

***A WHITE PAPER***

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**THE WASHINGTON GROWTH MANAGEMENT ACT**

**AFTER TEN YEARS:**

**THE DUTY TO ACCOMMODATE GROWTH**

**PERKINS COIE LLP**

THE ENVIRONMENT GROUP  
*Resource Challenges . . . Resourceful Solutions*

## **FORWARD**

This white paper was prepared by the Perkins Coie Environment Group to address the duty of counties and cities to plan for and to accommodate growth under the Washington Growth Management Act. This white paper is not intended as legal advice for any particular client or any particular circumstance. Anyone seeking advice on the Growth Management Act should contact a qualified attorney.

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## EXECUTIVE SUMMARY

The Washington Growth Management Act ("GMA") was originally adopted after turbulent debate on how to accommodate the relentless growth of the late 1980s. The GMA was intended as a planning statute, but the clear goal was that the comprehensive and consistent planning mandated by the GMA would lead to actual results of accommodating future growth in urban areas and preserving rural areas, environmentally critical areas, and natural resource lands. Subsequent amendments of the GMA have refined and clarified the intent and operation of the GMA scheme. The legislature rejected a state-dominated top-down approach to growth management and granted considerable discretion to local governments in determining how to accommodate growth.

The basic GMA planning framework represents a multifaceted approach to the planning, regulation, and facility provision for land development.

- Planning goals – addressing urban growth, reduction of sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space and recreation, environment, citizen participation, public facilities and services, and shoreline management.
- Critical areas and natural resource lands – designation and regulation of critical environmental areas and agricultural and forest resource lands.
- Countywide planning policies ("CPPs") – policies for urban growth areas, densities, facilities, housing, and economic development that are directive to local planning.
- Urban growth areas ("UGAs") – areas designated by counties (with city consultation) to accommodate the 20-year population growth allocation for each county, including all lands within cities.
- Comprehensive plans – the legal documents indicating how each local jurisdiction will accommodate its allocated UGA growth, including land use map designations, consistent with the county policies and growth allocations.
- Capital facilities – an element within the comprehensive plan demonstrating the public facilities that will support the planned growth and an ongoing updated plan indicating short-term and long-term facility installation and funding.
- Concurrency – the requirement that capital facilities must be available or committed consistent with development needs and an established level of facility service.
- Essential public facilities – the requirement that no local plan or regulation may preclude the siting of difficult-to-site public facilities of a regional importance.

- Development regulations – legal controls on development, including zoning, critical areas regulation, shoreline master programs, and subdivision regulations, which must be consistent with the comprehensive plans.
- Impact fees – the authorization for local governments to impose impact fees on development to assist in financing capital facilities that support development, with some significant restrictions.
- Growth Management Hearings Boards – three quasi-judicial administrative appeals boards to adjudicate whether a local government has complied with the requirements of the GMA in its planning or regulation.

The central operational vehicle for the GMA is the local government comprehensive plan, which must be "consistent" in at least three ways— (1) between each city and its county plans and policies, (2) within a jurisdiction among its plan development regulations, and capital facilities, and (3) among the elements of each jurisdiction's plan. Compliance with the state interest in growth management is ensured through review, interpretation, and enforcement by the Boards and the courts.

The local government planning under the GMA may be characterized as a one-way "hierarchy of substantive and directive policy" under which the planning at each level constrains, and to a substantial extent determines, the planning results at the next level down. The OFM provides 20-year population growth forecasts to all GMA counties. The counties, in collaboration with their cities, designate urban growth areas, suballocate the growth forecasts, and adopt planning policies that may include densities, housing, transportation, economic development, and other policies required for local comprehensive planning. Local comprehensive planning results in a land use map that indicates the densities and location of the suballocated population and job growth within the jurisdiction. The plans must be consistent with the county policies and must provide capital facilities that will support the growth.

Despite the local discretion intent of the GMA, the consistency requirement of the GMA reduces the discretion throughout the hierarchy. Planning for too much or too little growth may be inconsistent with county or OFM growth allocations. Development regulations and capital facilities must be consistent with comprehensive plans, thereby affecting local land use powers, permitting, and budgeting. The result is a remarkably unitary structure considering the deliberate rejection by the legislature of a "top-down" growth management scheme.

In its first ten years, the Washington Growth Management Act has certainly transformed the planning and regulation of land development and public facility provision by local governments. While there are multiple goals for the GMA, the core of the GMA is the proposition that population growth should mostly be contained within designated urban growth areas, leaving the remaining areas generally undeveloped and rural, or in agriculture, forest, parks, and open spaces. The key to this proposition is that GMA jurisdictions actually take the steps required to plan for and to accommodate population and job growth at the

necessary densities and to facilitate the needs of that growth with appropriate plans, zoning, regulation, water and sewer systems, transportation and traffic improvements, and other urban services. Because of the one-way GMA "hierarchy of substantive and directive policy", it is clear that through this process the GMA counties and cities have an affirmative duty to accommodate the population growth allocated to them with adequate buildable lands, densities, regulations, and capital facilities. To the extent feasible within this hierarchy of policy, the GMA counties and cities have discretion in determining how they accommodate their allocated growth.

After the first round of CPPs and comprehensive plans have been completed and implemented with development regulations and capital facilities plans, most GMA counties and cities appear to have satisfied the GMA requirements that they plan to accommodate their allocated growth, mainly because the Boards have determined that most UGAs, CPPs, and comprehensive plans now meet the requirements of the GMA.

However, the GMA also includes the duty to provide the public facilities that will support the growth to be accommodated in the UGAs and comprehensive plans. Failure to maintain consistency between these components violates the GMA and requires a county or city to reassess its future growth and land use with a view to planning for lower growth, which may also violate the GMA. At this point, despite the Boards' clear mandate that the GMA requires the planning and provision of adequate public facilities, it is as yet unclear whether GMA counties and cities are actually complying with the GMA on public facilities, mainly because of the lag between capital facility planning, funding, and implementation.

Finally, beyond the duty imposed on GMA local governments to plan to accommodate future growth, the GMA also appears to require local governments to actually accommodate their allocated future growth. The review and evaluation now mandated by the GMA and currently scheduled to begin in 2002 will for the first time require GMA counties and cities (especially those within the six buildable lands program counties) to determine whether they have actually provided the land, densities, and capital facilities to accommodate growth and whether they are actually accommodating the planned-for growth, both residential and nonresidential. The results of this review and evaluation will provide the information for conclusions on the success in accommodating growth under the GMA framework during the first decade and will probably cause significant adjustments in the plans and policies for the second decade and beyond.

In the second decade of the GMA, new issues are likely to emerge from the implementation of competing GMA goals and requirements. While the goals of the GMA have been determined to be substantive and enforceable, some may inevitably become incompatible with each other. For example, goals of compact urban development and sprawl reduction may clash with goals of affordable housing and economic development. Compact urban development may conflict with the provision of open space and recreation and the protection of the environment in urban areas. Protection of rural areas and natural resource lands may be inconsistent with the protection of private property rights.

More important, some core requirements of the GMA may produce conflicts. The overarching priority of accommodating growth within designated UGAs may be increasingly difficult to support with adequate public facilities, especially due to voter resistance to financing. Moreover, accommodating growth in UGAs, particularly employment growth within urban centers, may be impossible to accomplish without violating the established levels of service for public facilities, especially for transportation facilities, which must be maintained under the GMA concurrency requirement. Increasing growth and densities in urban centers, particularly those outside of central Seattle, may cause traffic congestion to exceed the concurrency limits imposed under the GMA, even with increasing transit usage.

In addition, there is the issue of whether urban growth areas can continue to accommodate growth and become much denser and more compact if environmental mandates require that substantial undeveloped buffers must be maintained along all streams, lakes, and wetlands. There is increasing priority placed on preserving habitat and water quality by restraining urban growth, densities, and impacts through the implementation of endangered species, shoreline development, and stormwater management rules. Even proposed transportation facility improvements may be evaluated for their impacts of inducing growth that may result in detrimental effects on habitat and water quality. Reducing the growth capacities within UGAs is likely to conflict at least with the GMA planning of the first decade and possibly with the requirements of the GMA to accommodate growth.

# **THE WASHINGTON GROWTH MANAGEMENT ACT AFTER TEN YEARS: THE DUTY TO ACCOMMODATE GROWTH**

## **I. INTRODUCTION**

### **A. The Growth Management Transformation**

Washington's Growth Management Act ("GMA"), Chapter 36.70A RCW, has resulted in a sweeping transformation of the planning and regulation of land development and public facility provision by local governments. Much of what was voluntary has become mandatory. Much of what was dispersed has become centralized. Much of what was contradictory has become consistent. In the course of this transformation, the locus of power to affect development has dramatically shifted to county and city elected officials and staffs and to the Growth Management Hearings Boards ("GMHBs" or "Boards").

The core of the GMA, and of the various "smart growth" proposals around the country, is the proposition that population growth should mostly be contained in specific geographic areas, leaving the remaining areas generally undeveloped and rural, or in agriculture, forest, parks, and open spaces. The key to this proposition is that counties and cities actually take the steps necessary to accept population and job growth at the necessary densities and to accommodate the needs of that growth with appropriate plans, zoning, regulations, water and sewer systems, transportation and traffic improvements, and other urban services.

After Washington's first decade under the GMA, it is time to examine its progress. Are the counties and cities subject to the GMA actually accommodating growth as required by the GMA? Are they providing adequate buildable land in the designation of urban growth areas? Are they planning and zoning with sufficient densities and uses? Are they planning for and providing adequate transportation, utilities, and other public facilities to support growth? Are they actually achieving the targets for accommodating growth that the policies and plans commit them to achieve? In other words, is growth being managed as intended and required by the GMA?

### **B. Historical Background**

First, some history. Like many important statutory milestones, the GMA was born of turbulence and strife. Previously, Washington's local governments had planned and regulated land development under the permissive Planning Enabling Act for counties, Chapter 36.70 RCW, and the Planning Commissions Act for cities, Chapter 35.63 RCW. The environmental

revolution of the late 1960s produced the Shoreline Management Act of 1971, Chapter 90.58 RCW, and the Washington State Environmental Policy Act of 1971 (SEPA), Chapter 43.21C RCW, both of which were strongly endorsed and broadly construed by the courts in subsequent years.<sup>1</sup>

But not until the relentless growth of the late 1980s did the impetus for stronger and more comprehensive control of development emerge. Unprecedented commercial development in downtown Seattle led to the CAP initiative of 1989, imposing an annual quota of new floor space.<sup>2</sup> In 1989, the Governor, after vetoing the legislative version, created the Washington State Growth Strategies Commission to review growth management programs in other states and recommend a strategy for Washington. Wash. Exec. Order No. 89-08 (1989). In the 1990 legislative session, after rejecting a more stringent version, the legislature passed a compromise Growth Management Act of 1990, but environmental groups took the rejected version to the people as Initiative 547, which was defeated. In opposing the initiative, the Governor and legislative leaders promised to fix and expand the 1990 GMA. The result was ESHB 1025, which in 1991 completed the basic structure of the GMA. The GMA has subsequently been amended and expanded, however, to require a local project review and land use appeal framework for GMA jurisdictions and to incorporate many requirements of the Shoreline Management Act. See Chapters 36.70A, 36.70B, 36.70C RCW.

The Washington GMA contains five core substantive components: (1) urban growth areas, (2) capital facilities and concurrency, (3) essential regional facilities, (4) critical areas, and (5) natural resource areas.<sup>3</sup> The legislature rejected a centralized state authority for its planning and regulatory scheme, opting instead for greater local government discretion.<sup>4</sup> The central operational vehicle for the GMA is the local government comprehensive plan, which must be "consistent" in at least three ways— (1) between each city and its county plans and

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<sup>1</sup> The Forest Practices Act of 1974, Chapter 76.09 RCW, is another environmental statute from the same period that has important but more limited application to development activities.

<sup>2</sup> City of Seattle Initiative 31 (1989), codified at SMC § 23.49.011.

<sup>3</sup> The urban growth areas component was borrowed from the Oregon growth management scheme, while the other components were modeled on the Florida statutes.

<sup>4</sup> "The GMA is founded on the premise that local governments, rather than state government, have the primary duty and authority for growth management policy-making and further, that the choices made by these local governments may be different in different parts of the state. . . . Washington's model [is] a contrast to truly 'top down' systems in other states which are premised on growth management policymaking centralized at the state government level and applied uniformly throughout the state." *City of Snoqualmie v. King County*, CPSGMHB No. 92-3-0004, at 13, Final Decision and Order (Mar. 1, 1993).

policies, (2) within a jurisdiction among its plan, development regulations, and capital facilities, and (3) among the elements of each jurisdiction's plan. Compliance with the state interest in growth management is ensured through review, interpretation, and enforcement by the Boards and the courts.

At this point, ten years after completion of the basic GMA, local governments in 29 of the 39 counties in Washington, with over 90 percent of the state's population, plan under the GMA.<sup>5</sup> In all but a few of these jurisdictions, comprehensive plans and development regulations have been adopted, the essential GMA planning and regulatory issues have been adjudicated by the Boards and litigated in the courts, and now the first large-scale evaluation and adjustment of plans is in progress in most of the large counties. While many components of the GMA have been controversial and hotly debated, some issues have been more or less resolved. Critical areas and natural resource lands designation and regulation are accomplished facts. The primacy of "essential public facilities" is settled, though ever controversial. The authority and the scope of the Boards have mostly been established. Rural development remains at issue, but the important parameters are in place.

### **C. Review and Evaluation Program**

GMA comprehensive plans and development regulations must be reviewed and evaluated every five years starting in 2002. The focus of the current review particularly focuses on urban growth areas and capital facilities. The rapid growth of the late 1990s consumed buildable lands and stretched public facilities beyond what was anticipated in the initial comprehensive plans. Soaring housing prices have produced allegations of land shortages within designated urban growth areas and of unimplemented affordable housing strategies required by the GMA. For the first time, local governments must evaluate their recent growth and development, their lands available for future development, and their capital facility plans and funding to support current and future growth. Because comprehensive plans are dependent on UGA designations and countywide planning policies, counties will need to evaluate their urban growth areas and countywide planning policies to determine whether adjustments are required. For some large counties, a more technical buildable lands evaluation is required.<sup>6</sup> In other words, the jurisdictions subject to the GMA must now grade themselves, their plans, and their regulations on their success at accommodating growth in the

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<sup>5</sup> The original GMA applied only to large counties (at least 50,000 population and 10 percent growth in 10 years) and fast-growing counties (20 percent or more in 10 years). RCW 36.70A.040(1). However, the statute included an opt-in provision that allowed other counties to elect the GMA authority and procedures. Once under the GMA, these counties may not subsequently opt out. RCW 36.70A.040(2). The GMA applies to all cities within the counties subject to the statute.

<sup>6</sup> The buildable lands program evaluation applies to King, Pierce, Snohomish, Kitsap, Thurston, and Clark Counties and the cities within these counties. RCW 36.70A.215(7).

first ten years of the GMA, and, if required by the results, they must modify their plans and regulations to comply better with the intent of the GMA.

In the spirit of the current GMA evaluation, this white paper is intended to present a fresh look at the GMA and its requirements for accommodating growth. While the statute itself has evolved only slightly since its completion in 1991, the Boards and the courts have now had considerable time and a variety of issues to further interpret the provisions of the statute as they apply to accommodating growth. Because the broad sweep of the GMA is now the accepted framework for planning and development in Washington, jurisdictions are now addressing the necessary fine-tuning of the GMA component parts to better meet the goals of the statute.<sup>7</sup>

## II. GMA PLANNING FRAMEWORK

### A. Introduction

Even though the legislature rejected a state-dominated top-down approach to growth management, the local government planning mandated under the GMA may be characterized as a "hierarchy of substantive and directive policy" that flows in one direction.<sup>8</sup> The state Office of Financial Management ("OFM") allocates the state's 20-year population growth forecast to counties. To accommodate this growth counties designate urban growth areas, population suballocations, and the planning policies for local comprehensive plans, subject to the protection of designated critical areas and natural resource lands. The comprehensive plans provide substantive direction to the content of the local development regulations, such as zoning, and to the capital facilities that can be authorized and funded. The regulations and the capital facilities govern the exercise of local land use powers and permitting.

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<sup>7</sup> This white paper does not address the findings and conclusions on the GMA that were included in the Final Report (December, 2001) of the Washington Competitive Council, which was appointed by the Governor in 2001. The Council's GMA recommendations included: (1) fund the infrastructure required to make GMA workable, (2) fund the planning and environmental review fund to enable area-wide SEPA review, (3) provide local governments with procedural and substantive guidance for the environmental review of comprehensive plans and development regulations, (4) require an economic development element in GMA comprehensive plans, and (5) strengthen positive incentives for local government compliance with GMA. Final Report at 25-26. One Council member described the GMA as a "broken promise" because adopting the GMA assumed (1) transportation funding for infrastructure to support urban growth areas, (2) rewards to local governments that planned for and met their GMA goals, and (3) permit streamlining to facilitate development in urban growth centers, but none of these conditions has occurred.

<sup>8</sup> *City of Snoqualmie v. King County*, CPSGMHB No. 93-3-0005, at 24, Final Decision and Order (Oct. 4, 1993).

The GMA includes 13 substantive planning goals (plus shoreline management)<sup>9</sup> that are intended to guide the preparation of local government comprehensive plans and development regulations. The goals address urban growth, reduction of sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space and recreation, environment, citizen participation, public facilities and services, historic preservation, and shoreline management. RCW 36.70A.020, .480. The GMA planning goals are not prioritized and are, in fact, somewhat mutually competitive. But the GMA goals are substantive, and local government comprehensive plans and development regulations must comply with the goals. *Diehl v. Mason County*, 94 Wn. App. 645, 660 (1999).<sup>10</sup>

## **B. Critical Areas and Natural Resource Lands**

Counties and cities were first required to designate and adopt development regulations to protect critical areas and natural resource lands.<sup>11</sup> RCW 36.70A.060(1). The objectives for protection of these areas are quite different. Critical areas are to be protected from excessive urban development to preserve environmental characteristics, while natural resource lands are to be protected from urban development to preserve the lands for commercial harvesting and extraction. Nevertheless, the effect on urban growth of the protection of these areas is the same—development in these areas is to be extremely restricted.<sup>12</sup>

A 1995 amendment to the GMA requires the use of "best available science" in designating and regulating critical areas. RCW 36.70A.172(1). Best available science must be included in the record and considered substantively in the designation and regulation of

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<sup>9</sup> The 1995 Legislature incorporated the goals and policies of the Shoreline Management Act, RCW 90.58.020, as GMA goals under RCW 36.70A.020 and established county and city shoreline management programs as elements within those jurisdictions' GMA comprehensive plans under RCW 36.70A.070. Laws of 1995, ch. 347, § 104; RCW 36.70A.480.

<sup>10</sup> See also *Rabie v. City of Burien*, CPSGMHB No. 98-3-0005c, Final Decision and Order (October 19, 1998) at 4.

<sup>11</sup> Critical areas are defined in the GMA as wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas (steep slopes). RCW 36.70A.030(5). Natural resource lands are agricultural, forest, and mineral resource lands that are not already characterized by urban growth and that have long-term significance for commercial production. RCW 36.70A.170(1).

<sup>12</sup> Once designated, delisting of these lands may be nearly impossible, even for lands with marginal resource or environmental value, even for a beneficial alternate use, and even where extensive public process was followed. See *King County v. Central Puget Sound GMHB*, 142 Wn.2d 543, 561 (2000).

critical areas, but it must be balanced with other considerations.<sup>13</sup> *Honesty in Environmental Analysis & Legislation (HEAL) v. City of Seattle*, 96 Wn. App. 522, 532 (1999).

### C. Countywide Planning Policies

Each county, as the "regional government" within its boundaries, is required to adopt a countywide planning policy ("CPP") that will guide the comprehensive planning in its constituent cities, with the primary purpose of ensuring consistency among city and county plans. RCW 36.70A.210(1). The CPP must include:

- policies to designate urban growth areas within the county;
- policies to promote orderly urban development and provision of urban services;
- policies for siting public facilities of countywide or statewide significance, including transportation;
- policies for countywide transportation facilities and strategies;
- policies for affordable housing, including distribution within the county;
- policies for joint county and city planning within urban growth areas;
- policies for countywide economic development and employment; and
- an analysis of the fiscal impact.

RCW 36.70A.210(3).

Once adopted by the county, a CPP is "directive" to and binding on the local comprehensive plans and must be followed by the local governments to ensure the consistency required by the GMA.<sup>14</sup> *King County v. Central Puget Sound GMHB*, 138 Wn.2d 161, 175 (1999). CPP policies may be substantively "directive" if they (1) meet a legitimate regional objective, (2) address only comprehensive plans (including UGAs) and not regulations or other land use powers, and (3) are consistent with provisions of the GMA.<sup>15</sup> The CPP

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<sup>13</sup> Looking ahead, GMA critical area regulations will be a focus for implementation of the Endangered Species Act ("ESA") Section 4(d) rule adopted by the National Marine Fisheries Service ("NMFS") for salmon in Washington, as the rule applies to land development. 50 C.F.R. § 223.203(b)(12). For development to be exempted from the ESA take prohibition under the 4(d) rule, the development must comply with a local plan and regulation that NMFS determines to be adequately protective of the listed species. See Alan D. Copesey, *ESA and GMA: No Inherent Conflict* (Jan., 2001) (unpublished).

<sup>14</sup> However, the directed provisions within the local comprehensive plans may still be challenged in the GMHBs for their compliance with the GMA. *King County v. Central Puget Sound GMHB*, 138 Wn.2d 161, 175-77 (1999).

<sup>15</sup> *City of Snoqualmie v. King County*, CPSGMHB No. 92-3-0004, Final Decision and Order (March 1, 1993) at 13-14. The Central Puget Sound GMHB also stated that CPPs have two primary purposes: (1) to achieve consistency among local comprehensive plans, as required by RCW 36.70A.100, and (2) to achieve a transformation of local governance within urban growth areas, so that

"directive" includes the authority for counties to allocate the population and employment growth to cities and unincorporated urban growth areas, which they must then plan to accommodate.<sup>16</sup>

In developing its CPP, a county must follow an extensive statutory process of collaboration with the cities within its boundaries. RCW 36.70A.210(2). However, the county has the ultimate substantive authority for the content and adoption of the CPP. *Postema v. Snohomish County*, 83 Wn. App. 574, 583 (1996). Cities may appeal an adopted CPP to the applicable GMHB. RCW 36.70A.210(6).

King, Pierce, and Snohomish Counties must adopt multi-county planning policies to guide comprehensive planning by those counties and the cities within them. RCW 36.70A.210(7).

#### **D. Urban Growth Areas**

Urban growth areas ("UGAs") are the heart of the GMA scheme. Each county must designate an "urban growth area" for the county, within which urban growth "shall be encouraged" and outside of which only nonurban growth may occur. An "urban growth area" must include all incorporated cities and may include unincorporated areas that are already "characterized by urban growth," are contiguous to areas already characterized by urban growth, or are designated as a "new fully contained community." RCW 36.70A.110(1). All land in a county that is not designated as UGA, critical area, or natural resource land is by definition a "rural area." In their designation of UGAs, counties must consult with the cities within their boundaries until agreement is reached.

Under the GMA scheme, the state OFM provides each county with an allocation of the 20-year population growth forecasted for the state, "expressed as a reasonable range

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urban governmental services are provided by cities and rural and regional services are provided by counties. *City of Snoqualmie v. King County*, Order of March 1, 1993, at 7. The Central Puget Sound GMHB subsequently added a third primary purpose: to direct urban development to urban areas and to reduce sprawl. *City of Edmonds v. Snohomish County*, CPSGMHB No. 93-3-0005, Final Decision and Order (October 4, 1993) at 19. The Central Puget Sound GMHB has also stated that these three purposes apply to urban growth areas ("UGAs") as well as to CPPs. *City of Tacoma v. Pierce County*, CPSGMHB No. 94-3-0001, Final Decision and Order (July 5, 1994) at 9.

<sup>16</sup> *City of Edmonds v. Snohomish County*, CPSGMHB No. 93-3-0005, Final Decision and Order (October 4, 1993) at 24. Counties and cities currently have a duty under the GMA to "plan" to accommodate their allocated growth. Although it appears obvious from the language of the GMA, it is not yet clear whether counties and cities will be held to a duty under the GMA to actually accommodate growth.

developed within the standard state high and low projection."<sup>17</sup> RCW 43.62.035. Each county designates a UGA based on "consultation" with the cities in the county. The total county UGA must include all incorporated areas and any additional unincorporated areas that will accommodate the 20-year population growth at "urban densities" with provision for nonresidential uses and open spaces. The UGA must consist of areas that are or will be served adequately by public facilities and services, with express priority for areas already served. RCW 36.70A.110(2), (3). UGAs are intended to ultimately be incorporated within cities for the provision of urban services. RCW 36.70A.110(4).

After UGAs are designated and the comprehensive plan establishes the nature of the growth to occur within them, the GMA requires periodic review, evaluation, and adjustment. The OFM must revise its population allocations at least every five years. RCW 43.62.035. Counties must review and revise their UGAs and the densities within them at least every ten years. RCW 36.70A.130(3). Local comprehensive plans must be reviewed, evaluated, and revised at least every five years, beginning in 2002. RCW 36.70A.130(1). A 1997 amendment to the GMA requires for six large GMA counties a five-year review and evaluation program for comprehensive plans, CPPs, and UGAs, beginning in 2002, that focuses on the achievement of urban densities and the supply of buildable land for various urban uses. This "Buildable Lands Program" requires revisions where inconsistencies are found. RCW 36.70A.215. Thus, while the GMA mandates periodic review and revision, the applicability and the timing are not fully coordinated, and the ability of counties and cities to perform the review and evaluation are uncertain.

## **E. Comprehensive Plans**

### **1. Overview of GMA Comprehensive Plans**

If the UGA is the heart of the GMA, then the comprehensive plan is the brain. The GMA did not originate the drafting and adoption of county and city comprehensive plans, but it did make comprehensive plans mandatory for GMA jurisdictions and it did require a specific structure of component elements and a consistency both internally and with the jurisdiction's regulations and capital facilities. RCW 36.70A.040(3), (4). Comprehensive plans must consist of a set of principles, goals, and standards for the development of the jurisdiction, with a map designating all land within the jurisdiction for its future land use. RCW 36.70A.070. All comprehensive plans must include the following elements, all of which must be consistent with the comprehensive plan's land use map:

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<sup>17</sup> The OFM allocations are reviewed with local governments before adoption and are appealable either to OFM or to the applicable GMHB. RCW 43.62.035; RCW 36.70A.280(1)(b). Counties must use a population projection within the OFM allocation range to size their UGAs. *Dawes v. Mason County*, WWGMHB No. 96-2-0023, Final Decision and Order (December 5, 1996) at 5; *City of Bremerton v. Kitsap County*, CPSGMHB No. 95-3-0039c, Order Rescinding Invalidity (February 8, 1999) at 29.

- land use element, incorporating critical areas, natural resource lands, and residential and nonresidential development, and including a land use map and policies for designations;
- housing element, emphasizing housing needs and affordability within the jurisdiction;
- capital facilities element, including an inventory of existing facilities, a forecast of future needs, locations and capacities, and a six-year facilities plan with financing;
- utilities element, consisting of location and capacity of existing and proposed public and private utility lines;
- transportation element, including facility inventories, level of service standards, ten-year travel demand forecasts based on the land use plan, financing analysis, demand-management strategies, and a six-year transportation facilities plan<sup>18</sup>;
- shoreline master program, consisting of goals and policies adopted by the local jurisdiction under Chapter 90.58 RCW; and
- rural element (counties only), designating rural centers and other existing development and providing for growth standards for such areas and density limits for other rural areas, with the required public facilities and services.<sup>19</sup>

RCW 36.70A.070, .480. Comprehensive plans may also include other consistent elements or subarea plans at the option of the local jurisdictions. RCW 36.70A.080. Local jurisdictions must also identify lands "useful for public purposes," such as utility, transportation, and open space corridors, landfills, sewage treatment, recreation, schools, and other public uses. RCW

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<sup>18</sup> A transportation concurrency ordinance connecting future development permitting to transportation level of service standards must be adopted by the local jurisdiction after adoption of the comprehensive plan. RCW 36.70A.070(6)(b).

<sup>19</sup> Rural areas may include "master planned resorts" and "major industrial developments" subject to certain public facility limitations. RCW 36.70A.360, .365. "New fully contained communities" that are not contiguous with a UGA are defined as part of a UGA. RCW 36.70A.110(1); .350. Other UGA population and land must be reduced to account for new fully contained communities in rural areas, and, arguably, also for master planned resorts and major industrial developments. *City of Tacoma v. Pierce County*, CPSGMHB No. 94-3-0001, Final Decision and Order (July 5, 1994) at 19. Otherwise, rural densities are strictly limited, with one unit per five acres as the most frequent bright line maximum. *Dawes v. Mason County*, WWGMHB No. 96-2-0023, Final Decision and Order (December 5, 1996); cf. *Woodmansee v. Ferry County*, EWGMHB No. 95-1-0010, Order on Compliance (May 13, 1996) (Lots of 2.5 acres may be rural.).

36.70A.150, .160. All plan elements must be consistent with the comprehensive plan land use map.<sup>20</sup> RCW 36.70A.070.

All GMA comprehensive plans must be subject to continual review, evaluation, and amendment. Plan amendment may occur no more than once per year. Plan review, evaluation, and revision must occur at least every five years, beginning in 2002. RCW 36.70A.130(1), (2). Plan adoption and amendment must include a public participation program of involvement through information, notices, meetings, and commenting. RCW 36.70A.140.

## **2. Growth Planning Process**

Even though the GMA rejected a state-dominated top-down approach to growth management, the GMA requires a "hierarchy of substantive and directive policy" that flows in one direction from the county CPPs to the local government plans, capital facilities, and regulations. The CPPs designate the UGAs, the population allocations, and the growth policies for comprehensive plans. The comprehensive plans provide substantive direction to the content of the development regulations, such as zoning, and to the capital facilities that can be authorized and funded. The regulations and the capital facilities govern the exercise of local land use powers and permitting.<sup>21</sup>

The comprehensive planning process starts from the designation of UGAs, the allocation of OFM population forecasts to UGAs,<sup>22</sup> and the adoption of guiding policies by the county. The GMA imposes an affirmative duty on every local government to accommodate its allocated population and job growth, but under the GMA each local government also retains considerable discretion to determine how it will accommodate the growth. RCW 36.70A.110(2). Essentially, cities (and counties for unincorporated UGAs) take their population allocation,<sup>23</sup> convert the population to households (average household

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<sup>20</sup> *Aagaard v. City of Bothell*, CPSGMHB No. 94-3-0011, Final Decision and Order (February 21, 1995) at 5.

<sup>21</sup> *City of Snoqualmie v. King County*, CPSGMHB No. 92-3-0004, Final Decision and Order (March 1, 1993) at 13.

<sup>22</sup> Each GMA county has the authority to suballocate its 20-year OFM county population allocation to the incorporated and unincorporated UGAs within the county, including to each city, as the basis for comprehensive planning. *City of Edmonds v. Snohomish County*, CPSGMHB No. 93-3-0005, Final Decision and Order (October 4, 1993) at 24. As a practical matter, the consistency requirements of the GMA effectively mandate that the county allocate to each city its planning population, after consultation and negotiation.

<sup>23</sup> In King, Pierce, and Snohomish Counties, adopted Multi-County Planning Policies further determine the population (and employment) that each county allocates to UGAs through its CPP.

size),<sup>24</sup> assign the households to a range of residential densities (housing units per acre), and locate the growth by densities within their inventory of buildable (or redevelopable) land. Local government discretion lies in (1) what population in the allocation range is planned for, (2) the average household size factor, (3) the residential densities selected, and (4) the location of the new growth.<sup>25</sup> The result of this process is a comprehensive plan land use map that includes at least enough buildable or redevelopable land to accommodate the allocated population and job growth at some density and some location within the jurisdiction. The plan may include additional buildable land either to accommodate more than the allocated growth or as a "land market supply factor." RCW 36.70A.110(2).

The courts and the GMHBs have reviewed county and city exercises of their discretion in planning for their allocated populations, the average household size factor, the densities selected, and the land market supply factor, all from the perspective of determining whether the county or city is inflating its UGA in violation of the GMA. For county UGA designations, using a population figure beyond the allocation range has been firmly rejected. *Diehl v. Mason County*, 94 Wn. App. 645, 653 (1999). Even using a figure at the top end of the range may invite close scrutiny.<sup>26</sup> However, a court has held that the OFM population projections apply only to UGAs and not to rural area growth. *Clark County Natural Resources Council v. Clark County Citizens United, Inc.*, 94 Wn. App. 670, 676 (1999).<sup>27</sup> Absent a CPP to the contrary, however, cities may plan for population higher than their allocations and may apply a land market supply factor.<sup>28</sup>

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<sup>24</sup> Some counties allocate a range of future households (instead of population) to cities and unincorporated UGAs after assigning an average household size in the CPP through consultation with the cities. See *Vashon-Maury v. King County*, CPSGMHB No. 95-3-0008, Final Decision and Order (October 23, 1995) at 12.

<sup>25</sup> See *Benaroya v. City of Redmond*, CPSGMHB No. 95-3-0072, Final Decision and Order (March 25, 1996) at 7.

<sup>26</sup> *Achen v. Clark County*, WWGMHB No. 95-2-0067, Compliance Order and Order of Invalidity (October 1, 1996).

<sup>27</sup> The GMA requires counties and cities to use the 20-year OFM population projection ranges to size their UGAs. RCW 36.70A.110(2). The *Clark County Natural Resources Council* court held that "the GMA does not require counties to use OFM's population projections as a cap or ceiling on non-urban growth." 94 Wn. App. at 676. The implication of this holding is that counties may exceed their OFM population projections by the amount of the rural area growth.

<sup>28</sup> *West Seattle Defense Fund v. City of Seattle*, CPSGMHB No. 94-3-0016, Final Decision and Order (April 4, 1995) at 39. The Central Puget Sound GMHB has established a bright-line "reasonable" market factor for residential land of 25 percent above the minimum UGA size. Above that level, the factor must be justified. *City of Bremerton v. Kitsap County*, CPSGMHB No. 95-3-

The average household size factor must either be consistent with the county's CPP or must reasonably produce population totals within the allocation range.<sup>29</sup> The densities within UGAs must be urban densities. Any residential density up to one unit per 2.5 acres may be urban, but an overall residential density of 4 units per acre is presumed to be urban. Lower overall densities for UGAs may be justified by environmental constraints.<sup>30</sup>

The location of the new growth within the UGA, i.e., in high-rise centers versus single-family areas or on undeveloped versus redevelopable land, remains for the discretion of the local government.<sup>31</sup> In one Central Puget Sound GMHB case, the Board held that the City of Federal Way had broad discretion under the GMA to make site-specific land use decisions and rejected a challenge to the City's assignment of a substantial portion of its allocated population growth to "towering condos" in the city center where actual growth was unlikely.<sup>32</sup>

## **F. Capital Facilities**

### **1. Capital Facilities Element and Plan**

Public facilities to support the planned-for growth must not only be identified in the capital facilities element in the comprehensive plan, but under the GMA they must also be the subject of independent and continuing action by the local jurisdiction.<sup>33</sup> All GMA jurisdictions must budget and construct their capital facilities in conformity with their comprehensive plan. RCW 36.70A.120. If capital facilities funding is insufficient for the capital facilities plan, then

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0039, Final Decision and Order (October 6, 1995) at 30-31. Land market supply factors may apply separately to residential, commercial, and industrial land supplies.

<sup>29</sup> *Benaroya v. City of Redmond*, Order of March 25, 1996, at 12.

<sup>30</sup> *Lawrence Michael Investments LLC v. Town of Woodway*, CPSGMHB No. 98-3-0012, Final Decision and Order (January 8, 1999) at 26.

<sup>31</sup> *Litowitz v. City of Federal Way*, CPSGMHB No. 96-3-0005, Final Decision and Order (July 22, 1996) at 11-12. This GMHB decision was appealed to superior court and on appeal was dismissed. *Litowitz v. Central Puget Sound GMHB*, 93 Wn. App. 66 (1998).

<sup>32</sup> *Litowitz v. City of Federal Way*, Order of July 22, 1996, at 14. The actual proportion to be accommodated in the city center was 17 to 24 percent of the city's allocated population growth. The Board distinguished this concentration from cases in other jurisdictions that were planning for 50 percent or more in urban centers. *Id.*, at 17.

<sup>33</sup> Public facilities under the GMA include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools. RCW 36.70A.030(12).

the land use element must be reassessed accordingly.<sup>34</sup> RCW 36.70A.070(3)(e). The six-year capital facilities plan in the comprehensive plan may be amended concurrently with the adoption of the jurisdiction's budget. RCW 36.70A.130(2)(a)(iii). In other words, the capital facilities plan must be kept current in actual facility budgeting and construction programming and must be kept consistent with the comprehensive plan land use element. The result is an independent obligation to regularly adjust the capital facilities plan.

## 2. Concurrency

In addition, the GMA requires concurrency of facilities with the demands of new development. Concurrency is the situation in which adequate public facilities to serve development "are available when the impacts of development occur, or within a specified time thereafter," the "specified time" being the six-year period of the current local capital facilities plan. WAC 365-195-070(3). The GMA is explicit in requiring jurisdictions to adopt concurrency ordinances for transportation facilities—development permits must be denied if the proposed activity causes the level of service on transportation facilities to be degraded below adopted level of service standards. RCW 36.70A.070(6)(b). The GMA may require concurrency of other capital facilities because of the goal that "public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy without decreasing current service levels below locally established minimum standards."<sup>35</sup> RCW 36.70A.020(12). The GMA is not clear whether or how local jurisdictions may manipulate level of service standards or financing for capital facilities for the sole purpose of either accommodating or restricting new development activity.<sup>36</sup>

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<sup>34</sup> *West Seattle Defense Fund v. City of Seattle*, CPSGMHB No. 96-3-0033, Final Decision and Order (March 24, 1997) at 12. However, the Central Puget Sound GMHB more recently ruled that this statutory provision does not necessarily require revision of the land use element if capital facilities funding falls short of the plan, because a jurisdiction may also reduce demands or standards of service. *McVittie v. Snohomish County*, CPSGMHB No. 99-3-0016c, Final Decision and Order (February 9, 2000) at 19.

<sup>35</sup> The Western Washington GMHB has held that the GMA concurrency requirement extends beyond transportation facilities to those public facilities and services that are required to support new development. *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB No. 96-2-0002, Final Decision and Order (July 16, 1996) at 6-7. The Central Puget Sound GMHB has agreed, but expressly added that a local concurrency enforcement ordinance is required only for transportation facilities. *McVittie v. Snohomish County*, CPSGMHB No. 99-3-0016c, Final Decision and Order (February 9, 2000) at 20-21.

<sup>36</sup> For transportation level of service standards, the Boards have upheld very low standards, amounting to virtual gridlock or failing roads, which would allow more growth with few transportation improvements. See *West Seattle Defense Fund v. City of Seattle*, CPSGMHB No. 94-3-0016, Final Decision and Order (April 4, 1995); *Achen v. Clark County*, WWGMHB No. 95-2-0067, Final

### 3. Essential Public Facilities

The GMA expressly prohibits local comprehensive plans and development regulations from precluding the siting of "essential public facilities," which are "difficult to site" facilities such as airports, education facilities, regional transportation facilities, correctional facilities, solid waste facilities, and in-patient facilities. RCW 36.70A.200. Local comprehensive plans must include a process for identifying and siting essential public facilities, but, other than affordable housing, the GMA makes no affirmative requirements. However, the preclusion prohibition has been broadly interpreted by the courts and the Boards.<sup>37</sup>

#### G. Development Regulations

In the GMA, "development regulations" are the legal controls placed by a local government on development or land use activities, including zoning, critical areas regulations, shoreline master programs, and subdivision regulations. RCW 36.70A.030(7). Development regulations include the procedural requirements of those legal controls, but they do not include the permit decisions for development projects. Thus, development regulations are the implementation mechanism for the comprehensive plan and the entire growth management scheme.

Under the GMA, all counties and cities, not just those planning under the GMA, must adopt development regulations that protect the critical areas that they were required to designate under RCW 36.70A.170(1)(d). RCW 36.70A.060(2). GMA counties and cities must also adopt development regulations that protect the natural resource lands that they designated under RCW 36.70A.170 and development regulations that implement their comprehensive plans and are consistent with the plans. RCW 36.70A.060(1), (2); RCW

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Decision and Order (September 20, 1995). The City of Bellevue broadened its peak hour from one to two hours for the calculation of the level of service, resulting in a lower average peak hour traffic volume and thus allowing more development for the same facilities. Ordinance No. 5081 (July 20, 1998). After this ordinance was challenged by Bellevue community councils, the court upheld the City action on level of service as not requiring an amendment of the City comprehensive plan (or approval by the community councils as a land use action). *Sammamish Community Council v. City of Bellevue*, 29 P.3d 728, 733 (2001). The Central Puget Sound GMHB has endorsed the option of reducing the level of service standard when probable funding for transportation facilities falls short of meeting planned facility needs, but in the context of RCW 36.70A.070(3)(e), not the transportation concurrency ordinance requirement of RCW 36.70A.070(6)(b). *McVittie v. Snohomish County*, CPSGMHB No. 99-3-0016c, Final Decision and Order (February 9, 2000) at 19.

<sup>37</sup> *City of Des Moines v. Puget Sound Regional Council*, 98 Wn. App. 23, 33-34 (1999) (airport expansion and support services); *Department of Corrections v. City of Tacoma*, CPSGMHB No. 00-3-0007, Final Decision and Order (November 20, 2000) (work release facilities); *Hapsmith v. City of Auburn*, CPSGMHB No. 95-3-0075c, Final Decision and Order (May 10, 1996) (railroad facilities); *Children's Alliance v. City of Bellevue*, CPSGMHB No. 95-3-0011, Final Decision and Order (July 25, 1995) (disabled children group homes).

36.70A.040(3)(d), (4)(d). Consistency between development regulations and comprehensive plans was an important innovation of the GMA and requires a plan amendment for changes in development regulations such as rezones of property.

Courts have upheld the GMA consistency requirement,<sup>38</sup> but have also reaffirmed the primacy of development regulations over inconsistent comprehensive plan designations, despite language of independent comprehensive plan effect in the 1995 Local Project Review Act.<sup>39</sup> Because of the consistency requirement, the GMHBs may review local government development regulations for compliance with the GMA and may determine noncompliance.<sup>40</sup>

## **H. Impact Fees**

The GMA authorizes local governments to impose impact fees on development proposals to assist in the financing of capital facilities that support future development. RCW 82.02.050(2). GMA impact fees may be collected and expended only for defined public facilities, including public streets and roads, public parks, open space, and recreation facilities, school facilities, and fire protection facilities, that are addressed by a capital facilities plan element of a GMA comprehensive plan. RCW 82.02.050(4), .090(7). The capital facilities plan element must identify:

- deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated;
- additional demands placed on existing public facilities by new development; and
- additional public facility improvements required to serve new development.

RCW 82.02.050(4). Thus, GMA impact fees may not be used to rectify existing public facility deficiencies.

In addition, GMA impact fees may not be the sole source for funding such facilities, and the fee imposition on development proposals must:

- be imposed only for facility improvements reasonably related to the new development being assessed;

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<sup>38</sup> *City of Bellevue v. East Bellevue Community Council*, 91 Wn. App. 461, 469-70 (1998).

<sup>39</sup> *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873-74 (1997). The Local Project Review Act requires a local government in making project permit decisions to determine a project's consistency with applicable development regulations or "in the absence of applicable regulations, the comprehensive plan." RCW 36.70B.030(1).

<sup>40</sup> *Skagit Surveyors & Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 567 (1998).

- not exceed a proportionate share of the costs of the facility improvements that are reasonably related to the new development; and
- be used for facility improvements that will reasonably benefit the new development.

RCW 82.02.050(3). Thus, the public facilities supported by the impact fees must be related to the development, and there must be some balance between impact fees and public funds for the facility improvements.

The GMA requires that impact fees be imposed by an ordinance that includes a schedule of fees for each type of development activity, a formula for calculating the impact fees, a credit for the value of any land dedication or facility improvement provided by the developer, an adjustment for documented unusual circumstances, and the establishment of service areas for calculation and imposition of the fees. RCW 82.02.060. Local governments must maintain impact fee funds in designated separate accounts, expend the funds only on facilities conforming to the capital facilities element of the plan, and encumber the funds within six years of collection. RCW 82.02.070, .080.

## **I. Growth Management Hearings Boards**

The GMA established three quasi-judicial administrative appeals boards<sup>41</sup> to adjudicate (a) whether a local government subject to the GMA has complied with the requirements of the GMA and (b) whether the OFM population allocations should be revised.<sup>42</sup> RCW 36.70A.280(1). The state, a county or city, or any person who "participated orally or in writing before the county or city" concerning the GMA issue has standing to appeal the issue to the Boards.<sup>43</sup> RCW 36.70A.280(2).

The Board members are appointed by the governor, must reside within the Board jurisdiction, must be qualified in land use planning, and must include at least one attorney and one former local elected official. RCW 36.70A.260(1). The Boards review the GMA issue in great factual depth and determine whether the county or city has complied with the procedural

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<sup>41</sup> Each GMHB has jurisdiction over GMA issues from separate geographic areas: Eastern Washington, Western Washington (except Central Puget Sound), and Central Puget Sound. RCW 36.70A.250.

<sup>42</sup> The Boards are also authorized to determine whether the Department of Ecology's decision to approve, reject, or modify a local government shoreline master program (or amendment) complies with the Shoreline Management Act. RCW 90.58.190(2)(a).

<sup>43</sup> The Central Puget Sound GMHB interprets this provision more broadly to include any person who attends a public meeting on the GMA issue. *Friends of the Law v. King County*, CPSGMHB No. 94-3-0003, Order on Dispositive Motions (April 22, 1994) at 13.

or substantive requirements of the GMA. The Boards may find either (1) noncompliance, with a remand to the local government for compliance within 180 days while the plan and regulations remain in effect, or (2) invalidity, which suspends the plan and/or regulations and all development proposals until compliance is achieved. RCW 36.70A.300.

If, after a remand to the local government for compliance, the Board again finds noncompliance, the Board must transmit that finding to the governor and may recommend sanctions against the noncompliant jurisdiction. RCW 36.70A.330(3). The governor may, after written findings, order sanctions in the form of withholding from the jurisdiction trust or tax funds collected by the state on account for the jurisdiction. RCW 36.70A.340, .345.

The Boards' function is to enforce the state's legislative mandates as expressed in the GMA. While the GMA scheme as a whole is intended to maximize local government discretion,<sup>44</sup> the Boards (and the courts) were established in the legislative compromise of 1991 to represent the state's interest in compliance with the procedural and substantive requirements of the statute. To the extent of their limited jurisdiction, the Boards have vigorously applied the requirements of the GMA to all components of local government planning and regulation under the GMA.

## **J. Summary of GMA Growth Planning**

The local government planning under the GMA may be characterized as a one-way "hierarchy of substantive and directive policy" under which the planning at each level constrains, and to a substantial extent determines, the planning results at the next level down. The OFM provides 20-year population growth forecasts to all GMA counties. The counties, in collaboration with their cities, designate urban growth areas, suballocate the growth forecasts, and adopt planning policies that may include densities, housing, transportation, economic development, and other policies required for local comprehensive planning. Local comprehensive planning results in a land use map that indicates the densities and location of the suballocated population and job growth within the jurisdiction. The plans must be consistent with the county policies and must provide capital facilities that will support the growth.

Despite the local discretion intent of the GMA, the consistency requirement of the GMA reduces the discretion throughout the hierarchy. Planning for too much or too little growth may be inconsistent with county or OFM growth allocations. Development regulations and capital facilities must be consistent with comprehensive plans, thereby affecting local land use powers, permitting, and budgeting. The result is a remarkably unitary

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<sup>44</sup> This local policy discretion was reinforced by the 1995 GMA amendment that changed the GMHB standard of review from "preponderance of the evidence" to the more deferential "clearly erroneous" action by the local government. RCW 36.70A.3201.

structure considering the deliberate rejection by the legislature of a "top-down" growth management scheme.

### **III. ACCOMMODATING GROWTH UNDER THE GMA**

#### **A. Introduction**

The core of the GMA is the proposition that population growth should mostly be contained within UGAs designated as cities and other developed or developing areas, leaving rural areas, natural resource lands, critical areas, and open spaces relatively undeveloped. Under this proposition, compliance with the GMA requires that GMA counties and cities actually take the steps necessary to accept and accommodate their allocated population growth in the policies, plans, regulations, public facilities, and services that are mandated by the GMA legal framework.

The GMA imposes an affirmative duty on all counties and cities subject to the GMA to accept and accommodate—"give support to," "foster," and "stimulate"—urban growth within their jurisdictions throughout the 20-year planning period.<sup>45</sup> However, despite this strict duty and the one-way "hierarchy of substantive and directive policy" and three-way consistency requirements of the GMA legal framework, counties and cities retain broad discretion in determining how their policies, plans, regulations, and facilities meet their duty under the GMA. Thus, to answer the question of whether GMA jurisdictions have planned to accommodate growth, and thus whether the GMA has to this point succeeded, we must determine the range of this broad discretion and whether the discretionary results have met the duty and the GMA requirements.

#### **B. Countywide Policies and Buildable Lands in UGAs**

##### **1. Duty and Discretion in CPPs**

Within the "hierarchy of substantive and directive policy," the discretion is greatest at the top—that is, for the designation of UGAs and adoption of countywide planning policies. The CPPs must designate UGAs to accommodate future growth as allocated to each county by the OFM. The CPPs and their UGAs must be adopted by the county legislative bodies after a collaborative planning process with the cities located within each county.<sup>46</sup> Once

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<sup>45</sup> *Benaroya v. City of Redmond*, CPSGMHB No. 95-3-0072c, Finding of Compliance (March 13, 1997) at 6.

<sup>46</sup> Larger GMA counties have created entities by interlocal agreement under Chapter 39.34 RCW to provide this collaborative process. These entities may develop and implement important components of the CPPs, such as designating UGAs, allocating population growth targets to cities, and developing housing and density goals for cities, but the legal effect of the CPPs can flow only from

adopted, CPPs are directive to local governments for their comprehensive plans and must be followed to ensure the consistency of plans required under the GMA. *King County v. Central Puget Sound GMHB*, 138 Wn.2d 161, 175-77 (1999). CPPs are policy documents, not comprehensive plans or development regulations; they are a mandatory framework for the procedures and substance of the comprehensive plans within each county.<sup>47</sup>

The CPPs must size the UGAs within the county to accommodate the 20-year population growth projections for the county that are produced by the OFM, and the CPPs must allocate the growth projections to each UGA within the county.<sup>48</sup> RCW 36.70A.110(2). However, counties retain discretion in designating the actual UGA size. They may create larger UGAs to provide some excess land capacity that will encourage more actual growth to locate within the UGAs, subject to overall urban densities.<sup>49</sup> RCW 36.70A.110(2). Counties may also restrict the buildable lands within UGAs and require higher overall densities to meet the OFM targets.<sup>50</sup>

However, despite the discretion in designating buildable lands for their UGAs, counties must analyze the capacity of the UGA land to accommodate the projected growth and must "show their work" in determining that the net buildable area is sufficient, though they are not required to formally adopt land capacity findings.<sup>51</sup> The Boards have closely scrutinized UGA designations for compliance with the GMA, particularly with respect to the GMA goals of encouraging growth in urban areas and of reducing low-density sprawl.<sup>52</sup> The

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adoption of the CPPs by the county councils. *City of Snoqualmie v. King County*, CPSGMHB No. 92-3-0004, Final Decision and Order (March 1, 1993) at 20.

<sup>47</sup> *City of Snoqualmie v. King County*, Order of March 1, 1993, at 8-9.

<sup>48</sup> CPPs may include a conversion of the population growth projections to household growth projections to facilitate the planning to accommodate the urban growth and to further ensure consistency within the county areas. *See Vashon-Maury v. King County*, CPSGMHB No. 95-3-0008, Final Decision and Order (October 23, 1995) at 12.

<sup>49</sup> *See Vashon-Maury v. King County*, Order of October 23, 1995, at 12-13.

<sup>50</sup> *Id.*; *West Seattle Defense Fund v. City of Seattle*, CPSGMHB No. 94-3-0016, Final Decision and Order (April 4, 1995) at 39.

<sup>51</sup> *Vashon-Maury v. King County*, Order of October 23, 1995, at 9-10. The Central Puget Sound GMHB termed this requirement "an accounting exercise." *City of Bremerton v. Kitsap County*, CPSGMHB No. 95-3-0039, Final Decision and Order (October 6, 1995) at 24. Counties must in particular show their buildable lands inventory as adjusted for nonbuildable lands like critical areas and public lands, their average household sizes, their range of housing densities, their provisions for nonresidential land, and any land supply market factor. *Id.*

<sup>52</sup> *City of Bremerton v. Kitsap County*, Order of October 6, 1995, at 16.

Boards have often remanded UGAs back to counties for including too much land, in violation of the GMA. But the Boards have allowed broad county discretion to minimize the size of UGAs or even to limit UGAs to incorporated cities only, based on county assumptions of high-density future development within the UGAs, because this compact pattern of planning and growth is consistent with GMA goals.

## 2. Amendments on Buildable Lands in UGAs

The 1995 amendments to the GMA added two provisions for the designation of UGAs that potentially sharpen the duty of counties to size their UGAs in a realistic manner. Laws of 1995, ch. 400. First, UGAs must permit a "range of urban densities and uses." RCW 36.70A.110(2). This provision is a requirement for county sizing of UGAs for both low- and high-density residential and for nonresidential uses, as well as for cities to include a range within their comprehensive plans. How broad or equal this "range" of densities and uses must be has not yet been interpreted by the Boards.<sup>53</sup> Nonetheless, this provision is a requirement that UGAs be sized and planned to accommodate growth in a range of densities and uses appropriate to the urban development goals.

Second, UGAs may include a reasonable land market supply factor, taking into consideration local circumstances. RCW 36.70A.110(2). While use of this factor is not mandatory, the Central Puget Sound GMHB spoke approvingly of and officially noticed the need to "strike a balance in sizing UGAs so as to contribute neither to sprawl nor to increased housing costs."<sup>54</sup> The Central Puget Sound GMHB established a bright-line "reasonable" market factor for residential land of 25 percent above the minimum UGA size.<sup>55</sup> Above that level, the UGA designation would be scrutinized for (1) the magnitude of the market factor

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<sup>53</sup> The Central Puget Sound GMHB has determined under this provision that "suburban" residential densities in the range of 1- and 2.5-acre lots meets the GMA definition of urban growth, but this density is not permissible as an average density for the entire UGA. *City of Bremerton v. Kitsap County*, Order of October 6, 1995, at 34-35. This holding implies that including at least some such suburban densities could be a requirement for UGAs under RCW 36.70A.110(2).

<sup>54</sup> *City of Bremerton v. Kitsap County*, Order of October 6, 1995, at 30 (quoting DCTED, Issues in Designating Urban Growth Areas—Part I, Providing Adequate Urban Area Land Supply (March 1992)).

<sup>55</sup> These land market supply factors apply separately to residential, commercial, and industrial land supplies. The Western Washington GMHB upheld a 25 percent residential, 25 percent commercial, and 50 percent industrial market factors, the last factor because of high growth in Clark County. *Achen v. Clark County*, WWGMHB No. 95-2-0067, Compliance Order and Order of Invalidity (October 1, 1996) at 4. The Board invalidated a "laudable" county plan for urban reserve areas beyond the UGA, into which the UGA would be regularly expanded under a "no net loss" rule for industrial land, because it was a "double-dipping" in combination with market factors and regular review of the UGA. *Id.* at 6-7.

above 25 percent, (2) evidence that the market factor is not reasonable, and (3) use by the county in other approaches, such as continuous monitoring and frequent UGA adjustments.<sup>56</sup> The availability of the land market supply factor could evolve into a test for the sufficiency of UGA size for 20-year urban growth.

In addition, since UGAs must be sized to accommodate the allocated OFM future population growth, it is possible that any material or substantial reduction in the capacity of designated UGAs to accommodate population and job growth because of expanded critical area regulation (for example, through additional fish and wildlife habitat conservation requirements which substantially reduce capacity in designated UGA areas) will require the counties to respond either by adjusting their UGAs to fully accommodate the future growth or by increasing densities within the existing UGA. On the other hand, a county, in consultation with the cities, may determine that the OFM future growth allocated to the county can be fully accommodated within the existing UGAs without expansion, based on increased density assumptions and planning within the UGAs, rather than on a principle of "no net loss" of UGA buildable area.<sup>57</sup>

### **3. Summary**

Based on their affirmative duty to accommodate growth within their jurisdictions, GMA counties must plan to accommodate their allocated population growth through their designations of UGAs and their CPP policies. However, GMA counties and their collaborating cities have wide discretion in determining the buildable lands, the densities, and the other policies that will accommodate their growth. It must be concluded that (1) counties and cities do have an affirmative obligation to "plan" for their allocated growth and (2) counties and cities are, at this point, providing for adequate buildable land and densities within their UGAs—because the first round of CPPs and comprehensive plans has been completed and the Boards have determined that most UGAs and CPPs now meet the requirements of the GMA. Thus, compliance with the mandate of the GMA that UGAs and CPPs are adequate to accommodate the allocated future growth has probably been accomplished during the first ten years of the GMA.

However, it must be recognized that this "accommodation" of growth has been accomplished by "planning" for growth, which may not necessarily actually achieve the accommodation of growth through the private market decisions by which development

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<sup>56</sup> *City of Bremerton v. Kitsap County*, Order of October 6, 1995, at 30-31.

<sup>57</sup> The King County CPP currently states: "The capacity in the Urban Growth Area for growth, based on adopted plans and regulations, meets the 20-year minimum requirement of the Growth Management Act according to the current population forecasts. In the future, all urban growth is to be accommodated within permanent Urban Areas by increasing densities." King County Countywide Planning Policies (August 2000) at 17.

occurs. Indeed, the challenges addressed to date by the Boards have primarily concerned UGAs that initially were overly expansive and densities that were too low, in violation of the GMA. New statutory provisions (1) requiring a range of urban densities and uses in UGAs and (2) permitting a reasonable land market supply factor may lead to tests of UGAs for providing adequate buildable lands, both residential and nonresidential. If expanded critical area protections inside UGAs reduce capacity, the GMA may require compensating increases in buildable land or densities within the affected UGAs. Finally, and probably most important, the buildable lands program now under way may present evidence that the existing UGAs have not actually been providing adequate buildable land to accommodate the allocated growth, in spite of acceptable planning.<sup>58</sup>

## **C. Comprehensive Plans and Development Regulations**

### **1. Duty and Discretion in Planning and Zoning**

The affirmative duty of counties and cities to accommodate, give support to, foster, and stimulate urban growth within their UGAs must be manifested in the comprehensive plans and development regulations, including land use and zoning maps.<sup>59</sup> As with the CPPs and UGA designations, counties and cities have broad discretion under the GMA in how they accommodate their allocated future growth in their comprehensive plans, both in the subjective criteria developed and in the substantive choices actually made.<sup>60</sup> For example, local governments may consider the existing densities, locations, and community culture and vision in their comprehensive plans.<sup>61</sup>

### **2. Constraints on Local Planning Under the GMA**

Local discretion to determine how the comprehensive plans will accommodate growth is limited under the GMA in at least six important ways.<sup>62</sup>

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<sup>58</sup> The buildable lands program may also provide some evidence on the Central Puget Sound GMHB's concern that the UGAs contribute neither to sprawl nor to increased housing costs. *City of Bremerton v. Kitsap County*, Order of October 6, 1995, at 30.

<sup>59</sup> *Hensley v. City of Woodinville*, CPSGMHB No. 96-3-0031, Final Decision and Order (February 25, 1997) at 7.

<sup>60</sup> *Aagaard v. City of Bothell*, CPSGMHB No. 94-3-0011, Final Decision and Order (February 21, 1995) at 6.

<sup>61</sup> *City of Tacoma v. Pierce County*, CPSGMHB No. 94-3-0001, Final Decision and Order (July 5, 1994) at 8.

<sup>62</sup> *Aagaard v. City of Bothell*, Order of February 21, 1995, at 6-7.

**a. Countywide Planning Policy.** First, and perhaps most important, the CPPs designate the UGAs and the population growth to be accommodated in the UGAs. The CPPs also contain policies adopted to direct the comprehensive planning process to ensure consistency among all plans within a county. Among these policies may be residential density standards, housing goals, commercial and industrial land allocations, and priority locations for development within UGAs. The CPPs are "directive" and must be followed by the local governments in their comprehensive plans.<sup>63</sup> Therefore, the CPPs, once adopted by the county determine much of the local comprehensive plan and significantly constrain the discretion of local planning choices to accommodate growth.

**b. GMA Planning Goals.** Comprehensive plans must comply with the substantive effect of the GMA planning goals.<sup>64</sup> Planning Goals 1 and 2, which require growth to be in urban areas and sprawl to be reduced, respectively, are substantive requirements that comprehensive plans accommodate the allocated future growth with an average residential density of at least four dwelling units per acre.<sup>65</sup> Any average density below this figure must be justified on the basis of large-scale, high-value, complex-function critical areas which prevent the local government from attaining this bright-line density goal.<sup>66</sup>

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<sup>63</sup> Absent a CPP to the contrary, cities are permitted to plan for a larger growth target than they were allocated by their county in the CPP, in order to encourage growth in cities and to provide flexibility in the event the growth projections turn out low. *West Seattle Defense Fund v. City of Seattle*, CPSGMHB No. 94-3-0016, Final Decision and Order (April 4, 1995) at 39.

<sup>64</sup> *Rabie v. City of Burien*, CPSGMHB No. 98-3-0005c, Final Decision and Order (October 19, 1998) at 4. "The substantive element of RCW 36.70A.020 [planning goals] is the heart of the GMA. All development regulations and comprehensive plans must comply with the Act's planning goals." *Association of Rural Residents v. Kitsap County*, CPSGMHB No. 93-3-0010, Final Decision and Order (June 3, 1994) at 23.

<sup>65</sup> *City of Bremerton v. Kitsap County*, CPSGMHB No. 95-3-0039, Final Decision and Order (October 6, 1995) at 35.

<sup>66</sup> *Lawrence Michael Investments LLC ("LMI") v. Town of Woodway*, CPSGMHB No. 98-3-0012, Final Decision and Order (January 8, 1999) at 19. In *LMI*, the Central Puget Sound GMHB applied the four dwelling units per acre minimum to a single undeveloped parcel within a mostly developed low-density city based on a low-value critical area designation. The Board required at least a four dwelling units per acre average despite a much lower existing residential density and a clear desire within the community to maintain this low density. The Board also ruled that cities have no duty under the GMA to plan for the redevelopment of already developed land within their jurisdictions, only for undeveloped land. *LMI v. Town of Woodway*, Order of January 8, 1999, at 29. However, cities may assume redevelopment to accommodate some or all of their allocated future growth by designating developed land for higher densities than the land currently carries.

GMA Planning Goal 4 requires that local governments planning under the GMA "encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of the existing housing stock." RCW 36.70A.020(4). Comprehensive plans must contain a housing element that "identifies sufficient land for housing . . . and makes adequate provisions for existing and projected needs of all economic segments of the community." RCW 36.70A.060(2). CPPs must contain "policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution." RCW 36.70A.210(3)(e).

Do these GMA requirements create an affirmative duty on the part of local governments to plan for future residential growth in a manner that promotes broadly affordable housing? Some counties' CPPs have included requirements for affordable housing goals, incentives, and even techniques for cities to include in their comprehensive plans.<sup>67</sup> Other counties have justified oversized UGAs or higher densities in rural areas on the basis of the mandate to provide affordable housing. However, the Boards have held that these CPP approaches to affordable housing are not required and are in fact mostly prohibited by the GMA. CPPs may not require local governments to include particular mechanisms to "ensure" that adequate affordable housing is available in UGAs, because cities have discretion in how they plan and use their powers to achieve goals.<sup>68</sup> The GMA affordable housing goals and housing element requirements do not establish a duty for specific comprehensive plan land designation outcomes.<sup>69</sup> Using additional land area to achieve more affordable housing is a violation of the GMA.<sup>70</sup> *Diehl v. Mason County*, 94 Wn. App. 645, 658-59 (1999). As a result, it must be concluded that at this point there is no affirmative obligation under the GMA affordable housing requirements for CPPs to require or for local governments to include

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<sup>67</sup> See, e.g., King County Countywide Planning Policies (August 2000), Policies AH-1, AH-2. The King County CPP requires local plans to include affordable housing numerical goals by household income level and to demonstrate in the plans specific policies, incentives, and regulations by which the goals will be achieved.

<sup>68</sup> *City of Edmonds v. Snohomish County*, CPSGMHB No. 93-3-0005, Final Decision and Order (October 4, 1993) at 31-32.

<sup>69</sup> *Litowitz v. City of Federal Way*, CPSGMHB No. 96-3-0005, Final Decision and Order (July 22, 1996) at 14.

<sup>70</sup> The Western Washington GMHB held that oversizing land for growth was a GMA violation on grounds of sprawl and of the requirement to provide for housing needs because sprawling development would actually increase housing costs. *Dawes v. Mason County*, WWGMHB No. 96-2-0023, Final Decision and Order (December 5, 1996) at 7-8.

comprehensive plan and regulatory provisions for accommodating affordable residential growth.<sup>71</sup>

GMA Planning Goal 5, economic development, meaning jobs located within a jurisdiction, is mandatory for consideration in comprehensive plans and development regulations. RCW 36.70A.020(5). Economic development policies are required for CPPs, and many CPPs include future jobs allocations and commercial and industrial land provisions for UGAs, to be accommodated primarily within existing centers.<sup>72</sup> RCW 36.70A.210(3)(g). Economic development elements are not required in comprehensive plans, even though they are often included. RCW 36.70A.070. The Boards have not yet construed these requirements of the GMA to establish a duty on the part of local governments beyond the requirements of their CPPs to provide for commercial and industrial lands for future growth in any proportionality to residential land, despite the requirement for designation of land, "where appropriate," for such uses in the land use element. RCW 36.70A.070(1).

In summary, the GMA planning goals do require local governments to plan for their allocation of future growth with at least a minimum overall residential density of four dwelling units per acre, unless the existence of important critical areas prevents attainment of this density. The GMA provision that UGAs must permit a "range of urban densities and uses" may require that local governments include a range of residential densities consistent with the overall UGA density, as well as a range of different land uses that would include nonresidential uses. The county CPPs may require comprehensive plans to designate land capacity for future jobs and affordable housing. However, the GMA does not dictate to local governments the future outcomes on specific lands within their jurisdictions, which remain within their discretion in their comprehensive planning.

**c. Capital Facilities.** A capital facilities element must be included in local comprehensive plans. The land use map designations must be consistent with the capital facilities element. Capital facilities must be funded and constructed concurrently with development requirements. Thus, these GMA mandates restrict the discretion of local governments in their comprehensive plans. All future growth that is accommodated in the comprehensive plans must be adequately served by capital facilities. If capital facilities funding is insufficient for the capital facilities plan, then the comprehensive plan land use

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<sup>71</sup> In the context of development regulations for group homes, the Central Puget Sound GMHB declared a broad duty for "a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and population." *Children's Alliance v. City of Bellevue*, CPSGMHB No. 95-3-0011, Final Decision and Order (July 25, 1995) at 4. However, despite the broad policy statement, the holding was probably limited to residential facilities that qualify as essential public facilities.

<sup>72</sup> See, e.g., King County Countywide Planning Policies (August 2000), Policies LU-67, LU-68; Countywide Planning Policies for Snohomish County (April 2000), Policies UG-1, UG-2.

element must be reassessed accordingly.<sup>73</sup> RCW 36.70A.070(3)(e). This requirement is a strong incentive for comprehensive plans to accommodate the allocated growth in densities and locations which have available capacity or in which capacity may be most efficiently expanded—consistent with the goals of the GMA.

**d. Critical Areas and Natural Resource Lands.** The GMA requires that critical areas and natural resource lands be designated and protected before the preparation of the local comprehensive plans. RCW 36.70A.170(1), .060(1). Therefore, these restrictions were already in place to limit local government discretion in accommodating growth on those lands. Development restrictions on important critical areas within a jurisdiction may justify reducing the overall residential density within the jurisdiction's UGA.<sup>74</sup> Local comprehensive plans may not subsequently redesignate natural resource lands for urban development, even with minimal development of impervious surfaces. *King County v. Central Puget Sound GMHB*, 142 Wn.2d 543 (2000).

**e. Essential Public Facilities.** The GMA precludes local governments from using their comprehensive plans or development regulations to exclude the siting of essential public facilities within their jurisdictions. The courts have held that this restriction includes a requirement that the local comprehensive plan must include and support such public facilities when adopted by county or multi-county policies. *City of Des Moines v. Puget Sound Regional Council*, 97 Wn. App. 920, 932 (1999).

**f. Market Forces.** The GMA does not directly address market forces in its requirements for comprehensive plans. However, the Central Puget Sound GMHB has explicitly recognized the limits on public planning in a system in which most development decisions are made in the private sector.<sup>75</sup> The Board recognized market decisions as a constraint on the discretion of local governments in their comprehensive planning. The clear implication is that, in order to accommodate growth under the GMA, comprehensive plans must account for private development decisions by including land use designations and densities that are consistent with market demand and supply factors for each jurisdiction.

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<sup>73</sup> *West Seattle Defense Fund v. City of Seattle*, CPSGMHB No. 96-3-0033, Final Decision and Order (March 24, 1997) at 12. However, the Central Puget Sound GMHB more recently ruled that this statutory provision does not necessarily require revision of the land use element if capital facilities funding falls short of the plan, because a jurisdiction may also reduce demands or standards of service. *McVittie v. Snohomish County*, CPSGMHB No. 99-3-0016c, Final Decision and Order (February 9, 2000) at 19.

<sup>74</sup> *LMI v. Town of Woodway*, CPSGMHB No. 98-3-0012, Final Decision and Order (January 8, 1999) at 19.

<sup>75</sup> *Aagaard v. City of Bothell*, CPSGMHB No. 94-3-0011, Final Decision and Order (February 21, 1995) at 6.

Therefore, because GMA plans for future development cannot make the growth happen as planned, the local governments in their comprehensive planning appear to have a duty to at least include and document consideration of market factors in their accommodation of future growth.

### **3. Summary**

While counties and cities are granted broad discretion in accommodating their allocated growth within their comprehensive plans, this discretion is constrained in a number of important ways. Counties and cities must plan and zone for the growth allocated to their UGAs in the CPPs, often with explicit density policies. Comprehensive plans must comply with the substantive effect of the GMA planning goals, but the Boards have emphasized only the goal requirements for growth to be in urban areas and for sprawl to be reduced. An overall urban density of four dwelling units per acre in a UGA is a bright-line standard, modifiable only for critical area constraints. The Boards have not as yet strictly applied other GMA goals, such as affordable housing and economic development, or their recognition of private market forces, to planning densities and locations.

According to the Board decisions, most counties and cities are planning and zoning for densities and locations within their UGAs that comply with the planning requirements of the GMA. However, the Boards have not yet "enforced" affordable housing and economic development goals, the requirement for a "range of urban densities and uses," and the constraint of private market forces to their reviews of local plans and regulations. In the future, compliance with the GMA on UGA densities and locations may require counties and cities to meet additional requirements in order to "accommodate growth" under the GMA.

## **D. Supporting Growth With Adequate Public Facilities**

### **1. Duty and Discretion in Providing Facilities**

The affirmative duty of GMA counties and cities to accommodate their growth allocations must be supported by the provision of adequate public facilities. The internal consistency mandate of the GMA requires that counties and cities identify the capital facilities necessary to support the future growth in their comprehensive plans and in ongoing capital facilities plans.<sup>76</sup>

In addition, adequate capital facilities must be in place concurrent with development without degrading existing levels of service below established standards. The Western Washington GMHB has held that GMA Planning Goal 12, on public facilities and concurrency, requires local governments to determine what public facilities and services are

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<sup>76</sup> See *Hensley v. City of Woodinville*, CPSGMHB No. 96-3-0031, Final Decision and Order (February 25, 1997) at 9.

necessary to support development, establish a concurrency program for each so determined, and reasonably ensure that those public facilities and services are adequate (within level of service standards) to serve new growth.<sup>77</sup> The Central Puget Sound GMHB has agreed that concurrency is required for all public facilities under GMA Goal 12, but expressly added that a local concurrency enforcement ordinance is required only for transportation facilities.<sup>78</sup>

## **2. Capital Facilities as a Constraint on Local Discretion**

The GMA establishes a priority for the location of urban growth: first in areas of UGAs adequately served by existing capital facilities, then in areas that will in the future be adequately served by funded capital facilities, and finally in the remaining areas of the UGAs. RCW 36.70A.110(3). But the GMA does not require—or prohibit—that future growth occur in any of these areas of the UGAs.<sup>79</sup> However, the GMA does mandate that locations within UGAs where counties and cities plan for future growth must be served by adequate public facilities and that the comprehensive plans and capital facilities plans must demonstrate this service.<sup>80</sup> If the locations planned for growth cannot be adequately served by funded facilities, the county or city must reassess its comprehensive plan land use element.

The capital facilities requirement for local government planning for future growth is a reality constraint on the discretion of local governments in their comprehensive planning. Cities and counties may rely on high-density residential and commercial development in underdeveloped centers, rather than lower density development in undeveloped areas, to accommodate their allocations of future growth.<sup>81</sup> However, the cities and counties must

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<sup>77</sup> *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB No. 96-2-0002, Final Decision and Order (July 16, 1996) at 6-7. Under this ruling, concurrency applies to more than transportation, but concurrency is not an end in itself—it is the "foundation for local governments to achieve the coordinated, consistent, sustainable growth called for by the Act." *Id.* at 7.

<sup>78</sup> *McVittie v. Snohomish County*, CPSGMHB No. 99-3-0016c, Final Decision and Order (February 9, 2000) at 20-21.

<sup>79</sup> *Association of Rural Residents v. Kitsap County*, CPSGMHB No. 93-3-0010, Final Decision and Order (June 3, 1994) at 37.

<sup>80</sup> *West Seattle Defense Fund v. City of Seattle*, CPSGMHB No. 94-3-0016, Final Decision and Order (April 4, 1995) at 32-34. Capital facilities may be funded either publicly or privately. Private funding may be mandatory through GMA and other impact fees, subject to statutory restrictions on those fees. The GMA does not restrict development proposals in locations not planned to be served by capital facilities if adequate facilities are privately provided and meet the concurrency standards.

<sup>81</sup> The Central Puget Sound GMHB has demonstrated that it will closely examine the assignment by cities of large proportions of their allocated future growth into high-density centers

analyze and demonstrate that the existing and planned future capital facilities will adequately support whatever they designate in their land use plans. The general duty under the GMA to accommodate growth within UGAs must be accompanied by a realistic commitment to providing capital facilities and maintaining concurrency.<sup>82</sup> This commitment must be demonstrated both in the comprehensive plan and in the continually updated capital facilities plan.

### 3. Summary

The capital facilities and concurrency requirements of the GMA have clearly been upheld as duties of counties and cities, but the issue of whether and how concurrency extends beyond transportation has not been fully resolved. Through the consistency requirements of the GMA—between the capital facilities element and growth to be accommodated in the comprehensive plan, between comprehensive plan designations and development regulations, and between the capital facilities element and the ongoing capital facilities plan—there is created a measurable and enforceable duty on the part of GMA jurisdictions to provide public facilities that support planned growth. Failure to maintain consistency between these components violates the GMA. In addition, failure to provide public facilities to support growth requires the county or city to reassess its future growth and land use, possibly with a view to planning for lower growth, which may also violate the GMA.

The question of whether GMA jurisdictions are actually supporting their planned-for growth with adequate public facilities remains unanswered. There have been relatively few challenges to county and city capital facility elements and plans for their adequacy in accommodating growth. The Boards have clearly stated that compliance with the GMA requires the planning and actual provision of adequate public facilities to accommodate growth at the time the growth occurs. However, the ongoing nature of local capital facility plans and their funding leaves it as yet unclear whether counties and cities are actually in

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without analysis and funding for capital facilities that will adequately support these centers. The Board required a special capital facilities analysis for Seattle where 75 percent of future growth was assigned to centers comprising only 6 percent of the city's land area, and for Bainbridge Island where 50 percent of future growth was assigned to the Winslow center, but not for Federal Way where only 24 percent of future growth was assigned to its city center. *West Seattle Defense Fund v. City of Seattle*, Order of April 4, 1995, at 31; *Robison v. City of Bainbridge Island*, CPSGMHB No. 94-3-0025, Final Decision and Order (May 3, 1995) at 20-21; *Litowitz v. City of Federal Way*, CPSGMHB No. 96-3-0005, Final Decision and Order (July 22, 1996) at 16-17.

<sup>82</sup> A "realistic commitment" means that financing for capital facilities may not be relied upon if it is "speculative." However, reliance on future approval by voters is not necessarily speculative, at least when the city has included a backup financing strategy and has provided for a level of service standard reduction if funding falls short of requirements. *Cotton Corp. v. Jefferson County*, WWGMHB No. 98-2-0017, Amended Final Decision and Order (April 5, 1999).

compliance with the GMA through their provision of capital facilities to accommodate the growth they are otherwise planning for.

#### **E. Actual Achievement of Growth Targets**

The GMA is a planning statute, imposing requirements on the local governments that are subject to the GMA to plan to accommodate future growth in their jurisdictions. However, amendments to the GMA have added requirements that (1) the OFM prepare new county population allocations at least every five years, (2) counties review and revise their UGA designations and densities at least every ten years, and (3) counties and cities review and revise their comprehensive plans and development regulations at least every five years to ensure compliance with the GMA. RCW 43.62.035; RCW 36.70A.130(1), (3). These reviews and revisions can only mean a requirement within the GMA to account for actual development that had occurred since the previous allocations and plans. Thus, compliance with the GMA will include ensuring that growth is not only planned for but also actually accommodated.

In addition, some large GMA counties must adopt within their CPPs a review and evaluation program to determine whether counties and cities are actually achieving urban densities under their plans and to identify measures (other than already required adjustments to UGAs) that can be taken to comply with the GMA.<sup>83</sup> RCW 36.70A.215(1). The product of this program will be quantitative evaluations of the actual accommodation of growth under the CPPs and comprehensive plans and proposed amendments to the CPPs and plans to remedy any inconsistencies identified in the evaluations. RCW 36.70A.215(2), (4).

This evaluation of actual experience under the GMA must include at least the following quantitative determinations:

- whether there is sufficient suitable land to accommodate the countywide OFM population allocation, the suballocations to UGAs, and the densities designated within the UGAs;
- the actual density of housing that has been constructed and the actual amount of commercial and industrial land developed; and
- the amount of land, by type and density range, needed for commercial, industrial, and residential uses for the remaining portion of the 20-year planning period.

RCW 36.70A.215(3). The results of the evaluation must be utilized to determine any inconsistencies between what was required under the GMA and planned under the CPPs and

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<sup>83</sup> This requirement applies to counties, and the cities within them, with more than 150,000 population in 1995 and located west of the Cascades, thus including King, Pierce, Snohomish, Kitsap, Thurston, and Clark Counties. Any other county subject to the GMA may undertake this process. RCW 36.70A.215(7).

comprehensive plans and to adopt and implement measures that are reasonably likely to increase consistency in the subsequent five-year period. RCW 36.70A.215(4). Under the statute, the first evaluation must be completed by September 1, 2002.<sup>84</sup>

Under the existing one-way hierarchy of the GMA planning process, it is arguable that a new OFM county population allocation, which is required at least every five years, requires a review of county UGAs and CPPs, which is now required at least every ten years, to evaluate whether the UGAs and CPPs can accommodate the new 20-year allocations. A revision of UGAs and revised population and job allocations to UGAs would then require an evaluation of local comprehensive plans for their capacity to accommodate that growth. Thus, the one-way directive hierarchy of GMA planning probably already requires a sequenced five-year review and revision for all GMA jurisdictions to ensure continuing compliance with the GMA.

The GMA amendments appear to add a requirement that GMA counties and cities actually accommodate growth, beyond simply "planning" for the population. The evaluations create a feedback loop for the existing one-way hierarchy of the GMA planning process. The effects of the critical area designations, the CPPs and UGAs, the comprehensive plans, and the development regulations—all required under the GMA to be consistent horizontally and vertically—on actual development must now be identified and included as adjustments in the CPPs, comprehensive plans, and regulations. The data and the analysis utilized by the local governments in this evaluation will be available for inspection. Inconsistencies between the results of the evaluation and the requirements of the GMA will presumably be enforceable against the counties and cities for compliance with the GMA. Until then, there is not enough information available to form a conclusion as to whether GMA jurisdictions are actually accommodating their allocated population growth as planned.

The reviews and evaluations scheduled to begin in 2002 will also for the first time focus the GMA on accommodating nonresidential growth, i.e., commercial and industrial development. The GMA does not expressly require counties and cities to plan for job growth, although many counties have included job allocations and nonresidential land in their UGA designations. But the buildable lands review and evaluation do expressly include commercial and industrial land needs and development as a requirement under the GMA. As the results of these evaluations become available, compliance with the GMA will almost certainly require the accommodation of job growth as well as population growth, though not necessarily according to a "jobs-housing balance," however that may be defined.

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<sup>84</sup> Counties and cities have requested the legislature to extend this deadline because of the burden caused by this "unfunded mandate," but to date the legislature has not responded. Based on the language of the statute for these evaluations, there is probably a requirement for the counties and cities to "show their work," as the Boards have required for the designation of land for UGAs.

## IV. CONCLUSION

### A. The First Decade

In its first ten years, the Washington Growth Management Act has certainly transformed the planning and regulation of land development and public facility provision by local governments. While there are multiple goals for the GMA, the core of the GMA is the proposition that population growth should mostly be contained within designated urban growth areas, leaving the remaining areas generally undeveloped and rural, or in agriculture, forest, parks, and open spaces. The key to this proposition is that GMA jurisdictions actually take the steps required to plan for and to accommodate population and job growth at the necessary densities and to facilitate the needs of that growth with appropriate plans, zoning, regulation, water and sewer systems, transportation and traffic improvements, and other urban services.

The local government planning mandated under the GMA may be characterized as a "hierarchy of substantive and directive policy" that flows in one direction, starting with the OFM population allocations to counties, through counties with their designations of urban growth areas, population suballocations, and growth policies, and finally to cities with their comprehensive plans, development regulations, and capital facilities programming. It is clear that through this process the GMA counties and cities have an affirmative duty to accommodate the population growth allocated to them with adequate buildable lands, densities, regulations, and capital facilities. To the extent feasible within this hierarchy of policy, the GMA counties and cities have considerable discretion in determining how they accommodate their allocated growth.

After the first round of CPPs and comprehensive plans has been completed and implemented with development regulations and capital facilities plans, most GMA counties and cities appear to have satisfied the GMA requirements that they plan to accommodate their allocated growth, mainly because the Boards have determined that most UGAs, CPPs, and comprehensive plans now meet the requirements of the GMA.

However, the GMA also includes the duty to provide the public facilities that will support the growth to be accommodated in the UGAs and comprehensive plans. Failure to maintain consistency between these components violates the GMA and requires a county or city to reassess its future growth and land use with a view to planning for lower growth, which may also violate the GMA. At this point, despite the Boards' clear mandate that the GMA requires the planning and provision of adequate public facilities, it is as yet unclear whether GMA counties and cities are actually complying with the GMA on public facilities, primarily because of the lag between capital facility planning, funding, and implementation.

Finally, beyond the duty imposed on GMA local governments to plan to accommodate future growth, the GMA also appears to require local governments to actually accommodate their allocated future growth. The review and evaluation now mandated by the GMA and currently scheduled to begin in 2002 will for the first time require GMA counties and cities

(especially those within the six buildable lands program counties) to determine whether they have actually provided the land, densities, and capital facilities to accommodate growth and whether they are actually accommodating the planned-for growth, both residential and nonresidential. The results of this review and evaluation will provide the information for conclusions on the success in accommodating growth under the GMA framework during the first decade and will probably cause significant adjustments in the plans and policies for the second decade and beyond.

## **B. New Issues for the Second Decade**

In the second decade of the GMA, new issues are likely to emerge from the implementation of competing GMA goals and requirements. While the goals of the GMA have been determined to be substantive and enforceable, some may inevitably become incompatible with each other. For example, goals of compact urban development and sprawl reduction may clash with goals of affordable housing and economic development. Compact urban development may conflict with the provision of open space and recreation and the protection of the environment in urban areas. Protection of rural areas and natural resource lands may be inconsistent with the protection of private property rights.

More important, some core requirements of the GMA may produce conflicts. The overarching priority of accommodating growth within designated UGAs may be increasingly difficult to support with adequate public facilities, especially due to voter resistance to financing. Moreover, accommodating growth in UGAs, particularly employment growth within urban centers, may be impossible to accomplish without violating the established levels of service for public facilities, especially for transportation facilities, which must be maintained under the GMA concurrency requirement. Increasing growth and densities in urban centers, particularly those outside of central Seattle, may cause traffic congestion to exceed the concurrency limits imposed under the GMA, even with increasing transit usage. While the courts endorsed the City of Bellevue's level of service standard fix, there are limits to such adjustments in level of service standard methodology for accommodating additional growth.

In addition, there is the issue of whether urban growth areas can continue to accommodate growth and become much denser and more compact if environmental mandates require that substantial undeveloped buffers must be maintained along all streams, lakes, and wetlands. There is increasing priority placed on preserving habitat and water quality by restraining urban growth, densities, and impacts through the implementation of endangered species, shoreline development, and stormwater management rules. Even proposed transportation facility improvements may be evaluated for their impacts of inducing growth that may result in detrimental effects on habitat and water quality. Reducing the growth capacities within UGAs is likely to conflict at least with the GMA planning of the first decade and possibly with the requirements of the GMA to accommodate growth.

These new issues and potential conflicts will further test and define the requirements for counties and cities as the GMA and its implementation continue to mature during the second decade.