

Rights, Wrongs and Reforms:
Selected Issues on Land-Use
Regulation within King County
December 2009



Municipal League of King County
Municipal League Foundation

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December 1, 2009

***The Municipal League of King County is a nonpartisan volunteer organization that has worked since 1910 to ensure good government that is open, effective and accountable. We rate candidates for public office, take positions on ballot measures and conduct studies of issues in the public interest.
More information at: <http://www.munileague.org>.***

The Municipal League Committee on Land-Use Regulation met from September 2007 to July 2009 to study issues related to growth management, land use, and permitting in King County jurisdictions.

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Executive Summary

Purpose: In 2007, the Municipal League of King County convened a study committee to look into recurring expressions of dissatisfaction and concern by citizens, property owners and developers at growth management and other land-use policies and at the regulatory and permitting practices of local and county governments.

This study has its origins in the property-rights initiatives that have been proposed in Washington State in the past few years, most recently Initiative 933 in 2006. The Municipal League opposed passage of I-933 and similar measures while observing that some of the proponents' complaints were appropriate causes for public concern. We saw a need for an independent review of these issues and, possibly, carefully crafted reforms to address them.

In the area of land-use regulation, we believe it is inevitable that strong differences of interest will arise between some property owners and the broader public. These differences lead to conflicting views about the wisdom and fairness of governmental actions.

By gathering and laying out the experiences and perspectives of key stakeholders, we wanted to set the stage for improved dialogue. Our hope is that this report, and the discussions that will follow, can play a part in reducing the high level of conflict and mistrust that surrounds land-use regulation within King County.

Methodology: The Municipal League study committee consisted of knowledgeable citizens representing a broad range of views. The committee interviewed selected individuals from the range of key stakeholder groups, listed below. We also gathered data from invited speakers, surveys, and written documentation, and analyzed the data to identify key issues, problems and promising practices that have been used to address these problems. From this process we developed conclusions and recommendations.

Our study committee sought the views and experiences of the following:

- Rural property owners and residents
- Property owners and residents in cities
- Developers, both large and small scale
- Advocacy groups and organizations working to influence land-use decisions
- Governmental staff and officials with policy or administrative responsibilities in land use
- Specialists, such as consultants and lawyers, working in the field of land use

In what follows we have distilled the key issues we identified in the course of our study and described our findings, conclusions and recommendations.

Complexity of the regulatory environment

Finding and Conclusions: The existence of multiple, sometimes overlapping jurisdictions with differing levels of authority presents special challenges to local governments, developers, property owners and the general public. The entire process takes place within a complicated

and often obscure arena of civil precedents, statutes, ordinances and policies with multiple origins, and in the context of strongly held political and community views.

Recommendation: Expand the promising Clark County pilot project throughout the state of Washington, making widely available a useful tool for reducing interagency communication and coordination difficulties relating to project permitting.

Government financial crisis and the impact of limited resources

Findings and Conclusions: Ongoing and serious limits on revenue are a major theme underlying local governments' challenges related to land-use regulation.

In particular, King County has allocated inadequate resources for these functions for many years and has relied too heavily on permit fees to fund this basic government function. One serious consequence can be poor customer service and great frustration on the part of individuals trying to access inadequately funded government services. We find the current fiscal situation in King County to be untenable. Without reform the system will eventually collapse.

Recommendation: Near term: Governments, especially King County, need to identify land-use regulation as a core function and secure additional financial support for this work or they must abandon some elements of the current work load. The state legislature can help to address this serious problem in the near term by providing additional revenue sources for counties, in particular.

Recommendation: Long term: State leadership is also urgently needed to assist counties and citizens in identifying viable governance and service delivery models for providing permitting and other necessary functions to unincorporated areas, and for ensuring that these mechanisms are enabled in state law. Some experts believe a solution may lie with completing all needed annexations within urbanized counties, such as King County, and utilizing a creative mix of special service districts in the rural areas of the county which can respond flexibly and equitably to the widely varying levels of service desired by rural residents. Another possibility would be for King County to negotiate inter-local agreements with cities within the county for such services as permitting, a solution which has been used elsewhere in the state. The concept of a township, authorized by the State Constitution but not now implemented, should be explored as an option for self-contained areas such as Vashon Island and perhaps others.

Conflicts over location and level of growth

Findings and Conclusions: There is enduring resistance on the part of many urban and rural residents to the growth-management policies which have long been adopted that call for compact urban development coupled with low-density rural development.

Elected officials and agency staff thus often find themselves in a difficult position. They are expected to be representative of their constituents, responsive to activists and interest groups, and at the same time in compliance with growth management and environmental requirements opposed by some constituents while supported by others. With strong voices disagreeing about many elements that go into implementing the policies and a lack of consensus on many specific proposals for land uses, this policy environment is very difficult for most governments to navigate.

It is challenging to make urban infill acceptable to receiving neighborhoods without driving up the cost excessively with additional design, amenity or process requirements.

The anticipated growth in population of this region can only be accommodated by increasing density somewhere. The Municipal League has repeatedly supported the growth management

goal that urban-level growth should be accommodated where it can best be served by existing services and infrastructure, or where new infrastructure and services can most economically be provided — i.e., in cities. It may be wishful thinking to imagine a more robust region-wide consensus on how to distribute and accommodate that density and how to distribute the costs associated with it. But in the absence of such a consensus, we see an urgent need to reduce the tension and bad feelings that surround these issues today.

Recommendation: Reducing tensions and bad feelings on this topic can be hugely challenging. Attitudes appear to be hardened and intractable. One type of tool, however, has sometimes proven effective on the project level. This is the involvement, early and often, of residents and institutions in surrounding neighborhoods whenever a major project is contemplated for an urban area. Techniques include: early and open communication with neighborhood leaders; discussions about the project with affected neighbors **before** the project is designed, so that citizen concerns can be taken into account early and less expensively than when a project has to be redesigned to meet objections; strict adherence to neighborhood plans and design guidelines, where they exist; and other similar techniques designed to balance wider community interests with the goals of the proposed development. Some examples we have noted that appear to be effective include Bellingham’s requirements for early community notification and meetings, Bellevue’s subarea planning process, to which the city strictly adheres in subsequent decisions, and Everett’s design and development guidelines for its historic downtown core, developed with major public input.

Fairness and equity — Who benefits and who pays?

Findings and Conclusions: Many people embrace and welcome regulation, understanding that while some regulations may reduce the options for use of their property, others protect this same property from the effects of other owners’ potentially damaging choices.

However, policies and practices that distribute benefits and costs of growth and development are not generally perceived by different stakeholders as equitable.

Inadequate public funding has caused significant burdens relating to infrastructure costs to be placed upon new development. This creates a major barrier to the important growth management goals of urban density and housing affordability.

Rural and unincorporated residents are not fairly represented in King County’s decisions regarding land-use regulations. All nine county council members vote on these decisions, yet they affect less than 17% of county residents who reside primarily in only four of the nine council districts. The vast majority of King County’s residents (and voters) live in cities, and thus urban perspectives and interests nearly always prevail in these decisions even though city residents have their own governments (cities) which make the decisions affecting urban residents’ local land uses.

Government’s greatest challenge in land-use regulation may well be to find the legally defensible and politically accepted balance between who benefits and who bears the burden.

Recommendation: New mechanisms must be found to address the inequitable representation for citizens living in unincorporated areas of King County.

Permitting process, permitting fees and related implementation issues

Findings and Conclusions: Based on the findings of a telephone survey on permitting and follow-up interviews and on the input of our various stakeholders, we have concluded that permitting is one of the most difficult processes in the entire land-use regulation area, for all participants and for a variety of reasons which we have spelled out. Permitting is one area

where government resource inadequacies can have very negative consequences, including: difficulty in providing adequate levels of staffing during periods of acute revenue shortage or periods of higher demand, occasional over-dependence on high or inappropriately calculated permit fees, as shown in the Tiger Mountain case (described in detail in the report), difficulty in providing customer service at acceptable levels, and challenges in making inherently complex processes understandable and predictable for the user.

Recommendation: To address costs and difficulties of administration, we encourage more local governments to participate in shared web portals, common ordinances, permit applications and codes.

Recommendation: In this area, in particular, it is important that government strive to be fair and evenhanded, and to ensure that staff behavior is appropriately neutral and professional.

Recommendation: We also refer to the suggestions outlined in the state report *Best Practices in Local Permitting*, relating to communication and customer service, and to the list of good examples we have noted. We do recognize and understand the challenges that governments face in making these types of improvements while struggling to balance competing priorities in the face of sometimes severe revenue problems.

Promising practices

We were heartened to uncover a very extensive list of promising practices throughout our inquiry into the many facets of land-use regulation. Despite major challenges of complexity, fiscal inadequacies and political conflicts, much good work is being done and innovative practices and successes appear in many places. We have attempted to highlight these in the hopes that they may be of use to jurisdictions looking for better ways to do their work.

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Introduction

Purpose: In 2007, the Municipal League of King County convened a study committee to look into recurring expressions of dissatisfaction and concern by citizens, property owners and developers at growth management and other land-use policies and the regulatory and permitting practices of local and county government.

This study has its origins in the property-rights initiatives that have been proposed in Washington State in the past few years. Most recently, Initiative 933 in 2006 was largely a response by rural property owners to the perceived unfairness of King County's Critical Areas Ordinance and other land-use regulations. The Municipal League opposed passage of I-933 and similar measures while at the same time observing that some of the issues and complaints contained in the proponents' statements were appropriate causes for public concern. We saw a need for an independent review of the issues and concerns and, possibly, carefully crafted reforms of policies and procedures.

In the area of land-use regulation, we believe it is inevitable that strong differences of interest will arise between some property owners and the broader public. These differences sometimes lead to conflicting views about the wisdom and fairness of governmental actions and restrictions.

By gathering and laying out the experiences and perspectives of key stakeholders, we wanted to set the stage for improved dialogue that could be more open and less adversarial than the ways in which these issues are commonly discussed. Our hope is that this report, and the discussions that will follow, will begin to reduce the high level of conflict and mistrust that surrounds land-use regulation within King County.

Stakeholders:

In seeking to find out how the system works in practice, our study committee learned from many sources about wide variations in the success with which county and municipal governments have addressed the legal, political and fiscal factors inherent in the regulation of land use.

Those sources included:

- Property owners and residents in the rural and unincorporated areas of the county (specifically property owners outside the urban growth boundary established to comply with the Growth Management Act and those affected by King County's Critical Areas Ordinance);
- Property owners and residents in cities, where the Growth Management Act directs urban level development;
- Developers, both of large and small scale;
- Organized or ad hoc groups and organizations engaged in discussions and advocacy on land use whose interest sometimes extends to broader public policy decisions (neighborhood associations, environmental groups, etc);

- Governmental staff and officials with policy or administrative responsibilities in land use, such as planning directors, permitting officials and elected council members;
- Specialists, such as consultants and lawyers, working in the field of land use.

Key issues: The key issues we identified in the course of our study include:

- Complexity of the regulatory environment
- Government financial crisis and the impact of limited resources
- Conflicts over location and level of growth within the County
- Fairness and equity — who benefits and who pays?
- Trust and mistrust among those affected by land-use regulation
- Challenges relating to permitting processes, fees and related issues
- Need for better tools for implementing urban density and protecting rural lands
- Insufficient dispute resolution mechanisms

Methodology: The Municipal League study committee consisted of knowledgeable citizens representing a broad range of views. The committee gathered input from a range of key stakeholder groups, identified above, by interviewing selected individuals from each of those key groups.

In addition to stakeholder interviews, we gathered data from invited speakers, surveys, and written documentation, and analyzed the data to identify key issues, problems and promising practices that have been used to address these problems. From this process we developed conclusions and recommendations.

Organization:

The report sets the stage in **Section 1** with a description of the public policy context and several big picture themes, including: complexity of the regulatory environment; inadequacy of government resources; conflicts over location and levels of growth; fairness and equity; and trust and mistrust among key players.

Section 2 discusses more specific implementation and administration of land-use regulation focusing on permitting-process issues including fees, and examples of several specific tools to implement urban density and protect rural lands, such as design review and transfer of development rights. The implementation section concludes with a brief discussion of dispute resolution.

Section 3 summarizes the promising practices and examples of successes identified throughout the report’s discussion of the key issues.

Section 4 lays out our conclusions and recommendations.

Appendices: Appendix A provides a list of interviewees and speakers. Appendix B is a bibliography of materials reviewed (including electronic links to most items). A summary of our telephone survey is found in Appendix C. Appendix D is a chart showing local and regional services delivered by King County.

Section 1: Public Policy Context and Issues

History: For centuries, land-use laws and regulations have advanced the goal of preserving and improving the quality of community life through controlling the uses of land and structures. Building codes (guiding construction) and zoning codes (limiting uses of land in certain areas) have been used in most American cities since the 19th century.

Major statewide measures: More recently, Washington State has adopted a number of major legislative tools to accommodate development while protecting environmental and community values. Three of the most important, from a long list, are the State Environmental Policy Act (SEPA), enacted by the Legislature in 1971, the Shorelines Management Act (SMA), approved by the voters in 1972, and the Growth Management Act (GMA), which became law in 1990 and 1991.

These measures set statewide requirements that are interpreted and implemented by counties and cities. For example, GMA requires all cities and counties in Washington State to identify and protect critical areas within their boundaries by adopting Critical Areas Ordinances (CAO's), and requires those counties and cities planning under the GMA to adopt comprehensive plans and implementing regulations showing how they will accommodate projected growth. Counties and cities have some discretion in how they carry out the details of these mandates, but must adhere to the guidelines and limits set by state (and to some extent federal) governments, and must comply with state and federal constitutions. In this study, we focus on the implementation of these policy and regulatory activities by King County and by the 38 cities within King County.¹

Complexity of the Regulatory Environment

Land-use regulation is not nearly as simple and straightforward as the above discussion about state measures might suggest. In fact, it is far more complex. The existence of multiple, sometimes overlapping jurisdictions with differing levels of authority presents special challenges to local governments, developers, property owners and the general public. The entire process takes place within a complicated and often obscure arena of civil precedents, statutes, ordinances and policies with multiple origins, and in the face of strongly held political and community views. Further complicating this environment are the occasional shifts in policy priorities which can occur with turnover of elected officials.

The almost constant need for change in the land-use field provides another element of complexity. Plans, policies and regulations should be reexamined and updated periodically. For instance, cities and counties planning under GMA must regularly update their comprehensive plans and implementing regulations on a schedule prescribed by state law, but are free to update them more frequently. Shorelines Management Plans should be updated according to the Shorelines Management Act. However, other policies and regulations are generally changed on a more gradual, ad hoc basis. Re-examining and updating land-use regulations may be even more important than changing laws in other fields because of the many recent breakthroughs in our understanding of man's impact on the environment.

¹ King County is one of 39 county governments in the State of Washington. As a governmental entity, King County provides municipal services in areas of the county that are not within any incorporated city, and by contract for some cities (land use, local parks, animal control, sheriff). It also provides some general governmental services to all residents within its boundaries, for example, transit, waste-water management, public health, administration of records and elections, and criminal justice (including fingerprinting provided countywide by the Sheriff's office). Appendix D lists local and regional services provided by King County. This report discusses the activities of King County government and of the cities within King County. Unless the context suggests otherwise, "King County" in this report refers to the governmental unit, not to the territory within the county boundaries.

We distinguished six levels of authority affecting land-use policy and regulation in King County.

- Federal government

Many federal regulations affect land use and multiple federal agencies may be involved in setting standards and interpreting regulations. Laws, regulations, policies and agencies at the federal level are considered part of the landscape with which both citizens (individuals, developers, non-profits) and local governments must comply. While influence and change at this level are beyond the scope of our study, we considered federal regulation as part of the context within which local actions occur.

- State government

The state has significant direct impact on land use through the enactment, interpretation and implementation of legislation, regulations and policies. Three major pieces of legislation of particular importance are the Growth Management Act, the State Environmental Policy Act, and the Shoreline Management Act, each of which establishes a series of demands on local governments for compliance in numerous areas that affect land use and development throughout the state and thus throughout King County.

- Puget Sound Regional Council

This regional planning organization, whose membership includes elected officials from the four central Puget Sound counties and cities within them, has adopted important regional policy and planning documents. These include Vision 2040, a growth strategy for the region, and Multi County Planning Policies, which provide guidance to the local jurisdictions within these counties as they carry out planning actions required by the Growth Management Act.

- County government

King County's role is limited in terms of countywide land-use activities. It convened a multi-jurisdictional body called the Growth Management Planning Council (GMPC) in the early 1990s to develop the Countywide Planning Policies as mandated by the Growth Management Act. The GMPC, chaired by the County Executive, continues to meet several times each year to monitor and oversee amendments and updates to the Countywide Planning Policies (CPPs). These policies serve as a basis for ensuring that each city, and the county for unincorporated areas, develops comprehensive plans and implementing regulations which are consistent with the Growth Management Act and with each other. Two of the major tasks of the GMPC and the CPPs are to designate urban centers as focus points for major job and residential growth in the county, and to collaboratively determine how much of the future growth, based on state projections, will occur in each of the jurisdictions within the county. Together with the King County Comprehensive Plan, the CPPs designate Urban Growth Areas within the county as locations to accommodate most of the projected growth. The GMPC has also initiated a benchmarks program which uses indicators to monitor the county's and each jurisdiction's progress in complying with the CPPs.

Although the King County Comprehensive Plan primarily governs unincorporated areas, it does provide some guidance to countywide development, including delineation of the Urban Growth Area (UGA) and Rural and Resource areas within the county. Cities can only annex territory within the UGA. In addition, county staff coordinates some countywide tasks relating to the Countywide Planning Policies and growth management.

- Local governments

Cities, such as Bellevue, Covington and Seattle, regulate and implement land-use policies at the local level. They do so following their own laws and regulations and those of higher levels of government – federal, state and region- wide and county-wide planning policies described above. Regulatory functions include zoning, permitting and protection of sensitive areas. As noted, King County functions as a local government in regulation of land use for all parts of the county that are not within the boundaries of cities.

- Special purpose districts

These are agencies with specific functions – such as port, school, water, fire and sewer districts – whose jurisdictional boundaries may be different than local government boundaries and may overlap more than one local government. Special purpose districts are governed by independently elected Commissioners.

Issues:

Numerous issues arise as a result of multiple levels and multiple agencies of government, including for example the following:

- Coordination among requirements of multiple levels and multiple agencies requires at a minimum time, resources, communication, good information and clarity about roles, responsibilities and boundaries of the various agencies involved. Identifying all the potentially applicable regulations and all the agencies that may be involved in approving a land-use proposal is a complex task. Complying with all the requirements is yet a greater challenge.
- Regulations or the interpretation of regulations may be inconsistent among agencies within a single level, and between differing levels, of government. (For one example: fire districts or departments may require street widths that differ from local government preferences.)
- The timing or sequence for obtaining decisions may differ from agency to agency, especially when the project involves multiple levels of government.

Promising Example: Clark County Pilot Project

The problems that projects encounter during permit review when they are required to obtain approvals from various agencies representing multiple levels of government can be absolutely daunting. The state legislature recognized this, and requested that the Governor's Office of Regulatory Assistance conduct a pilot project designed to demonstrate the type and extent of the problems faced by proponents of complex projects and to develop techniques which could help to resolve them.²

The pilot project involved four state agencies, three federal agencies, the City of Vancouver, Clark County, and the associations of Washington's cities and counties. Working together, they created the "Integrated Project Review and Mitigation Tools" decision support process. The main components are an electronic document sharing mechanism for use by all of the agencies, plus coordinated and consistent processes for evaluating permit applications.

The technical core of the project was a mechanism for data exchange between agencies whose systems previously did not connect with each other or permit the sharing of documents. The

² Governor's Office of Regulatory Assistance, "Integrated Project Review & Mitigation Tools Initiative," <http://www.ora.wa.gov/regulatory/projectreview.asp>.

result is a shared on-line pre-application process that facilitates comments from local, state and federal permit reviewers. The system identifies the various activities involved in each application and shows which elements of the project are linked to which local, state and federal regulations, which permits are required, and whether programmatic permits are needed. Each participant can see what each agency is doing on the application.

This process was described as particularly useful in highlighting which conditions are duplicative or conflicting. Agency reviewers can put conditions on the permit and make sure conditions are not conflicting with those required by other agencies. Reviewers then harmonize or reconcile conditions. This was identified as an important breakthrough in achieving simplification and consistency among agencies. The goal is to eventually make this tool available to jurisdictions throughout the state so that it can be widely used.

Government Financial Crisis and the Impact of Limited Resources

Every phase of land-use regulation involves expenses for governments. This may include but is not limited to:

- Planning;
- Developing maps, regulations and codes to implement plans;
- Reviewing permit applications;
- Analyzing environmental impacts of policies and land-use proposals;
- Inspections;
- Enforcing regulations and codes;
- Updating plans and revising implementing regulations accordingly;
- Dealing with appeals to decisions; and
- Assuring required public participation throughout these processes.

Additional resource demands arise from such related governmental functions as:

- Staff hiring and training;
- Preparation of printed documents and web-based information for the public; and
- Site visits.

Ongoing and serious limits on revenue are a major theme underlying local governments' challenges related to land-use regulation as well as many other mandated duties. The problem is particularly acute with King County, which lacks the breadth of revenue sources available to cities.

King County's Ongoing Fiscal Crisis

The causes of government revenue limitations are many and varied, and are not generally within the scope of this report. In particular, though, the fiscal challenges faced by King County government are not new, are more intractable than those faced by most cities, and do have a demonstrable effect on land-use matters, especially the permitting process. The Municipal League's 2003 report, "Shortchanged: King County's Fiscal Crisis", included findings and recommendations which are pertinent to the topic of this report.³ In part, the text of our earlier report reads:

King County is experiencing a fiscal crisis, which cannot be addressed without a major change in its responsibilities and focus. Although there have been deep budget cuts in

³ Municipal League of King County, "Shortchanged: King County's Fiscal Crisis," 2003 <http://www.munileague.org/issues/past-studies/shortchanged.pdf>.

recent years, revenues available to fund expenses of the County's General Fund continue to be insufficient to support the level of services previously established.

In addition to providing regional government services throughout the County, the County also serves as the local service provider for unincorporated areas. In 2003, the County estimated that approximately \$42 million of the money spent to provide local government services was supplied by revenues generated by the County in its regional government role. Thus, the County as regional government is subsidizing local government services.

In its report, the Municipal League recommended that numerous steps be taken to address King County's fiscal crisis, including the following:

1. *King County should divest itself of its role as a local service provider – in order to fulfill its role as regional service provider.*
2. *All land within the urban growth boundary should be incorporated or annexed to the city or cities within each area's sphere of influence through a collaboration between King County, existing cities and citizens. Rural unincorporated communities should be organized into townships or other entities for the purpose of local service delivery, to include local land-use decision-making consistent with the Countywide Planning Policies and the Growth Management Act. King County should be more aggressive in encouraging and enabling unincorporated residents to find alternatives to King County for local service provision.⁴*
3. *King County, along with the other members of the Washington State Association of Counties, should continue to seek, and the Legislature should authorize, additional revenue sources to fund equitably county services.*
4. *As additional revenue opportunities are explored, the County must also continue to cut costs.*

Fast forward to 2009, and we find that King County's fiscal problems have only worsened since our 2003 study. Additional annexations of unincorporated land, rising personnel costs (especially health care), and the major downturn in the economy of the past year are some of the factors contributing to this deterioration. The County Executive's proposed 2010 budget, for example, cut the budget of the Department of Development and Environmental Services (DDES) from \$32 million to \$24 million, while recommending a substantial increase in permitting fees.

How do these serious resource issues play out regarding our topic of land-use regulation? The problem is particularly acute in the area of permitting.

Comparing King County and Cities on Funding of Permitting Activities

The role of permit fees in funding permitting agencies: King County's land use and building department, DDES, operates as an enterprise fund. It is primarily funded (and was proposed in the Executive's 2010 budget to become exclusively funded) by permit fees. It receives almost no appropriation from the County's General Fund.

King County bases its permit fees almost exclusively on hourly rates. The rate is currently \$140 per hour (after downward adjustment following a lawsuit) and had been proposed to increase to \$195 in 2010. This pattern is in clear contrast to the ways cities fund comparable activities. Cities generally base their permit fees on numerous factors, such as the overall value, square footage or cost per square foot of the proposed project, although some also have flat fees per

⁴ The Washington State Constitution, in Article XI, grants counties the power to create townships as a vehicle for delivering local government services within their boundaries. None currently exist.

permit type in conjunction with hourly fees for unusually complex projects. The City of Seattle, for example, combines flat fees for various categories of permits with hourly rates when project review requires more hours than typically required to review specific types of permits.⁵

Mitigating impacts of development cycles on permitting agencies: When the number of applications for permits declines, as happens in economic downturns, King County lacks the resources to maintain staffing for the permitting function and therefore is likely to have to reduce personnel levels. Cities by contrast have more widely varied sources of revenue and thus are better situated to weather downturns. Seattle officials explained that the city has established a reserve fund created for the purpose of mitigating the impact of economic downturns on staffing, though the city has still had to lay off some employees. The goal is to avoid incurring the expenses of losing, then later having to recruit and train, staff when the economy turns around. Development often occurs in boom and bust cycles in response to variations in the economy, so strategies that lessen the impact on staff levels reduce costs as well as disruption of employees' lives.

Observations: Efficient processes and good customer service are important goals which permitting agencies should strive to achieve, according to many sources.⁶ Being able to make such improvements is a function both of attitude and of resources. These goals are very difficult to meet when an organization is facing severe revenue limitation as King County's DDES is and has been for some time. It is also more difficult to provide good customer service and streamline processes in the midst of a construction boom cycle, when staff are working flat out to deal with the logjam of applications awaiting review. While this may suggest that there is never a good time for a government in fiscal crisis to make process reforms, we believe periods of low activity, such as the present, provide the better opportunity for instituting needed process changes.

Recommendations:

King County needs to seek alternative mechanisms for delivering local services: The Municipal League stands by its earlier recommendation that King County should divest itself of local service functions, and that another mechanism or mechanisms should be found to deliver these services to the increasingly small number of geographically dispersed citizens of unincorporated King County. The services to be divested would include permitting and land-use regulatory functions (within the requirements set by the GMA and Countywide Planning Policies, including rural density limits and location of the urban growth boundary), which pertain only to unincorporated areas of King County. This change is not only fiscally necessary. It would also help to resolve the problem of under-representation mentioned later in this report, and the resulting perception of unfairness that is widespread in the unincorporated and especially the rural areas of the county.

The challenges faced by King County and other urbanizing counties in efficiently delivering local services to unincorporated areas, while simultaneously serving as regional governments, are problems of long standing. More than 30 years ago, civic leader Aubrey Davis proposed addressing these problems by the creation of a Deputy Executive position within County government that would be organizationally responsible for all local services and would thus serve as the "city manager" for unincorporated areas. Local service providers like DDES and the Roads Division would report directly to that Deputy Executive. This creative idea is still worthy of consideration, though it may no longer, by itself, be enough to resolve the growing fiscal and representation problems facing King County and its citizens.

⁵ See Appendix C for the summary of our survey of these fee-setting procedures throughout the region.

⁶ The most notable of these sources is the recent report "Local Government Permitting Best Practices," issued in August 2008 by Washington's Office of Regulatory Assistance.

The 1997 King County Charter Review Commission addressed this problem and similarly recommended that King County seriously study the available options to identify and put in place a mechanism for improved provision of local services to unincorporated residents of the county. With the County's worsening fiscal health, this recommendation takes on added urgency.

State leadership needed: We recommend that the state take a leadership role in assisting with the analysis of possible options. It may be time for the state to convene another Local Governance Study Commission, which explored these issues in the late 1980s. The report of the original study commission makes interesting reading, as it deals with many of the same concerns and problems now facing Washington's urbanizing counties — concerns that have gone unaddressed and unresolved since they were identified by the study commission in the late 80s.⁷ The state should also assist in making promising options feasible by legislating necessary changes in statute.

Observations: All in all, we are not optimistic that King County will be able to improve its fiscal health in the near future without major structural and systemic changes which likely will require state legislative action. It should be noted that cities, with somewhat broader revenue sources from which to draw, are also suffering in the current economic downturn, and some have had to reduce the number of permit-processing personnel and other staff involved in land-use regulatory activities. In the case of King County government and the governments of cities within it, public expectations regarding governments' ability to regulate land use efficiently, effectively and fairly must be aligned with fiscal reality. Otherwise trust in local governments will erode further and anti-government sentiment will make it even more difficult for government to meet the challenges ahead.

Conflicts over Location and Levels of Growth

One of the most controversial issues relating to land-use regulation throughout King County is the question of where growth should occur. Established growth management policy calls for urban levels of growth to be accommodated within urban growth areas (i.e., incorporated cities and certain urbanized areas immediately adjacent to them⁸) and for only low-density development to occur outside these areas (i.e., in rural areas and natural resource lands).

This question has been long settled by language in the Growth Management Act and by regional and local plans complying with GMA requirements. However, as King County and cities attempt to implement this policy via zoning, environmental regulation and other tools, they are finding significant resistance from many urban and rural residents.

Stakeholder comments:

Urban Residents

- Urban density drives up the cost of housing, making cities less affordable for working people by increasing the value of any remaining developable land and thus adding to the cost of any new construction. It also provides a type of housing that is not attractive to families, often consisting solely of apartments and condos without private yards and other amenities which families with children generally prefer.

⁷ Washington State Local Governance Study Commission, Final Report, "A History of Washington's Local Governments," Volume I and "The Quiet Crisis of Local Governance in Washington," Volume II, January 1988.

⁸ As required under the state's Growth Management Act, the King County Council has adopted a policy, welcomed by the Municipal League and many other observers, that encourages annexation into cities, or incorporation, of all urbanized areas inside the Urban Growth Boundary.

- Adding population to already heavily populated areas brings negative impacts on existing residents, such as over-crowded schools, congested streets, and lack of parking.
- Increased density in single-family neighborhoods tends to destroy the character of these neighborhoods – character which attracted residents in the first place.
- The effort to make new housing economical to the builder and affordable to the residents seems all too frequently to result in buildings that are unattractive and visibly inexpensive, thus adding little to their neighborhoods beyond negative impacts.
- Some critics of growth in urban areas attribute any policy encouraging that outcome to a desire for increased municipal revenue without regard to the interests of current residents.
- The environment is hurt by overly dense urban development which often results in loss of trees, open spaces and habitat for wildlife. It is better policy to disperse the growth equitably so that no single area is overly affected.

Rural and Unincorporated Area Residents

- Downzoning to lower density (done to comply with growth management mandates) and environmental restrictions on uses of property effectively reduce development potential and hence the value of land.
- It is wrong not to compensate property owners when downzoning or otherwise restricting uses on property long held by owners in expectation of future financial gains; doing so results in loss of land value without just compensation.
- City dwellers too often want to keep development out of the rural and resource lands so they can have an unspoiled playground to enjoy as a respite from overdeveloped cities.
- If it is accepted public policy to environmentally restrict or otherwise downzone rural and natural resource property to achieve a broader community benefit; it is only right that everyone should pay for this benefit, not solely the affected property owners.
- Needed environmental protection can be achieved by using older, simpler approaches rather than the complex, difficult to understand and sometimes difficult to implement prescriptions and requirements underlying today's regulatory framework.

Developers

- Though the Growth Management Act and implementing policies and regulations would seem to encourage construction in urban areas, multiple difficulties hamper efforts to build within cities.
- Urban residents who do not agree with adopted growth management policies demonize developers and blame those trying to implement the policies for what they see as undesirable outcomes.
- It is generally easier to build homes in low density areas (or on so-called raw land) than it is to build in urban areas where neighborhood resistance makes the review process uncertain and difficult, where available land is scarcer and more expensive, and where regulations are often highly complex.
- The Urban Growth Boundary in King County, adopted as part of the Countywide Planning Policies in the early 90s, is overdue for reconsideration and for some degree of

expansion. The problem is that, since the adoption of the boundary, land appropriate for good-sized development within the boundary has essentially been used up, so that parcels of an appropriate size and availability for development can no longer be found. Urban infill is very difficult to do, which is further cause for expanding the boundary.

Governments

- There is enduring resistance on the part of many urban and rural residents to the adopted growth management policies calling for compact urban development coupled with low-density rural development.
- Conflicting and combative agendas of various interest groups with diverse views about urban and rural density and related regulations make management in this area exceedingly difficult.
- Nearly any action that touches land-use issues in a significant way is likely to be challenged, leading often to costly appeals and delays.
- On the bright side, at least some communities reported that there may now be growing acceptance of density consistent with growth management policies including decreasing resistance to multi-family housing located in cities.

Problems:

- A broad consensus is lacking on where growth should go.
- There is no concise “bright line” standard for what constitutes urban density.
- It is inherently difficult to achieve fairness by aligning benefits and impacts in these decisions.
- Those attempting to follow policies directing growth to urban areas often encounter political and process barriers.
- It is challenging to make urban infill acceptable to receiving neighborhoods without driving up the cost excessively with additional design, amenity or process requirements.

As the above suggests, the growth management policies directing urban-level development to cities and restricting development in rural and resource lands are not well accepted by some who are directly or indirectly affected by them. As a result, there is often pressure on government to delay, soften or outright resist implementation. Elected officials and agency staff thus often find themselves in a difficult position. They are expected to be representative of their constituents, responsive to activists and interest groups, and at the same time in compliance with growth management and environmental requirements opposed by some constituents while supported by others. With strong voices disagreeing about many elements that go into implementing the policies and a lack of consensus around many specific proposals for land uses, this policy environment is very difficult for most governments to navigate.

Observations: The reactions of both urban and rural property owners affected by environmental and other land-use regulations differ markedly, even within each stakeholder group, as to those regulations. Many embrace and welcome regulation, understanding that while some regulations may reduce the options for use of their property, other regulations protect this same property from the effects of other owners’ potentially damaging choices. But it is not uncommon, especially in rural areas, for property owners to feel that the real purpose behind certain environmental regulations is to prevent development, rather than to protect the environment.

The lack of a clear standard for urban density has made it more difficult for cities to carry out the GMA policy of encouraging urban-level growth in urban areas. Some experts in the field have suggested that a possible remedy might be for the state legislature to make a minor amendment to the GMA, requiring countywide planning policies (used by all jurisdictions in each county planning under GMA) to include such a standard. This process would require the jurisdictions within each county to come to agreement on just what that standard should be for cities within the county, which might be difficult, but it would send a clearer message to cities about what is expected of them.

Fairness and Equity — Who Benefits and Who Pays?

The perceptions of stakeholders often differ about the fairness of land-use regulatory activities. There are also legitimate policy differences about the relative claims of future versus present residents, the ways costs should be apportioned between the ranks of all taxpayers vs. project proponents, the influence which various stakeholders may have on specific decisions or more general policy development, and other similar questions. Of all these considerations, however, government's greatest challenge in land-use regulation may well be to find the legally defensible and politically accepted balance between who benefits and who is disadvantaged. This dilemma appears to be at the heart of most of the concerns we heard from stakeholders. The following paragraphs summarize what we have learned through interviews and review of published materials about how people perceive fairness in the land-use regulatory arena.

Rural and Unincorporated Area Residents

- They believe they are losing value in their land because of significant restrictions on land use. Examples: what residents refer to as downzoning without compensation; and restrictions imposed by the 2004 King County Critical Areas Ordinance, especially the provision which allowed no more than 35% of certain-sized parcels to be cleared of natural vegetation.
- Large developments are favored by government because of their size and the resources of their proponents, and they receive special approvals and treatment as a result.
- Rural and unincorporated residents are not fairly represented in King County's decisions regarding land-use regulations. All nine county council members vote on these decisions, yet they affect fewer than 17% of county residents who reside primarily in only four of the nine council districts. The vast majority of King County's residents (and voters) live in cities, and thus urban perspectives and interests nearly always prevail in these decisions even though city residents have their own governments (cities) which make decisions affecting their local land uses.
- One small subset of rural residents, those engaged in agricultural activities, are very few in number and some believe that their concerns and perspective are not heard and taken seriously by decision makers.

Urban Residents

- It is unfair to require that additional growth and development – especially density – occur in already urban communities in the name of preserving rural areas.
- By having to take too much development, city residents are receiving the negative impacts of someone else's benefit--exactly the reverse of the rural residents' concern about their being impacted by development restrictions or denied use of their land in order to preserve the rural areas as “playgrounds” for urban residents.

- Managing future growth by concentrating development in urban areas is a policy which, if not carefully monitored, can lead to disproportionate negative impacts such as destruction of neighborhood character and decrease in property values.
- Development in already urbanized areas is being promoted by city governments in order to generate additional revenue, rather than for legitimate policy considerations.

Developers

- Excessive regulatory requirements often amount to an inequitable burden.
- There is a need for greater fairness in the way infrastructure is funded, so that the burden does not fall predominantly on new homeowners but is more equitably shared. Without such a change, housing affordability will continue to be a major problem, as broadly beneficial infrastructure costs are imposed largely on purchasers of new homes.
- The costs of some government agencies' activities related to land-use controls are inequitably charged to permit applicants in spite of the fact that the beneficiaries of these efforts include neighboring landowners, future residents, and, in many ways, the entire population of the areas in which the development takes place.
- Large developers actually face a much more difficult environment for getting projects approved than do small project proponents, because great political attention is often paid to large proposals while small projects may move forward without attracting similar notice.
- Government has not found a workable solution to balancing the regulation of private land uses with the general public good.
- Government's focus is one-way: quick to charge the property owner through mitigation fees, etc., when the effect of regulations is an "upzone" (resulting in an increase in value), but slow to give attention to the effects of downzoning on property values.

Problems:

- Those most affected by decisions relating to land-use regulation within unincorporated King County are not proportionately represented by decision makers, most of whose constituents are residents of cities which have their own separate land-use decision making powers.
- Inadequate public funding has caused significant burdens relating to infrastructure costs to be placed upon new development. This creates a major barrier to the important growth management goals of urban density and housing affordability.
- Policies and practices which distribute benefits and costs of growth and development are not generally perceived by different stakeholders as equitable. The provision in King County's CAO for restricting clearing of natural vegetation on some sized parcels to 35% of the parcel's area was considered by those affected to be just such an inequitable measure.

Court action resolving the dispute over the 35% clearing restriction in King County's Critical Areas Ordinance:

The legal challenge relating to the 35% vegetation clearing restriction in King County's CAO was decided in favor of the opponents when this provision was struck down by the Court of

Appeals in 2008. With the State Supreme Court's decision not to hear the case, the Appeals Court's judgment effectively ends this controversy.⁹

Trust and Mistrust

We found that there is a lack of trust between citizens and government that is especially pronounced in the land-use arena, with motives for decisions and actions questioned by many sides. This atmosphere creates barriers to solving problems and dealing with conflicts as negative assumptions impede the likelihood of compromise on difficult issues. This problem appears to be particularly acute regarding citizen interaction with King County.

What we heard from citizens, developers, policy analysts and government officials:

Government Perspective and Challenges:

- When government officials anticipate negative reactions to proposals and opportunistic exploration of regulations for loopholes or errors, they approach general communication, decision-making and revision of regulations with great caution. The results are often delays and the publication of difficult-to-understand, technical, legalistic materials.
- The conflict between active interest groups on many sides of the issues makes these problems even more difficult; some groups seem to build their programs around faulting actions of government agencies and the unveiling of what they perceive as concealed policy objectives.
- While land-use staff may see their role as protecting the general public interest, they are often viewed with hostility as they interact with the public in the course of their work.
- Planning officials approach decisions with great caution, considering not only the immediate proposal but also the precedent that might be set by any exercise of discretion and the perceptions of unfairness that might result. There seems to be no reward for risk-taking in the public sector, only for caution.

Citizen Perspectives and Issues - King County:

- The many costly requirements and the frequent delays that developers and small project proponents report in dealing with King County have led to their questioning the motives of government staff in implementing land-use regulations.

Examples: One developer commented that "discretion is exercised by government staff in the guise of applying rules." He believed that rules were cited as the cause of delays in decision making, but the real purpose for some staff members was to prevent the projects from proceeding at all. Almost identical language was used by a rural resident with a small tract of land: "The County's goal is to stop growth so they put as many barriers in place as possible so people will give up." These examples portray sentiments we heard from a number of rural residents and developers who operate in unincorporated King County. They see their difficulties in obtaining approvals as barriers that government shows little interest in overcoming.

- For unincorporated residents, there is an additional basis for suspicion about the motives of reviewing staff. The King County Department of Development and Environmental Services (DDES) bases nearly all its permitting fees on hourly rates charged for time

⁹ Citizens' Alliance for Property Rights et al v. Ron Sims, King County Executive, King County, and the Metropolitan King County Council, Reversal of Summary Judgment and Evidentiary Rulings on Summary Judgment, published in part July 7, 2008, Washington State Court of Appeals, Division One, No. 59416-8-1.

spent by staff in reviewing permit applications. For some observers, this practice appears to explain why there is little motivation for streamlining and efficiency – staff time does, in a very literal sense, bring in the money that supports the department and its staff. To the mistrustful, there appears to be every incentive to maintain complex and opaque requirements and a convoluted process in order to maximize billable hours and hence revenue collected. There are many ramifications of this important topic beyond issues of trust, which are discussed in detail in Section 2 of this report under “Permitting process, fees and related issues.”

- Concerns were also raised about County staff politicizing the process by which King County developed its Critical Areas Ordinance. When asked to comment on this complaint, a DDES official described the behavior as justified in order to counter excessively aggressive citizen opposition. We believe this comment reflects a lack of sensitivity to the need for unelected government officials to behave in a neutral and professional manner as they go about their various duties, even such duties as development of a controversial policy or law. Trust in government depends on this neutral approach.

Observations:

When all sides – those seeking to develop land, organizations and individuals wanting to prevent or minimize development, and government staff and officials – view each other as adversaries and assume the worst in terms of motivation for behavior, constructive steps are difficult. Since government has the power of decision-making and action, and holds a monopoly over permitting decisions, with applicants having nowhere else to turn for this service, government may need to be the party to break the cycle of mistrust. We acknowledge that this would be tremendously difficult to achieve.

Section 2: Implementation and Administration

Permitting Process and Fees; Related Implementation Issues

Background: Nearly all stakeholders we interviewed had concerns and issues about various aspects of governmental permitting processes. In order to make any changes in land uses or to make even relatively small changes to structures, property owners must apply for and receive a permit allowing them to take the proposed action. Permitting is where policy intersects with practice in land-use and environmental regulation – laws are enforced when people try to take actions which are governed by those laws. This report focuses primarily on city and county land use and building permits. Land-use permits assure that structures meet zoning requirements and comply with environmental regulations; they are required for any changes in use on a specific property (subdividing a lot or changing from single to multi-family use). Building permits uphold industry standards and public safety requirements and are required for construction and remodeling projects such as plumbing, electrical work, roofing, structural additions, etc. They are not typically required for very minor repairs. There are also categories of permits that deal with clearing and grading, tree removal, water and sewer related work and other non-structural issues, and numerous codes exist for which compliance is required, such as energy and fire safety codes.

Permitting Practices Survey

Background:

To gather information on permitting, we conducted interviews and a brief telephone survey, contacting staff of 38 cities and of the King County Department of Development and Environmental Services. For many cities we also examined the online resources and procedures for permitting and regulation.

Survey results:

By the standards described in the Governor’s Office of Regulatory Assistance August 2008 report *Local Government Permitting Best Practices*¹⁰ the results of our review suggest that, by and large, most cities in King County are striving to employ good permitting practices. Many cities have made significant efforts toward achieving good business practices in key areas: providing well-organized on-line permitting information, good customer service at the permit counter, and pre-application meetings to fully explain policies and requirements to applicants.

Two areas where we found the practices are mixed and in need of further improvement are providing a single point of contact for more complex applications and overly complicated fee structures.

On-Line Permitting Resources and the Permit Counter Experience. Most cities in King County today have their zoning codes, permit processes, permit checklists and permit fees posted on-line. Permit applications can be submitted on-line in some cities but most still require the applications to be submitted in person. A number of cities are using an on-line portal called MyBuildingPermit.com that uses common permit applications for simple permits such as mechanical, plumbing, electrical, low-voltage electrical and re-roofing. The site also allows contractors to track the status of a permit and to schedule inspections on-line.

¹⁰ Governor’s Office of Regulatory Assistance, “Local Government Permitting Best Practices,” August 2008.

We found that most cities' on-line resources include easy-to-use sections for homeowners, explaining which home-repair and remodeling projects require a permit and which do not. Typically, on-line sites also have a reasonably clear set of forms, checklists and fee explanations for contractors doing single-family home additions or new construction projects that require building permits. However, the permitting information appears highly complex to us, even on the most user-friendly city websites, when multi-family or commercial structures are planned or when land-use or critical-areas reviews will be necessary.

Permit Applicant Meetings and Staff Contacts. Meetings between permit applicants and city staff, sometimes including outside technical experts, are the standard means for clarifying unusual or complex project proposals before and during the permit process. Most cities require pre-application meetings for some but not all permit types and most do charge for these meetings, either a set fee (typically ranging from \$250 to \$500) or a set fee plus an hourly charge for any expert staff or outside consultants. Some cities credit pre-application meeting fees towards subsequent permit review fees. Most cities use some form of a "case manager" or single point of contact for applicants.

Permit Fees. The total cost of fees for a project generally includes application or review fees, permit issuance fees, and inspection fees. Within these broad categories, though, the types of fees may be numerous and the distinctions highly technical. Cities in King County commonly have established their fees using standard building industry tables reflecting the square footage and expected total cost of the project, and, as noted, often operate with a combination of set and hourly fees depending on the complexity of the proposal. Due to increasing demands on many city budgets, there is pressure to recoup costs related to permitting services from applicants.

Stakeholder Comments

The comments we heard about permitting processes can be summarized in a few major themes: time, complexity, staff attitude and cost. These varied by jurisdiction and stakeholder perspective.

Unincorporated King County Residents

- Residents in unincorporated areas deal only with King County for permitting because it is their local government. DDES until recently employed permitting practices that angered many applicants.
- There was a general perception that the fees charged for permit review by the County were exorbitantly high and unreasonable.
- For example, interviewees stated that fees were charged for time spent directly dealing with a permit application AND for time staff from other departments spent dealing with land-use and environmental issues as a whole.
- Staff involved in permit reviews had their time billed at the same rate, whether they were professionally trained individuals with technical expertise and advanced degrees or staff performing certain clerical functions. This seemed to be a way of padding the billing.
- The rationale for binding fee estimates, as laid out in staff worksheets, was not made available to permit applicants, yet unless those estimates were accepted, the proposed project was not allowed to proceed through the review process. Our interviewees described this practice as a refusal to itemize billings.
- The permit fee appeal process in use by DDES was not independent, objective or transparent.

- It appeared to many permit applicants that the practice of billing by the hour was providing incentives to staff to prolong the permit review and approval process; this impression was strengthened by reports that staff had billing quotas.
- Customer service and communication were often poor, with repeated inquiries about progress of a permit often going unanswered.
- We also heard the perception that some permitting staff seemed driven by a personal anti-development agenda.

City Residents

- The views of urban residents were more mixed, but based on what we heard and observed, it appears that cities, perhaps because of their more robust revenue situation, have been able to provide generally acceptable customer service at rates that are usually perceived as reasonable.
- Renton made a concerted effort about a decade ago to greatly streamline its permitting process and make it significantly more user-friendly, which reportedly yielded reduced permitting timelines of up to 50%.¹¹ Many cities have referred to Renton's approach in their own attempts to streamline their permitting processes.
- In Seattle, where public attitudes are more diverse (and contentious) regarding new development, there appear to be greater problems with complexity of the process and complaints about staff imposing subjective judgments on the review of permit applications, especially if there is notable community concern about a project.
- Some Seattle residents, generally those who are opposed to the denser development patterns called for in the GMA and Seattle's Comprehensive Plan, also believe that permitting is too permissive and is politically driven by the city's desire to increase its revenues.

Developers

- Developers sometimes experience an easier time navigating a complex system than do individual property owners because they have expertise in the field and experience finding their way through the permit review process. They can also generally afford to hire lawyers and consultants, at least for larger projects, to assist them with the process.
- We were told that the tendency of some permitting staff in Seattle to apply overly subjective judgment to their permit-review duties decreases significantly when a developer arrives at the permit counter accompanied by a lawyer.
- Outside of Seattle a number of suburban cities have earned a reputation for working constructively with permit applicants to help them navigate the process. For example, Issaquah created a customized collaborative process for reviewing permit applications for the large planned community of Issaquah Highlands, which significantly reduced both the time and expense that would otherwise have been required for reviewing plans for this major project.

¹¹ Described in Governor's Competitiveness Council, Final Report, Appendix C: "Increasing Agency Responsiveness and Accountability: A Case Study of Renton's Regulatory Reform," December 2001, <http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/WAtaxstudy/CompetitivenessCouncilFinalReport.pdf>.

- Small cities are easier to work with; coordination is simpler, communication is better, and they are more flexible.
- Jurisdictions seeking jobs and economic development also tend to be more helpful to permit applicants. Examples given were: Medina, Redmond, Issaquah and Burien.
- It is helpful to have predictability in the permit process, so that decisions, once made, don't get unmade later in the process. Flexibility is also helpful when it is used to problem-solve and get beyond excessive rigidity in some codes.

Challenges for Governments:

Governments face many conflicting pressures in the permitting arena. Chronically financially stretched (especially King County), they cannot legally use permit fees to fund anything but related permitting expenses; this principle has been upheld by several recent court decisions, most notably by the judgment in the Tiger Mt. case, discussed below.

While most jurisdictions consistently work to make their process more user-friendly and less difficult to navigate, they are often frustrated in those efforts by resource inadequacies.

The resource picture is complicated by the boom and bust cycle of development, with large numbers of permit applications in prosperous times, and drastic reductions when the climate for development becomes unfavorable. It is difficult to adjust staffing levels to meet these varying levels of demand. The City of Seattle stabilizes employment levels to some degree by strategies described elsewhere in this report.

Many of the tasks of permitting and regulatory agencies are mandated from other levels of government. These requirements add to the expense and complexity of the local agencies' duties; there is generally no source of revenue specifically linked to satisfying these externally imposed duties.

Vigilant groups and individual citizens are alert to prevent unpopular projects from receiving favorable treatment they perceive to be unwarranted, and are quick to complain when they believe this has happened.

Many governments would like to make more of their permitting process available electronically but doing so would entail a capital expense which they cannot currently fund even though greater use of electronic permitting would save money over time.

Summary of Problems We Heard:

We heard many complaints from citizens attempting to do business with King County, especially relating to the code enforcement and permitting processes. As noted above, permitting complaints related to instances of poor communication, unresponsiveness to inquiries about the progress of permit applications, and lack of clarity about process expectations and fee issues. In his 2008 report to the County Council, King County's Rural Ombudsman identified concerns about cultural issues within the Land Use Division of DDES, although he expressed encouragement that these problems seemed to be subsiding; instead he noted greater cooperation and less defensiveness.¹²

The complaints about Seattle revolved around subjective judgments in the review of land-use permits which added time and complexity and uncertainty to the process, sometimes significantly, and about overreaching or overly subjective design review processes. Others in Seattle saw the permitting process as too permissive. Suburban cities were often described as

¹² King County Rural Ombudsman, "Report to the County Council," September 1, 2008.

generally doing a good job with customer service, and with using discretion to assist permit applicants rather than to frustrate their expectations.

Action: Dispute Resolution in Class Action Lawsuit, Tiger Mountain LLC et al v. King County

The complaints we heard from citizens about King County's permitting fee structure and practices were brought forward in a class action lawsuit filed in 2004. The case was heard in Snohomish County Superior Court and resulted in a series of orders throughout the duration of the case, and a final judgment in May 2007. Among the judge's rulings:

1. DDES was required to formally adopt financial policies and uniform standards and criteria for revising fee estimates.
2. DDES was required to reduce interest rates accruing on delinquent fee payments.
3. DDES was ordered to formally adopt a policy providing for refunds of charges for its staff time when an applicant prevailed on an administrative appeal.
4. DDES was ordered to automatically forward worksheets used by staff in preparing binding fee estimates and modifications to applicants with their billing statements.
5. King County was ordered to adjust fees downward to delete general governmental overhead charges previously ruled unlawful by the court.
6. King County was ordered to develop a sliding scale of billing rates for DDES staff to reflect a variety of job qualifications and responsibilities.
7. King County was ordered to establish an administrative appeal process for regulatory fee disputes consistent with minimum due process requirements.
8. King County was ordered to create a special reserve account of \$2,449,429, to be dispersed as refunds to those applying for permits between 2000 and 2007 who had been overcharged on permit fees. Before refunds were made, the County was ordered to pay plaintiffs' attorneys fees and court costs from this fund.

The judge did find that the fees were not unreasonably high per se, only that the basis for them was unlawful. He also upheld as legal a number of other practices about which plaintiffs had complained. A newspaper article at the time described the outcome as a mixed bag.¹³

The Tiger Mt. case resulted in a number of process reforms and a substantial refund to permit applicants. The reforms have been essentially completed and the refunds disbursed. It will be important to monitor DDES' permit review process to ensure that the court-ordered reforms are sustained.

Analysis and conclusions:

After a careful review of the Court's Orders and Judgment in the Tiger Mt. case, we conclude that the majority of the perspectives of the unincorporated residents of King County presented above were grounded in fact. Other perspectives, relating especially to attitude and communication, are more difficult to evaluate, although they appear, at least partially, to have

¹³ Tiger Mountain LLC et al v. King County, Order on Motions for Partial Summary Judgment, May 24, 2004, Snohomish County Superior Court, No. 03-2-05287-4; Tiger Mountain LLC et al v. King County, Order on Fourth Partial Summary Judgment re: Reasonableness of fees, and constitutional due process, Nov. 6, 2006, Snohomish County Superior Court, No. 03-07977-9; Tiger Mountain LLC et al v. King County, Judgment (class action), May 4, 2007, Snohomish County Superior Court, No. 03-2-05287. The Seattle Times, "Judge orders changes in King County's permit-application fees," November 10, 2006.

been confirmed by independent officials who work with permit applicants. It seems evident to us that many of King County's permit fee billing problems arose from resource inadequacies which have presented growing challenges to the County over the past several decades.

We concluded that many local governments are struggling with fiscal, political and other challenges, but are working hard to continuously improve their permitting processes; they are often laboratories of innovation and good ideas. A sampling of these good ideas and innovative practices can be found in Section 3.

Two Tools for Implementing Urban Density and Protecting Rural Lands

Beyond regulatory complexity, limited resources, and conflicting attitudes toward growth, significant challenges face us as a region in trying to carry out the growth management vision of urban density and protected natural areas. Local governments, policy makers and citizen groups often develop creative ideas for overcoming obstacles and meeting conflicting interests. We have selected two such ideas that are being implemented with mixed results: Design review in Seattle neighborhoods and elsewhere is intended to make infill and urban density more acceptable to communities while adding flexibility to prescriptive development standards; transfer of development rights (TDR) is intended to serve as a market mechanism for exchanging the value of density for that of natural resource and sensitive lands.

Design Review Processes

Design review is a component of the land-use approval process used by a number of jurisdictions in King County to provide communities with public input opportunities relating to urban infill development and to provide flexibility in the implementation of design guidelines. Design review is intended to improve communication among developers, neighbors, and government early in the design and siting of new development and to ensure that new development fits sensitively into neighborhoods. A detailed discussion of this complex topic is well beyond the scope of this report, but study committee members had these observations:

- Design review is a part of the permit approval process for certain building projects, usually large projects or projects located in particularly sensitive areas. It is generally based on adopted design guidelines, either city-wide or sometimes neighborhood-based, or occasionally both. It is generally implemented using either a citizen panel (design review board) or permitting staff (administrative design review).
- It can add significant value to the project and to the community in which it is located. It can contribute to community acceptance of a proposed project, or deflect opposition. However, on the downside it can also add significantly to the uncertainty, time and cost of a project, especially if individual board participants or staff are influenced in their design review work by personal agendas and biases.
- It is helpful if participants in a design review board have had experience in designing or constructing the type of development under review (e.g., if an architect member has designed multi-family housing projects prior to reviewing them). It can also be helpful if the board includes someone with relevant construction experience, so that the cost and time implications of the recommendations are fully understood and considered.
- Rather than citizen board or staff administrative processes, in which the exercise of discretion can become very subjective, some developers prefer a more straightforward approach requiring that projects meet a clear and specific set of neighborhood-generated design and/or development guidelines. A menu approach, such as that currently under development by Renton officials, can be useful if providing sufficiently specific guidance. The advantage of these approaches (specific guidelines and a menu

of possible selections) over a board or administrative review approach is that each provides greater specificity and certainty than does open-ended review, especially if project reviewers use subjective aesthetic preferences in the review process.

- The job of a review board, or of staff carrying out administrative review, ought to be careful interpretation of adopted guidelines rather than imposing subjective standards. Care must be taken to ensure that the entire process adds value to the project and its receiving neighborhood without adding excess time and cost. This can be challenging.
- Regardless of particulars of the design review process, some believe the quality and administration of the process are really what determines success in achieving better projects and reducing difficulties during the permit review process.
- Seattle has both a citizen board process, for larger projects, and administrative design review for smaller projects. There are seven boards, six for different regions of the city and one for overflow.
- Seattle's administrative design review is being expanded to include review of townhouses, as part of the city's broader process of updating its multi-family code. This change is intended to help citizens have more confidence in the approval process for townhouses, which have been controversial within parts of the city. It is also intended to streamline the process ordinarily used in Seattle's administrative design review.

Transfer of Development Rights

Transfer of development rights (TDR) is a market-based voluntary tool used in many areas throughout the nation, often to enable preservation of historic structures. Within our state and region, it is intended mainly to further the goals of protecting sensitive or high value rural, environmentally fragile and natural resource (timber and agricultural) lands from development, while helping encourage high density development in urban areas. The process entails developers buying the development rights of properties to be protected (sending areas) and utilizing them to achieve greater development capacity than would otherwise be allowed in the designated urban areas (receiving areas).

In some instances the development rights from a sending area are purchased by governments and "banked" for later sale to developers for use in urban locations where additional growth is being encouraged. In some programs, TDRs may also be used to acquire other desired development features, such as greater height, reduced parking requirements, and other provisions which help the financial prospects of new development.

In theory TDRs represent a valuable option for managing growth across the region, but there are several problems with implementation. These were spelled out in a recent report by a policy advisory committee created by the Legislature to study the challenges of developing a regional TDR program for central Puget Sound.¹⁴ One of the chief difficulties is creating an adequate market for use of TDRs in the receiving sites. The value of rights related to land being removed from development is often much greater than the value of applying those development rights in a receiving site; as a result developers infrequently make use of this opportunity.

¹⁴ Washington State Department of Community, Trade and Economic Development, "Creating a Regional Transfer of Development Rights Program for Central Puget Sound," December 2008.

The TDR Policy Advisory Committee had a number of recommendations to help ensure that this process could be used successfully in the Central Puget Sound region. Many of these recommendations require state funding and technical assistance, and thus must await an improvement in the economy and decisions by the Legislature.

Successful Example: The program has, however, proven useful in a few cases, such as an 8-story housing project in Pierce County's University Place, which was allowed two extra stories in exchange for purchase of development rights from farmland in the Puyallup valley. While there was initially some resistance to extra height at the receiving site, the market for the development was assured because it provided needed affordable housing units in an area in close proximity to two major hospitals where demand was strong. The neighborhood was pleased to have the opportunity to save farmland which supplied their local farmers' market with fresh produce. The two-story additional height was sufficient to allow the developer an adequate return on the purchase of development rights. In this case everything came together smoothly and the deal worked.

Controversial Proposal — Conservation Villages in Rural Areas: One particular idea for a specialized and atypical use of TDRs was developed by the Cascade Land Conservancy to help implement its Cascade Agenda – a 100 year vision for the region. It included a proposal for the creation, on a limited pilot basis, of Conservation Villages, to be built with the use of development rights transferred from resource and other important land in the rural area open to development. The idea was to allow small, carefully-sited rural villages of 50-200 housing units to be built in compact patterns, following green building standards and utilizing best practices on water conservation and other environmental principles. The rationale was that current development patterns outside the urban growth area allow for one house per five, ten or twenty acres, and this development pattern consumes large amounts of land and requires costly dispersed infrastructure and services, while fracturing the landscape and doing nothing to protect vulnerable resource and other important land from development. A better use of rural land, the Conservancy argued, would be to allow compact villages in carefully selected areas which would utilize development rights purchased from fragile and valuable lands thus saving these in perpetuity. At the same time this more efficient use of land would help slow the sprawling development patterns now encouraged under existing laws and zoning, requiring 98% less land and 80% less water than used by the same number of units in traditional development patterns.

Opposition to this proposal, even in its proposed form as a pilot project (legislation called for one Rural Conservation Village per county for each of the three counties in the Central Puget Sound region), was strong and came from several quarters. The strongest concern came from planning groups and environmental groups who saw the proposal as undermining the already weak market for TDRs in urban areas, where adopted policy encourages growth to occur. Concern was also voiced that the proposal, as it stood, sounded appealing but that it lacked protections that would prevent the resulting villages from creeping up in size from the proposed 200 units and thus becoming an opening to create huge new subdivisions. The bill authorizing the pilot projects did not pass, but conversations continue about how to more effectively protect sensitive rural lands and address the impacts and costs of low density development outside the Urban Growth Boundary.¹⁵

Important TDR Agreement Negotiated: Bellevue and King County recently completed negotiations on an important TDR agreement, paving the way for the use of this tool to enhance future development in the Bel-Red area of northeast Bellevue. The real test of its potential for

¹⁵ For a description of this proposal, see Cascade Land Conservancy, "The Cascade Agenda: Conservation Villages," 2007.

success will come once the economy picks up and major development becomes economically viable again.¹⁶

Resolving Disputes

Background: As noted elsewhere in this report, disputes arise frequently within the land-use regulatory arena, and citizen users of that system are often frustrated at how difficult it is to get the disputes addressed and resolved. One of the mechanisms currently in use is the hearing examiner system, used by many cities and King County to adjudicate certain types of usually project-specific disputes and appeals. Another is the Growth Management Hearings Board (there are three covering different regions of the state), authorized by the Growth Management Act to hear citizen and government complaints about government actions under GMA. Cases coming before the Hearings Boards are generally not related to individual projects or actions on specific parcels of land, but rather concern such issues as whether a government has properly prepared a comprehensive plan, for instance, or provided adequate opportunities for public participation in adopting development regulations implementing that plan.

For the typical complaints of average citizens, such as those we heard in our interviews, however, these mechanisms are either unsuited to their particular problems or too difficult to access readily. In some cases, the courts are used to resolve intractable disputes for which, often, there is no other recourse. The Tiger Mt. case, mentioned above, is an example of this type of issue.

Critical Areas Ordinance Mediation: Another example of an intractable issue is the matter of the King County CAO provision requiring retention of natural vegetation on 65% of certain parcels of land. Before taking this to court, dissatisfied residents first attempted to have the CAO overturned via a citizen referendum. The courts ruled this to be an improper use of the referendum process. Next opponents attempted to address this via the unsuccessful statewide initiative, I-933, which would have required compensation to landowners for value lost through regulation. Finally, a lawsuit was filed. The State Court of Appeals recently found the contested CAO provision to be unlawful and struck it down.¹⁷

Even before the Appeals Court ruling, however, the Legislature recognized the difficulty of achieving consensus and satisfactory resolution on this issue, and remanded the matter to the Ruckelshaus Center for stakeholder work and mediation, with special attention to the impacts of CAO on agricultural interests. Two years later, the issue is still being negotiated at the Center, but may now be close to resolution.¹⁸

Successful Example: King County Rural Ombudsman. One example of successful dispute resolution is the work of King County's Rural Ombudsman. This position was created in 2005 and its current occupant began work in June 2006. This position is tasked with receiving and addressing the complaints, generally land use related, of rural and unincorporated residents who have encountered problems in working with County government. These are often about permitting and code enforcement issues. The Ombudsman, a trained lawyer, provides

¹⁶ Daily Journal of Commerce, Sept. 1, 2009, "County OKs TDR Plan for Bel-Red", and The Seattle Times, Sept. 7, 2009, "Smart Growth: Bel-Red Ready for Makeover."

¹⁷ Citizens' Alliance for Property Rights et al v. Ron Sims, King County Executive, King County, and the Metropolitan King County Council, Reversal of Summary Judgment and Evidentiary Rulings on Summary Judgment, published in part July 7, 2008, Washington State Court of Appeals, Division One, No. 59416-8-1.

¹⁸ The William D. Ruckelshaus Center is a project of the Extension Service of Washington State University and the Evans School of Public Affairs at the University of Washington <http://ruckelshauscenter.wsu.edu/about/mission.html>.

information and assistance to many citizens, and when that does not suffice, formally investigates complaints and works out solutions between the complaining individual and the appropriate department. He is independent of the agencies about which complaints are made, and thus able to take strong stands when he believes they are warranted. He is also able to bring unresolved disputes, and related policy and process issues, directly to the County Council when he believes an agency has not addressed them satisfactorily.

In his recent report to the Council, the Ombudsman stated that he had handled 427 cases in his first two years. Of those, 245 were related to DDES, with the vast majority about performance of the Land Use Services division. Most complaints had to do with code enforcement and permitting issues.¹⁹ His oversight and involvement have not only made the process easier for numerous citizens, but have also encouraged the agency to address some of its issues and processes and look for more successful ways of carrying out its duties.

Dedicated Land-Use Courts. After first wending their way through other layers of appeal, such as Growth Management Hearings Boards and Hearing Examiners mentioned above, some land-use disputes do end up in court for final adjudication. Difficulties arise, however, due to the large backlog of cases being experienced by many courts and to the lack of relevant expertise of many judges and their staffs. It has been suggested by some professionals working in this field that creating dedicated land-use courts might be useful in resolving some of the above problems. This tool, which would require a reorganization of the Superior Court structure similar to what is done for Family Law courts, is used successfully in other states, and we believe merits exploration in King County and elsewhere in Washington. We encourage the appropriate officials to move forward with careful examination of this idea and with creation of dedicated land-use courts if additional analysis suggests this is warranted.

¹⁹ King County Rural Ombudsman, "Report to the County Council," September 1, 2008.

Section 3: Promising Practices

Throughout the course of this study, we heard of practices that were working well to deal with conflicts in the community, with citizens' need for equity and fairness, with applicant interactions with city and county government and with the myriad other issues that characterize the land-use policy and regulatory environment.

Permitting

As noted elsewhere in this report, we also referred to the Office of Regulatory Assistance 2008 report on Local Government Best Practices.²⁰ That report outlined six broad areas of practice that help to smooth the permitting experience: build mutual understanding, engage reviewers and stakeholders early, ensure complete applications, analyze process, performance and costs, use information technology, and implement systems for staffing flexibility.

During our research and interviews, we gathered anecdotes about what was working well and practices that have had success, or have promise, in addressing land-use permitting issues. Some of these have been cited, when relevant, in earlier sections and are listed again here. These practices are not exclusive to jurisdictions in King County, but all could be usefully applied here.

- Seattle has developed strategies to smooth out staffing problems relating to the boom and bust cycle of construction. These include keeping staffing at a low minimum, utilizing a reserve fund to pay salaries during down times, and outsourcing certain functions during boom times.
- MyBuildingPermit.com is a uniform on-line permit portal created by officials of a number of cities in King County in an effort to improve consistency in building codes and permitting among cities. The online site includes adopted common ordinances that regulate construction, common information bulletins, and common permit applications for simple permits such as mechanical, plumbing, electrical, low-voltage electrical and re-roofing. The site also allows contractors to track the status of a permit and to schedule inspections on-line. The King County cities now using MyBuildingPermit.com include Bellevue, Bothell, Burien, Duvall, Issaquah, Kenmore, Kirkland, Mercer Island, Renton, Sammamish, SeaTac, and Woodinville.
- Seattle's Online Permit Coaching program and its Client Assistance Memos (CAMs) are impressive on-line information tools that provide user-friendly information on the range of City permitting, land-use and code compliance policies and procedures. They are readily available on Seattle's Department of Planning and Development website.
- Burien's attempts to ensure fairness to property owners being constrained by environmental regulation via their policy of allowing density calculations to be made based on gross parcel area rather than only on the unconstrained portion of the parcel.
- Issaquah's willingness to work collaboratively with proponents of non-traditional projects such as the Issaquah Highlands, already noted, and more recently a transit-oriented mixed-use housing project for moderate income families which includes multiple sponsors and complex ownership. The former project won a Smart Partnership award from the Governor in 2009 for both Issaquah and project partner King County.

²⁰ Governor's Office of Regulatory Assistance: "Local Government Permitting Best Practices," August 2008.

- Bellevue's provision of pre-application conferences for any applicant that requests them without charge.
- King County's practice of making available free staff assistance at the permit counters for two hours each morning on a first-come first-served basis.
- Sammamish's innovative Over the Counter Permit program, which guarantees that permits will be approved within an hour after application for certain types of small projects. This program won a Judge's Merit award in the Governor's Smart Communities Program of 2009.
- Renton's major permit streamlining process, undertaken in 2001, which addressed time, efficiencies, staff attitudes and many other issues. It has since become a model for many other jurisdictions seeking to improve their own processes.²¹
- The willingness of many governments within King County, including King County itself, to relax the permit expiration deadlines for pending projects so that the permits can remain active throughout the current economic downturn when they are unlikely to be funded.

Urban development

- Bellingham requires early (pre-application) neighborhood meetings for a whole range of major projects, site specific neighborhood and comprehensive plan amendments, and for proposed changes to institutional master plans. Project applicants must invite all surrounding neighbors within a specified radius to a public meeting in order to inform them of the proposed project and get their input. Notices are sent by certified mail. This process occurs at the very early conceptual stage so public concerns can be addressed before requiring costly redesigns.
- Everett has adopted development and design guidelines for future development within the historic district downtown. The guidelines were created with significant public input and appear to have provided interested residents with an opportunity to help guide future development in their neighborhood, which in turn has lessened opposition to this development. This project won a Governor's Smart Communities award for 2009.
- Bellevue has developed subarea plans for its neighborhoods to guide future development, and adheres strictly to them in reviewing applications for projects. The subarea plans have been based on strong public input and thus tend to provide community acceptance for future developments which are consistent with the plans.
- Burien has instituted a practice of allowing property owners to calculate development potential of their property based on gross rather than net (after imposition of environmental restrictions) development potential. This practice works well in Burien, and there is no apparent reason it could not work equally well in other cities and in unincorporated King County. The resulting development would be no greater than what would be allowed on the parcel if there were no environmental restrictions, thus affected property owners would feel they had not been shortchanged by land-use restrictions, and hence would be less apt to resist them.

²¹ A case study describing this reform, authored by the city official responsible for it, can be found in Appendix C of the report of the Governor's Competitiveness Council, at http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/WAtaxstudy/Competitiveness_Council_Final_Report.pdf

- Burien waived SEPA requirements for development in its downtown core in order to attract desired development. It accomplished this by using the “urban infill exemption” under RCW 43.21C.229.²²
- Bellevue and King County recently approved a program enabling the exchange of TDRs for proposed major redevelopment in the Bel-Red Road area.²³

Rural development

- The State Legislature has been concerned about effects of the GMA on rural residents. An example: The GMA has been amended to create a classification called Local Area of More Intensive Rural Development (LAMIRD). This designation recognizes that small unincorporated communities existed prior to the enactment of the GMA and allows for additional development and redevelopment within their historic boundaries.
- Transfers of Development Rights (TDRs) have worked well in specific cases such as Pierce County’s University Heights housing development which utilized agricultural land development rights. However, there are also difficulties with implementation of this tool, not least of which is that local governments often prefer other tools for increasing urban density, such as height or density bonuses in exchange for investments in infrastructure and other amenities.
- Conservation Villages are a proposal of the Cascade Land Conservancy which would allow more efficient development patterns in carefully selected rural areas while utilizing development rights transferred from high value natural resource and other sensitive lands needing protection. While concerns have been raised about several aspects of this proposal, it continues to generate constructive debate about the need for efficient use of land even in rural areas and about the need for developing tools to preserve rural and resource lands that are in danger of conversion to sprawling development.

²² Lisa Grueter and Gil Cerise, “Using SEPA as an Economic Development Tool”, Northwest Hub, October 30, 2009, <http://www.northwesthub.org/sepa-economic-incentive-tool-washington-254>.

²³ Daily Journal of Commerce, “County OKs TDR Plan for Bel-Red,” Sept. 1, 2009, and The Seattle Times, “Smart Growth: Bel-Red Ready for Makeover,” Sept. 7, 2009.

Section 4: Conclusions and Recommendations

In this report, the Municipal League has attempted to sketch out the broad range of concerns and solutions that we learned about during the course of our study. From throughout the body of the report, where they appear in the context of discussions of key issues, we have assembled the following list:

Policy Considerations and Fairness

Engaged citizens and their governments within King County have given considerable thought to the distribution of future growth within the urban growth boundary. Efforts to meet GMA goals by bringing compact development to urban areas are sometimes made more challenging by regulatory and process barriers. These barriers also can sometimes negatively impact another significant policy goal, the availability of affordable housing, as additional process time can add substantial additional cost to the project.

PROBLEM: Unincorporated area residents, especially those in the rural area, feel unfairly treated by government because of representation problems.

OBSERVATION: The Municipal League, Charter Review Commissions and other good government groups have been concerned for some time about the representation unincorporated residents receive in primarily urban counties such as King County. This problem has been described elsewhere in this report in the section on Equity and Fairness.

RECOMMENDATION: The Rural Ombudsman is one mechanism we identified that is working well to alleviate this sense of grievance, but the Ombudsman lacks decision making powers and can only inform and attempt to persuade. Consideration must be given to finding a more representative mechanism for local service delivery for citizens living outside of cities in King County. It may be timely for the state to again convene a Local Governance Study Commission to explore this issue in depth. Readers of the original Study Commission's report will note that many of the same issues described in this Municipal League report were identified and addressed more than two decades ago by the Local Governance Study Commission. There is no doubt that the situation has become more serious since that time. If this issue is not addressed and resolved, the underlying problems for urbanizing counties, both representative and fiscal, will only continue to deteriorate.

Implementation and Administration

Problem: The arena of land-use policy and procedures is complex, hard to understand and difficult and expensive to administer.

OBSERVATION: While the complexity in this arena cannot be made to disappear, because modern life, society and laws are all complex, government officials need to continue their many promising efforts to simplify and rationalize procedures, such as those examples highlighted in the Promising Practices section of this report.

RECOMMENDATION: To address costs and difficulties of administration, we encourage more local governments to participate in shared web portals, common ordinances, permit applications and codes. We also refer again to the best practices identified earlier relating to communication and customer service. We do recognize and understand the challenges that governments face in making these types of improvements while struggling to balance competing priorities in the face of sometimes severe revenue problems.

RECOMMENDATION: In the near term, even as it seeks to identify innovative new options for local service delivery, King County might consider establishing its own version of MyBuildingPermit.com. It might also explore, with other local jurisdictions within the county, the feasibility of creating an expanded web-based permitting system that could address building permits as well as, possibly, certain land-use permits, especially for potential annexation areas. Such a system would review permit applications from both incorporated and unincorporated King County, based on locally appropriate zoning, regulations and codes. The system might be funded from a combination of permit fees and contract fees from the various jurisdictions. After the initial investment, it would save each jurisdiction some costs of staff and infrastructure, and perhaps provide incentive for greater standardization of regulation to the degree this could be accomplished.

PROBLEM: King County's permit fee system has been inherently unfair.

OBSERVATION: It is unreasonable to expect that the fees incurred by project applicants can support the broader costs of land-use regulation and related governmental activities. This regrettable practice, which has arisen from fiscal necessity, has been prohibited by the final judgment in the Tiger Mt. case, at least as it pertained to activities of the Prosecutor's Office and Council staff. We are hopeful that future fiscal reforms can remove the motivation for this practice.

RECOMMENDATION: Land-use policies and regulation serve to implement the region's growth management and other important public goals and as such benefit all citizens. The great majority of cost that these activities entail should be paid for from the general fund, as they benefit the public in general.

PROBLEM: Land-use regulatory functions for King County lack adequate resources.

OBSERVATION: Financially strapped governments have a difficult time making necessary improvements in the system. One serious consequence of the pervasive lack of support for general government activities can be poor customer service and great frustration on the part of individuals trying to access inadequately funded government services. Another consequence can be over-reliance on user fees, such as permitting fees. The current system is untenable. Without reform the system will ultimately collapse.

RECOMMENDATION: Near term: The gap between the responsibilities of government (especially for King County itself) and the resources available for meeting those responsibilities needs more careful – and courageous – attention. Governments need to identify land-use regulation as a core function and secure additional financial support for this work or they must abandon some elements of the current work load as impossible to properly execute within the current fiscal climate. In the near term, the State Legislature could help to address this serious problem by providing additional revenue sources for counties. One example is the utility tax for unincorporated areas that has been considered but not adopted.

RECOMMENDATION: Long term: State leadership is also urgently needed to assist counties and unincorporated citizens in identifying viable governance and service delivery models for providing permitting and other necessary local government functions. Further work with the state legislature may be needed to implement whichever option is selected. It is possible that a solution can be found to unincorporated residents' representation problems which also addresses the County's funding inadequacies. Some experts believe this solution may lie with completing all needed annexations within urbanized King County and utilizing a creative mix of special service districts in the rural areas of the county which can respond flexibly and equitably to the widely varying levels of service desired by rural residents. Another possibility might be for

King County to negotiate inter-local agreements with cities within the county for such services as permitting, a practice found elsewhere in the state.

PROBLEM: Inadequacy of dispute resolution mechanisms creates great frustration and anger at government and needs improvement:

RECOMMENDATION: The Rural Ombudsman in King County is an example of a low-key but effective approach to dealing with land-use disputes between King County government and unincorporated residents. Other jurisdictions might consider creating such a position, or sharing such a position if economics dictate. As a result of the judgment in the Tiger Mt. class action lawsuit, King County has recently established improvements to its permit fee appeals process which promise to reduce applicants' frustrations on this topic. For example, final decisions on fee appeals are now made by the independent Hearing Examiner rather than by the Director of DDES.

RECOMMENDATION: The administrators of the court systems within King County and elsewhere in the state should consider establishment of dedicated courts that focus on land-use and related issues, utilizing judges and staff with specialized knowledge of the issues. This should not require a wholesale creation of an entirely new court system, but rather a reorganization of existing Superior Courts to include this subject specialty, much as King County now utilizes family law courts. It would not replace hearing examiners nor growth management hearings boards, but would allow for specialized knowledge to be brought to bear by the judicial system when cases requiring that knowledge come before the courts.

PROBLEM: Permit applicants often believe that administrative acts, especially by King County staff, are arbitrary and represent misuse of power.

OBSERVATION: Property owners and permit applicants have no other recourse than their local government to gain permission to develop or change uses on their land. Too often citizens perceive that permitting and other staff do not behave in an appropriately professional and neutral manner in carrying out their duties. Inappropriately subjective and unprofessional staff behavior can constitute a serious barrier to achieving important policy goals, can add greatly to the time and cost of projects, and can further undermine citizen trust in government.

RECOMMENDATION: Administration of land use and permitting should be conducted in a way that is fair, responsive, and takes very seriously instances of misuse of discretion or authority by employees at every level. This point extends as well to the behavior of elected and other government officials. Policy making and interventions in disputes must be conducted in ways that do not fuel feelings of unfairness or more widespread public cynicism.

Some jurisdictions have developed exemplary practices in the regulatory and permitting arenas and other governments should emulate them. Renton, Bellevue and Burien are often cited as good examples — and there are others. There are also proposals from outside government which are worthy of consideration. We identified a number of examples which are discussed in the Promising Practices section and that we believe jurisdictions should seriously consider.

Appendix A

Committee members interviewed or heard presentations by the following individuals as part of the study process:

Maria Barrientos, Barrientos LLC, Seattle developer

Leonard Bauer, Washington Department of Commerce, Growth Management Services

Sally Clark, Seattle City Council

Sue Donaldson, former Seattle City Council member and current director, Appleseed Foundation

Sue Enger, Municipal Research & Services Center

Scott Greenberg, City of Burien, Planning Director

Steve Hammond, former County Council member, Chair, Citizens' Alliance for Property Rights

David Hoffman, Master Builders Association, King County Manager

Garrett Huffman, Master Builders Association, South King County and Seattle Manager

Kent Kammerer, Chair, Seattle Neighborhood Coalition

Maxine Keesling, citizen activist, Woodinville

Judd Kirk, Port Blakely Communities

Bruce Laing, Former KC Hearing Examiner, County Councilmember, and Growth Management Hearings Board member

Eric Laschever, Stoel Rives, land use attorney

Mike Luis, housing consultant

Faith Lumsden, Governor's Office of Regulatory Assistance

Mike McCormick, former State GMA official, current planning consultant

Rodney McFarlane, rural property owner

Bob Meinig, Municipal Research & Services Center

Merritt Norton, rural property owner

Margaret Pageler, former Seattle City Council member and current member of the Central Puget Sound Growth Management Hearings Board

Peter Orser, Quadrant Homes

Patrick Schneider, Foster Pepper, land use attorney

David Spohr, King County Rural Ombudsman, Office of Ombudsman

Diane Sugimura, Director, Seattle Dept. of Planning and Development

Mary Anne Tagney-Jones and Michelle Connor, Cascade Land Conservancy

Matt Terry, City of Bellevue, Planning Director

Stephanie Warden, King County Department of Development and Environmental Services, Director

Bill Williamson, Williamson Law Office, land use attorney

Appendix B

Resources used as part of the study process

- American Planning Association, Washington Chapter, "Observations on the Costs of Land Use Regulations and Growth Management: Critical Perspectives on a Controversial UW Study," August 2008
- Cascade Land Conservancy, "Conservation Villages," August 27, 2007
<http://www.cascadeagenda.com/files/strategies/Copy%20of%20Conservation%20Village%204pagerWN.pdf>
- Citizens' Alliance for Property Rights et al v. Ron Sims, King County Executive, King County, and the Metropolitan King County Council, Reversal of Summary Judgment and Evidentiary Rulings on Summary Judgment, Published in part July 7, 2008, Washington State Court of Appeals, Division One, No. 59416-8-1
- Aubrey Cohen, "Zoning the 'enemy' of affordable homes," Seattle PI, September 19, 2007
http://www.seattlepi.com/local/332171_workforce19.html
- Daily Journal of Commerce, Sept. 1, 2009, "County OK's TDR Plan for Bel-Red"
- Theo S. Eicher, "Growth Management, Land Use Regulations, and Housing Prices: Implications for Major Cities in Washington State," February 2008
<http://depts.washington.edu/teclass/landuse/Seattle.pdf>
- Keith Ervin, "Judge orders changes in King County's permit-application fees", The Seattle Times, Nov. 10, 2006
- Steve Francks and Gene Duvernoy, "Living closer together doesn't mean we have to step on each other's toes," The Seattle Times, March 6, 2008
http://seattletimes.nwsource.com/html/opinion/2004263123_realtorsclc06.html
- Edward Glaeser and Edward Gyourko, "Zoning's Steep Price," Regulation, Fall 2002,
<http://www.oaklandnet.com/BlueRibbonCommission/PDFs/Zoning%27s%20Steep%20Price.pdf>
- Governor's Competitiveness Council, Final Report, December 2001, Appendix C: "Increasing Agency Responsiveness and Accountability: A Case Study of Renton's Regulatory Reform"
http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/WAtaxstudy/Competitiveness_Council_Final_Report.pdf
- Governor's Office of Regulatory Assistance, "Integrated Project Review & Mitigation Tools (IPRMT) Initiative" <http://www.ora.wa.gov/regulatory/projectreview.asp>
- Governor's Office of Regulatory Assistance, "Local Government Permitting Best Practices," August 2008 http://www.ora.wa.gov/documents/lgp_best_practices_report.pdf
- Lisa Grueter and Gil Cerise, "Using SEPA as an Economic Development Tool", Northwest Hub, October 30, 2000, <http://www.northwesthub.org/sepa-economic-incentive-tool-washington-254>
- The Housing Partnership, "The Right Size Home: Housing Innovation in Washington," 2006
<http://www.warealtor.org/Government/qol/policies/RightSizeCatalog.pdf>

The Housing Partnership, "Forum for Regulatory Balance: Final Report", 1994

King County, Ombudsman, Report to the County Council, September 2008
http://www.kingcounty.gov/operations/Ombudsman/~media/operations/Ombudsman/documents/Sept1_2008TriannualReport.ashx

King County, Strategic Plan 2010-2014, (Public Comment Draft), November 2009
www.kingcounty.gov/strategicplan

Katherine Long, "Smart Growth: Bel-Red ready for makeover", The Seattle Times, September 7, 2009

Municipal League of King County, "Shortchanged: King County's Fiscal Crisis " 2003
<http://www.munileague.org/issues/past-studies/shortchanged.pdf>

Municipal Research & Services Center of Washington, "Flexible Regulatory and Non-Regulatory Incentive Tools"
<http://www.mrsc.org/subjects/planning/FlexIncentivesEnviron.aspx#incent>

National Association of Counties, "Local Tools for Smart Growth: Practical Strategies and Techniques to Improve our Communities" 2000
http://www.naco.org/Template.cfm?Section=New_Technical_Assistance&template=/ContentManagement/ContentDisplay.cfm&ContentID=15553

Permit Technical Advisory Committee, "Recommendations to Metropolitan King County Council", September 15, 2008

Tiger Mountain LLC et al v. King County, Order on Motions for Partial Summary Judgment, May 24, 2004, Snohomish County Superior Court, No. 03-2-05287-4

Tiger Mountain LLC et al v. King County, Order on Fourth Partial Summary Judgment re: Reasonableness of fees, and constitutional due process, Nov. 6, 2006, Snohomish County Superior Court, No. 03-07977-9

Tiger Mountain LLC et al v. King County, Judgment (class action), May 4, 2007, Snohomish County Superior Court, No. 03-2-05287

Washington State Department of Community, Trade and Economic Development, Final Report of the Land Use Study Commission, December 29, 1998
<http://www.commerce.wa.gov/landuse/report/index.html>

Washington State Department of Community, Trade and Economic Development, "Creating a Regional Transfer of Development Rights Program for Central Puget Sound," December 2008

Washington State Department of Commerce, Growth Management Act Administrative Guidelines Update Project, July 22, 2009
<http://www.commerce.wa.gov/site/1043/default.aspx>

Washington State Local Governance Study Commission, Final Report, "A History of Washington's Local Governments", Volume I, and "The Quiet Crisis of Local Governance in Washington", Volume II, January, 1988

Appendix C

Telephone Survey of Permitting Practices

To gather data on permitting, we conducted a brief telephone survey, contacting staff of 38 cities and of the King County Department of Development and Environmental Services. For many cities we also examined the online resources and procedures for permitting and regulation. By the standards described in the Governor's Office of Regulatory Assistance August 2008 report *Local Government Permitting Best Practices*, the results of our review suggest that, by and large, most cities in King County are striving to employ good permitting practices.

Many King County cities have made significant efforts toward achieving good business practices in key areas: providing well-organized on-line permitting information, good customer service at the permit counter, and pre-application meetings to fully explain policies and requirements to applicants. Two areas where we found the practices are mixed and in need of further improvement are providing a single point of contact for more complex applications and overly complicated fee structures.

On-Line Permitting Resources and the Permit Counter Experience

Most cities in King County today have their zoning codes, permit processes, permit checklists and permit fees posted on-line. Permit applications can be submitted on-line in some cities but most still require the applications to be submitted in person. In an effort to improve consistency in building codes and permitting among cities, officials of a number of cities in King County worked together to create a uniform on-line portal called MyBuildingPermit.com. It is based on information sharing, common standards, and pooled resources. The online site includes adopted common ordinances that regulate construction, common information bulletins, and common permit applications for simple permits such as mechanical, plumbing, electrical, low-voltage electrical and re-roofing. The site also allows contractors to track the status of a permit and to schedule inspections on-line. The King County cities now using MyBuildingPermit.com include Bellevue, Bothell, Burien, Duvall, Issaquah, Kenmore, Kirkland, Mercer Island, Renton, Sammamish, SeaTac, and Woodinville.

We found that most cities' on-line resources include easy-to-use sections for homeowners, explaining which home-repair and remodeling projects require a permit and which do not. Typically, on-line sites also have a reasonably clear set of forms, checklists and fee explanations for contractors doing single-family home additions or new construction projects that require building permits.

In contrast, the permitting information appears overwhelming even on the most user-friendly city websites when multi-family or commercial structures are planned or when land-use or critical-areas reviews will be necessary. An inexperienced property owner or a small developer attempting to understand the regulations and permitting processes for the first time can be forgiven for feeling overwhelmed and discouraged. If such an applicant gives up in the face of this complexity and goes to the permit counter to have the process explained, the experience will depend on how busy the construction market is, how knowledgeable and responsive the city staff are, and how many regulatory features the proposed project entails.

If a zoning or building code variance is involved, if there is a stream or wetland, steep slope, drainage issue, or mature trees on the property, or if the project involves an oddly-shaped site or parking constraints, the permitting experience can easily become very challenging. The most

carefully designed and streamlined permitting process can still be subject to a thousand variations of interpretation, cost, duration and uncertainty.

Permit Applicant Meetings and Staff Contacts

Meetings between permit applicants and city staff, sometimes including outside technical experts, are the standard means for clarifying unusual or complex project proposals before and during the permit process. Seven cities told us they do not require a pre-application meeting; five said they do not require a pre-application meeting but encourage them. The remaining 26 cities require pre-application meetings for some but not all permit types. For example, some cities require a pre-application meeting for land-use permits but not for building permits; others require one for commercial but not for residential permits. Some cities use a valuation or size threshold over which a pre-application meeting is required.

Eleven cities told us they do not charge for staff time spent in a pre-application meeting. The remaining 27 do charge, either a set fee (typically ranging from \$250 to \$500) or a set fee plus an hourly charge for any expert staff or outside consultants, e.g. engineers, who participate in the meeting. Several of the cities which do charge for pre-application meetings also credit those fees towards any overall permit fee if the project proceeds after the pre-application meeting.

Twenty-eight cities told us that they use some form of a “case manager” or single point of contact for applicants. Ten cities said they do not. Most cities have established a permit counter or permit center that is staffed by permit technicians who are able to explain the city’s permitting process and answer questions about a specific application type. In smaller cities, particularly those that have few undeveloped areas and thus handle primarily minor permits and residential remodels, there may be one or two staff persons who know the details of the city’s code and who serve as a single point of contact for applicants. In these small cities, internal coordination and external communication with permit applicants seem to work smoothly, and a single point of contact is a necessity as there is only a single person reviewing permits. These cities generally do not require pre-application meetings and do not charge to meet with the applicant.

For more complex project applications and in cities where more development is occurring, the practices vary widely. Some cities assign a coordinator to each application and that single point of contact handles any necessary coordination with multiple city departments. Unfortunately, not all cities employ this good business practice and applicants may be expected to get questions answered on a piecemeal basis.

Permit Fees

Best Practices in Local Permitting reports that government officials participating in stakeholder groups viewed appropriate assessment of permit fees as the most challenging aspect of the entire process. The total cost of fees for a project will generally include application or review fees, permit issuance fees, and inspection fees. Within these broad categories, though, the types of fees may be numerous and the distinctions highly technical. For example, the City of Bellevue has 18 different fee schedules posted on its website. Cities in King County commonly have established their fees using standard building industry tables reflecting the square footage and expected total cost of the project, and, as noted, often operate with a combination of set and hourly fees depending on the complexity of the proposal. Most cities stated that they are able to provide fee estimates at the time of pre-application but that they are unable to guarantee the eventual fee total.

Due to increasing demands on many city budgets, there is pressure to recoup costs related to permitting services from applicants. But doing so through a single fee assessed at the time of application is almost impossible. Most cities told us that for larger projects they use billing accounts where a flat fee or valuation-based fee is charged at the start and then monthly billings

are sent as additional review and inspection fees are incurred. This approach requires very extensive analysis and tracking of staff time and costs, and administrative systems for itemizing and billing charges from multiple departments and for multiple services.

We understand that this complex system of charging for permit reviews and inspections has arisen over time, often out of perceived necessity, and that most cities try hard to be fair in setting the fees for services. In fact, several court cases have challenged high or inappropriately calculated permit fees and caused local government to have to justify their fee structures based on actual costs of providing the services for which they are billing.

King County permitting officials report that statements from DDES are itemized, but developers and builders and individual permit applicants expressed dissatisfaction in our interviews with the degree of detail provided.

Appendix D

Regional and Local Services Provided by King County

(From *King County Strategic Plan 2010-2014, Public Comment Draft*)

King County Responsibilities

Under the King County Charter, King County is the regional service provider to all county residents and the local service provider to residents in the unincorporated areas. The table below lists many of the services King County currently provides.

Regional Services for all King County residents

- Affordable housing and homeless programs
- Civil rights enforcement for housing, employment, public accommodations, and contracting
- Elections
- Emergency-911 telephone system
- Emergency management
- Emergency medical services (EMS)
- Employment and job training for youth and adults
- Flood control services
- Growth management planning
- Human services for children, youth and families, seniors, domestic violence survivors, sexual assault victims, individuals with developmental disabilities and veterans and their families
- Jail (adult secure detention) for felons and alternatives to detention
- Juvenile Court
- Juvenile detention and alternatives to detention
- King County International Airport (Boeing Field)
- Legal records for property and marriage
- Licensing – vehicle, vessel, marriage, and taxicab
- Mental health and substance abuse treatment
- Metro Transit
- Property tax assessment and relief; collection and distribution to taxing districts
- Prosecutor
- Public defense for individuals accused of felony crimes
- Public health, including disease control/prevention
- Public health clinics

- Public records
- Regional economic development
- Regional parks and trails
- Regional Sheriff services, including search & rescue and automated fingerprint identification system
- Regional wastewater treatment
- Salmon recovery and watershed management
- Solid waste management, including Cedar Hills landfill
- Specialized courts – mental health, drug, and family
- Superior Court including felony matters, family law and juvenile justice matters

Local Services for unincorporated King County residents (and by contract for some cities)

- Agriculture and forestry services
- Animal care and control
- Building and land use code enforcement
- Building permits and inspections
- District Court including misdemeanor offenses, traffic violations, protection orders
- Jail (adult secure detention) for misdemeanants
- Economic development
- Fire inspections
- Local land use and zoning
- Local parks with swimming and limited youth programming
- Roads and bridges
- Sheriff
- Surface water and storm water management