

# How Land Use Law Affects Water Supplies

Tim Trohimovich, AICP, JD  
Planning Director  
Futurewise

[tim@futurewise.org](mailto:tim@futurewise.org)

206-343-0681

# Big growth, big fight over water

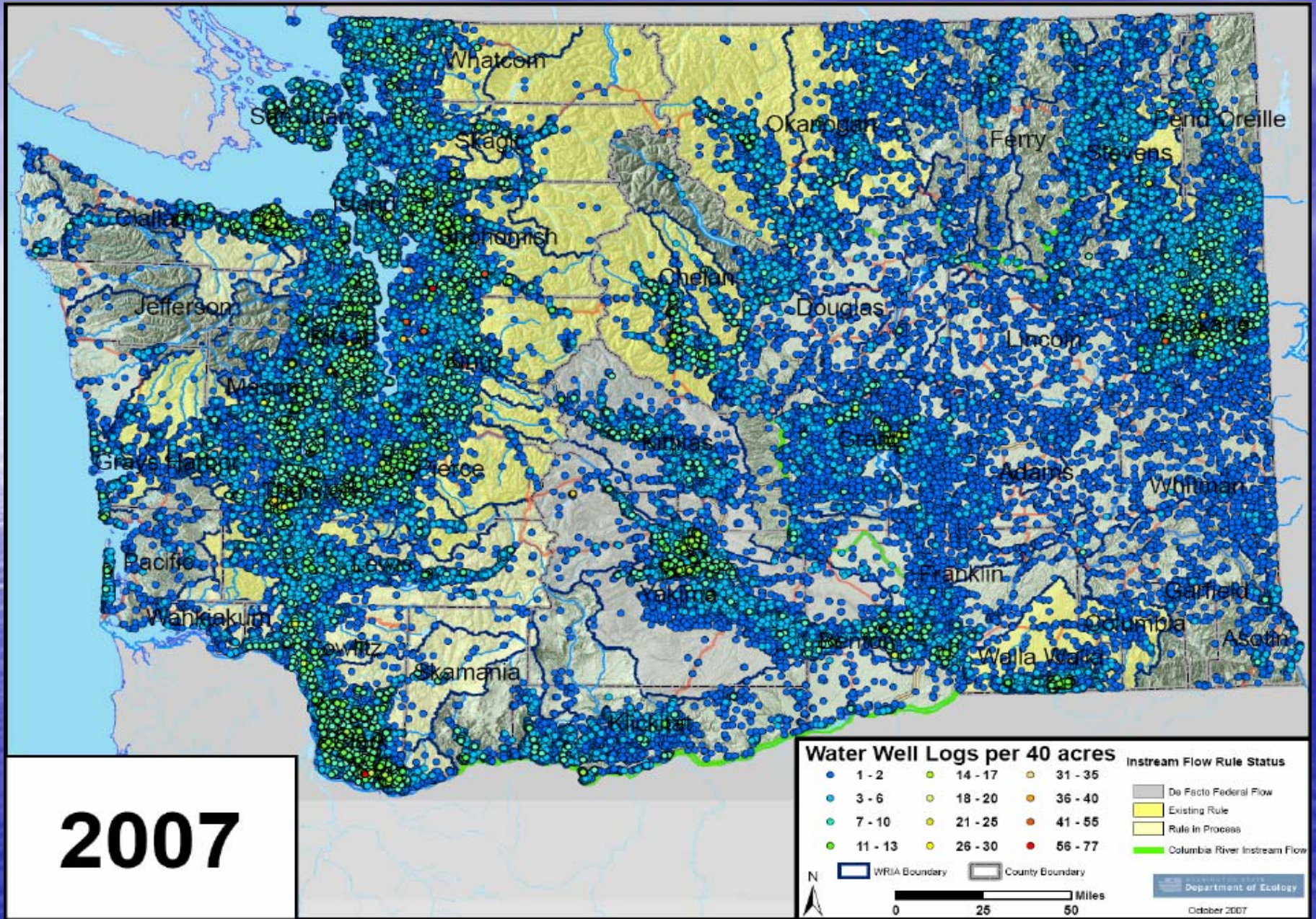
Some taps could run dry as the housing boom in Kittitas County competes for a supply that already has been claimed for other uses.



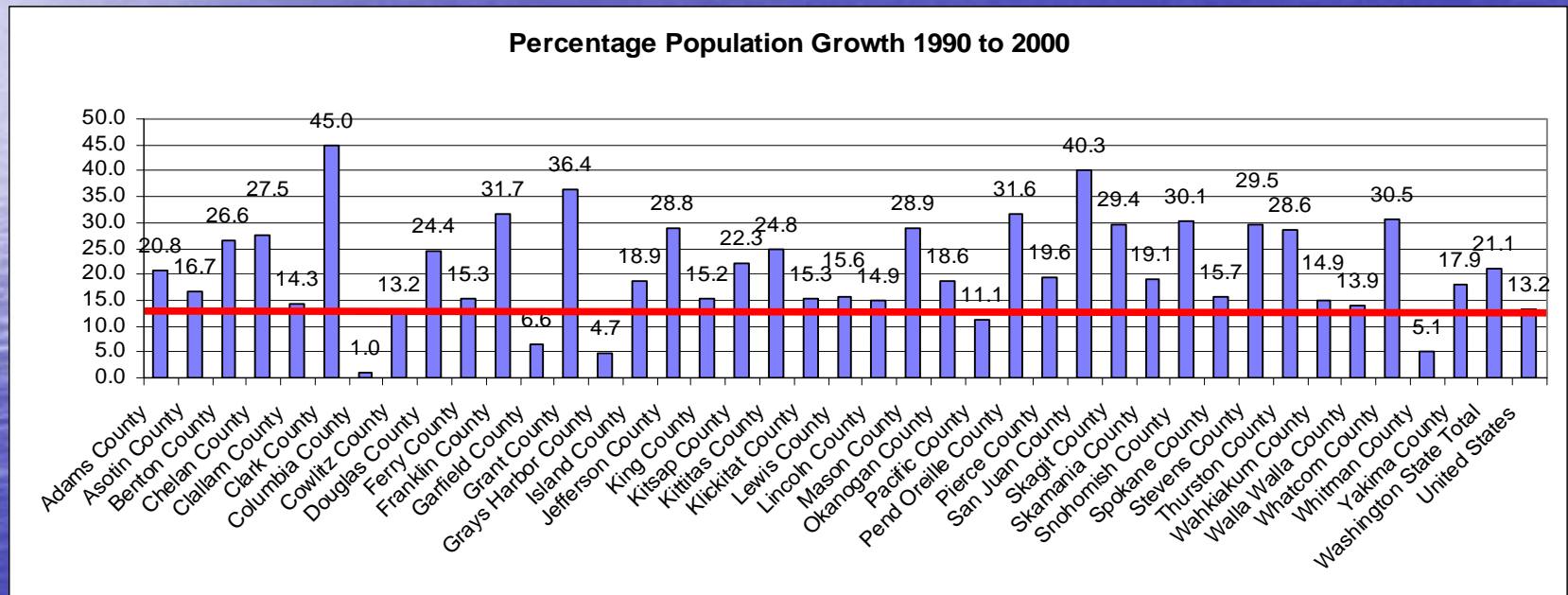
MIKE SIEGEL / THE SEATTLE TIMES

**futurewise**

Building communities  
Protecting the land

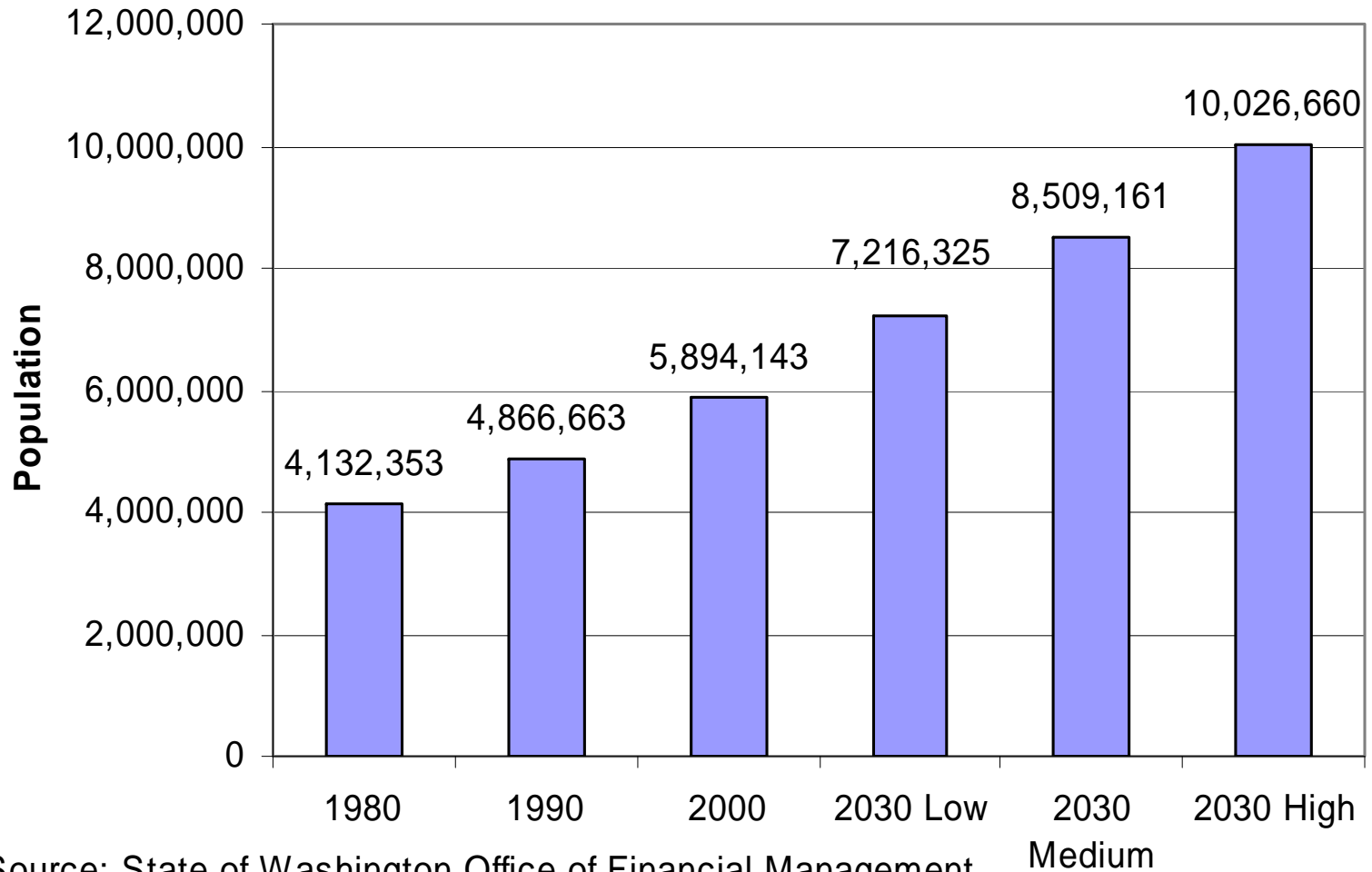


# Washington sees Rapid Growth in 1990s



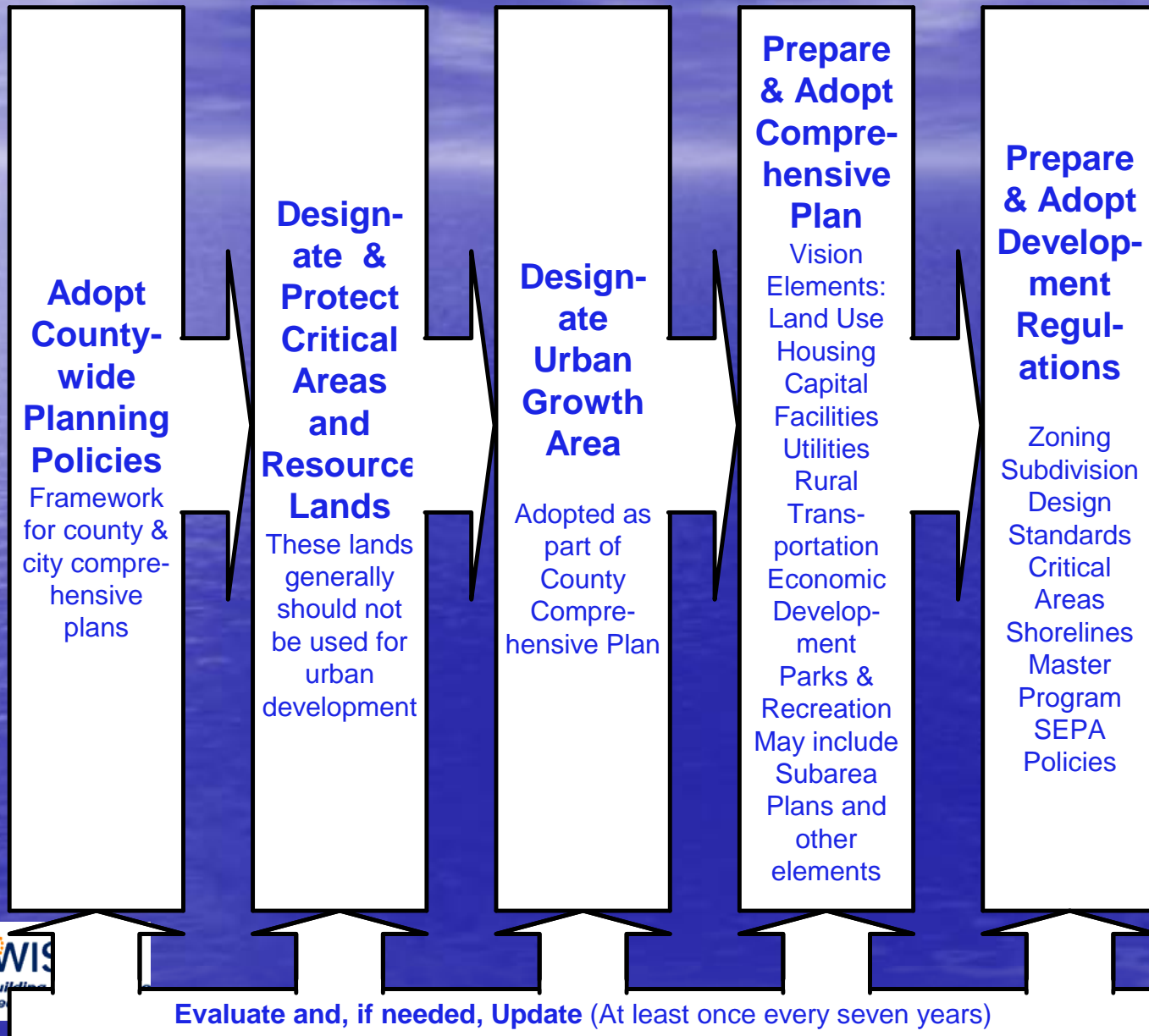


## Actual & Projected Population Growth Washington State: 1980 to 2030



Source: State of Washington Office of Financial Management

# Comprehensive Planning Process



# Growth Management Act (GMA) Water Specific Provisions

- Environment Goal. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.  
RCW 36.70A.020(10)

# Critical Areas Regulations

- Designate using best available science (RCW 36.70A.170 & RCW 36.70A.172(1))
  - Wetlands
  - Areas with a critical recharging effect on aquifers used for potable water
  - Fish and wildlife habitat conservation areas
  - Frequently flooded areas
  - Geologically hazardous areas (including channel migration zones)

# Protect Critical Areas

- Protect the functions and values of critical areas using best available science (RCW 36.70A.060 & RCW 36.70A.172(1))
  - All functions and values
  - Maintain existing conditions
  - GMA authorizes, but does not require enhancement

# Comprehensive Plan

- Land Use Element (RCW 36.70A.070(1))
  - Shall provide for protection of the quality and quantity of ground water used for public water supplies
  - Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state
- Rural Element (RCW 36.70A.070(5))
  - Protect critical areas including surface water and ground water resources
- Capital Facilities Plan (RCW 36.70A.070(3))
  - Level of service standards
  - Plan
  - Funding plan

# Growth Management Hearings

## Boards

- Three person state boards: One member local government elected official & one member a lawyer
- Decide appeals of:
  - GMA Comprehensive plans & development regulations
  - Shoreline Master Programs for cities and counties fully planning under the GMA
  - Whether OFM's 20-year population projection must be adjusted
- The Board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]. To find an action "clearly erroneous," the board must be left with the firm and definite conviction that a mistake has been committed. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 552 (2000)

# SEPA Policy

- *Polygon Corp. v. City of Seattle*, 90 Wn.2d 59, 578 P.2d 1309 (1978)
  - SEPA sets forth a state policy of protection, restoration, and enhancement of the environment. RCW 43.21C.020
  - Procedurally, the environmental protection policy is to be implemented by the preparation and circulation of an environmental impact statement disclosing the environmental impacts of the proposed action. RCW 43.21C.030(2)(c).
  - Reading SEPA as a purely procedure law “would thwart the policies it establishes and would render the provision that ‘environmental amenities and values will be given appropriate consideration in decision making’ a nullity. RCW 43.21C.030(2)(b).”
  - “It necessarily follows that SEPA confers substantive authority to the deciding agency to act on the basis of the impacts disclosed.”

# SEPA Categorical Exemptions

- Statutory exemptions in RCW 43.21C.035 through 0384 for certain irrigation projects, school closures, annexations, fish habitat restoration, air operating permits, water waste discharge permits for existing dischargers, and others
- Administrative exemptions in Part Nine of SEPA Rules
- Administrative exemptions cannot include “major actions significantly affecting the quality of the environment.” RCW 43.21C.110(1)(a)
- Include optional flexible thresholds [WAC 197-11-800(1)]
  - From 4 to 20 dwelling units
  - From 10,000 to 30,000 sq. ft. agricultural buildings
  - 20 to 40 car parking lots
  - From 100 to 500 cubic yard landfills or excavations

# Process for SEPA Threshold Determination

- Responsible Official makes the threshold determination
  - Determination of Nonsignificance, no EIS required
  - Mitigated Determination of Nonsignificance (DNS), no EIS required due to mitigating conditions
  - Determination of Significance (DS) and Scoping Notice, EIS is required
- Notice is required for DNSs for certain types of development such as those where another agency has jurisdiction and clearing or grading permits

# EIS Process

- Scoping
  - What issues will be considered
- Draft Environmental Impact Statement (EIS)
- Public and agency comments
- Final EIS
- Can be appealed along with the underlying action to the Growth Board or Superior Court

# State Subdivision Statute (Chapter 58.17 RCW)

- The process by which buildable, legal lots are created
- Divisions five acres or larger can be regulated, but do not have to be
- Short Subdivisions
  - Four or nine or fewer lots
- Long subdivisions or plats
- Must specifically find appropriate provisions for potable water supplies

# Evidence of Adequate Water Supply Required for a Building Permit (RCW 19.27.097)

- Applicants for building permits for buildings necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building
  - Water right permit, but not application for a water right
  - Letter from an approved water purveyor stating the ability to provide water
  - Another sufficient form
- County or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency
- For counties not fully planning under the GMA, county and state may mutually agree on areas where this requirement does not apply

# Futurewise

- Non-profit 501(c)(3) organization
- Our mission at Futurewise is to promote healthy communities and cities while protecting working farms and forests and shorelines for this and future generations
- What we do:
  - Research and analysis
  - Advocate for better planning and to improve the Growth Management Act
    - Local governments
    - State agencies & the legislature
  - File strategic appeals of poor planning decisions
  - Assist citizen groups, the public, and state and local governments