VETO MESSAGE ON SB 6094

May 19, 1997

To the Honorable President and Members,
The Senate of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52, Engrossed Senate Bill No. 6094 entitled:

"AN ACT Relating to growth management;"

This bill, enacting the recommendations of the Land Use Study Commission, was introduced at my request. However, the bill was amended significantly in the legislative process. Therefore, I have listened to the input of a broad range of interests and conducted a thorough review of all of the provisions of the bill as passed by the Legislature.

I have maintained throughout the 1997 legislative session that the consensus recommendations of the Land Use Study Commission, comprising representatives of business, agricultural, local and state government, neighborhood activists and environmentalists, should provide the framework for the debate over how best to improve the state's Growth Management Act. I thank the members of the commission for their diligent work, developing a variety of issue papers, conducting hours of public hearings, and developing a well-reasoned and well-crafted legislative proposal.

As I reviewed this bill as passed by the legislature, I always kept in mind the framework for the analysis provided by the Commission. I believe that this bill will go a long way toward resolving many of the specific concerns people have had with the way the Growth Management Act has worked since it was first enacted. Among other things, this bill provides greater deference to the decisions of local elected officials throughout the state, improves public participation in the growth management process, and gives the Growth Management Hearings Boards the added direction they need in resolving some very difficult land use issues. I have signed every section of this bill that includes the language proposed by the Land Use Study Commission, as well as some other sections. However, I was unable to sign the bill in its entirety and have vetoed the following sections.

Section 1 changes the intent section recommended by the Land Use Study Commission. The language of the recommended intent section represented a fine balance of the interests represented on the Commission and should not have been altered, thereby implying an intent that was not agreed to by the Commission.

Section 4 provides that a county, after conferring with its cities, may develop alternative methods of achieving the planning goals of the Growth Management Act. This GMA-flex option was briefly discussed by the Land Use Study Commission and dismissed without recommendation because it is an issue that represents a major change in direction and needs much more discussion and refinement before it is a viable alternative.

Section 5 states that the goal of the state is to achieve no overall net loss of wetland functions. This section also provides that in adopting critical areas development regulations, counties and cities should balance all of the goals of the GMA and that the

legislature intends that no goal takes precedence, but that counties and cities may prioritize the goals in accordance with local history, conditions, circumstances, and choice. This issue was not addressed by the Land Use Study Commission and seems to me to be inconsistent with the tenor of the Commission's recommendations.

Section 6 allows for exemptions from critical area development regulations for emergency activities and activities with minor impacts on critical areas. This idea was not considered by the Land Use Study Commission. This change in policy would have to be fully explored before I could be comfortable signing it into law.

Section 8 provides that in certain counties, developments in rural areas shall not require urban services and shall be principally designed to serve and provide jobs for the local rural population. This section creates confusion because it states a rule that currently applies in all counties planning under the Growth Management Act, but implies that the rule applies only to specific counties. Section 7 of this bill provides all the direction needed by counties to plan for the rural element, including guidelines for rural development.

Section 7 provides that the rural element shall permit rural development providing for a variety of rural densities, uses, essential public facilities, and rural governmental services to serve the permitted densities and uses in the rural element. There are three exceptions in which businesses in the rural element are not required to be principally designed to serve the existing and projected rural population. These exceptions are: (1) infill of existing development; (2) small-scale recreational or tourist uses; and (3) development of cottage industries and small-scale businesses. Therefore, section 8 is unnecessary, confusing, and potentially more restrictive in certain counties than are the recommendations of the Land Use Study Commission embodied in section 7.

Section 15 provides that all appeals of Growth Management Hearings Board decisions shall be filed directly in the Court of Appeals. This is not a recommendation of the Land Use Study Commission and I am not certain that it would be in the best interest of the parties who appear before the boards. Most parties believe that Superior Court review of board decisions is appropriate and is working well.

Section 17 establishes a new and higher standard for findings of invalidity - the "arbitrary and capricious" standard. I believe this would strip too much authority from the Growth Management Hearings Boards and severely weaken the important state role in the Growth Management Act.

Section 18 adds language to the Land Use Study Commission recommendation which clarifies the current expedited review provision relating to orders of invalidity. The new language creates a burden on those who challenge land use decisions that in many instances would be impossible to meet, because the plan or regulation has not been in effect long enough to have caused actual harm. In some instances there is no prudent policy justification for waiting until actual harm can be proven before allowing the invalidation of a comprehensive plan or development regulation.

Section 19 would allow the Superior Court, when reviewing an order of invalidity, to: affirm, set aside, enjoin, or remand orders of the Growth Management Hearings Boards; or enter a declaratory judgment of compliance or noncompliance, which may include an order of invalidity setting out the particular part or parts of the plan or regulation that are invalid. This was not a recommendation of the Land Use Study Commission and was not the subject of any other bills introduced this session. The concept received no public scrutiny or debate. This provision could have the unintended effect of providing for review of a comprehensive plan without the court having the benefit of the entire record.

I recognize that there is not enough money provided in the operating budget (ESHB 2259) to accomplish the full purpose of section 25. However, by approving section 25 of this bill and section 103(4) of the operating budget, I am indicating my commitment to beginning the work of reviewing and evaluating the effectiveness of the growth management act in achieving the desired densities in urban growth areas. To accomplish this, I will work with the legislature to identify additional resources, a cost recovery program, or other means to assure sufficient funding to allow the first evaluations to be completed by the September 1, 2002 deadline.

By approving sections 29 and 30, I have approved the use of the Public Works Trust Fund and the Centennial Clean Water Fund to address critical or emergent public health and existing environmental problems related to infrastructure in jurisdictions that are not currently in compliance with the Growth Management Act. I am very concerned that this legislation not be used as a method to provide unrestricted access to these accounts for local governments that are not in compliance with the law. For this reason, I have directed the Department of Health, the Department of Ecology, the Department of Community, Trade and Economic Development, and the Public Works Board to interpret this new authority conservatively.

Section 44 would add new members to the Land Use Study Commission. I am concerned that the Commission may already be unable to meet its time schedule for completing its ambitious work plan. The selection and appointment of new members to the Commission is likely to cause delay in the Commission's process. Furthermore, I believe the Commission is currently well-balanced in its composition. I would like to see that same balance maintained for the last year of the Commission's work. However, I do encourage interested legislators to attend the meetings of the Commission and to provide input when appropriate.

Section 45 amends the charge given to the Land Use Study Commission by adding the following requirements: (1) Review long-term approaches for resolving disputes that arise under the Growth Management Act, the Shoreline Management Act, and other environmental laws, including identifying needed changes to the structure of the boards that hear environmental appeals; (2) If the LUSC determines that there is no longer a need for the Growth Management Hearings Boards, recommend a plan for sunsetting the boards; and (3) Evaluate the effect of the changes to the standard of review and make recommendations raising the standard of review,

limiting the authority of the boards to make determinations of invalidity, or making other changes.

The ambitious Land Use Study Commission work plan for 1997-98 already includes much of the work proposed in section 45. However, I am concerned that the language of this section has the unintended effect of predetermining a result or, at least, a range of results. I encourage the Land Use Study Commission to review as many of these issues as it can reasonably fit within its crowded work plan and narrow time constraints.

Section 52 makes a technical change to effectuate the purpose of section 15, which I have vetoed.

For the reasons stated above, I have vetoed sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52 of Engrossed Senate Bill No. 6094.

With the exception of sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52, Engrossed Senate Bill No. 6094 is approved.

Respectfully submitted,
Gary Locke
Governor