

Evaluation of Growth Action Plan Elements of Aspen Area Community Plan 1998-99 Update

This report contains an evaluation of the Growth Action Plan elements of the draft Aspen Area Community Plan, 1998-99 update.

The report is organized around the outline provided by the Growth Action Plan. It includes each of the lettered goals from the Growth Action Plan in full. Under each goal, it includes the consultant's summary of the much more lengthy policies included in the draft plan.

Budget and time constraints limited this review to an office analysis only. The consultants have cited examples from other communities based on anecdotal knowledge and their own files, but there may be other—and better—examples that a comprehensive national survey might identify. The community development staff has requested an analysis of “political, legal and economic” implications of each recommendation. The consultants have attempted to respond in this limited context, but they have done so only from their direct experience in other communities and their prior experience in Aspen and Pitkin County. Additional information which might change their opinions of the implications would include: a thorough economic impact analysis by a qualified firm; access to the city's and county's historic legal analyses of the defensibility of the GMQS system in general; and surveys, personal interviews and other interaction with public officials and their constituents to provide a better sense of the current political issues

This report was prepared by Eric Damian Kelly, FAICP, of Duncan Associates. Duncan Associates is a consulting firm specializing in plan implementation. The firm has conducted work in more than 30 states, including a good deal of work in Colorado and prior work for Aspen and Pitkin County. Other resort and tourist destinations among its clients include Hilton Head Island; Reno; Las Vegas; Eagle County, Colorado; and Wilmington, North Carolina. James B. Duncan, president, and Eric Damian Kelly, vice president, have each worked in the field of growth management for more than 25 years. The two are authors of two of the three books on growth management currently featured in the Planners Bookstore catalog.

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This analysis was performed under contract to the Board of County Commissioners of Pitkin County, working under the county's Community Development Department.

Consultant's Comments on Proposed Goals and Policies

A. Limit Ultimate Population in the Aspen metro area to a peak of 28,000 to 30,000 people at build-out.

1. *Evaluate existing conditions*
2. *Consider development of "peak capacity standard"*
3. *Identify remaining capacity of existing infrastructure*
4. *Identify remaining development potential for all use-types and update annual ceiling numbers*

Recommendations:

- (a) We recommend changing the goal to specify a number of dwelling units and a number of lodging beds.
- (b) We see no need to create a new "standard" for peak capacity.
- (c) It is absolutely essential to create a tracking, planning and management system to maintain a balance among the community's growth goals, the actual construction of new units and the construction of related infrastructure.
- (d) The new tracking, planning and management system should also serve as the basis for a "concurrency system" as part of the GMQS, ensuring that a project can be approved only when actual infrastructure capacity will be available to serve it.

Discussion:

Recommendation (a): Local governments directly control the creation of dwelling units and lodging rooms through zoning and the related system of issuing building permits. A goal based on the number of dwelling and lodging units is easier to measure than the current one and much more achievable. The current peak population goal can be used as the basis for converting to units and pillows.

Household sizes among residents may change, particularly if the plan succeeds in its goal of providing housing for more year-round residents.

Recommendation (b): A standard is simply a benchmark to provide a basis for measuring progress toward a goal. The Aspen Area Community plan already contains a standard—a peak population of 30,000 (see p. 16). That standard is clearly based on a "peak capacity" concept and there seems to be little purpose in spending much effort to develop a separate "standard" related to that. It would be useful to convert that to a number of dwelling units of different types and a number of lodging units, which relates back to Recommendation (a).

Recommendation (c) and General: Identifying the remaining capacity of existing infrastructure and developing a capital improvements program to expand infrastructure as necessary to serve planned growth is absolutely essential to the success of the program. Those are the basic elements of the "concurrency" approach used in Florida; such a system is the best way to address concerns about system capacities, also raised under goal C, paragraph 20.

Identifying remaining development potential is also absolutely essential. The city and county ought to track development capacity constantly, adding new units as they come on-line, removing capacity units as public acquisitions and regulatory incentives reduce the capacity, and reporting regularly where the community stands as a percentage of build-out. It is almost impossible to evaluate the validity and/or value of some of the GMQS categories and exemptions without having the context of a development capacity analysis. Note that the development capacity analysis ought to consist of at least three categories: existing units; units which can be built under exemptions or otherwise essentially “by right” under the GMQS; and maximum regulatory capacity of other developable land in the urban area, which may actually be a larger number than the achievable development capacity on some parcels.

It is possible that the city and/or county already have some of this data. The two pieces of information that we received that relate to the subject are: “Estimated Future Peak Population and Remaining Build-Out Potential” (one sheet, dated in footer as 4/21/99) and “Metro GMQS Data” (a project list that appears to show pending units). Both contain relevant data, but policy 4 under Goal A on page 19 of the Plan Update suggests that they are incomplete even as to the potential for construction under the current system. It does not appear, for example, that they deal with development capacity of projects for which no plans have been submitted or of the potential for addition of second-floor residential in the downtown area or for the potential creation of units from additional exempt lot splits.

Nothing that we received addresses the issue raised in policy 3 under Goal A, which is the issue of tracking infrastructure capacity. If either the city or county currently tracks this data, we have not seen it.

Recommendation (d): Concurrency, or adequate public facilities regulation, is probably the most basic form of growth management. It is practicable only with the kind of data that the community will have on implementing Recommendation (c), but it is an essential tool.

Examples:

Recommendation (a): Virtually all growth management programs with which we are familiar track units. The famous early programs in Petaluma, California, and Ramapo, New York, tracked dwelling units. The long-standing growth management program in Westminster, Colorado, uses dwelling units as its unit of measure related to population. Montgomery County, Maryland, which has been in the growth management business for 30 years, measures the number of dwelling units. Although Boulder has historically published a goal related to percentage population growth, when we have reviewed its program that has always been translated to a number of dwelling units.

Recommendation (b): We know of no examples that have a “standard” that is any more detailed than the one already contained in the Aspen Area Community Plan.

Recommendation (c): Three communities in which we have observed excellent programs for tracking the number of potential dwelling units that can be constructed are: Westminster, Colorado; Reno, Nevada; and Montgomery County, Maryland. We do not have the most current documents from any of those communities, but we are providing separately an excerpt from one of the Reno reports as an example. Note, however, that each of these communities historically has tracked only projects that have actually been approved. We have recommended that Aspen and Pitkin County do more than that. For those communities—and most with which we work—it is not realistic even to estimate

the development capacity in undeveloped areas, because zoning and, in the case of the cities, even the municipal boundaries, are subject to change. The future development area in and around Aspen, however, is different. It has—or should have—a clear boundary. Within that boundary, it is possible, with a modest expenditure of effort, to: count every unit included in an approved project (data already available); count every vacant lot and determine whether it may have any vested rights; identify every lot which might be split under the lot-split exemption; identify all projects that can potentially be converted to residential units; identify the maximum zoning density on all vacant, undeveloped tracts in the future development area; identify the potential for second-floor residential units. With all of that data, the city and county can compare the desired development goal with the maximum development potential under existing regulations and adjust the regulatory program accordingly. All of that data will provide a much better basis for tracking remaining development potential.

For more information, see:

Kelly, Eric Damian. 1993. *Planning, Growth and Public Facilities: A Primer for Public Officials*. Planning Advisory Service Report No. 447 (Chicago: American Planning Association).

Determining public development capacity—basically infrastructure capacity—is a different issue. Many communities track such information, sometimes simply by system—that is, the water department may track remaining capacity for water while the wastewater department tracks similar data separately. Westminster has historically had a good tracking system for both sewer and water. Montgomery County has an excellent tracking system for all infrastructure capacity built into its growth management system.

Our planning colleagues with Cooper-Ross regularly provide a more comprehensive “development capacity” analysis. We are providing separately an example of one they prepared for Norman, Oklahoma, working under the Burnham Group. They have prepared a similar analysis for Pueblo and Pueblo County, where they are now working.

Recommendation (d): Montgomery County, Maryland. Westminster, Colorado. All local governments in Florida, under state mandate. Colorado’s enabling act for counties mandates a basic form of concurrency finding, although the general language of the statute has led in many cases to superficial implementation. For other examples, see :

Kelly, Eric Damian. 1993 *Managing Community Growth: Policies, Techniques and Impacts* (Westport, CT: Praeger), esp. Chapter 4; and

Nelson, Arthur C., James B. Duncan, Clancy J. Mullen and Kirk R. Bishop. 1995. *Growth Management: Principles and Practice* (Chicago: Planners Press), esp. Chapter 7.

Implications:

Implementation of these recommendations will give the city and county better management control of the goals that they have established. From a public policy perspective, it should thus facilitate accomplishment of the goals.

We know of absolutely no legal authority through which a local government can directly control “population.” That implies establishing policies for birth rates, immigration and out-migration and all sorts of things that are outside the scope of even the broad home-rule authority given cities in Colorado. On the other hand, there is good authority for communities to establish growth management programs that limit the rate of expansion of the number of dwelling units in the community. Recommendation (a) should thus

increase the defensibility of the GMQS program in general and tie the plan and regulations more directly together.

We also believe that changing to a goal based on a number of units and adopting an improved tracking system will make the system easier to understand—for public officials, for their constituents, for interested visitors, and, if necessary, for the courts.

Implementation of Recommendation (c) will provide the city and county with much improved management data to use in: 1) establishing capital improvement programs and related capital budgets; 2) making other capacity-affecting changes to infrastructure; 3) establishing and adjusting annual development quotas.

B. Provide Affordable Housing units to help sustain the local, permanent resident population. This should be accomplished through purchase and “buy-down” of existing units and high quality new construction.

5. *Develop a housing master plan*
6. *Study feasibility of tiered development review process; develop separate process for conversion to affordable housing*
7. *Discourage cash-in-lieu payments as affordable housing mitigation*
8. *Study use of free-market incentive to build affordable housing*
9. *Whenever possible, provide affordable housing without new construction*
10. *Study impacts of rezoning undeveloped commercial land to “neighborhood commercial” with affordable housing overlay*
11. *Explore eliminating or significantly reducing parking requirements for affordable housing developments in city*
12. *Consider allowing lodges to be redeveloped only as affordable housing*

Recommendations:

- (e) Development of a Housing Element to the Aspen Area Community Plan is essential to address these issues.
- (f) The Housing Element should address parking needs for all types of housing units.
- (g) Considering options for combining residential and commercial uses seems to make a great deal of sense.

Discussion

These are perfectly reasonable policies on the surface. It is difficult, however, to evaluate them intelligently outside the context of an overall Housing Element to the Aspen Area Community Plan. Note that the Development Capacity analysis recommended under Goal A will provide valuable data to assist those preparing this plan.

Such a plan should be prepared with the assistance of a real estate market expert to help the city and county evaluate the effectiveness of the current affordable housing program, the effect of payments in lieu, the practicability of the suggested “free-market incentives,” the practicability of the suggestions for providing affordable housing without new construction, and the probable impacts of changing the existing commercial zoning. Those are not theoretical questions and they really are not questions which can be answered for Aspen and Pitkin County based on the success or failure of similar programs in other communities. The Aspen Area needs its own plan, created in the context of the local land market, local development capacities, local construction patterns, and local housing demand.

The housing master plan should address parking needs for all types of housing units. Eliminating parking for affordable housing units may make them seem more like

“second-class” housing units, particularly if the residents work in locations or on shifts that are not easily served by mass transit.

Considering options for combining residential and commercial uses seems to make a great deal of sense. Although the issue deserves more study, “live-above” commercial units may be entirely compatible with the community goal of providing more basic commercial services to meet the needs of residents.

In short, all of the policies here should be considered “tentative” or “working hypotheses” pending the completion of the recommended Housing Element.

Examples:

We are not housing experts, but most larger communities in which we work have housing plans or housing elements to their comprehensive plans. Communities receiving federal assistance for housing must have Comprehensive Plans for housing (previously called CHAS, or Comprehensive Housing Affordability Strategy). A housing consultant hired to provide assistance with this task could certainly provide tangible examples. If a staff member is assigned to perform this work, she or he should contact other communities in the region for examples of their housing plans and should also contact some resorts for similar documents.

Implications:

Preparing a plan is essentially the only way that the city and county can effectively fulfill the stated housing goal. The collection of policies listed in the plan update include some good ideas, but they are really only that—ideas—without a plan for context. Creating a Housing Element would dramatically increase the practicability of this goal, as well as its defensibility.

C. Implement a true rate of growth that counts *all* growth.

13. *Study ways to manage the size and composition of the workforce*
14. *Study the impacts of revising “change in use” provisions in city and county codes*
15. *Study ways to better capture effects of employee generation through employee mitigation*
16. *Explore ways to “capture” what is currently explicitly exempted or missed from the GMQS*
17. *Explore “sliding scale” for construction projects to contribute to affordable housing mitigation*
18. *Explore requiring larger redevelopment projects pay for or provide affordable housing units*
19. *Explore a significant decrease in the FAR allowed [on residential sites]*
20. *Consider elimination of multi-year GMQS allotments*
21. *Review exemptions under GMQS*

Recommendations:

- (h) Many of the “exemptions” under the GMQS should be converted to a “permitted without competition” category or, as the draft Update suggests in one place, subject to a lottery system. Such an approach would bring those projects under other aspects of the GMQS, including its tracking and mitigation components.
- (i) “Exemptions” ought to be limited to situations that are essentially viewed as legally or politically “vested” rights.
- (j) Changes in use should clearly be brought under the GMQS or something closely related, and the city and county should address the impacts of changes of use in the same way that they now address the impacts of new development.
- (k) Similarly, significant expansion of a use—including any residential use—should be brought under the GMQS system.
- (l) At least the residential areas in the traditional town of Aspen should be subject to more restrictive controls on height and bulk of buildings, to address some of the concerns about size and scale of new dwelling units.
- (m) We cannot recommend any effort to regulate directly the local workforce.
- (n) Creating a multi-tiered review system for development in Aspen and Pitkin County seems unnecessarily cumbersome.
- (o) As noted in the Comment under goal A, the best way to address the infrastructure capacity concerns raised in paragraph 20 is through a “concurrency” program that combines careful tracking of development capacities and demands with capital improvement programs designed to bring new infrastructure on-line as necessary to serve planned growth.

Discussion:

Recommendations (h) and (i): These recommendations should require little discussion. In general, we find that “exemptions” weaken a program both politically and legally, because they suggest that some projects or people are not subject to regulation. Actually most projects now considered under “exemptions” are subject to extensive regulation—they are simply guaranteed (or nearly guaranteed) approval under the quota system. We consider that category “approvable without competition” or something similar.

Recommendations (j), (k) and (l): Implementation of these recommendations—to address use changes and expansions through the GMQS system—is contingent on implementation of the development tracking system recommended above. Further, to the extent that current records do not show precise uses or floor areas approved under the GMQS, that data should be gathered and added to the permit files. Future permits under the GMQS should be issued only for a specific use (or group of uses—such as “convenience retail”) and for a specific floor area. If changes of use do not now require a new “certificate of occupancy” or “certificate of zoning compliance,” the code should be amended to accomplish that. Expansions of uses into new space presumably require building permits; expansions of uses into existing space would fall under the change of use recommendation immediately above.

It may be desirable to create a “dwelling unit equivalent” that applies to single-family units, using a base module of 2500 square feet, or other appropriate size, as a single dwelling unit equivalent and treating residences larger than that as multiple units. One very real consideration, in addition to the fiscal and scale issues addressed in the draft Update, is that very large units may, over a period of time, be occupied by increasing numbers of people. Once residential space exists, it is very difficult to control the number of people in it at any given time.

We acknowledge the fact that some large residences may currently be used only a few weeks a year while small apartments may have 3 or 4 workers sharing them. We know of no way to distinguish among dwelling units, however, other than by type (single-family, multi-family) and size. Further, it may be unrealistic to assume that all of the large homes will remain single-family units over the long-run. It would be difficult to prevent an extended family from owning one and using it intensively. It may be difficult over the long-run to prevent creative forms of “club” or “partnership” ownership that create non-record timeshare projects. Thus, units that may be under-used now may not remain that way over the long-run.

One approach to the dwelling unit issue is simply to regulate the number of units. If, however, as some of the policies in the Plan Update suggest, there is some concern with differences in occupancy patterns, then the best way to address those is by further classifying dwelling units by size or by some other objective measure, such as the number of bathrooms or number of kitchens. Note that this recommendation (which is not a strong recommendation—simply one to consider) is entirely consistent with the stronger Recommendation (l), that at least the city impose more restrictive controls on the size and bulk of single-family homes in established areas.

There are a number of comments in the Plan Update that suggest continued concern with the size and scale of remodeled and replacement dwelling units, particularly in the traditional town areas of Aspen. Implementation of appropriate—but more restrictive—controls on height, bulk, floor-area and scale is the best way to control this. This is a traditional zoning issue, not a GMQS issue, and it should be addressed through zoning.

Typical tools used to address such issues include: height limits; FAR and other bulk limits; standards for scale and proportions of buildings.

Recommendation (m): There may be a local government someplace in the United States that has attempted to regulate the size of the local work force, but we are not aware of one and we cannot recommend that. We have serious concerns about the practicability and defensibility of such a program.

Note, however, that workforce size clearly ought to be a consideration in allocating space to nonresidential uses under the GMQS system. Numbers of employees and numbers of customers are the major impacts of nonresidential development and are absolutely the basis for such regulation. This is another area in which you may need to hire some additional consulting help, to try to develop local formulas for relating occupancy (numbers of employees and customers) to floor area or land area of particular nonresidential uses. For example, a video rental store has far fewer employees per square foot than a fast-food restaurant. It would be helpful, however, to have a detailed table showing employment patterns by 1000 square feet by land use.

If the concern is primarily with temporary construction workers, then the city and county could consider limiting the total amount of construction in a particular year. Such a limitation would simply take the GMQS program one more step by limiting the total construction effort as well as the construction output.

It is not clear how big a problem—or how much of a long-term problem—construction and other temporary employees are. Clearly there can be a lot of people working on a major construction project, but they will be there only for a limited period of time. The city and county could conceivably limit the total dollar value of all construction permitted in a particular year simply to limit the number of employees brought in, but that would lead to the need for all sorts of exemptions—for improvements to meet health and safety codes, for work to repair fire or other damage, and for all sorts of other urgent or seemingly urgent types of work. Further, simply managing the number of construction employees does not deal with the total employment base. Is it the ultimate intention of the city and county to limit the number of employees in each shop and to limit the number of employees at the resorts? That seems difficult to implement and almost impossible to enforce as a practical matter. Presumably a major goal of the limitations on commercial space is to limit the number of employees. If those numbers require readjustment, it is easier to readjust—and enforce—them than to develop an entirely new system of workforce management.

Recommendation (n): Creating a multi-tiered review system for development in Aspen and Pitkin County seems unnecessarily cumbersome. Some communities seem to use rigorous review processes to limit the amount or type of growth. The city and county regulate those issues directly and ought to make the actual review process as simple as is reasonably possible. A tiered system makes sense in communities where there are some projects with 3 units and some with 300, but neither the city nor county is likely to be reviewing proposals large enough to need a phased or other large-scale review process.

Recommendation (o): As noted in the Recommendation (d) under goal A, the best way to address the infrastructure capacity concerns raised in paragraph 20 is through a “concurrency” program that combines careful tracking of development capacities and demands with capital improvement programs designed to bring new infrastructure on-line as necessary to serve planned growth. That is a far better approach to this issue than eliminating multi-year allotments; in a real-sense, multi-year allotments provide

increased predictability and should be desirable to the city and county, as well as to creative developers.

Examples:

Recommendations (h) and (i) (elimination of exemptions). We are not aware of any examples that directly apply to this situation. Certainly most growth management programs have some exemptions. We prefer those that have fewer. Montgomery County is probably as good an example as any of such a program.

Recommendations (j) and (k) (bringing more projects under GMQS). We are not aware of any specific examples of growth management programs that take this approach. We do, however, regularly use exactly this approach in creating impact fees, which we believe is a directly related subject. Many impact fee ordinances—both ones we have drafted and ones drafted by others—include expansions of uses and conversions of uses as fee-triggering events.

Recommendation (l). Most communities with zoning limit the height and bulk of buildings in residential areas. Although in many communities, the rules are so liberal that few build to the maximums, the principle of such regulation is well-established. Probably the best examples of more significant restrictions on residential construction occur in historic districts, where additional restrictions often include regulations specifically addressing the scale of buildings (in proportion to lot frontage) and the proportions of the building (ratio of height to width). Our observations of construction in some resort communities (notably San Diego around Mission Bay) suggest that those communities have limited reconstruction to that which can occur within the existing building envelope.

Recommendation (m). We are aware of no examples of communities that have attempted locally to limit the total workforce.

Recommendation (n). There are many communities that have multi-tiered review systems. One recent one that we prepared for a resort community is the one in Hilton Head Island. That code is available for review on our website:

<http://www.duncanplan.com>

Note, however, that we have recommended that Aspen and Pitkin County not use this approach. Hilton Head continues to develop under a large project (plantation) scenario in which multi-tiered review is both appropriate and necessary. That is not the case in the Aspen area.

Recommendation (o): See examples under Goal A.

Implications:

Recommendations (h) and (i), have limited implications. By eliminating many exemptions and simply classifying those now-exempt projects as subject to regulation under a special category, the city and county will strengthen the defensibility of the program. If the new language is properly drafted, there should be no net practical effect on the program, the city, the county or owners of the affected properties or projects.

Recommendations (j), (k) and (l), for bringing more projects—those involving use conversions and expansions—under GMQS, are eminently defensible but may be controversial. These are the first recommendations in this report that we believe could attract significant opposition—from proponents and prospective applicants for that type

of development. Clearly the Plan Update suggests, and, presumably, data on file shows, use expansions and conversions have the same sorts of impacts on the community as new uses of the same type. Thus, we believe a program expansion to address these impacts is entirely appropriate and defensible.

Recommendation (m) may be controversial with some of the contributors to the Plan Update. We do not believe, however, that there is any direct way to control the size of the workforce, short of establishing some sort of admissions pass to the city or to the urban growth area. Any such program would raise **serious** Constitutional issues, particularly under the “Commerce Clause,” under which the federal government has the exclusive right to regulate interstate commerce. To the extent that there is a “right to travel” in the United States, it finds its roots in the Commerce Clause. Although it is not entirely clear that a community is Constitutionally prohibited from limiting the number of visitors to the community, limiting the number of workers seems directly to confront the Commerce Clause in a very risky way. NOTE that we have not conducted independent research on this issue and do not have a budget to do so at this time. We are, however, raising a major red flag on this issue for review by counsel to the city and county.

Recommendation (n) seems to require little discussion. There are no really large projects in Aspen and Pitkin County now and all small projects ought to received efficient and reasonably expeditious review.

Recommendation (o). See discussion of Implications under Goal A, above.

D. Contain development with the creation of an Aspen Community Growth Boundary and intergovernmental agreements between the City of Aspen and Pitkin County regarding annexation and development outside of that boundary in the unincorporated County.

22. *Create growth boundaries*
23. *Develop intergovernmental agreements to limit urban levels of development to areas within the growth boundary*
24. *Consider downzoning actions in County, consistent with urban growth boundaries*
25. *Growth boundary should accommodate projected build-out and appropriate open space*
26. *Growth boundary should include “greenfastructure”*
27. *Reserve large development sites for affordable housing*
28. *Consider establishing minimum densities*
29. *Explore opportunities to encourage redevelopment, especially for affordable housing and locally serving businesses*
30. *Consider amending GMQS to promote infill development*

Recommendations:

- (p) Establishment of growth boundary or some definition of the area within which development will be permitted or encouraged;
- (q) Negotiation of intergovernmental agreements to implement growth boundary and to address annexation issues;
- (r) Establishment of minimum densities to ensure optimal use of land that is developed—include these in zoning ordinance, not just in plan;
- (s) Encouragement of infill development;
- (t) Encouragement of infill *redevelopment*;
- (u) Preservation of large sites for high priorities—which probably include “locally serving businesses” as well as affordable housing;
- (v) Creation of a detailed Greenways and Open Space Element to the Aspen Area Community Plan.

Discussion:

We are candidly somewhat surprised that the GMQS program has worked as well as it has so far without the growth boundary and related tools to set minimum densities and encourage infill development and redevelopment. These should be very high priority items. They are typical growth management tools. See Kelly and Nelson & Duncan books cited above.

Note, however, that it will be difficult to begin drawing boundaries without completing the inventory of development capacity recommended in our comments on Goal A.

Note, further, that the report author, in some of his writings, has expressed concerns about the impacts of growth boundaries. That criticism, however, has been in the context of a metropolitan area with essentially unlimited (or at least unknown) growth potential. Trying to put an increasing number of people into a confined space distorts the landmarket and can cause many other problems. Aspen and Pitkin County have, however, already established the growth quota. It only makes sense to focus as much of that growth as practicable into an “urbanized” area around Aspen.

Regarding Recommendation (v), we recommend that the issue of “greeninfrastructure” be treated through an Open Space and Greenways Element of the Aspen Area Community Plan, rather than as part of a community growth boundary study. The open space plan should include an implementation element, with strategies for acquisition and preservation.

Examples:

Recommendation (p). There are a number of examples of urban growth boundaries, which trace their roots to urban service area boundaries, established in Lexington, Kentucky, and Boulder, Colorado, in the 1950s. See Kelly and Nelson & Duncan books cited above for other examples. Probably the best-known example of an urban growth boundary today is the one in Portland, Oregon. A number of California communities have adopted growth boundaries in the last two or three years, although those are reported primarily in the popular press rather than in scholarly works or technical reports.

Recommendation (q). There are examples of the use of intergovernmental agreements throughout Colorado and many other states. Successful city-county cooperation includes that in Boulder/Boulder County, Colorado; Lexington/Fayette County, Kentucky; Wichita/Sedgewick County, Kansas.

Recommendation (r). Minimum density requirements fall well within the scope of zoning enabling acts around the country, all of which allow the regulation of density—without specifying whether a community should set minimum or maximum density standards. Probably the most extensive experience to date with minimum densities is in the Portland metropolitan region, where local governments are required by the regional plan to meet density quotas within fixed boundaries.

Recommendation (s) and (t). Many large cities are successfully encouraging infill development and redevelopment today. Those range from well-publicized success stories like Cleveland, Ohio, to less famous communities like Wichita, Kansas, and Rochester, New York.

Recommendation (u). There are fewer success stories than we might like to see in preserving large tracts for high priority uses. Many communities have seen their opportunities for economic development eroded as good industrial sites have lost their frontage and prime access to “strip commercial” uses. On the other hand, few communities have as great a need as Aspen for controls to preserve such sites. The lack of good examples should not discourage the community from being on the “cutting edge” on this important issue.

Recommendation (v). Many communities today have excellent plans for the preservation of greenways and open space. Several excellent reference sources for such a plan include:

Mertes, James D., and James R. Hall. 1996, *Park, Recreation and Greenway Guidelines*, Alexandria, VA: National Recreation and Park Assoc.;

Endicott, Eve, ed. (Lincoln Institute of Land Policy) 1993. *Land Conservation through Public/Private Partnerships*. Washington: Island Press; and

Garvin, Alexander, Gayle Berens, and others. 1997. *Urban Parks and Open Space*. Washington: Urban Land Institute and Trust for Public Land.

Implications:

Based on our experience, the recommendations regarding urban growth boundaries, minimum densities, infill development and redevelopment are all fairly implied by the community's over-all growth management policies. These are essential tools to accomplish what the Aspen Area Community Plan sets out to do.

The implications of preserving large tracts for priority uses may be more challenging. The practical effect of such a policy may be to deny a marginally acceptable development approval today hoping for a better proposal for the same site later. That can lead to economic hardship to an owner developer, to political pressure on public officials and to legal challenges. The best defense to all of those potentially negative implications is to have a solid planning base for the preservation efforts—in other words, the community really needs the recommended Housing Element and Greenways and Open Space Element to the plan.

E. Foster a well-balanced community by promoting development that, through its integrated design, promotes economic diversity, transit- and pedestrian-friendly life-styles, and the mixing of people of “all ages, incomes, races, ability and employment.”

- 31. Foster mixed residential development patterns*
- 32. Study effects of low-paying jobs on community*
- 33. Provide parks and open space near development of affordable housing*
- 34. Consider ways to support a diversity of small, locally owned businesses*
- 35. Consider changes to codes to allow second-floor housing in the core*
- 36. When upzoning for affordable housing, consider deed restrictions on areas reserved for open space*
- 37. PUDs for increased density should be selectively considered*
- 38. Investigate incentives for lot splits and affordable housing*

Recommendations:

- (w) See recommendations (e) and (v), regarding the creation of Housing and Greenways and Open Space Elements, respectively, to the Aspen Area Community Plan.
- (x) Reduce the status of these items from numbered policies to “ideas for consideration” and reconsider these ideas in the context of those plan elements.

Discussion:

The policies under this goal address a variety of issues and do not form a truly cohesive package.

Land reserved as open space as part of an affordable housing approval package should most certainly be made subject to a conservation easement.

The appropriateness of PUDs, lot splits and other density-related incentives can be evaluated only after completion of the development capacity analysis recommended in our Comment on Goal A.

We have suggested above that second-floor housing in the core may serve a number of valuable public purposes. This is an eminently logical change.

The purpose of studying the effect of “low-wage” jobs on the community is not clear. Unless the city believes that it has the authority to set a minimum wage and to impose it in the county through intergovernmental agreement, there is little that the local governments can do about this issue. Of necessity, many of the jobs in a resort area are low-skill and may attract people who will accept relatively low wages. Jobs like hotel maids, bus-persons in restaurants, dishwashers and other non-chef kitchen help, residential maids, and many of the jobs that support the ski areas are jobs that pay low wages everywhere. Although store clerks in up-scale retail establishments may be on attractive commission scales, store clerks in grocery stores and other businesses that meet the “locally serving” goal of the Update are typically poorly paid. The housing and accessibility problems of Aspen have historically helped to keep wages for such jobs

higher in Aspen than they would be in Craig or Colorado Springs, but some of the jobs are likely to remain low-wage. Probably the more important question for the city and county to consider is whether they want to require employers with such jobs to provide direct, subsidized housing opportunities for such employees, as some resort operators do.

Examples:

Examples for these ideas seem relevant only when they can be considered in the context of the recommended Housing and Greenways and Open Space Elements.

Implications:

We cannot intelligently evaluate the implications of these ideas without the recommended Housing and Greenways and Open Space Elements of the Plan.

F. Develop a better Land Use database and tracking system and a proactive annual housing and development guide.

- 39. Update population analysis every five years*
- 40. Conduct a study of “real costs” of residential development*
- 41. Create tracking system for development that is approved but not built*
- 42. Submit reports to city and county each year updating development activity*
- 43. Analyze build-out potential annually*
- 44. Track affordable housing projects and publish data*
- 45. Adopt simplified housing development guidelines*
- 46. Bring existing conditions report up to date*
- 47. Study impacts of reducing or eliminating multi-year allocations under GMQS*

Recommendations:

Most of these items relate to or even re-state what we understood to be the implications of policies stated earlier in this section, particularly under Goal A. To restate our key recommendations on this subject:

- (c) It is absolutely essential to create a tracking, planning and management system to maintain a balance among the community’s growth goals, the actual construction of new units and the construction of related infrastructure.
- (d) The new tracking, planning and management system should also serve as the basis for a “concurrency system” as part of the GMQS, ensuring that a project can be approved only when actual infrastructure capacity will be available to serve it.

We would add one further recommendation here:

- (w) The Community Development Department should continuously track the balance between capacity and demand and regularly publish data on that balance—including projects approved but not yet built.

Discussion:

The proposed policies—and our recommendations on them—largely restate and/or complement those set out under Goal A. Little further discussion is necessary or even appropriate.

The issues of the real costs of residential development and simplified housing guidelines should be integrated into the new Housing Element.

Examples:

See examples cited for Recommendations (c) and (d), under Goal A.

For examples regarding costs of residential development and simplified housing guidelines, see suggestions for Recommendation (e) under Goal B.

Implications:
Same sources as “examples.”

G. Encourage a regional approach to land use planning in the Roaring Fork Valley.

- 48. Work on developing intergovernmental agreements among Aspen, Pitkin County, Snowmass Village and Basalt*
- 49. Consider development impacts regionally*
- 50. Update annexation plans among jurisdictions*
- 51. Work on moving transferred development rights to area within the urban growth boundary*
- 52. Encourage valley-wide coordination of comprehensive plans*
- 53. Explore the legality and potential implications of a county real estate transfer tax*
- 54. Update the annexation plan for Aspen.*

Recommendations:

- (x) Intergovernmental cooperation on a regional plan makes a great deal of sense.
- (y) Moving transferred development rights to the area within the urban growth boundary and updating the annexation plan seem to be implied by Goal D and our Recommendations (p) and (q).
- (z) Exploring legality of county-wide real estate transfer tax makes sense.

Discussion:

Excellent. All of these policies should be accomplished if possible. Most of these policies are mutually supportive and most are mutually interdependent. Number 54 actually seems to belong under Goal D rather than here—it is an Aspen-Pitkin County issue, rather than a broader Roaring Fork Valley issue.

Examples:

Probably the best example of regional planning in the country is that in the Twin Cities of Minnesota. The Portland metro area has a state-mandated regional planning program. The Regional Plan Association of New York represents a long-standing private, cooperative effort at regional planning.

Among resort areas, the Tahoe Regional Planning Agency probably stands out for its regional planning efforts—but note that those occur under a unique Interstate Compact.

We like the “cross-acceptance” approach to regional planning in New Jersey as a practical approach to regional planning where not all participants are enthusiastic participants. If everyone wants to cooperate, there are better ways to do it.

To the best of our knowledge, the longest experience with a true real estate transfer tax is that of the State of Vermont, which has a tax aimed at speculators—it disappears after a specified holding period.

Implications:

There is adequate legal authority in Colorado to engage in regional planning through intergovernmental cooperation. We express no opinion on the political practicability of such efforts.

We specifically offer no opinion in the legal authority or lack thereof for a county to establish a real estate transfer or other excise tax in Colorado.

Summary of Major Recommendations

- ***Establish a solid data base of regulatory development capacity and infrastructure development capacity.***
- ***Implement as soon as possible a dynamic tracking system for regulatory development capacity, infrastructure capacity, existing development and remaining development potential. Publish the data and use the data as a management tool.***
- ***Based on the capacity and demand analysis, establish an urban growth boundary, adjust zoning densities, adjust or eliminate GMQS exemptions and incentives and generally adjust the regulatory system to ensure that the annual results reflect the community's goals.***
- ***Bring expansions of uses and conversions of uses under the GMQS.***
- ***Prepare a Housing Element for the Aspen Area Community Plan, addressing housing standards in general, and affordable housing criteria. Address issues of affordability, long-term protection, conversion, parking, and recreational opportunities for affordable units in the context of the plan element.***
- ***Prepare a Greenways and Open Space Element of the Aspen Community Plan, identifying goals of open space preservation and establishing implementation strategies for the acquisition and preservation of open space.***
- ***Expand regional cooperation in planning and implementation through joint planning efforts and expanded use of intergovernmental agreements for implementation.***