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## AN OVERVIEW OF WASHINGTON'S GROWTH MANAGEMENT ACT

Eric S. Laschever<sup>†</sup>

*Abstract:* Beginning in the 1970s, a number of states began adopting state wide growth management statutes. In response to increasing population pressures, Washington State enacted its Growth Management Act ("GMA") in 1990. This article examines the GMA's requirements for comprehensive plans, its enforcement and appeals provisions, and the relationship of the GMA to other Washington State laws, including the State Environmental Policy Act and the Shoreline Management Act. The GMA has significantly changed the land use planning process in Washington, and its effects can already be seen in wide spread protection of critical areas, the designation of urban growth policies, and local plans to focus growth.

### I. INTRODUCTION

In the United States, land use planning, except for land owned by the federal government, has historically been performed by local municipal governments such as cities and counties. Beginning in the 1970s a number of states began adopting comprehensive growth management statutes that established state wide goals and procedures for managing growth.<sup>1</sup> In 1990, Washington State adopted its Growth Management Act ("GMA" or "Act") in response to dramatic growth during the preceding decade.

This Article provides an introduction to the Act.<sup>2</sup> Section I provides an overview of the planning requirements that the GMA imposes on local, regional, and state government. Section II explores requirements for comprehensive plans, one of the GMA's most important tools for managing growth. Section III discusses enforcement and appeals provisions. Finally, the Article discusses the relationship of the GMA to other Washington State laws, including the State Environmental Policy Act ("SEPA") and the Shoreline Management Act ("SMA").

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<sup>1</sup> See, e.g., OR. REV. STAT. § 197.510 (1996); FLA. STAT. ch. 163.3161-3215 (1995).

<sup>2</sup> This Article is adopted from an earlier work by the author and Richard Ford that appeared in the WASHINGTON STATE ENVIRONMENTAL LAW HANDBOOK (2d ed.).

## II. PLANNING FOR GROWTH: AN OVERVIEW OF THE PLANNING REQUIREMENTS

Before passage of the GMA, local governments were responsible for land use planning and the state played a limited role. Local governments had the statutory authority to engage in land use planning, but they were not required to do so. Local governments largely limited their planning to traditional zoning, shorelines, environmental review and the transportation planning required to receive state transportation funds.<sup>3</sup> The GMA changed this system by establishing a comprehensive planning framework and requiring many local governments to plan. The GMA established new roles for the state, regional, and local levels of government.

### A. *State Participation*

Under the GMA, the state provides technical and financial assistance, mediates disputes between counties and cities, establishes minimum standards to ensure consistency in regional transportation planning, and enforces the Act through sanctions and a process for identifying and managing natural resources of statewide significance. State agencies must comply with local comprehensive plans adopted under the GMA.<sup>4</sup>

#### 1. *Technical and Financial Assistance*

The Department of Community Trade and Economic Development ("CTED") is the state agency with the principle responsibility for implementing the GMA. CTED provides financial and technical assistance and incentives to counties and cities to help them prepare comprehensive plans and development regulations.<sup>5</sup> CTED also coordinates the state agencies' review of comprehensive plans and development regulations.

The principal form of financial assistance provided by CTED has been direct grants to local governments for preparing interim measures,

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<sup>3</sup> G.R. Hill, *Overview of Washington Growth Management Act*, University of Washington Continuing Legal Education materials (Oct. 1991). For a detailed discussion of these authorities see *Regional Planning and Local Autonomy in Washington Zoning Law*, 47 WASH. L. REV. 593 (1970).

<sup>4</sup> WASH. REV. CODE § 36.70A.103 (1997).

<sup>5</sup> WASH. REV. CODE § 36.70A.190(1).

comprehensive plans, and development regulations. CTED technical assistance includes developing guidelines to implement the Act. For example, CTED issued guidelines to help local governments classify "critical areas" as well as agriculture, forest, and mineral land.<sup>6</sup> CTED is also available to mediate disputes between counties and cities regarding regional issues and the designation of urban growth areas.<sup>7</sup>

To ensure state-wide consistency in regional transportation planning, the Act requires the state Department of Transportation ("DOT") to provide minimum standards for developing regional transportation plans.<sup>8</sup> DOT also distributes funds to regional planning organizations to develop these regional plans.<sup>9</sup>

Finally, the federal and state constitutions protect private property owners from government takings. To assist local governments in adopting ordinances that avoid unconstitutional takings, the legislature directed the Washington Attorney General's Office to develop guidelines on the subject.<sup>10</sup> The attorney general issued draft guidelines in the fall of 1991, and final guidelines in 1995.<sup>11</sup>

## 2. CTED Review

Planning counties and cities must notify CTED of their intent to adopt plans and regulations sixty days in advance. State agencies may comment on the proposed plans and actions, but they do not have authority to approve or disapprove of them.<sup>12</sup> As discussed below and in Section IV, the state may seek review of a comprehensive plan or implementing regulations before the Growth Management Hearings Board.<sup>13</sup>

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<sup>6</sup> WASH. REV. CODE § 36.70A.050; WASH. ADMIN. CODE § 365-190-010-080 (1997). For discussion of these classifications, see *infra* notes 29-32 and accompanying text.

<sup>7</sup> WASH. REV. CODE § 36.70A.190(5).

<sup>8</sup> WASH. REV. CODE § 47.80.030(3).

<sup>9</sup> WASH. REV. CODE § 47.80.050.

<sup>10</sup> WASH. REV. CODE § 36.70A.370.

<sup>11</sup> See The State of Washington Attorney General's Recommended Process and Advisory Memorandum for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property (1995).

<sup>12</sup> WASH. REV. CODE § 36.70A.106.

<sup>13</sup> The GMA establishes three hearing boards to consider petitions alleging that a state agency or local government has not complied with the GMA. WASH. REV. CODE § 36.70A.250. See Section III *infra*, for a detailed discussion of the Boards, and the footnotes in that section for an examination of the role the Boards have played in interpreting the GMA.

### 3. *Growth Board Review*

The GMA establishes three hearing boards to consider petitions alleging that a state agency or local government has not complied with the GMA. Section III discusses the Boards in more detail.

### 4. *Sanctions*

The Governor may impose sanctions on state agencies, counties or cities that fail to comply with the Act.<sup>14</sup> These sanctions are discussed in greater detail in Section IV, which covers appeals and enforcement.

### B. *Regional Planning*

Before the GMA, state law generally did not require regional land use planning. To address the Act's objective of coordinated planning the GMA established two regional planning tasks: (1) developing county-wide planning policies; and (2) developing regional transportation plans.

#### 1. *County-Wide Planning Policies*

The Act required counties, in cooperation with cities located within their boundaries, to adopt county-wide planning policies ("CPPs").<sup>15</sup> Cities and counties must use these policies to guide the development of their comprehensive plans.<sup>16</sup> Comprehensive plans must be consistent with the CPPs to ensure that the counties' and the cities' plans are consistent with each other as required by the Act.<sup>17</sup>

The CPPs must, at a minimum, address the following issues:

- Location of urban growth areas and related services;

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<sup>14</sup> WASH. REV. CODE § 36.70A.340.

<sup>15</sup> WASH. REV. CODE § 36.70A.210(2)(e).

<sup>16</sup> WASH. REV. CODE § 36.70A.210(1).

<sup>17</sup> *Vashon Maury v. King County*, 95-3-0008 CPSGMHB 1245, 1270 (1995) (a plan that is consistent with an unchallenged CPP complies with the Act); *Hapsmith v. City of Auburn*, 95-3-0075c CPSGMHB 1857, 1880 (1996) (plan is inconsistent with transportation policies of CPP); *Benaroya v. Redmond*, 95-3-0072 CPSGMHB 1753, 1770 (1996) (plan inconsistent with percentage requirements in CPPs, which require cities to provide housing for all economic segments of population).

- Promotion of contiguous and orderly development;
- Siting of public capital and transportation facilities;
- County-wide economic development and employment;
- Affordable housing; and
- Joint planning within urban growth areas.<sup>18</sup>

Only the Governor and cities may appeal an adopted county-wide policy to the growth management hearings board.<sup>19</sup> The Act requires King, Pierce and Snohomish counties to adopt "multi-county planning policies"<sup>20</sup> but does not specify the content of these policies or a deadline for their adoption.

Some CPPs are highly prescriptive. For example, King County, Washington's largest county, adopted CPPs that established detailed policies for locating urban growth and housing targets for cities within the County. Subsequent county and city plans were evaluated for consistency with these policies.<sup>21</sup>

## 2. *Regional Transportation Planning*

The Act establishes a coordinated planning program for regional transportation systems and facilities throughout the state.<sup>22</sup> The Act authorizes local governments to form regional transportation planning organizations<sup>23</sup> to develop regional transportation plans and to certify that local comprehensive plans are consistent with such plans and other requirements of the Act.<sup>24</sup> All transportation projects within the region that have an impact on regional facilities or services must be consistent with the regional transportation plan.<sup>25</sup>

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<sup>18</sup> WASH. REV. CODE § 36.70A.210(3).

<sup>19</sup> WASH. REV. CODE § 36.70A.210(6).

<sup>20</sup> WASH. REV. CODE § 36.70A.210(7).

<sup>21</sup> WASH. REV. CODE § 36.70A.210(2)(e).

<sup>22</sup> WASH. REV. CODE §§ 47.80.010-47.80.050.

<sup>23</sup> WASH. REV. CODE § 47.80.020.

<sup>24</sup> WASH. REV. CODE § 47.80.030(1)(a) and (b).

<sup>25</sup> WASH. REV. CODE § 47.80.030(3).

### C. Local Level Planning

#### 1. Comprehensive Plans

The principal mechanism for implementing the Act's growth management goals is planning at the local level, by cities and counties. The Act required the state's largest and fastest growing counties (counties with more than fifty thousand people and a population increase of more than twenty percent in the past ten years) and the cities within those counties to develop new comprehensive plans by July 1, 1993, and implementing regulations by July 1, 1994.<sup>26</sup>

Counties not required by the GMA to plan may elect to do so.<sup>27</sup> Twenty-six counties and 179 cities within those counties are now planning under the GMA.<sup>28</sup>

#### 2. Natural Resource Lands and Critical Areas

While local governments developed their comprehensive plans, the Act required that they adopt interim measures to protect natural resource lands and critical areas. Some of these requirements also apply to counties and cities not otherwise required by the Act to undertake growth management planning.

All counties in the state must designate agriculture, forest, and mineral resource lands that have long-term commercial significance.<sup>29</sup> Counties planning under the GMA must adopt development regulations to assure that land uses adjacent to these resource lands not interfere with their continued use for producing food, agricultural products, timber or minerals. These interim regulations may not prohibit uses permitted before their adoption, and

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<sup>26</sup> WASH. REV. CODE § 36.70A.040; *Id.* WASH. REV. CODE § 36.70A.120.

<sup>27</sup> WASH. REV. CODE § 36.70A.040(2).

<sup>28</sup> Personal communication with Department of Community Trade and Economic Development. The requirements for preparing comprehensive plans, which are extensive, are discussed in detail in Section III, *infra*.

<sup>29</sup> WASH. REV. CODE § 36.70A.170; *English v. Columbia County*, 93-1-0002 EWGMHB 329, 332-33 (1993) (designation of agriculture lands and protection of forest lands did not comply with WASH. REV. CODE §36.70A.030 and .050 because the County did not use minimum criteria or justify its use of a different approach); *Ridge v. Kittitas County*, 94-1-0017 EWGMHB 539, 540-46 (1994) (county failed to show why forest lands of commercial significance were not designated as such); *Ellensburg v. Kittitas County*, 95-1-009 EWGMHB 1841, 1850 (1996) (ordinance failed to properly designate agricultural lands because criteria used are overly restrictive).

they remain in effect until final regulations implementing comprehensive plans are adopted.<sup>30</sup>

Similarly, *all* counties and cities must designate critical areas and adopt development regulations that preclude land uses or developments that are incompatible with such areas.<sup>31</sup> Critical areas are defined as wetlands, aquifers, recharge zones, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Cities and counties are required to use "best available science" when developing policies and regulations to protect critical areas.<sup>32</sup>

Although the GMA allows for local discretion in designating and protecting natural resource lands and critical areas, the Act has resulted in significant new protections for these areas. For example, the Central Growth Management Hearings Board has ruled that "protection" of these areas under the Act, requires that there is "no net loss" of the structure, functions, and roles of critical areas.<sup>33</sup> The Boards have sent back development regulations that have been challenged for further work because they excluded certain critical areas, provided inadequate protection (e.g. insufficient buffers), or did not incorporate recommendations of resource experts.<sup>34</sup>

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<sup>30</sup> WASH. REV. CODE § 36.70A.060; *Ellensburg* at 1853 (ordinance that allows property owner to opt out of agricultural regulations failed to conserve agricultural lands); *Benaroya v. Redmond*, 95-3-0072 CPSGMHB 1753, 1759 (1996) (property that has not been primarily devoted to the commercial production of agriculture does not meet the definition of agricultural lands); *Diehl et al. v. Mason County*, 95-2-0073 WWGMHB 1487, 1491 (1996) (failure to designate agricultural lands was not supported by data); *Friends of Skagit County v. Skagit County*, 95-2-0075 WWGMHB 1511, 1514-16 (1996) (county failed to designate forest and agricultural lands or adequately conserve mineral lands); *Sky Valley v. Snohomish County*, 95-3-0068c CPSGMHB 1631, 1695 (1996) (county must explain rationale for changing designation of forest lands in its comprehensive plan).

<sup>31</sup> WASH. REV. CODE § 36.70A.060; *Pilchuck v. Snohomish County*, 95-3-0047 CPSGMHB 1409, 1426 (1995) (regulations must ensure that there is "no net loss" of the structure, functions, and roles of critical areas; regulations may not exempt certain critical areas from protection); *English v. Columbia County* at 333 (expanded SEPA is not adequate to protect critical areas); *Whatcom Environmental Council Watershed Defense Fund v. Whatcom County*, 95-20-0071 WWGMHB 1449, 1454 (1995) (critical areas ordinance failed to comply where the county ignored recommendations of agencies with expertise); *Diehl* at 1492 (county failed to adequately protect wetlands, flood plains and aquifer regarding charge areas).

<sup>32</sup> WASH. REV. CODE § 36.70A.172; *Clark County Natural Resources Council v. Clark County*, 96-2-0017 WWGMHB 2205, 2209 (1996) (riparian buffers are inadequate and not based on best available science); *Friends of Skagit County v. Skagit County*, 96-2-0025 WWGMHB 2247 (1997) (no analysis supports exemptions and critical area buffers).

<sup>33</sup> *Pilchuck v. Snohomish County*, at 1426.

<sup>34</sup> See *English v. Columbia County* at 333 (CTED guidelines are minimum designation requirements and the State Environmental Policy Act is not adequate to protect critical areas)(1993); *Diehl* at 1492 (county failed to adequately protect wetlands, flood plains and aquifer regarding charge areas); *Yakama Indian Nation v. Kittitas County*, 94-1-0022 EWGMHB 835, 839 (1995); *Whatcom Environmental Council Watershed Defense Fund v. Whatcom County*, 95-20-0071 WWGMHB 1449, 1454 (1995) (critical areas ordinance failed to comply



### 3. *Urban Growth Areas*

One of the Act's most significant requirements is that counties that plan under the Act must designate "urban growth areas" ("UGAs"), within which urban growth is to take place and outside of which only non-urban growth can occur.<sup>35</sup> The Act defines urban growth as growth that uses land intensively for buildings, structures, and impermeable surfaces to such a degree that it precludes using the land to produce food, other agricultural products, fiber, or minerals.<sup>36</sup>

This requirement focuses much of the new residential, commercial, and industrial development in urban areas. For example, the Boards have ruled that a variety of residential densities ranging from one home per acre to one home per five acres, which were typically allowed in rural areas before the GMA, constitute urban growth that is not permitted outside the UGA. The Boards have also found non-resource related commercial and industrial development to be urban growth.<sup>37</sup>

Counties designate UGAs in consultation with the cities within their boundaries. These areas must include all cities, and may include unincorporated areas that either are already characterized by urban development or are adjacent to areas characterized by urban development. The size of UGAs is limited to lands needed to accommodate the population growth forecasted by the Office of Financial Management ("OFM").<sup>38</sup>

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where the county ignored recommendations of agencies with expertise); *Honesty in Environmental Analysis and Legislation (HEAL) v. City of Seattle*, 96-3-DQ12 CPSGMHB 2013, 2027 (1996) (board must give deference to local government's choice of scientific data).

<sup>35</sup> WASH. REV. CODE § 36.70A.110; *Save Our Butte Save Our Basin v. Chelan County*, 94-1-0001 EWGMHB 505, 511-13 (1994) (OFM population numbers impose an upper limit on the population used to calculate the urban growth area); *Kitsap Citizens for Rural Preservation v. Kitsap County*, 94-3-0005 CPSGMHB 599, 611-12 (1994) (county ordinance permits urban growth to occur in rural areas outside the IUGA); *Sky Valley v. Snohomish County* at 1670 (industrial area should be located in UGA rather than rural area).

<sup>36</sup> WASH. REV. CODE § 36.70A.030(14).

<sup>37</sup> *Bremerton v. Kitsap County*, 95-3-0039 CPSGMHB 1167, 1216 (1996) (densities of one unit per 2.5 acres is urban in nature and may not be permitted in the rural area); *Gig Harbor v. Pierce County*, 95-3-0016 CPSGMHB 1317, 1356 (1995) (provision allowing one unit per 2.5 acre shoreline development in rural areas violated § 36.70A.070); *Sky Valley v. Snohomish County*, 95-3-0068c CPSGMHB 1631, 1664 (1996) (densities of one unit per 2.3 acre in nature; density of one unit per 5 acre adjacent to UGA is prohibited).

<sup>38</sup> WASH. REV. CODE § 36.70A.110; *Associations of Rural Residents v. Kitsap County*, 93-3-0010 CPSGMHB 395, 437 (1994) (county may not rely on outdated documents to calculate UGA); *Bremerton v. Kitsap County* at 1205, 1211 (UGA invalid when based on projections well above OFM figures and when based on artificially low assumptions regarding household size); *Vashon Maury v. King County*, 95-3-

If the county and a city do not agree on the boundary, the county must justify its action in writing and CTED may mediate the dispute.<sup>39</sup> In addition, cities may appeal the urban boundary to the Growth Management Hearings Boards, discussed below in Section IV.

A county may approve new fully contained communities outside of the UGAs if the development: provides infrastructure; implements transit-oriented site planning and traffic demand management programs; provides for uses that result in jobs, housing, and services for the new community; provides affordable housing; mitigates impacts on designated agricultural, forest, and mineral resource lands; and is consistent with critical areas regulations. The county must also reserve a portion of its twenty-year population projection for use by the new community and subtract this reserve from the population projection for planning the remaining UGAs within the county.<sup>40</sup>

Counties may also develop short-term visitor recreational facilities (planned resorts) outside UGAs. The county may do so, however, only if the comprehensive plan specifically identifies policies to guide development and includes provisions that restrict new urban or suburban development and uses in the vicinity of the resort. The county must also find that the land is better suited for resort use than for commercial timber or agriculture and must ensure that the project mitigates on-site and off-site infrastructure impacts.<sup>41</sup>

Counties may also establish a process for siting major industrial developments in the rural areas, which include natural resource based industries or activities that require very large parcels of land.<sup>42</sup> A 1997 amendment to the GMA permits infill, development, or redevelopment of existing industrial, commercial, residential, or mixed use areas.<sup>43</sup>

### III. COMPREHENSIVE PLANS

The GMA establishes goals to guide the preparation of comprehensive plans, prescribes the elements that plans must include, and

0008 CPSGMHB 1245, 1252 (1995) (upholding UGA based on OFM projections); *Gig Harbor v. Pierce County* at 1343 (same).

<sup>39</sup> WASH. REV. CODE § 36.70A.110(2).

<sup>40</sup> WASH. REV. CODE § 36.70A.350.

<sup>41</sup> WASH. REV. CODE § 36.70A.360; *Sky Valley v. Snohomish County* at 1672-73 (county plan did not identify lands useful for a public purpose).

<sup>42</sup> WASH. REV. CODE § 36.70A.365.

<sup>43</sup> ESB 6094 § 7(d)(1) (1997), codified at WASH. REV. CODE §36.70A.070(5)(d)(i).

creates special mechanisms for preserving open space, concentrating growth in urban areas, and identifying and planning for public facilities, including those that are difficult to site. The Act required that local governments implement comprehensive plans with consistent and supportive development regulations and capital budgets by July 1, 1994. In addition, comprehensive plans of counties and cities with common borders or related regional issues had to be coordinated and consistent with each other.<sup>44</sup>

#### A. *GMA Goals*

The GMA establishes thirteen goals to guide cities and counties in developing comprehensive plans and development regulations.

1. Encourage development in urban areas.<sup>45</sup>
2. Reduce the conversion of undeveloped land into sprawling, low-density development.<sup>46</sup>
3. Encourage efficient multimodal transportation systems.<sup>47</sup>
4. Encourage the availability of affordable housing.<sup>48</sup>
5. Encourage economic development throughout the state.
6. Provide compensation for "takings" of private property.<sup>49</sup>

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<sup>44</sup> WASH. REV. CODE § 36.70A.100.

<sup>45</sup> *Peninsula Neighborhood Association v. Pierce County*, 95-3-0071 CPSGMHB 1727, 1738 (1996) (shoreline designation allowing densities of one unit per acre in rural areas does not encourage development in urban areas and does not reduce sprawl as required by Goals 1 and 2 and § 36.70A.110).

<sup>46</sup> *Berchauer v. Tumwater*, 94-2-0002 WWGMHB 529, 537 (1994) (residential densities of one unit per acre and two to four units per acre do not comply); *Benaroya v. Redmond*, 95-3-0072 CPSGMHB 1753, 1776 (1996) (board will scrutinize densities of less than four units per acre to ensure they do not encourage sprawl).

<sup>47</sup> *Hapsmith v. City of Auburn*, 95-3-0075c CPSGMHB 1857, 1887 (1996) (land use designation that discourages rail use discourages multimodal transportation and does not comply with transportation goal).

<sup>48</sup> *West Seattle Defense Fund v. City of Seattle*, 95-3-0040 CPSGMHB 1071, 1086 (1995) (housing goal does not mandate that single-family residences be preserved at expense of other housing types).

<sup>49</sup> *Vashon Maury v. King County*, 95-3-0008 CPSGMHB 1245, 1303 (1995) (county did exemplary job of giving regard to property rights); *Hapsmith v. Auburn*, at 1886-87 (compliance with property rights goal is determined by reviewing ordinance itself rather than remarks of city officials); *Beckstrom v. San Juan County*, 95-20-0081 WWGMHB 1483, 1484 (1996) (county complied with property rights goal

7. Process applications for permits timely and fairly.
8. Maintain and enhance natural resource-based industries.<sup>50</sup>
9. Encourage the retention of open space and development of recreational opportunities.<sup>51</sup>
10. Protect the environment and enhance the state's quality of life.
11. Encourage citizen involvement.
12. Ensure the availability of public facilities and services necessary to support development.<sup>52</sup>
13. Encourage historic preservation.

These planning goals are not listed in order of priority.<sup>53</sup> Rather, local governments are to use the goals to develop plans and regulations that reflect their own sense of balance among the often competing objectives of growth management. Unlike the objectives of the State Environmental Policy Act ("SEPA") and the Shoreline Management Act ("SMA") that apply generally to governmental actions, the GMA's goals are to be used exclusively for the purpose of preparing plans and development regulations. Nonetheless, the Growth Management Boards have held that these are substantive goals with which plans and regulations must comply. For example, the Boards have found plans that allow

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where record shows that property concerns were debated before the Planning Commission and Board of County Commissioners).

<sup>50</sup> Gig Harbor v. Pierce County, 95-3-0016 CPSGMHB 1317, 1325 (1995) (goal 9 met where county established minimum levels of service for parks); Ellensburg v. Kittitas County, 95-1-009 EWGMHB 1841, 1847 (1997) (ordinance that improperly designates and conserves natural resource lands failed to maintain and enhance natural resource industries).

<sup>51</sup> Sky Valley v. Snohomish County, 95-3-0068c CPSGMHB 1631, 1722 (1996) (plan complies with open space goal).

<sup>52</sup> Taxpayers for Responsible Government v. Oak Harbor, 96-2-002 WWGMHB 1951, 1953-56 (1996) (comprehensive plan invalid where it does not analyze future capacities of public facilities and the financial services need to ensure adequacy).

<sup>53</sup> WASH. REV. CODE § 36.70A.020.

residential densities of one unit per acre to violate the goals of encouraging development in urban areas and reducing sprawl.<sup>54</sup>

### B. *Plan Elements*

The GMA requires that comprehensive plans include six sections or "elements."

1. *Land Use.* The plan must designate the general location and extent of uses for agriculture, timber, housing, commerce, industry, recreation, open space, public utilities and public facilities. Issues such as density, future population growth, water quality, and drainage must be taken into account. In addition, this element must protect the quality and quantity of ground water used for public water supplies.<sup>55</sup>
2. *Housing.* The plan must inventory existing and future housing requirements, plan for preserving and upgrading existing housing stocks, and provide for low income and affordable housing needs.<sup>56</sup>
3. *Capital Facilities.* The plan must inventory existing public facilities and their capacity, forecast future needs, identify proposed locations and capacities of new facilities and provide a financing plan for a minimum of six-years to meet requirements for new facilities. This facilities plan is different from traditional Capital Improvements Program ("CIPs") in four regards. First, the capital facilities plans must include all capital facilities. Traditional programs addressed only those facilities that the municipality chose to include. Second, traditional programs could choose any or no criterion for ranking projects. The GMA facilities plan gives the highest priority to projects that maintain service levels. Third, unlike

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<sup>54</sup> Berchauer v. Tumwater, 94-2-0002 WWGMHB 529, 537 (1994).

<sup>55</sup> WASH. REV. CODE § 36.70A.070(1); *Sky Valley v. Snohomish County* at 1722 (plan must specifically discuss open space corridors and include a map depicting them).

<sup>56</sup> WASH. REV. CODE § 36.70A.070(2); *West Seattle Defense Fund v. City of Seattle*, 95-3-0040 CPSGMHB 1071, 1086 (1995) (housing goal does not prohibit the demolition of existing housing structures and does not mandate that single-family residences be preserved at the expense of every other housing type).

traditional programs, the facilities plan must specify how improvements will be financed. Finally, the GMA requires that the plan be implemented as a condition of permitting additional growth.<sup>57</sup>

4. *Utilities.* The plan must inventory existing facilities and outline proposed new facilities requirements, including electric, telecommunications, and gas lines, and other utility facilities as appropriate.
5. *Rural Element (Counties Only).* The plan must identify lands that are rural in character either as not designated for urban growth or as natural resource lands. The plan must permit uses that are compatible with the rural character of such lands.<sup>58</sup>
6. *Transportation.* The plan must specify the land use assumptions used in estimating travel needs, project the facilities and services required to meet those needs, provide a financing plan for necessary facilities and services, and assess the impacts of the transportation plan on adjacent jurisdictions.<sup>59</sup> The elements of the comprehensive plans must be both consistent with one another and internally consistent.<sup>60</sup>

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<sup>57</sup> WASH. REV. CODE § 36.70A.070(3); *Bremerton v. Kitsap County*, 95-3-0039 CPSGMHB 1167, 1219 (1996) (plan is invalid because capital facilities element was incomplete); *Vashon Maury v. King County*, 95-3-0008 CPSGMHB 1245, 1276 (1995) (petitioner failed to establish that capital facilities element did not comply with capital facilities requirements); *Sky Valley v. Snohomish County*, 95-3-0068c CPSGMHB 1631, 1676 (1996) (capital facilities element complied with GMA); *Taxpayers for Responsible Government v. Oak Harbor*, 96-2-0002 WWGMHB 1951, 1952 (1996) (capital facilities plan inadequate where it only provided a generalized list of sources for new water reservoir).

<sup>58</sup> WASH. REV. CODE § 36.70A.070(5)(b),(c); *Bremerton v. Kitsap County*, at 1216 (plan must have variety of rural densities); *Vashon Maury v. King County*, at 1294 (uses that otherwise meet the definition of "urban growth" are allowed in the rural area if due to their very nature they require a rural setting); *Gig Harbor v. Pierce County*, 95-3-0016 CPSGMHB 1317, 1356 (1995) (two rural densities is not a sufficient variety of rural densities).

<sup>59</sup> WASH. REV. CODE § 36.70A.070(6); *Hapsmith v. City of Auburn*, Growth Planning Hearings Boards 1857, 1887 (Central Puget Sd. 1996) (transportation forecast based on assumption that there were no significant changes since pre-GMA plan does not comply with WASH. REV. CODE § 36.70A.070(6)); *Sky Valley v. Snohomish County* at 1719 (concurrency requirement applies to service and facilities that are at capacity).

<sup>60</sup> WASH. REV. CODE § 36.70A.070; *West Seattle Defense Fund v. City of Seattle*, 95-3-0040 CPSGMHB 1071, 1083-84 (1995) (map and plan are inconsistent where map identifies urban village

Comprehensive plans may also include optional elements addressing such issues as conservation, solar energy and recreation<sup>61</sup> and may provide for innovative land use regulation techniques such as density bonuses, cluster housing, planned unit development, and transferable development rights.<sup>62</sup>

### C. *Open Space Corridors*

Planning counties and cities must identify open space corridors within and between urban growth areas. "Open space" includes lands useful for recreation, habitat and trails, and must be coordinated with designated critical lands. Counties and cities may seek to acquire a fee simple or lesser interests in these corridors.<sup>63</sup>

### D. *Public Facilities and Difficult-to-Site Facilities*

Planning counties and cities must identify lands for public facilities (*i.e.* public rights-of-way and schools). The local government's capital facilities plan must identify a schedule and a financing mechanism for acquiring or developing these lands and facilities.<sup>64</sup>

Planning counties and cities must also include in their comprehensive plans a process for identifying and siting "essential" or difficult-to-site public facilities such as prisons, landfills, and transportation facilities.<sup>65</sup> Local comprehensive plans and development regulations may not preclude the siting of essential facilities.<sup>66</sup>

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boundaries that have not yet been adopted), *Bremerton v. Kitsap County* at 1219 (finding lack of internal consistency between the land use element and capital facilities element).

<sup>61</sup> WASH. REV. CODE § 36.70A.080; *Sky Valley v. Snohomish County* at 1713 (optional elements must be consistent with other elements of Comprehensive Plan).

<sup>62</sup> WASH. REV. CODE § 36.70A.090; *Vashon Maury v. King County* at 1273 (program allowing higher densities in exchange for open space is an innovative land use technique permitted by WASH. REV. CODE § 36.70A.090).

<sup>63</sup> WASH. REV. CODE § 36.70A.160; *Association of Rural Residents* at 395, 437 (IUGA invalid where county fails to refer, define, or identify locations of open space); *Gig Harbor v. Pierce County* at 1330 (same).

<sup>64</sup> WASH. REV. CODE § 36.70A.150.

<sup>65</sup> WASH. REV. CODE § 36.70A.200(1); *Hapsmith v. City of Auburn*, Growth Planning Hearings Boards 1857, 1884 (Central Puget Sd. 1996) (railroad facilities that serve the region are essential public facilities).

<sup>66</sup> WASH. REV. CODE § 36.70A.200; *Bremerton v. Kitsap County* 95-3-0039 CPSGMHB 1167, 1219 (1996) (plan did not comply with § 36.70A.200 since it did not contain a process for identifying and siting essential public facilities); *Hapsmith v. City of Auburn* at 1884 (plan policies for light industrial land uses precluded essential railroad facilities); *Sky Valley v. Snohomish County* at 1672-73 (same).

### E. *Development Regulations*

Local governments must adopt development regulations that are consistent with the Comprehensive Plan.<sup>67</sup>

### F. *Public Participation*

Local governments must establish a public participation program that identifies procedures for "early and continuous public participation" in developing comprehensive plans and development regulation.<sup>68</sup>

## IV. APPEALS

### A. *Administrative Appeals: Hearings Boards*

The Act creates three regional Growth Management Hearings Boards ("Boards") to consider petitions alleging that a state agency, county, or city has not complied with the Act's provisions.<sup>69</sup> One board serves Eastern Washington, another serves Central Puget Sound (*i.e.* King, Pierce, Snohomish, and Kitsap counties), and the third serves Western Washington. Although separate entities, the Boards operate under a common set of procedural rules.<sup>70</sup>

#### 1. *Matters Subject to Review*

The Boards' authority to adjudicate cases is limited to (1) allegations that a state agency, county, or city is not in compliance with the Act's

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<sup>67</sup> WASH. REV. CODE § 36.70.A.105; *Bremerton v. Kitsap County* at 1222 (development regulations that implement an invalid plan cannot comply with the GMA); *West Seattle Defense Fund v. City of Seattle*, 95-3-0040 CPSGMHB 1071, 1083 (1996) (regulations that implement urban villages are invalid where comprehensive plan does not establish final village boundaries).

<sup>68</sup> WASH. REV. CODE § 36.70A.140; *Benaroya v. Redmond* at 1774 (making substantial changes to the plan without supporting information or analysis violates public participation requirements); *West Seattle Defense Fund v. Seattle*, at 1802 (city did not comply with public participation requirements); *Whatcom Environmental Council Watershed Defense Fund v. Whatcom County*, 95-20-71 WWGMHB 1449, 1451 (1995) (county failed to ensure early and continuous public participation); *Association to Protect Anderson Creek v. City of Bremerton*, 95-3-0053 CPSGMHB 1461, 1468 (1995) (city complied with public participation requirements). *Friends of Skagit County v. Skagit County*, 95-2-0075 WWGMHB 1511, 1512 (1996) (county failed to comply with public participation requirements where there was not adequate notice and where materials were unavailable).

<sup>69</sup> WASH. REV. CODE § 36.70A.250.

<sup>70</sup> The rules are codified at WASH. ADMIN. CODE § 242-02-010.



requirements for comprehensive plans and development regulations, not in compliance with SEPA as it relates to plans, regulations, and amendments thereto, or not in compliance with the Shoreline Management Act as it relates to adoption of a shoreline master program or amendments; and (2) allegations that the twenty-year growth management planning population projections used to designate urban growth areas should be adjusted.<sup>71</sup> Appeals regarding comprehensive plans and development regulations must be brought within sixty days of their publication by the county or city.<sup>72</sup> Such plans and regulations are presumed valid, and the petitioner has the burden of proving that they do not comply with the Act.<sup>73</sup> Individual land use decisions, such as the granting of a building permit, may not be appealed to the Boards.

## 2. *Standing*

The state, planning counties and cities, and persons who have appeared before the county or city or who are certified by the Governor may file a petition for review with the appropriate Board. Standing may also be established in limited cases by satisfying the standing requirements of Washington's Administrative Procedures Act.<sup>74</sup>

### *B. Finding of Noncompliance or Invalidity*

The Board, on its own motion or on motion of a petitioner, will hold hearings to determine whether the state agency, county, or city is complying with the GMA. The Boards must issue final orders within 180 days of petitions being filed, with limited extensions.<sup>75</sup>

Such orders may find that the GMA action complies with the GMA, or fails to comply with the GMA.<sup>76</sup> A finding of non-compliance does not void the plan unless the Board determines that the continued validity of the plan would substantially interfere with fulfilling the goals in

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<sup>71</sup> WASH. REV. CODE § 36.70A.280; *City of Sumner v. Pierce County Boundary Review Board*, 94-3-0013 CPSGMHB 655, 659 (1994) (Board does not have jurisdiction to review decisions of Boundary Review Boards).

<sup>72</sup> WASH. REV. CODE § 36.70A.290(2).

<sup>73</sup> WASH. REV. CODE § 36.70A.320.

<sup>74</sup> WASH. REV. CODE § 36.70A.280; *Friends of the Law v. King County*, 94-3-0003 CPSGMHB 341, 352 (1994) (appearance standing is established by attending a public hearing or meeting, participating by testifying at a public hearing, or submitting a letter).

<sup>75</sup> WASH. REV. CODE § 36.70A.300(2).

<sup>76</sup> WASH. REV. CODE § 36.70A.300(1).

RCW 36.70A.020.<sup>77</sup> Provisions or measures found to be invalid may not be applied to project applications submitted after the Board's order. If the Board finds that the governmental entity is not complying with the Act, the governmental entity has up to 180 days in which to comply. After 180 days, the Board may recommend that the Governor impose sanctions.<sup>78</sup>

The GMA operates only prospectively. The doctrine of vested rights enables a permit holder to complete a land development despite subsequent changes to the zoning code that would prohibit or otherwise affect the project.<sup>79</sup> In Washington, an applicant is entitled to be governed by the zoning ordinances in effect on the date that a complete application was submitted.<sup>80</sup> As discussed above, a finding of noncompliance and an order of remand does not affect the validity of comprehensive plans and development regulations during the remand period, unless the board also invalidates the provision. Where the Board issues a determination of invalidity, the order does not extinguish rights that vested before the date of the Board's order. Such an order subjects subsequent applications to the rules enacted in response to the remand order.

### C. Sanctions

The Governor may impose sanctions, based on a Board's findings, against state agencies, counties, or cities that fail to comply with the Act. The Governor can direct the appropriate state agency to:

- Revise allotments in agency appropriation levels;

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<sup>77</sup> WASH. REV. CODE § 36.70A.300(4); *Bremerton v. Kitsap County* at 1229 (finding comprehensive plan to be invalid); *Friends of Skagit County v. Skagit County*, 95-2-0065 WWGMHB 1811, 1812-13 (1996) (modifying original order) (finding Interim Urban Growth Area invalid); *Whidbey Environmental Action Network v. Island County*, 94-2-0063 WWGMHB (1996) (determining preexisting regulations to be invalid); *Friends of Skagit County v. Skagit County*, 95-2-0065 WWGMHB 1543, 1547 (1996) (invalidating sections of county development regulations for rural areas); *Save Our Butte Save Our Basin v. Chelan County*, 94-1-0015 EWGMHB 1605, 1611-12 (1996); *Seaview Coast Conservation Coalition v. Pacific County*, 95-2-0076 WWGMHB 1989, 1990 (1996) (development regulations allowing single family residences in shoreline area substantially interfered with achieving the environmental and open space goal).

<sup>78</sup> WASH. REV. CODE § 36.70A.330. *Vashon Maury v. King County*, 95-3-0008 CPSGMHB 1245, 1285 (1995) (board found zoning amendments that were adopted without sufficient public participation would substantially interfere with goals of Act).

<sup>79</sup> For a detailed discussion of Washington's vesting rules see *Washington's Zoning Vested Rights Doctrine*, 57 WASH. L. REV. 139 (1981).

<sup>80</sup> See WASH. REV. CODE § 58.17.033; *Eastlake Community Council v. Roanoke Associates*, 82 Wn.2d 475, 481, 513 P.2d 36 (1973).

- Withhold revenues to local governments from the motor vehicle fuel tax, the transportation improvement account, the rural and urban arterial accounts, the sales and use tax, and the liquor profit and excise tax; or
- Temporarily rescind counties' or cities' authority to collect real estate excise taxes.<sup>81</sup>

#### D. *Judicial Appeal*

Parties may appeal a Board's decision to superior court within thirty days of the final order from the Board.<sup>82</sup> Judicial review of Board decisions is based on the administrative record compiled by the Board.

### V. IMPLEMENTING GROWTH CONTROLS

#### A. *Concurrency: Public Facilities Required as a Condition of Development*

The GMA requires an applicant for a land use permit to show that public facilities and services are in place or will be provided "concurrent" with the development. These concurrency requirements are "conditions" of land use without which a development cannot proceed. There are four principal elements to the Act's concurrency provisions.

First, an applicant must provide proof of an available potable water supply before the local government may issue a building permit.<sup>83</sup> Given current limits on existing water supplies, this provision could profoundly affect the rate and location of growth.<sup>84</sup>

Second, planning municipalities must prohibit development that would cause transportation service to decline below the service level set in the transportation elements of their comprehensive plan. Development may be allowed if transportation improvements or strategies to accommodate the impacts of development, such as ride sharing programs or demand management, are made "concurrent with the development." The phrase "concurrent with development" for the transportation

<sup>81</sup> WASH. REV. CODE § 36.70A.340.

<sup>82</sup> WASH. REV. CODE § 36.70A.300(5).

<sup>83</sup> WASH. REV. CODE § 19.27.097(1).

<sup>84</sup> *Taxpayers for Responsible Government v. Oak Harbor*, 96-2-002 WWGMHB 1951, 1952 (1996) (capital facilities plan inadequate where it only provided a generalized list of sources for new water reservoir).

requirement means that improvements or strategies are in place or will be provided within six years of development.<sup>85</sup>

Third, planning municipalities must have in place a capital facilities plan (covering schools, water, sewer, etc.) that is funded and that provides facilities adequate to serve the land uses authorized by the plan.<sup>86</sup>

Finally, comprehensive plans must ensure that development does not degrade ground water quality.<sup>87</sup> This requirement should result in the provision of adequate sewers before development proceeds.

### *B. Short Plat Limitations*

The GMA imposes new conditions on the approval of plats of five or fewer lots, so called "short plats." Written findings are now required to show that the plat provides adequately for a wide range of public facilities. This is a state-wide requirement and will particularly impact smaller builders and landowners wishing to subdivide. To be consistent with the Act's provisions regarding urban growth areas, counties will have to severely limit subdivisions outside urban growth areas.<sup>88</sup>

### *C. Financing Growth*

#### *1. Development Fees*

Cities and counties are authorized to impose development fees for streets and roads, open space, parks and recreation facilities, schools, and fire protection facilities.<sup>89</sup> The Act requires that the fees:

1. be imposed only for system improvements that are reasonably related to the new development;
2. not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

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<sup>85</sup> WASH. REV. CODE § 36.70A.070(6)(e).

<sup>86</sup> WASH. REV. CODE § 36.70A.070(3); *Taxpayers for Responsible Government v. Oak Harbor* at 1954-56 (local government must adopt policies or regulations to reasonably assure that public services and facilities are available).

<sup>87</sup> WASH. REV. CODE § 36.70A.070(1).

<sup>88</sup> WASH. REV. CODE § 58.17.060, 17.100.

<sup>89</sup> WASH. REV. CODE. § 82.02.050(2).

3. be used for system improvements that will reasonably benefit the new development.<sup>90</sup>

Planning counties and cities may impose impact fees immediately. For fees to continue after July 1, 1993, however, counties and cities must incorporate provision for these fees into approved comprehensive plans.<sup>91</sup>

Impact fees and mitigation measures imposed under SEPA, land use review, or shoreline codes may be used in conjunction with development fees as long as they do not duplicate mitigation for the same impact.<sup>92</sup>

## 2. *Real Estate Excise Tax*

The Act authorizes local governments required to plan to impose an additional one-fourth percent excise tax on property sales to help finance capital facilities identified in the capital facilities element of the comprehensive plan. Local governments that choose to plan under the Act may only impose this tax if the majority of voters in the taxing district authorize the local government to do so.<sup>93</sup>

## VI. RELATIONSHIP TO OTHER LAWS

### A. *State Environmental Policy Act ("SEPA")*

The requirements of SEPA must be met under the GMA. SEPA review is expected for development of regional planning policies, interim regulations, comprehensive plans, and final implementing regulations.<sup>94</sup>

In 1995, the legislature amended SEPA and the GMA to more fully integrate the requirements of the two laws. The legislature determined that the comprehensive plans and development regulations prepared under the GMA, along with other state and federal laws, often provide environmental analysis and mitigation of impacts caused by projects

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<sup>90</sup> WASH. REV. CODE § 82.02.050(3). These requirements are similar to those required by the U.S. Supreme Court for establishing the proper "nexus" between mitigation measures and development. See *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

<sup>91</sup> WASH. REV. CODE § 82.02.050(4).

<sup>92</sup> WASH. REV. CODE §§ 43.21C.065, 82.02.100.

<sup>93</sup> WASH. REV. CODE § 82.46.035(2).

<sup>94</sup> WASH. REV. CODE § 36.70A.280 (noting that failure to comply with SEPA is grounds for appeal to the growth hearings boards).

sufficient to satisfy part or all of SEPA's environmental review requirements.<sup>95</sup> The legislature required the Department of Ecology to develop rules for integrating project level review under SEPA and the GMA.

*B. Shoreline Management Act ("SMA")*

The goals and policies of a shoreline master program for a county or city approved under the Shoreline Management Act ("SMA") is considered to be an element of the county- or city- adopted comprehensive plan. All other parts of the shoreline master program, including use regulations, are considered to be part of the local government's GMA development regulations.<sup>96</sup>

VII. CONCLUSION

The GMA has significantly changed the process used in the state of Washington to plan for and manage growth. The effects of the GMA can already be seen in more wide spread protection of critical areas, the designation of urban growth policies and local plans to focus growth.

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<sup>95</sup> ESHB 1724 § 202.

<sup>96</sup> WASH. REV. CODE § 36.70A.480.

