Chapter 9: Implementation

There are 6 major steps involved in developing a Capital Facility Plan, as discussed in previous chapters:

1. Determine assets
2. Determine future needs
3. Determine costs
4. Identify revenues
5. Prioritize projects for funding
6. Develop plan

Implementing the Capital Facilities Plan takes place through numerous decisions and actions over the life of the plan. Which projects and funding sources are included in the 6-year Capital Improvement Plan is a large component of implementation, but it is only one of many decisions related to the development of a community's infrastructure. Your community's decisions about infrastructure and public works are one of the most powerful tools to implement the comprehensive plan. Those decisions must be consistent with other elements of the comprehensive plan.¹

The adopted budget is also a significant implementation tool and should reflect projects that are identified for funding in the six-year capital improvement plan. Additionally, Countywide Planning Policies can provide recommendations or even interlocal agreements for capital facilities shared by jurisdictions or in joint planning areas (see RCW 36.70A.210).

It takes deliberate effort to implement policies from the comprehensive plan. There are several policies, practices, and actions that can drive a county or city toward its goals – or hold it back from achieving them. This chapter is designed to help communities turn goals and policies of the comprehensive plan and other policy oriented documents into reality.

As the capital improvement plan is developed, there are some key decisions or actions to help implement the comprehensive plan and capital facilities element. These may specifically include:

- Project selection (see more on this in the section below) and programming (which projects should be built first)
- Project Scoping and Design specification (which design features to include in the project), including scoping of major reconstruction projects
- Policies governing project finance
- Design standards – often large portions of the infrastructure is constructed by others and then deeded to the jurisdiction – make sure you know what you are getting and that you get what you want
- Environmental Review and local project review
- Concurrency and level of service review, development phasing

¹ RCW 36.70A.120
• Onsite sewer systems in urban areas
• Setting service area boundaries
  a. Water Service
  b. Sewer service
  c. Fire and EMS

**Using the Comprehensive Plan for Project Decisions**
Each county and city planning under the GMA must perform its activities and make capital budget decisions in conformance with its comprehensive plan (RCW 36.70A.120). Each local government can develop criteria to use when prioritizing all of the various needs. These criteria can help the local government balance policy and fiscal constraints during the project scoping and prioritization process. Some jurisdictions prioritize projects within functional plans (e.g. all identified sewer projects are identified and prioritized within the general sewer plan). However, at some point, it becomes critical that all projects for all facilities and services be viewed in their entirety.

Projects that are to be paid for through the general fund that are included in the CFP, should be prioritized, which may pit parks projects against library or transportation projects. Local governments may wish to develop policies or procedures to ensure the limited funds are spread out across the various types of projects over time to ensure all projects, facilities, and services can be implemented as envisioned in the comprehensive plan, rather than the majority of funds being spent on one or two types of infrastructure at the expense of the others over time. There should be policy guidance to help decision-makers aware of these choices in the context of the comprehensive plan vision as well as making choices between parks and recreation projects versus sidewalks and other types of projects. Goals and policies in the comprehensive plan can provide guidance related to growth and development patterns, bringing an underserved area up to a level of service standard, or provide phasing guidance to help decision-makers time the sequence of providing services. Municipal Research Services Center (MRSC) provides financial and budget policies from several local governments at: [https://www.mrsc.org/subjects/finance/finpolpg.aspx](https://www.mrsc.org/subjects/finance/finpolpg.aspx).

**Identifying Projects**
As discussed in earlier chapters, it is important to understand the complete set of projects that will be needed to serve the anticipated growth envisioned in the comprehensive plan. This list of needs and projects will provide a better understanding of needed improvements, costs, and funding sources that can be used or will be needed to meet those needs.

In its Capital Facilities Plan, the City of Lacey includes projects from seven “separate but coordinated comprehensive planning documents” that when combined, will enable the city to meet its adopted levels of service for capital facilities to implement the comprehensive plan. Some of the City of Lacey’s other planning documents include functional plans for sewer, parks, water, stormwater, and transportation. Each section of the CFP includes a narrative, an LOS analysis, a project summary sheet for each project identified as needed (including funding and expenditures for each category), an inventory map, a project location
map, and information sheets for each project that include project funding sources and expenditures (by year for the first 6-years). Projects that are needed within the 20-year period are included, although funding sources are not always specifically noted. The project description and justification help elected officials and the public understand the basis for all of the projects.

**How to address listing all projects vs. needing to list them to be eligible for grants/loans**

Jurisdictions often inquire about what to include in the 6-year CIP. The Growth Management Hearings Board has provided several interpretations regarding this issue. One question often asked is; *should all projects that need outside funding be listed to help with eligibility for grants and loans even if they may not be funded within the six-year timeframe? Is it important to list the specific funding source rather than listing “loan” or “grant” even if a source has not been identified? These can be tough issues to address.* The 6-year CIP is meant to include all projects that will be built or initiated in that 6-year timeframe, including the estimated cost and funding source. The project can be listed and shown to be financed through a grant and/or loan. If that occurs, the jurisdiction should follow through and apply for the grant or loan. If the jurisdiction is not successful in obtaining the grant or loan, the project can be delayed or a different funding source identified in the next update to the 6–year CIP. However, the jurisdiction will need to proceed cautiously as citizens expect the project to begin in the near future.

**Project Selection and Prioritization**

Each county or city will eventually need to select projects that are needed (or desired) and determine how to prioritize them. In some cases, the needed projects are prioritized in the functional plan for a system (e.g. water system plan, general sewer plan). At some point, all of the projects will be considered for budgeting – bringing all projects that do not have a specific funding source to compete for limited general funds. The jurisdiction will need to weigh these projects against each other and prioritize them. Prioritization policies will ensure decisions are in line with implementing the vision of the comprehensive plan and fulfill the commitments of the comprehensive plan over time.

The City of Olympia developed a Policy Decision Matrix which included 28 criteria which were weighted in order of importance to help prioritize individual projects. The criteria with the most points involved projects with regulatory orders or satisfied recommended actions or regulations by government agencies. The lowest points involved the use of innovative solutions or impacts of not being funded on other projects or programs. Each project was evaluated with this criteria, and in the end, points were totaled to demonstrate which projects scored the highest and should be included in the Capital Facility Plan and budget. This was also an effective tool to demonstrate to the City Council and the public, the decisions that helped inform the budgetary process. To view the Policy Decision Matrix, go to: [http://www.commerce.wa.gov/Services/localgovernment/GrowthManagement/Capital-Facilities/Capital-Facilities-Planning-Tool/Pages/default.aspx](http://www.commerce.wa.gov/Services/localgovernment/GrowthManagement/Capital-Facilities/Capital-Facilities-Planning-Tool/Pages/default.aspx), download the Planning Tool Templates, and click on the “Decision Matrix”.
In another example, the City of Eugene, Oregon includes a “Reader’s Guide” section in their 2014-2019 Capital Improvement Program. A graphic shows the planning steps associated with the plan development and adoption process. The city drafts its project list based on available resources, citywide project coordination, and funding constraints. The combined outcome of this work results in the city’s project selection and prioritization for capital improvements.

Hearings Board Cases Related to Funding Sources

- RCW 36.70A.070(3)(d) requires that a CFE clearly identify funding sources. A generalized list of funding sources did not comply with such a requirement. However, use of other sections of the CP which are incorporated by reference and are sufficiently specific documents does comply with the GMA. TRG v. Oak Harbor 96-2-0002 (FDO, 7-16-96)

- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d)), the county may include such information in its CFE. Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source – e.g., impact fees. [Bremerton/Port Gamble, 95-3-0039/97-3-0024c, 9/8/97 Order, at 39.]

- Petitioners argue that [RCW 36.70A.070(6)(a)(iv)] requirement (A) - analysis of funding capability to judge needs against probable funding resources – entails more than simple identification of funding sources and projected dollar amounts for each source […] must address “the range of revenue reasonably expected, the assumptions and variables for the projected sums and the level of certainty for the projections.” According to the Guideline [WAC 365-196-430(2)(k)(iv)], “analysis of funding capability” means determination of revenues “reasonably expected” based on existing sources and “a realistic estimate” of any new funding source. Many jurisdictions, including Kirkland, undoubtedly undertake a much more sophisticated financial forecast and risk assessment in their annual CFP reviews, but the Board does not find that the GMA requires the Comprehensive Plan transportation element to contain ranges, assumptions and variables, and levels of certainty for transportation funding sources. Finding of Compliance Case No. 09-3-0007c and FDO Case No. 10-3-0012 (Feb. 2, 2011), pgs. 21-23.

- Generalized statements in the [Capital Facilities and Utilities Element of the Comprehensive Plan] of what capital facilities the County has presently and may need in the future does not clearly identify what is needed to support the incorporated cities, let alone the new unincorporated UGAs, nor how much these public facilities and services will cost and sources of public money needed for such purposes. Wilma v. Stevens County, EWGMHB Case No. 06-1-0009c, FDO, at 25 (March 12, 2007).

- The GMA, under RCW 36.70A.070(3), requires a capital facilities plan element in the City or County’s Comprehensive Plan. The Legislature recognized that planning is forward
looking, so mandated at a minimum a six-year Capital Facilities Element (CFE), to ensure financing of projected capital facilities and sources of public money were clearly identified. They also required a forecast of future needs for such capital facilities. The County has a six-year CFP, for the period of 2000-2006. McHugh, et al. v. Spokane County, et al., EWGMHB Case No. 05-1-0004, FDO (Dec. 16, 2005).

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• [Six-year financing plan] RCW 36.70A.070(3) requires that sources of public funds with a reasonable assurance of availability within the six-year period be clearly identified. ... [the City] does this by showing that there will be revenue available, generated by sales taxes and real estate excise taxes, as a result of development within the expanded UGA. It does not matter that such revenue may go into the general fund, because the City can take into consideration the source of the funds when budgeting expenditures from the general fund for capital facilities. The purpose of RCW 36.70A.070(3)(d) is to make sure that there are sufficient sources of funding available to the City or County. Using this planning information, the City and County have the discretion to determine which funding sources to use and how much of each source to use. Panesko v. Benton County, EWGMHB Case No. 07-1-0002, FDO, at 24 (internal citations omitted) (July 27, 2007).

• RCW 36.70A.070(3) requires that sources of public funds with a reasonable assurance of availability within the six-year period be clearly identified... [the Records shows] that there will be revenue available, generated by sales taxes and real estate excise taxes, as a result of development within the expanded UGA. It does not matter that such revenue may go into the general fund because the City can take into consideration the source of the funds when budgeting expenditures from the general fund for capital facilities. The purpose of RCW 36.70A.070(3)(d) is to make sure that there are sufficient sources of funding available to the City or County. Using this planning information, the City and
County have the discretion to determine which funding sources to use and how much of each source to use... there is no GMA requirement that the capital facilities plan include documentation or commitment from developers for developer contributions... If the developers are unwilling or unable to pay their portion through SEPA mitigation, impact fees, utility fees, etc., within the six-year planning period, the City will not have to “pony up more”;... Rather, the projected development simply will not occur. Roberts/Taylor v. Benton County, EWGMHB Case No. 05-1-0003, Compliance Order, at 29 (internal citations omitted) (April 4, 2007).

On-Site Sewage Systems in Urban Growth Areas
There may be situations when it may be appropriate to allow on-site sewage systems in UGAs (e.g. when difficult due to provision of piped system challenges, or as an interim solution until sanitary system hook up can occur). Some jurisdictions address this by requiring all new development to connect to sanitary sewer when available and then note any specific exceptions. Unique circumstances may be approved upon certain findings as part of the permitting process. If this situation is applicable in your jurisdiction, it would be wise to identify how and when such exemptions or exceptions are allowed. Also, if sanitary sewer does become available to the lots in the future, there should be policies and requirements in place to specify when connection to the system will be required (e.g. when an on-site system fails, needs to be replaced, or when within a specified distance of a sanitary sewer).

It is important to consider implications of allowing on-site systems that may arise. For example, if several on-site systems are permitted in an area, it may become less and less financially feasible for a sanitary sewer connection to be made as the pool of potential rate-payers for the extension is reduced.

WAC 365-196-320(1)(f) provides guidance regarding the use of on-site sewer systems in urban growth areas, acknowledging that it may be appropriate in limited situations when there is no negative effect on basic public health, safety, and the environment. When used, on-site systems in urban growth areas should not preclude development at urban densities.

Allowing on-site sewer systems in an urban growth area may be appropriate in the following circumstances:

- Use of on-site sewer systems as a transitional strategy where there is a development phasing plan in place (see WAC 365-195-330); or
- To serve isolated pockets of urban land difficult to serve due to terrain, presence of critical areas, or where the benefit of providing an urban level of service is cost-prohibitive; or
- Where on-site systems are the best available technology for the circumstances and are designed to serve urban densities.
Capital facilities and Development Review
Planning upfront for capital facilities can increase certainty and predictability for citizens and developers. Knowing what is needed and where and when facilities will be available, can streamline permitting. It can help reviewing departments, special purpose districts, and outside agencies determine what improvements or conditions of approval are appropriate to request during project review. Having the appropriate capital facility plans and development regulations in place can also help justify the improvements and be referenced cited in staff reports as well as adopting resolutions or ordinances by elected officials.

Providing Sufficient Capacity
One important aspect of permitting is the determination that sufficient capacity exists in order to serve the new development being proposed. If not, what will be needed to bridge that gap and who should pay for those improvements? Ultimately, the jurisdiction is required to ensure facilities and services can be provided at the adopted level of service. Developers cannot be required to pay for existing deficiencies.

Concurrency
If approval of a development would result in impacts that result in a facility falling below the adopted level of service, the jurisdiction must deny the development if mitigation to preserve the LOS cannot be achieved. This is the concurrency requirement. It is required for transportation facilities and optional for capital facilities and public services. Under the GMA, concurrency can be achieved within six years of the development being approved. Any funds collected from developers by the jurisdiction to help fund these improvements must be spent within six years or returned to the developer.

Jurisdictions may adopt a concurrency mechanism for other public facilities that are deemed necessary for development (see WAC 365-196-840(2)). These other facilities may include parks and recreational facilities, sanitary sewer systems, stormwater facilities, and schools. The Municipal Research and Services Center (MRSC) maintains an excellent webpage devoted to concurrency, including summaries of two court cases and key cases from the Growth Management Hearings Board.

Development Phasing
Phasing development can be a useful tool in the timing of infrastructure. Jurisdictions may need more development to occur in a certain area first before expanding into a different area (e.g. an area that is farther from services than the infill area). This can help maximize use of existing infrastructure, increase the number of ratepayers to help pay for infrastructure, utilize new grant and/or funding sources, and delay the need for costly upgrades or new facilities until the timing of development, infrastructure, and funding can be synchronized.

Development Standards
Development standards can also be an implementation tool. Some urban jurisdictions have “to and through” requirements for new development. Such standards require developers to extend rights-of-way and utility lines to the edge of the property being developed. This
allows the adjacent property owner the ability to continue the improvements when they
decide to develop. Certain considerations that should be made by the jurisdiction include
allowing for and facilitating latecomer’s agreements, when the jurisdiction may want to pay
for the facility to be “upsized” to allow for optimal provision of service at full build out, and
other growth related questions that may arise. Careful consideration of planned growth and
the facilities that are needed can put the jurisdiction in a better position to meet the needs
of developers, future developers and residents of the area, and the city as a whole.

**Project Integration**

Local governments can save significant resources by integrating projects. For example, if a
jurisdiction integrates the projects for roads or streets with stormwater and utility projects,
significant money can be saved by combining the projects - or at least phasing them so that
one project’s work (or a portion of it) does not have to be torn up a year or two later to
allow another project to take place. There can be “missed opportunities” and increased
costs when system integration does not occur.

**Developer Improvements**

Local governments typically require developers to install the infrastructure needed to serve
the proposed development. These improvements are usually required to be constructed to
the local government’s pre-identified standards, inspected, ultimately approved, and
deeded to the local government for long term ownership and maintenance. This can be a
significant way for some capital facilities to be built or improved.

In order for this to occur, the local government should have clear policy and development
regulation language to make clear what will be required. Additionally, local governments
will need to ensure the required improvements are roughly proportionate to the impacts of
the development. When questions arise, the local government staff should work with the
City Attorney or County Prosecuting Attorney to ensure conditions of approval are legally
defensible. Some important cases to be aware of include:

**Benchmark Land Co. v. City of Battle Ground**, 94 Wn. App. 537 (1999) - Road improvements as
condition of plat approval

A preliminary plat application is not "approved" until the local legislative body giving its
approval enters a written decision that includes findings of fact and conclusions of law as
required by **RCW 58.17.100**. An oral decision is not binding. Also, a local ordinance
generally requiring subdivision developers to improve the streets fronting their
proposed developments as a standard regulation of new subdivisions does not absolve
the local jurisdiction of its duty to conduct a site-specific inquiry into whether and to
what extent a proposed subdivision will impact an adjoining street before it may
condition preliminary plat approval of the subdivision on the developer's making
specified street improvements.

**Sparks v. Douglas County**, 127 Wn.2d 901 (1995) - subdivision dedication roughly proportional
The court determined that a nexus existed between the requirement of short plat approval of a dedication of rights-of-way for road improvements and the county's interest in the promotion of road safety. The court also determined that the exactions demanded by the county were roughly proportional to the impact of the proposed development under Dolan v. City of Tigard because they were the result of an individualized analysis conducted by the county.

**Luxembourg Group v. Snohomish County**, 76 Wn. App. 502, review denied, 127 Wn.2d 1005 (1995) - stub road access dedication is taking

The county denied a subdivision application because the applicant would not agree to dedicate a stub road access to a landlocked neighboring property as a condition for approval. The court determined that the dedication requirement would not remedy any problem caused by the applicant's proposed subdivision. The court held that a dedication requirement that would not remedy any problem caused by the subdivision effects an unconstitutional taking of property without compensation.


A requirement that a developer build a road across his property that would eventually connect with a road to be built in the future on adjacent property was invalidated as a takings. The county's requirement lacked "rough proportionality" to the nature and extent of the impact of the proposed development.

**Cradduck v. Yakima County**, 166 Wn. App. 435 (2012) - flood management ordinance upheld

Under its flood management ordinance, the county did not permit the plaintiff to replace a mobile home on a lot within her mobile home park located in a designated floodway. Although the trial court rejected the plaintiff's regulatory takings claim, it granted her substantive due process claim. The court of appeals reversed the trial court's substantive due process holding, concluding that the county flood management ordinance and the statute under which it was adopted (ch. 86.16 RCW) support legitimate public purposes, use means that are reasonably necessary to achieve those purposes, and are not unduly oppressive on the landowner.

Additional Resources: