Growth Management Act:

A rift between intent and reality

The Onalaska High School: split in two by a Growth Management Hearings Board suggested growth boundary

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EXECUTIVE SUMMARY

Developing land use policies to handle growth is a difficult task, particularly when geography and economics make growth unwelcome in some areas while welcomed eagerly in others. In an attempt to control the ramifications of a rapidly exploding population, state lawmakers drafted what is known as the Growth Management Act (GMA). It was designed with thirteen planning goals, which served as a framework for *local governments* to enact comprehensive land use plans and development regulations. The Act was supposed to promote affordable housing, efficient transportation, economic opportunity throughout the state, timely permit processing, and citizen involvement in land use planning, among other goals.

Now, ten years from the initial legislation, what has been achieved through the Growth Management Act?

Businesses are suffering—GMA-authorized impact fees and land use restrictions are driving up the cost of new development. Meanwhile, the waiting process for some development permits stretches from months into years.[1] Despite GMA's goal of improved transportation, traffic congestion is among the significant business problems faced by companies such as Boeing and Microsoft.[2]

Smaller businesses are also staggering under the weight of GMA. Over the five-year period from 1993 to 1998, Mason County experienced a 10 percent drop in the number of private business located within the county. In a number of cases, GMA's land use restrictions were to blame. Officials in Mason County have already significantly limited the types of businesses that can locate in rural areas, but the Western Washington Growth Management Hearings Board insists that more business types must be excluded. Among the objectionable business types are animal hospitals, pet shops, small engine repair, and plumbing shops. In light of the fact that more than 60 percent of Mason County's businesses are located in rural areas, the Hearings Board requirement could further cripple the county's economy. (See pp. 27–29).

Workers are unable to find jobs—Recent Hearings Board restrictions on Lewis County economic development may impact 1,400 workers, nearly three times the level of countywide job growth since 1995. The county's efforts to revitalize its struggling economy and lower its high unemployment rate were thwarted by Hearings Board restrictions on where businesses should be allowed to locate. (See p. 26).

Counties are running out of money and out of options—Unelected Hearings Boards have invalidated whole sections of development regulations and locally crafted comprehensive plans. Faced with the risk of doing business in an area without valid regulations in place, new development and businesses simply choose to go elsewhere. (See p. 6).

Meanwhile, counties have already spent millions to comply with GMA. Jefferson County is at $3 million, and counting, while the county faces budget cuts in areas such as juvenile and family court.[3]

Citizens are losing their rights—GMA is not merely a threat to Washington's economy, it is a threat to individual rights and liberties. For example, under one Hearings Board opinion, it is apparently impermissible to place a second home on the family farm, even for immediate family members.[4]

Since its enactment more than a decade ago, the Growth Management Act (GMA) has changed the course of land use planning in Washington state. More importantly, it has changed the ability of Washington citizens to afford their homes, find jobs or expand their businesses. In short, GMA has stifled local economies, tied the hands of elected city and county officials, impeded citizen involvement and trampled private property rights. Rather than providing a bottom-up planning process as the law was intended, GMA policies are handed down by governor-appointed Growth Management Hearings Boards—a process that is neither representative of local citizens nor effective in implementing the Act's goals.

As the Act originally was envisioned, *local* communities were to be the *center* of growth management decision-making.[5] The GMA's planning goals were to guide local development, not tyrannize it.[6] This reflected the reality that the best people to assess local needs and conditions, and to draft growth management plans suited to individual counties and cities, are local citizens and their elected officials.[7]

This study examines the intent behind the Growth Management Act and its subsequent amendments, contrasting its intended purpose with its real-life implementation. By way of illustration, this study offers a snapshot of how GMA has impacted three rural counties: Lewis,

Mason, and Jefferson. Each of these counties is suffering economically, and GMA has resulted in far more problems than solutions.

In conclusion, this study offers specific recommendations for changes to our state's growth management policies. These recommendations include:

- elimination of the Growth Management Hearings Boards;
- making economic development a mandatory element of local comprehensive plans;
- showing greater deference to local land use decisions; and
- providing market-based incentives to promote growth goals.

Perhaps the original intentions behind GMA were noble. And perhaps lawmakers sincerely think that unelected, quasi-judicial Hearings Boards can do a better job of planning for growth than the citizens and elected officials who live in, work for, and love their communities. But let's be frank: the GMA should not be part of a land use chess game; it impacts people's lives in significant ways. People's homes, businesses and land are not simply political pawns to be manipulated by special interests or state Hearings Boards. Citizens who are affected by local land use decisions ought to be directing the game.

All this is not to say that local plans are always right, or that the Growth Management Hearings Boards are always wrong. The question is: Who should call the shots when it comes to how local land is used—a county's citizens and elected officials or a governor-appointed, quasi-judicial board? The way Washington answers this question will profoundly impact businesses, jobs, communities and families for years to come.

Endnotes

1. Washington Research Council, "Growth in Perspective: Impact of Government Regulations and Fees on Housing Costs," *PB 01-18* (24 May 2001).
2. Allison Linn, "Boeing chairman critical of Seattle business climate," *Seattle Times* (30 April 2001); Kerry Killinger and Bob Helsell, "Transportation woes call for bold action," *Seattle Times* (18 February 1998).
3. Charles Saddler, Jefferson County Administrator, memorandum to elected officials and department heads (19 October 2001).
4. *Butler v. Lewis County,* WWGMHB Case No. 99-2-0027c, Final Decision and Order, 37 (30 June 2000).
5. WAC § 365-195-010(3); Growth Strategies Commission, *A Growth Strategy for Washington State,* (September 1990), 4.
6. WAC § 365-195-101(2).
7. RCW § 36.70A.3201; WAC § 365-195-060.

GMA: THE PLAYERS AND THE PROCESS

During the 1980s, Washington experienced significant growing pains. While some areas of the state faced too little growth, the Central Puget Sound Region experienced rapid growth—and everything that comes with it.[1] Traffic became congested and the landscape was changed as a higher percentage of open space became new development.

Changes were not limited to the geographical landscape; political changes were also in the wind. Land use had historically been a matter of local concern, but things were about to be altered dramatically.[2] Although Washington's Growth Management Act (GMA) is based on a local, purportedly bottom-up, planning process, it has been used to place significant restrictions on the freedom of local citizens and the discretion of their elected officials.

As it was originally enacted, the Growth Management Act required counties experiencing a high percentage of growth (as well as the cities within them) to adopt comprehensive land use plans guided by a list of statewide growth-management goals:

- **Urban growth**—Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- **Reduce sprawl**—Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- **Transportation**—Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- **Housing—**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 existing housing stock.
- **Economic development**—Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
- **Property rights**—Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- **Permits**—Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- **Natural resource industries**—Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
- **Open space and recreation**—Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.

The Scope of GMA

GMA comprehensive plan and development regulation requirements originally applied 1) to any county with a population of over 50,000 that had experienced a population increase of over 10% (now 17%) in the previous ten years and 2) to any county that had experienced a population increase of over 20% in the previous ten years. For a limited period of time, counties with a population of less than 50,000 had an opportunity to opt out of the requirements of the Act. The GMA also provided that a county not otherwise subject to the Act's full planning requirements could opt in to the GMA, but such a decision would be permanent. 1990 Wash. Laws 1st Ex. Sess. ch. 17 § 4; RCW §36.70A.040.

It is interesting to note that although the state has raised the percentage of growth that subjects counties to full planning requirements, the higher percentage applies only prospectively. Any county experiencing a higher growth rate prior to that time would remain subject to full planning requirements. RCW § 36.70A.040(1).

- **Environment**—Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- **Citizen participation and coordination**—Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
- **Public facilities and service**—Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- **Historic preservation**—Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.[3]

Within the framework of these goals, local plans are to address, at a minimum, the following elements:

- **Land use**—Designating the proposed general distribution, location and extent of land use;
- **Housing—**Ensuring the vitality and character of established residential neighborhoods and making provision for existing and projected housing needs;
- **Capital facilities—**Inventorying and planning for facilities siting;
- **Utilities—**Consisting of the general and proposed location and capacity of all utilities;
- **Rural—**Governing lands not designated for urban growth or natural resources; and
- **Transportation—**Implementing the land use element and addressing land use assumptions, estimated traffic impacts, facilities and services needs, finances, and demand management strategies.[4]

It is worth noting that GMA does not require local governments to include an economic development element in their comprehensive plans. While counties and cities may include this element at their option, GMA's lack of emphasis on economic development as an element of local plans has enabled the Hearings Boards to disregard local economic development strategies, apparently considering them incompatible with other goals such as sprawl reduction and preservation of open space.

In addition to adoption of a comprehensive plan, GMA requires counties and cities to implement their comprehensive plans through development regulations.[5] No later than September 2002, and every five years thereafter, counties will be required to review and update their comprehensive plans and regulations.[6]

GMA's stated intent

"Local comprehensive plans and development regulations ***require counties and cities to balance priorities and options for action*** in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, ***the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.***" RCW § 36.70A.3201 (emphasis added)

As part of the planning process counties are to designate urban growth areas (UGAs), designed to include sufficient land area and population density to accommodate the projected population growth for the next 20 years.[7] By statute, all cities are urban growth areas. Counties may, however, designate additional urban growth areas, provided that certain conditions are met.[8] Interim urban growth areas (IUGAs) are initially designated by county regulations. Final urban growth areas are designated at the time the comprehensive plan is adopted.[9]

To ensure regional consistency of land use plans, counties and cities subject to full GMA planning requirements must establish a collaborative process for the adoption of countywide planning policies.[10] Countywide planning policies, or CPPs, are written policy statements used as a framework for the development and adoption of county and city comprehensive plans. At a minimum, CPPs are required to address the following areas:

- implementation of GMA's urban growth area requirements;
- provision of services to urban development;
- siting of capital facilities;
- countywide transportation facilities and strategies
- affordable housing;
- policies for joint city-county planning within urban growth areas;
- countywide economic development and employment; and
- fiscal impact.[11]

Counties and cities that fail to adopt CPPs face sanctions from the governor.[12] CPPs may be binding on counties' future land use decisions, in order to ensure consistency between local comprehensive plans.[13] This

system presents constitutional concerns, because citizens in unincorporated areas of the county are not represented equally with citizens inside city limits. To illustrate, both the residents of the cities and the residents of the unincorporated county elect county commissioners, while only the residents of the cities elect their city officials. GMA requires county officials to adopt CPPs established in coordination with city officials. Thus, voters inside city limits have a disproportionate voice in the establishment of CPPs.[14]

Counties not otherwise subject to full GMA planning requirements are still obliged to designate agricultural, forest and mineral lands, as well as critical areas (see Glossary).[15] The Department of Community Development was given the responsibility of promulgating guidelines for the designation of these areas.[16]

Currently, 29 of the state's 39 counties are subject to full planning requirements under GMA.[17] Thus, at least 95 percent of the state's population is directly and continuously impacted by the policies and requirements of the Act.[18] Of these counties, 18 were required to plan under GMA, and 11 chose to plan under GMA.[19]

Office of Community Development

The Department of Community, Trade and Economic Development (whose growth management arm is now the Office of Community Development) has the statutory responsibility to adopt procedural GMA compliance criteria that "reflect the regional and local variations and the diversity that exists among different cities and counties that plan under [GMA]."[20] Those procedural criteria note:

> **Regional and local variations** and the diversity that exist among different counties and cities **are to be reflected** in the use and application of these procedural criteria . . . To a major extent **recognition of variations and diversity is implicit in the framework of the act itself, with its emphasis on a 'bottom up' planning process and on public participation.** Such recognition is also inherent in the listing of goals without assignment of priority. Accordingly, this chapter seeks to **accommodate regional and local differences by focusing on an analytical process, instead of on specific outcomes.**[21]

Counties and cities are required to send their comprehensive plans and development regulations to the Department, but the Department does not have the authority to approve or disapprove local land use decisions.[22]

Powers of the Hearings Boards

The Growth Management Hearings Boards are quasi-judicial bodies with broad powers to hear petitions challenging local comprehensive land use plans or development regulations, including critical areas ordinances and shoreline master programs.[23] Original proponents of the GMA intended the Growth Management Hearings Boards to be a place for citizens who were affected by local planning decisions to be heard without the formality and expense required in judicial proceedings.[24]

As the years have passed, many have questioned whether the Boards are achieving this objective.[25] The current Hearings Board system has created delay and uncertainty in the local planning process, as counties and cities struggle to meet with Board approval. Citizens and local elected officials regularly have their "bottom-up" plans invalidated under top-down policies.

Although the Department of Community Development (now Office of Community Development/OCD) has been charged with providing technical assistance and procedural criteria to aid local governments in developing their plans,[26] the Hearings Boards have interpreted certain GMA requirements contrary to the Department. For example, RCW § 36.70A.110 requires counties and cities to designate urban growth areas and densities "based" upon the growth management population projection made by the Office of Financial Management.[27] The Department had interpreted the word "based" to mean that the OFM figures were a foundation for counties to use in establishing the size and density of UGAs. According to the Board, OFM figures were to be used exclusively, unless a county was able to clearly show they were inaccurate.[28]

The Hearings Boards have also taken it upon themselves to interpret the undefined terms of the GMA. For example, the Act contains no definition of "sprawl," but the Hearings Boards have developed their own "bright line" tests for appropriate densities.[29] As a result, it is possible for counties whose plans have not been challenged to successfully designate a certain level of development density, while a neighboring county's similar provisions could be invalidated in a Hearings Board challenge. Local plans may thus stand or fall based on

> *"All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual liberties."*
> –Washington Constitution, Art. 1, §1.

Hearings Board opinions, not the terms of the Act. Even between the Boards, rules may differ.[30]

The Hearings Boards' lack of deference to local decision making presents a significant threat to GMA's purportedly bottom-up process. On a number of occasions, the legislature has passed measures designed to reign in the Hearings Boards.[31] Unfortunately, local government is still afforded little discretion in its planning efforts. Entire sections of county plans have been invalidated by Hearings Board order, even under the more deferential standard of review enacted by the legislature in 1997.

In keeping with our representative form of government, local citizens elect commissioners and council members who reflect their views and priorities. Particularly in the intricacies of land use planning, it is these elected officials who are best suited to determine how to preserve rural character, how to encourage economic development, and what land use policies will best accomplish these ends. What's more, it is the local officials and their planning commissions who are involved in the citizen input process mandated by the GMA itself.[32] Historically, therefore, it has been the responsibility of local counties and cities, through their elected officials, to plan for growth and development.[33] If citizens dislike these decisions, their remedy would be found either in the courts or in the ballot box.

Establishing a governor-appointed review board with power to invalidate local land use decisions thwarts, rather than implements, the GMA's goal of public participation. Citizens have almost no voice in who is appointed to the Hearings Boards, let alone the land use decisions the Boards hand down. Furthermore, citizens have less incentive to get involved in local planning when their perspective has been disapproved by the lofty Hearings Boards. Ultimately, the policies reflected by Hearings Board mandates reflect the opinions of the Board members and possibly the citizen groups who challenged their local plans or regulations, rather than representing the views of local citizens and their elected officials.

Hearings Board Review

Under RCW § 36.70A.320, local comprehensive plans and development regulations are presumed valid.[34] Petitioners seeking to challenge a plan or regulation before a Growth Management Hearings Board have the burden of demonstrating its lack of compliance with the GMA.[35] Under the GMA's current evidentiary standard, a hearings board must be convinced that a county plan or regulation is clearly erroneous before it may find local plans or regulations to be noncompliant.

These standards change considerably when a plan or regulation is found invalid. Once there has been a ruling of invalidity, a county or city has the burden of proving that any plan or regulation adopted in response to the ruling will not interfere with the purposes of the GMA.[36] Thus, the new plan or regulation must be approved by the Hearings Board before it can be effective. Needless to say a ruling of invalidity bears significant consequences, sending local land use policies into limbo until a city or county is able to adopt a policy that will meet Hearings Board approval.

Development permits that have not already vested under prior law cannot vest until new regulations are adopted and approved by the applicable Hearings Board.[37] Businesses and developers are unable to take the risk of operating under unknown legal standards and may simply abandon plans in an area mired by invalidity. For example, Whatcom County found that the Hearings Board invalidation of its Cherry Point Industrial

Noncompliance vs. Invalidity

There are important differences between a hearings board finding of *noncompliance* and a finding of *invalidity.* A finding of noncompliance with the GMA goals is sufficient to support monetary sanctions (RCW § 36.70A. 340). If a Hearings Board also finds the challenged plan or regulation would substantially interfere with the GMA goals, it may invalidate the plan or regulation. RCW § 36.70A.302.

Unless there is a finding of *invalidity,* a county plan or regulation remains valid during the period in which it is remanded to the county for further action. RCW § 36.70A.300(4).

Interim Urban Growth Area (IUGA) resulted in a number of industrial firms deciding to locate in Oregon or Canada, instead of Whatcom County.[38] Similarly, an invalidity ruling affecting about half the land on Pacific County's Long Beach Peninsula halted real estate sales and sent the building industry in to what one homebuilder described as a 10-year low.[39]

Success of Growth Management: GMA's impact on its own goals

At present, GMA appears to be a self-defeating system. Not only has it failed to provide a truly bottom-up planning framework, but the Act has a negative impact on many of its own goals. Consider the following:

1. **Urban growth**—Restricting growth to urban areas limits available land supply, negatively impacting the cost of housing. In addition, increased urban densities can result in increased traffic congestion and air pollution.[40] Rather than efficiently using existing infrastructure, it appears that GMA's urban growth policies may overburden existing infrastructure.
   What's more, even former GMA supporters are acknowledging that there are limits to population density, beyond which quality of life is degraded.[41]
2. **Transportation**—Presently, the Seattle area ranks second in the nation for traffic congestion, wasting time and increasing business costs.[42]
   Needless to say, as housing prices rise, buyers must travel further to find a home they can afford. This exacerbates traffic congestion, as the distance workers travel from their homes to their job increases.[43]
3. **Housing**—Many companies have difficulty attracting a quality workforce because workers cannot afford to live close enough to their homes.[44] GMA has tightened restrictions on land use and increased the regulatory burdens on development. Although national home ownership rates have risen, Washington state is among the lowest in the nation.[45] Seventy percent of today's homes are not affordable for those who make at or less than the median income.[46] Research indicates that a significant percentage of Washington's increased housing prices may be attributed to GMA.[47]
   GMA-authorized impact fees are also contributing to the high cost of development. These costs, in turn, are passed on to consumers, resulting in higher housing costs.

> ***"There's a level of equilibrium for all mammals at which cooperation and socialization is maximized. Pass that level and nothing good happens. . . . Density in our urban areas, beginning with Seattle, has degraded our quality of life and will completely undermine it, if we don't do something soon."***
> –F. A. Blethen, Speech to Manufacturing Industrial Council, Seattle, Washington (November 26, 2001).

4. **Economic development**—Economically depressed counties are being thwarted in their attempts to recruit new businesses and sustain existing ones. Hearings Board opinions restrict the flexibility counties were intended to have in planning for local economic needs.
   Another specific concern is that counties' economic tax bases are eroded by the GMA requirement that growth be channeled into cities (UGAs).[48]
5. **Property rights**—Private property owners face serious restrictions on their ability to use, develop, and enjoy their property. Consider the Western Washington Growth Management Hearings Board's disapproval of Lewis County's regulation authorizing a second dwelling on farm land.[49] Why should the State be able to prevent a family member from building a home alongside his or her parents to help with, or ultimately take over management of, the family farm?
6. **Permits**—Although certain provisions of the GMA encourage timely permit processing, the current practice of invalidating local comprehensive plans and development regulations has brought uncertainty and delay to the permit offices of a number of Washington's counties. Without valid regulations in effect, developers have no guarantees about the standards their work must meet or expenses they will incur. (See p. 6).
   Permit processing is still unbelievably slow—the process can take over three years in some areas.[50]
7. **Environment**—While GMA seems to have prompted increased environmental protection, some are concerned that the Hearings Boards give more

weight to the environmental goal than the other twelve GMA goals, precluding local governments from balancing planning goals to reflect regional differences and economic needs.[51]

8. **Citizen participation and coordination**—Many citizens have become involved in the land use planning process, but it would appear that counties' comprehensive plans and development regulations all to often reflect the views of the Hearings Boards rather than the views of local citizens.[52] This is a disincentive for continued citizen involvement and defeats GMA's role as a bottom-up planning process.

Endnotes

1. SHB 2929, 51st Leg., 1st Ex. Sess., Final Bill Report (Wa. 1990).
2. Richard L. Settle & Charles G. Gavigan, "The Growth Management Revolution in Washington: Past, Present and Future," 16 U. Puget Sound L. Rev. 867, 879 (1993); ESHB 2929, 51st Leg., 1st Ex. Sess., Final Bill Report (Wa. 1990).
3. 1990 Wash. Laws 1st Ex. Sess. ch. 17 § 2, now codified as RCW § 36.70A.020.
4. RCW § 36.70A.070.
5. RCW § 36.70A.040(3).
6. RCW § 36.70A.130(1)
7. RCW § 36.70A.110
8. *Id.*
9. RCW § 36.70A.110(5).
10. RCW § 36.70A.210.
11. *Id.*
12. 1991 Wash. Laws 1st Spec. Sess. ch. 32 § 2(5).
13. *King County v. Central Puget Sound Growth Mgmt Hearings Board*, 979 P.2d 374 (Wash. Sup. Ct. 1999).
14. Based on the idea that CPPs were not binding on county and city planning decisions, one court has ruled that CPPs did not involve the exercise of governmental powers and that citizens in unincorporated areas were not entitled to a "one person, one vote" standard of representation. *Postema v. Snohomish County*, 922 P.2d 176 (Wash. Sup. Ct. 1996). Recent state supreme court case law, however, indicates that CPPs are in fact binding. *King County v. Central Puget Sound Growth Mgmt. Hearings Bd.*, supra.
15. 1990 Wash. Laws 1st Ex. Sess. ch. 17 § 17.
16. 1990 Wash. Laws 1st Ex. Sess. ch. 17 § 5.
17. Office of Community Development website, "Counties Planning Under GMA" <http://www.ocd.wa.gov/info/lgd/growth/maps/map_1.tpl> (September 2001).
18. Washington Municipal Research and Services Center website, "Comprehensive Planning/Growth Management," <http://www.mrsc.org/planning/compplan.htm> (February 2001).
19. Washington Research Council, "Growth in Perspective: Rural Development," *Policy Brief 01-21* (18 September 2001), 1.
20. RCW § 36.70A.190(4)(b).
21. WAC § 365-195-060 (emphasis added).
22. RCW § 36.70A.106.
23. RCW § 36.70A.250 *et seq*.
24. Land Use Study Commission, *1996 Annual Report*, 12.
25. *Id.*
26. RCW § 36.70A.190.
27. RCW § 36.70A.110(2).
28. *City of Port Townsend v. Jefferson County*, WWGMHB Case No. 94-2-006, Final Order, 14-16 (1 August 1994). OFM currently develops a projected population range. See RCW § 43.62.035.
29. *Sky Valley v. Snohomish County*, CPSMGHB Case No. 95-3-0068c, Final Decision and Order, 5-14 (12 March 1996).
30. Derek Woolston, "Simply a Matter of Growing Pains? Evaluating the Controversy Surrounding the Growth Management Hearings Boards," 71 Wash. Law Rev. 1219, 1244-1248 (1996).
31. SSB 6637 would have prohibited the Hearings Boards from prioritizing, balancing or ranking the GMA goals and forbade the Boards from substituting their judgment for decisions within the discretion of a city or county. The bill passed both houses, but these provisions were vetoed. SSB 6637, 54th Leg., Reg. Sess. Final Bill Report (1996). See also 1996 Wash. Laws Reg. Sess. ch. 325. In 1997, at the recommendation of the Land Use Study Commission, the legislature successfully raised the standard of review for local plans and regulations, so that Hearings Boards had to find noncompliance with GMA by clear and convincing evidence rather than the previous preponderance of the evidence standard. Another provision of this bill would have required a finding that a local government had acted arbitrarily and capriciously before a local plan could be invalidated, but this provision was also vetoed. ESB 6094, 55th Leg., Reg. Sess. (1997); 1997 Wash. Laws Reg. Sess. ch. 429.
32. RCW § 36.70A.020(11).
33. Wash. Const. art 11, § 11. "Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." See also Richard L. Settle & Charles G. Gavigan, "The Growth Management Revolution in Washington: Past, Present and Future," 16 U. Puget Sound L. Rev. 867, 876 (1993); Woolston, 1230-1231.
34. RCW § 36.70A.320(1).
35. RCW § 36.70A.320(2).
36. RCW § 36.70A.320.
37. RCW §36.70A.302(5). A regulation revived through a savings clause must likewise be approved by the applicable Hearings Board before permits may vest under its provisions.
38. Michael Knapp, Whatcom County Planning Director, letter to Paul Parker, Washington Association of Counties (17 September 1996). (This letter was included in a more extensive memorandum sent by the Washington Association of Counties to the House Government Operations Committee on September 17, 1996, in response to its request for information regarding the impacts of Hearings Board invalidity rulings.)
39. Eric Pryne, "The state's growth enforcers: When Growth Management Boards step into local matters, things get

done, which is about all allies and critics can agree on," *Seattle Times* (13 May 1997).

40. Wendell Cox, "How 'Smart Growth' Intensifies Traffic Congestion and Air Pollution," *The Independence Institute,* (25 September 2000) <http://i2i.org/Publications/IP/Growth/AirPollutionSmartGrowth.htm> (November 2001).
41. F.A. Blethen, Speech to Manufacturing Industrial Council, Seattle, Washington (26 November 2001).
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44. Washington Competitiveness Council, *Final Report* § 3.3.12 (December 2001).
45. U.S. Census Bureau, "Housing Vacancies and Homeownership Annual Statistics: 2000, Table 13" <http://wwwcensus.gov/hhes/www/housing/hvs/annual00/ann00t13.html> (October 2001). See also Master Builders Association, "Homeownership rates show need for improvement in Washington," <http://www.mba-ks.com/public/tmg_t1.cfm?Story*ID*=214> (October 2001); Washington Research Council, "Impact of Government Regulations and Fees on Housing Costs."
46. Master Builders Association, "MBA Members Address Jobs/Housing Balance," <http://www.mba_ks.com/public/tmg_t1.cfm?Story*ID*=192> (October 2001).
47. Samuel R. Staley and Leonard C. Gilroy, *Smart Growth and Housing Affordability: Evidence from Statewide Planning Laws* (Los Angeles, California: Reason Public Policy Institute, 2001).
48. Land Use Study Commission, *1996 Annual Report*, 8.
49. *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, Final Decision and Order, 37 (30 June 2000).
50. Washington Research Council, "Growth in Perspective: Impact of Government Regulations and Fees on Housing Costs," PB 01-18 (24 May 2001), 4.
51. Land Use Study Commission, *1996 Annual Report*, 9.
52. Land Use Study Commission, *1996 Annual Report*, 9-10. While the LUSC indicated that it believed GMA had met its goal of citizen participation, it noted that the Boards overturned plans which citizens had worked long and hard to develop.

HOW GMA BEGAN

As parts of the state struggled to keep pace with the rapid growth of the 1980s, demand for a growth management solution was rising. After two legislative attempts to create a statewide Growth Strategies Commission (GSC) proved unsuccessful, Governor Booth Gardner established the commission by executive order in 1989.[1] The seventeen-member GSC was to study and recommend growth management strategies, issuing a preliminary report during the 1990 legislative session and a final report by the end of June 1990.[2]

The political push for growth management did not wait for the GSC report. The Growth Management Act, as we now know it, was enacted in two separate phases. The first phase had its beginnings in an informal legislative committee created during the 1990 Legislative Session by House Speaker Joe King.[3] The committee's proposals served as a starting point for SHB 2929, or GMA I.[4]

The legislative history of the GMA I was complex. Although the bill passed the house of representatives without major amendments, the senate substituted a new bill through a striking amendment.[5] Because the house refused to concur with the senate's amendments, the bill was referred to a conference committee, composed of three members from the house and three from the senate.[6] The regular legislative session came and went without any agreement being reached.

The provisions of SHB 2929 were ultimately agreed upon by the conference committee on April 1, 1990, the final day of the legislature's special session, and it passed both houses that same day.[7]

Final language of SHB 2929 directed the Growth Strategies Commission to address a number of issues not governed by provisions of the Act. Most significantly, the GSC was charged with the responsibility of defining the state role in growth management and recommending a specific structure to ensure that local governments coordinated their plans and complied with statewide planning goals.[8] And so it was, before the ink was dry on the planning framework of GMA I, the enforcement mechanisms of GMA II were on the way.

Initiative 547—Pressure for GMA changes

Shortly before the enactment of GMA I, Initiative 547 was filed for the November 1990 ballot.[9] I-547 would have replaced the GMA with an onerous planning mandate applicable to all counties and cities, rather than limiting its requirements to those areas experiencing higher levels of growth.[10]

The Initiative offered a lengthy list of planning goals, relegating county and city governments to an "initiating and administering" role, while granting governor-appointed regional review panels the broad authority to ensure compliance.[11] The regional management councils would be responsible for developing statewide planning rules, as well as approving or disapproving local plans.[12] Local governments could also be sanctioned for noncompliance.[13] The policies embodied in this initiative were soundly rejected by about 75 percent of Washington voters.[14]

Nonetheless, a number of these policies have slipped into the Growth Management Act as it has been amended and, more importantly, interpreted over the last decade.[15] For example, the 1991 amendments established the governor-appointed Growth Management Hearings Boards, which, although they lack the breathtakingly broad powers of the initiative's regional review panels, have thwarted the local, bottom-up planning process on numerous occasions. (See pp. 23–31). As GMA was originally enacted, neither the Growth Management Hearings Boards nor their power to sanction local government and invalidate comprehensive plans were included. Perhaps influenced in part by the failed I-547, the 1991 amendments to GMA created the Growth Management Hearings Boards and authorized sanctions against noncompliant counties.[16]

1991—The enactment of GMA II

Following the defeat of I-547, various legislators and special interests renewed their efforts to expand the policies of GMA I. The Growth Strategies Commission issued its final recommendations in September of 1990, which included GMA amendments requiring all cities and counties to protect resource lands and critical areas, provisions for regional planning, the addition of several mandatory comprehensive plan elements, authorization

for the state to challenge noncompliance with GMA, and the establishment of an arbitration process to resolve GMA disputes.[17]

At Governor Gardner's request, HB 1025 was introduced to implement the recommendations of the Growth Strategies Commission, with certain changes.[18] For example, the governor's bill provided for the creation of an administrative hearings board in place of the GSC's recommended arbitration process.[19]

Like its predecessor, GMA I, HB 1025 followed a tortuous path through the legislature. After various amendments in the house, the bill languished in the senate for the remainder of the regular session. Governor Gardner called together a "five corners committee," consisting of representatives from the four legislative caucuses and the Governor's Office. The committee met for nearly a month without agreeing on a proposal for GMA II. Finally, faced with an alternative proposal from local government and business representatives, the committee reached an agreement. Re-engrossed Substitute House Bill 1025 was then passed by the house on June 27, 1991 and by the senate on the following day.[20]

> ***"[T]he state should facilitate rather than dictate local comprehensive planning, and should speed up rather than slow down its process."***
> – Growth Strategies Commission, *A Growth Strategy for Washington State* (September 1990), 15.

These 1991 amendments to the Growth Management Act, or GMA II, dramatically increased the impact of the law on the counties planning under GMA.[21] It was through GMA II that the basic structure of the GMA enforcement process, including the Growth Management Hearings Boards, was created. Each three-member Board was assigned a geographical area: the Eastern Washington Growth Management Hearings Board for all counties east of the Cascades; the Central Puget Sound Growth Management Hearings Board for King, Pierce, Snohomish, and Kitsap Counties; and the Western Washington Growth Management Hearings Board for all remaining counties west of the Cascades.[22] Board members were to be appointed to six-year terms by the governor, but were not subject to confirmation by the senate.[23] At least one member of each board had to be admitted to practice law and at least one member had to be a previous city or county elected official. Members had to have experience or training regarding land use and had to live within the area under their jurisdiction.[24]

The Boards were authorized to hear 1) petitions alleging noncompliance with the Growth Management Act or the State Environmental Protection Act, as it pertained to plans, regulations, or policies adopted under the GMA or 2) challenges to the office of financial management's 20-year growth management planning population projections.[25] Generally, the following individuals or entities have standing to file a petition before the Hearings Boards: the state, local governments planning under GMA, a person who appeared before the county or city regarding the matter on which review was requested, or a person who would otherwise have standing under the Administrative Procedure Act.[26]

While local plans and regulations are entitled to a presumption of validity under the law, this has provided local governments limited protection. GMA II required petitioners challenging local plans to carry the burden of proving noncompliance, but it held them to a low evidentiary standard. Thus, the 1991 amendments authorized the Hearings Boards to find a county or city noncompliant if the Board believed, based on the preponderance of the evidence, that local officials had erroneously interpreted or applied the GMA's provisions.[27] It appears that state deference to local planning was still intended, but this low evidentiary standard would only serve to erode the presumption of validity and allow the Hearings Boards to substitute their judgment for that of local officials.

GMA II also authorized the governor to sanction counties found noncompliant by the Hearings Boards.[28]

Another change wrought by GMA II was the requirement that cities and counties cooperate in the adoption of countywide planning policies.[29] Counties and cities failing to adopt CPPs would face sanctions from the governor.[30]

A number of counties found themselves trapped by these new requirements. During the initial year of GMA I, counties subject to planning requirements based on their high rate of growth had a limited window in which they could opt out of the Act's requirements.[31] Those that failed to do so became permanently subject to GMA requirements, including the burden of Hearings Board review and threat of sanctions. In addition, some counties voluntarily opted in to GMA planning, in hopes of receiving state funding.[32] Once inside of GMA, these

counties likewise found that there was no going back. (By the time GMA II was adopted in 1991, fifteen counties were subject to GMA and eight had opted to be covered by the Act.)[33]

Even with the more intrusive GMA II, it appears that a bottom-up planning process was intended.

The GSC repeatedly stated the centrality of the local planning process, and Governor Gardner indicated that his proposal was built on principles of local decision making by elected officials who were accountable to the public.[34] During the past ten years, however, the governor-appointed Hearings Boards created by GMA II have drastically altered local land use plans. As far as preserving local decision making and accountability to citizens, GMA II missed the mark.

1993—Deadlines extended and sanctioning power expanded

By the 1993 legislative session, it was becoming apparent that counties would not be able to meet the planning deadlines imposed by GMA. Counties initially subject to GMA were required to adopt their comprehensive plans and development regulations by July 1, 1993 or July 1, 1994, depending on the population of the county.[35] Counties that opted in to GMA planning requirements were given four years from the date of their decision to adopt their plans and regulations.[36]

The 1993 legislature also authorized the governor to impose sanctions on counties which failed to meet their GMA deadlines.[37]

1995—Appointment of the Land Use Study Commission

The Land Use Study Commission (LUSC) was created during the 1995 Legislative Session through ESHB 1724, for the purpose of integrating and consolidating the state's land use and environmental laws.[38] In addition, the LUSC was charged with the following responsibilities:

- evaluating the effectiveness of the GMA, Shoreline Management Act, State Environmental Policy Act, and other land use, environmental, planning and permitting laws;
- identifying the modifications needed in these laws;
- drafting a consolidated land use procedure;
- monitoring the statewide vesting of project permit applications;
- monitoring local government's permit procedures;
- evaluating the funding mechanisms for local planning; and
- studying the possibility of authorizing professionals to certify compliance with environmental and land use requirements.[39]

The commission was to be composed of fourteen members, eleven to be appointed by the governor, and the remaining three to be the director of the Department of Community, Trade and Economic Development, the Director of the Department of Ecology and the Secretary of the Department of Transportation, or their designees.[40] Their work was to begin in June of 1995 and terminate in June of 1998.[41] Recommendations developed by the commission provided impetus for important amendments to the GMA particularly in the area of rural development (see pp. 15-17).

Another significant change made by the 1995 Legislature was the partial integration of the Shoreline Management Act with the GMA. The goals and policies of each city or county's shoreline master program were made an element of the required comprehensive plans.[42] An additional element of the 1995 legislative changes provided authorization for a city or county to eliminate certain project-specific environmental review requirements, if these had been adequately addressed in the local planning process.[43]

ESHB 1724 also clarified the impact that a Hearings Board finding of noncompliance would have on local comprehensive plans and development regulations. The legislature emphasized that local plans and regulations found noncompliant by a Hearings Board were to remain in effect during the period in which they were on remand, unless the Hearings Board specifically determined that the challenged plan or regulation substantially interfered with the goals of the GMA; that is, that the plans or regulations were invalid. A finding of invalidity would be prospective only, and would not affect rights that had vested (see Glossary) prior to the Board's order.

Following an order of invalidity, however, development applications would be in a state of limbo. No applications could vest under the old, invalid regulations. Applications could vest under a replacement regulation only if the Board found that the new regulation complied with the GMA.[44] Previous development

regulations could take the place of invalidated regulations through a savings clause (see Glossary) only if the previous regulations were found valid by the Hearings Board.[45]

While these amendments clarified the status of county regulations when a Hearings Board declares the regulations noncompliant or invalid, it has become apparent that local control over land use decision making is severely limited by the Hearings Board rulings. As time passed, some came to believe that the Boards' power to invalidate local regulations had created chaos instead of greater certainty and had altered the "bottom-up" nature of the GMA.[46]

In a separate bill, ESB 5019, the 1995 Legislature also addressed the question of industrial development outside of Urban Growth Areas (UGAs). GMA requires that growth be encouraged within designated UGAs and be prohibited outside these areas unless the growth is not urban in nature.[47] In contrast, the GMA also sets a goal of encouraging economic development throughout the state, particularly in areas experiencing insufficient growth.[48] It seems policymakers wanted it both ways.

ESB 5019 confirmed the authority of counties, in consultation with cities, to designate areas for major industrial development outside of their UGAs. To qualify, a major industrial development had to be a master-planned location that either 1) required a parcel of land so large that there were no suitable alternatives within a UGA or 2) was a natural resource-based industry which needed to be located near agricultural, forest, or mineral resource land. A major industrial development could be approved outside a UGA only if specified criteria were met, including:

- provision for new infrastructure and payment of applicable impact fees;
- implementation of transit-oriented site planning and traffic demand management programs;
- provision of buffers between the development and non-urban areas;
- provision for environmental protection;
- establishment of development regulations to prevent adjacent urban growth;
- mitigation of adverse impacts on resource lands;
- consistency with county regulations for the protection of critical areas; and
- determination that no suitable site is available within a UGA.[49]

While this legislation certainly provided greater flexibility to counties in need of economic development, Hearings Board opinions have required extensive planning for a valid major industrial development. This burden may render the legislation useless to economically distressed counties.[50]

1996—Industrial Land Banks

In addition to the major industrial development authorization of 1995, the 1996 Legislature established a pilot project, under which, for a limited time, counties meeting specific requirements could establish an industrial land bank (ILB).[51] Under HB 2467, a county's ILB could include no more than two master-planned locations for major industrial activity outside the county's UGAs.

The criteria for inclusion of land in an ILB paralleled the planning requirements for a major industrial development under the 1995 amendments, with the exception that the 1996 pilot ILBs did not have to be designated for a specific business.[52] The legislature had found that requiring case-by-case designation of industrial developments could operate to a community's economic disadvantage when a business needed to make location decisions expeditiously. As a result, it believed that allowing counties to plan ahead for future siting of industrial development was worth experimentation.[53]

The 1996 session also brought significant support for changes to the authority of the Hearings Boards. Through SSB 6637, the legislature sought to alter the Board's authority to invalidate local plans and regulations. First, SSB 6637 would have divided an invalidity order into two parts: After an initial determination of

> ***"The Commission has concluded that providing greater certainty in the planning process will . . . enable greater deference to decisions made by local authorities . . . The Commission recognizes that there is considerable variability in circumstances around the state and that local governments need considerable flexibility to make the best choices for their communities."***
>
> – Land Use Study Commission, 1996 Annual Report, 2.

invalidity, a local government entity would have 90 days to make substantial progress toward developing a valid plan or regulation. If the local entity failed to do so, a final order of invalidity would be entered.[54]

Even when this final order of invalidity was entered, it would not extinguish rights that vested under state or local regulation either before or after the date of the order. The single exception was for development applications for division of land, which would vest to a replacement regulation once the Board had determined that the new regulation would not be invalid.[55]

It is not difficult to understand why the legislature was concerned about the impact of the Boards' orders of invalidity. Between the time the 1995 legislature granted the Board the authority to invalidate local plans and regulations, and the time the Land Use Commission issued its 1996 report, the Boards had invalidated part or all of eleven county comprehensive plans or development regulations.[56] This left about a quarter of the state's counties with areas of land not covered by valid regulations and developers and land owners whose permits could not vest.

SSB 6637 would have reduced the power of the Hearings Boards by requiring courts to conduct an independent review of Hearings Board legal conclusions that were appealed.[57] Typically, courts take a fresh look at an agency's legal decisions, but they give substantial deference to an agency's interpretation of a statute it administers.[58]

In addition, the proposed amendments would have explicitly extended the presumption of validity afforded to local comprehensive plans and regulations to land designations (such as classification of critical areas and forest land) and any other local action required by GMA. The legislature emphasized that the Boards had no authority to prioritize, balance, or rank the GMA planning goals.[59]

SSB 6637 would have clarified the fact that the burden of proof in a GMA hearing was on the person challenging the local plan or regulation. The Hearings Boards would also have been required to apply a heightened standard of proof. Boards were required to find compliance with GMA unless it found that a county or city had erroneously interpreted the GMA or that the county or city's actions were not supported by substantial evidence.[60]

These provisions never made it into law because they were vetoed by Governor Lowry. What was left of SSB 6637 made minor changes and clarifications to board procedure and subsequent court review of board decisions. However, the governor did recognize that the legislature was attempting to reign in the Hearings Boards, and he encouraged the Boards to take heed.[61] In addition, the governor directed the newly-formed Land Use Study Commission to examine the Boards' power to invalidate local plans and regulations and recommend any necessary changes.[62]

> ***"I believe that this provision is a message by the legislature to the boards directing them to use discretion in their authority to invalidate local ordinances. I echo this message."***
> –Governor Mike Lowry, SSB 6637 Veto message, March 30, 1996.

1997—Rural Development Amendments

As the Land Use Study Commission's 1996 report noted, the GMA provides little guidance as to what should be permitted in rural lands, for the simple reason that the Act was designed to manage urban growth.[63] Initially, it was assumed that this provided local governments with broad discretion in providing for development densities outside of UGAs.[64] In reality, local discretion was being constricted through Hearings Board interpretation.

By the end of 1996, the LUSC saw the need for a rural framework that recognized the differences in circumstances faced by counties around the state and that specifically acknowledged counties' authority to tailor rural character to their circumstances. Frustrations were high over the Boards' apparent "one-size-fits-all" approach to rural development.[65]

To address these problems, the LUSC compiled a list of recommendations and drafted legislation to implement them.[66] Under the LUSC recommendations, further clarity was to be provided through definitions of "rural character," "rural governmental services," and "rural development."[67] Contrary to the Hearings Board's current limitations on more intensive rural development, the LUSC's recommendations were to allow continuation or expansion of existing isolated non-residential uses.[68]

In 1997, the LUSC's draft legislation was introduced in the form of Senate Bill 5758 and House Bill 1869. These bills did not gather widespread support, but many

> ***"The Commission heard many variations on the phrase 'one size does not fit all' during the course of its public meetings. Counties and cities suggest that there are wide variations of geography, history, culture, and development around the state that the GMA does not recognize. . . . Added flexibility could also help address some of the harsher impacts changes in the land use system have had on individual property owners."***
>
> –Land Use Study Commission, 1996 Annual Report, 11.

of the LUSC's recommended provisions were included in the ESB 6094, introduced later in the 1997 legislative session. ESB 6094 passed both houses, but was partially vetoed by Governor Locke[69]

Section one of ESB 6094 provided in part that

> "[A] **county** should foster land use patterns and **develop a local vision** of rural character that: will help **preserve rural-based economies** and traditional rural lifestyles; will **encourage the economic prosperity of rural residents**; will foster opportunities for small-scale, rural-based employment and self-employment; will permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; will foster the private stewardship of the land and preservation of open space; and will enhance the rural sense of community and quality of life. The legislature recognizes that there will be a **variety of interpretations** by counties of how best to implement a rural element, reflecting the diverse needs and local circumstances found across the state. **RCW 36.70A.070(5) provides a framework** for local elected officials to make these determinations."[70]

In another portion of this section, the legislature altered the LUSC's original proposal by adding a provision referring to the need to protect property rights, and deleting a provision referring to the need to protect fish and wildlife habitat in developing the rural element.[71] Although the LUSC Chair indicated that these changes did not undermine the Commission's intent, Governor Locke vetoed section one.[72] In fact, the governor repeatedly indicated his reluctance to stray from the LUSC's recommendations, vetoing a number of legislative changes to the Commission's original recommendations.[73] The legislative intent described in section one would have emphasized local discretion over rural development, and it is unfortunate that it was vetoed because of this minor language change.

Section two, which was virtually unchanged by the legislature, stated that the ultimate responsibility for planning rests with the local community, which has the duty to harmonize the GMA planning goals.[74] Section three amended the GMA definitions section and specifically approved clustered residential development as an allowable form of rural development.[75] Both of these sections were signed into law by Governor Locke.[76]

Another section of ESB 6094, which was not formally recommended by the LUSC, was a "GMA-flex" option, allowing counties and cities to develop alternative methods to meet the planning goals of the Act. The governor vetoed this section, expressing reluctance to make such a significant change without further investigation.[77]

Section seven, probably one of the most significant changes, amended the mandatory elements of local comprehensive plans to include a rural element, governing population densities and land uses in rural areas. Under this new provision, now codified at RCW § 36.70A.070(5), counties developing their rural element are allowed to plan for limited areas of more intensive rural development (LAMIRDs).[78] (For further discussion of the LAMIRD amendment, see pp. 23–24).

The 1997 amendments also allowed rural counties to exercise increased flexibility in their designation of agricultural lands of long-term commercial significance. While cities and counties were required to conserve agricultural land, they were authorized to use innovative zoning techniques such as cluster zoning or sliding scale zoning.[79] The LUSC acknowledged that changing market conditions and water availability could impact the use of land for agricultural purposes, and recommended that increased local flexibility and limited development be allowed in agricultural areas.[80]

In addition to the 1997 amendments pertaining to rural development, the LUSC proposed some specific

changes to the conduct and procedure of the Growth Management Hearings Boards. Some of these proposals, such as application of the Administrative Procedure Act (RCW § 34.05.001 et seq.) to GMHB proceedings, passed the legislature without change from the LUSC's original proposals.[81] Another provision recommended by the LUSC and ultimately enacted in ESB 6094 provided for direct review of growth management disputes in county superior court, upon the agreement of all parties.[82]

ESB 6094 clarified the impact of a Hearings Board determination of invalidity on a comprehensive plan or development regulation. Section 16 established that a determination of invalidity was prospective only, and would not affect a completed development permit application which vested under state or local law prior to the Board's determination. Determinations of invalidity would also not apply to certain types of permits, for example, building or construction permits for remodeling or tenant improvements of a preexisting structure on a preexisting lot.[83]

Another provision of ESB 6094 would have prevented the Hearings Boards from invalidating local plans and regulations unless a city or county had acted in an arbitrary or capricious manner. This change had been added to the LUSC's recommendations by the legislature, and was vetoed by Governor Locke.[84]

The most important change to the Hearings Boards' authority was found in section 20, which was identical to the LUSC's recommended legislation.[85] In what appears to be another effort to reign in the Hearings Boards, the LUSC had recommended that the standard applied to challenges of local plans be changed from the previous "preponderance of the evidence" standard to the more stringent "clearly erroneous" standard.[86] In other words, anyone challenging a local plan or development regulation would have to prove that the local plan or regulation was clearly erroneous before it could be found noncompliant. Otherwise, the presumption of validity would control and the local plan would be upheld.[87] This section successfully passed the legislature and was signed into law.[88]

In addition to the ESB 6094 amendments, the 1997 Legislature expanded its authorization for counties to establish Industrial Land Banks (ILBs) to include any county meeting certain population and location criteria. The type of development suitable for an ILB was also broadened to include businesses that require a location with characteristics such as proximity to transportation facilities or related industries such that no suitable location could be found in an urban growth area.[89]

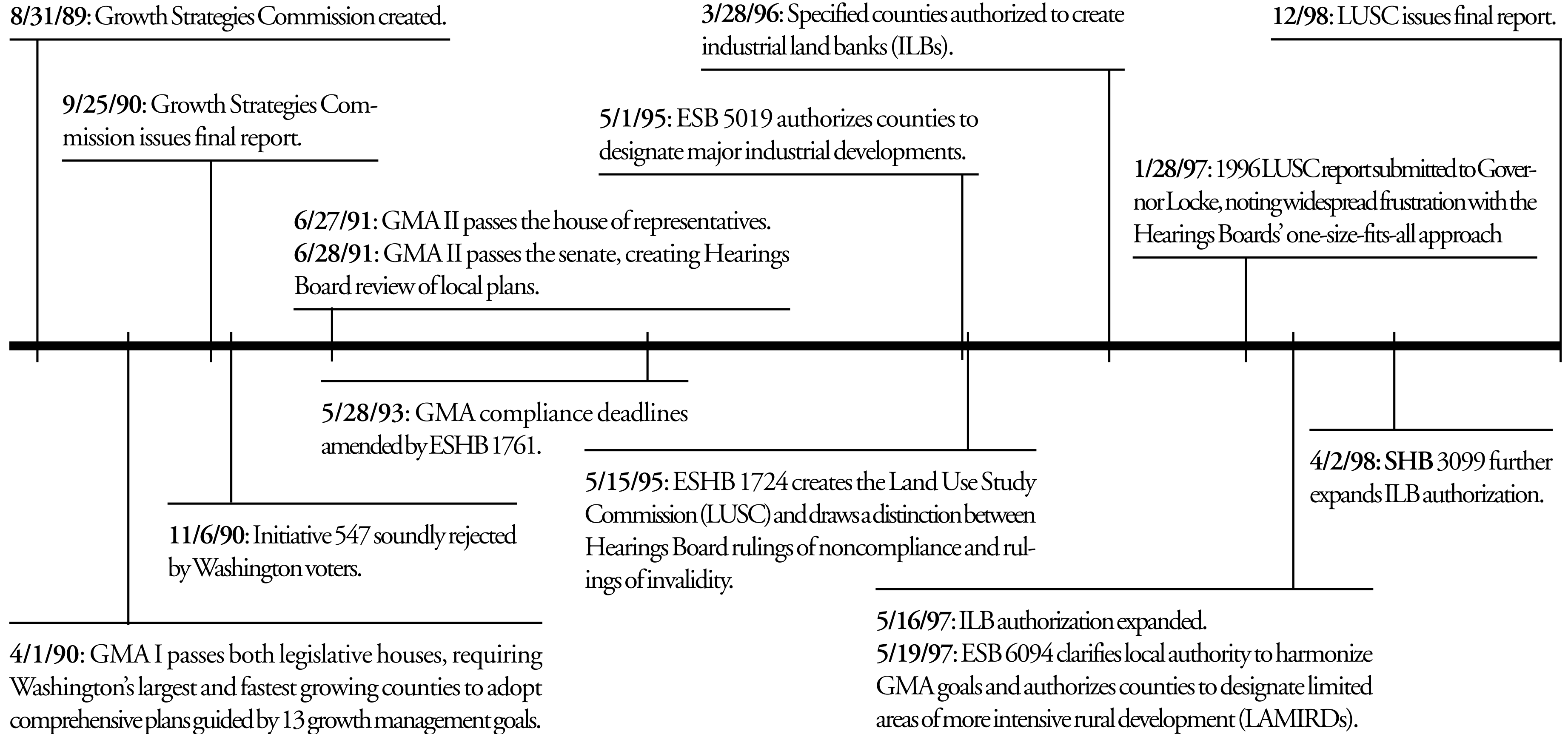
1998—Land Use Study Commission final report

By 1998, rural counties were suffering under the burden of GMA's planning requirements. To provide a measure of relief, the legislature passed HB 2542. This bill would have given those counties that initially chose to become subject to full GMA planning requirements another chance to opt-out.[90] Unfortunately, the governor vetoed the bill in its entirety, leaving counties with no way out of GMA.[91]

Authorization for Industrial Land Banks was also expanded a second time. Through SHB 3099, the legislature allowed certain counties that were 1) experiencing a high unemployment rate and 2) bordered by the Pacific Ocean or located along the I-5 or I-90 corridor to establish ILBs. (The effect of this amendment was to add Lewis, Grant and Clallam Counties.)[92]

The Land Use Study Commission issued its final report in 1998, examining issues such as adoption of a consolidated land use code, further reform to the environmental review and permitting, and the land use appeals process.[93] Replacement of the Growth Management Hearings Boards with either a land use court, the traditional superior court process, or appellate court review was also discussed, but no definite conclusions were reached.[94] Opponents of the status quo had pointed out that the threat of becoming mired in the Hearings Board appeal process could cause project applicants to accept development conditions that could not otherwise be required.[95] In addition, there were recurring concerns that Hearings Board mandates were interfering with issues best left to local discretion.[96]

GMA TIMELINE



Endnotes

1. Executive Order 89-08 (31 August 1989), rescinded by Executive Order 97-04 (9 December 1997).
2. *Id.*
3. The following legislators were a part of this informal commission: Maria Cantwell, Mary Margaret Haugen, Ruth Fisher, Jennifer Belcher, Nancy Rust, and Busse Nutley. See Richard L. Settle & Charles G. Gavigan, "The Growth Management Revolution in Washington: Past, Present and Future," 16 U. Puget Sound L. Rev.867, 883-884 (1993).
4. *Id.*
5. Settle & Gavigan, 885-886; Washington State Senate Journal, 51st Leg., vol. 1, 1253 (2 March 1990).
6. Washington State Senate Journal, 51st Leg., vol. 2, 1336 (3 March 1990); Washington State House of Representatives Journal, 51st Leg., vol. 2, 1380 (5 March 1990).
7. Settle & Gavigan, 885-886. See also Washington State House of Representatives Journal, 51st Leg., vol. 2, 1961-1962 (1 April 1990).
8. 1990 Wash. Laws 1st Ex. Sess. ch. 17 § 86.
9. "Initiative 547: The law as it now exists," 1990 Voters' Pamphlet 6. See also Settle & Gavigan, 889.
10. Text of Initiative 547, *1990 Voters' Pamphlet,* 14 et seq.
11. Text of Initiative 547, *id.* For a comparison of SHB 2929 with the provisions of I-547, see *Planning Northwest, Comparison of ESHB 2929 and Initiative 547*, (September 1990) (available from Washington State Archives, Growth Management File). See also Settle & Gavigan, 891.
12. Text of Initiative 547 at 17-19.
13. *Id.* at 20.
14. Washington Secretary of State website, "Initiatives to the People: 1914-2000," <http://www.secstate.wa.gov/inits/statistics initiatives.asp> (5 October 2001).
15. See Jodi Walker, "Washington's GMA: A wolf in sheep's clothing," *Building Insight* (June 1998) 6; Jeffrey M. Eustis, *A Comparison of Statewide Land Use Planning Measures: Initiative 547, The Growth Management Act, and the Growth Strategies Commission Report* (available from Washington State Archives, Growth Management File).
16. 1991 Wash. Laws 1st Spec. Sess. ch. 32 §§ 5, 26. See Settle & Gavigan, 892.
17. Growth Strategies Commission, *A Growth Strategy for Washington State* (September 1990). See also Settle & Gavigan, 892.
18. Washington State House of Representatives Journal, 52nd Leg., vol. 1, 56 (16 January 1991).
19. Settle & Gavigan, 893. See also "Growth Strategies/Management Comparison" (12 January 1991) (available from Washington State Archives, Growth Management File).
20. Settle & Gavigan, 894-895. See also Washington State House of Representatives Journal, 52nd Leg., vol. 2, 4275-4292 (27 June 1991); Washington State Senate Journal, 52nd Leg., vol. 2, 3987-3988 (28 June 1991).
21. 1991 Wash. Laws 1st Spec. Sess. ch. 32 (1991). GMA II was not to be outdone by its predecessor for a complicated legislative history. For a more detailed description of how the 1991 changes came about, see Settle & Gavigan, 892-895.
22. 1991 Wash Laws 1st Spec. Sess. ch. 32 § 5.
23. *Id.* § 6.
24. *Id.*
25. 1991 Wash. Laws 1st Spec. Sess. ch. 32 §9.
26. Id §§ 9(2) and 12. Petitions by the state may be made only by the governor, the head of an agency with the governor's permission, or the Commissioner of Public Lands (relating to state trust lands). 1991 Wash. Laws 1st Spec. Sess. ch. 32 § 12. APA standing would apply to anyone prejudiced or likely to be prejudiced by an agency action, whose interest was required to be considered by the agency in taking the challenged action and whose interest will be protected by a judgment in his or her favor. RCW § 34.05.530. An individual who had not appeared before the planning county or city regarding a particular matter could establish standing for a Hearings Board petition if certified by the governor within a specified period of time. 1991 Wash Laws. 1st Spec. Sess. ch. 32 § 9(2).
27. 1991 Wash Laws 1st Spec. Sess. ch. 32 §13.
28. 1991 Wash. Laws 1st Spec. Sess. ch. 32 § 26.
29. *Id.* Now codified at RCW § 36.70A.210.
30. 1991 Wash. Laws 1st Spec. Sess. ch. 32 § 2(5).
31. 1990 Wash. Laws 1st Ex. Sess. ch. 17 § 4(1).
32. 1990 Wash. Laws 1st Ex. Sess. ch. 17 § 20.
33. HB 1025, 52nd Leg., 1st Reg. Sess., House Bill Report, 2 (Wa., 9 March 1991).
34. See, e.g., Growth Strategies Commission, *A Growth Strategy for Washington State* (September 1990) 4; "Governor's Executive Request Legislation, Growth Strategies Executive Summary" (available from Washington State Archives, Growth Management File).
35. Recall that GMA planning requirements applied 1) to any county with a population of over 50,000 that had experienced a population increase of over 10% (now 17%) in the previous ten years and 2) to any county that had experienced a population increase of over 20% in the previous ten years. For a limited period of time, counties with a population of less than 50,000 had an opportunity to opt out of the requirements of the Act. The GMA also provided that a county not otherwise subject to the Act's full planning requirements could opt in to GMA planning.
36. 1993 Wash. Laws 1st Spec. Sess. ch. 6 § 1. Interim Urban Growth Areas (IUGAs) were to be specified by Oc-

tober 1, 1993 for counties initially required to plan and within three years of becoming subject to the Act for other counties. *Id.* § 2.

37. 1993 Wash. Laws 1st Spec. Sess. ch. 6 § 5.
38. ESHB 1724, 54th Legislature, Reg. Sess. (1995); 1995 Wash Laws Reg. Sess. ch. 347 § 801.
39. *Id.* § 801, 804.
40. *Id.* § 802.
41. *Id.* § 803.
42. *Id.* § 104
43. *Id.* §§ 201-202, 206(m). ESHB 1724 also required development of a consolidated permit review process, determination of the completeness of an application within 28 days, and a 120 deadline for issuance of a final decision on a permit application. See § 401 et seq. (A number of these provisions were codified in RCW § 36.70B, rather than the RCW § 36.70A.)
44. 1995 Wash. Laws Reg. Sess. ch. 347 § 110. Due to a later amendment, 1997 Wash. Laws Reg. Sess. ch. 429 § 16, the law now reads: "A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures *do not substantially interfere* with the fulfillment of the goals of this chapter." RCW § 36.70A.302(5) (emphasis added).
45. 1995 Wash. Laws. Reg. Sess. ch. 347 §110.
46. SSB 6637, 54th Leg., Reg. Sess, Partial Veto Message (30 March 1996).
47. RCW § 36.70.110. See also ESB 5019, 54th Leg., Reg. Sess., Final Bill Report (1995).
48. RCW § 36.70A.020(5).
49. ESB 5019, 54th Leg., Reg. Sess (1995); 1995 Wash. Laws Reg. Sess. ch. 190 (now codified at RCW § 36.70A.365).
50. *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c, Final Decision and Order, 45 (March 5, 2001) (Henrikson, dissenting).
51. These criteria were 1) the county have a population of more than 250,000 and 2) the county be part of a metropolitan area that includes a city in another state with a population of more than 250,000. 1996 Wash. Laws Reg. Sess. ch. 167 § 2(1). This provision was known as the "Clark County bill." See *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, Final Decision and Order (30 June 2000), 51.
52. Compare 1996 Wash. Laws Reg. Sess. ch. 167 § 2(8) (now codified at RCW 36.70A.367(8)) with RCW §36.70A.365(1).
53. 1996 Wash. Laws Reg Sess. ch. 167 § 1.
54. 1996 Wash. Laws Reg. Sess. ch. 325 § 3.
55. *Id.*
56. Land Use Study Commission, *1996 Annual Report*, 12.
57. 1996 Wash. Laws Reg. Sess. ch. 325 § 3(5).
58. See, e.g., *King County v. Central Puget Sound Hearings Board*, 14 P.3d 133 (Wash. Sup. Ct. 2000).
59. 1996 Wash. Laws Reg. Sess. ch. 325 § 5.
60. *Id.*
61. SSB 6637, 54th Leg., Reg. Sess., Partial Veto Message (30 March 1996).
62. *Id.*
63. Land Use Study Commission, *1996 Annual Report*, 14 (January 1997).
64. Settle & Gavigan, 936-937.
65. Land Use Study Commission, *1996 Annual Report*, 11 (1997).
66. T. Ryan Durkan, LUSC Chairperson, letter to Governor Locke (January 28, 1997).
67. Land Use Study Commission, *1996 Annual Report*, 14-15; See also Land Use Study Commission, 1996 Annual Report, Summary of recommendations. The current definitions of these terms may be found at RCW § 36.70A.020.
68. Land Use Study Commission, *1996 Annual Report*, "Summary of Recommendations."
69. Jared B. Black, "The Land Use Study Commission and the 1997 Amendments to Washington State's Growth Management Act," 22 Harv. Envtl. Law Rev. 559, 578-580 (1998). See also ESB 6094, 55th Legislature, Reg. Sess., History of ESB 6094 (1997).
70. ESB 6094, 55th Leg., Reg. Sess., § 1 (1997); 1997 Wash. Laws Reg. Sess. ch. 429 § 1 (emphasis added).
71. 1997 Wash. Laws ch. 429 § 7.
72. ESB 6094, 55th Legislature, Reg. Sess., Final Bill Report (1997); Black, 587.
73. ESB 6094, 55th Leg., Reg. Sess., Partial Veto Message (19 May 1997).
74. 1997 Wash. Laws Reg. Sess. ch. 429 § 2; Black, 588 (1998).
75. 1997 Wash. Laws Reg. Sess. ch. 429 §§ 2-3
76. ESB 6094, 55th Leg., Reg. Sess., Final Bill Report (1997).
77. ESB 6094, 55th Leg., Reg. Sess., Partial Veto Message (19 May 1997).
78. 1997 Wash. Laws Reg. Sess. ch. 429 § 7 (1997); RCW § 36.70A.070(5).
79. 1997 Wash. Laws Reg. Sess ch. 429 § 23.
80. Land Use Study Commission, *1996 Annual Report*, 15-16 (January 1997).
81. 1997 Wash. Laws Reg. Sess ch. 429 §§ 11 and 12; Black, 592-593.
82. 1997 Wash. Laws Reg. Sess ch. 429 § 13; Land Use Study Commission, *1996 Annual Report*, "Summary of Recommendations."
83. 1997 Wash. Laws Reg. Sess ch. 429 § 16 (now codified at RCW § 36.70A.302).

84. 1997 Wash. Laws Reg. Sess ch. 429 § 17; ESB 6094, 55th Leg., Reg. Sess., Partial Veto Message (May 19, 1997). Some members of the Commission had also urged for the adoption of an "arbitrary and capricious" standard of review. These members pointed out that the arbitrary and capricious standard was typically applied to the review of local legislative actions and should therefore be applied in the GMA context as well. Such a standard would have helped to preserve local decision making, but the proposal failed to gain sufficient support on the commission. Land Use Study Commission, *1996 Annual Report* (January 1997), 16–17.
85. 1997 Wash. Laws Reg. Sess ch. 429 § 20 (1997). See also Black, 597.
86. Land Use Study Commission, *1996 Annual Report*, 16-17 (January 1997).
87. *Id.* at 17.
88. 1997 Wash. Laws Reg. Sess ch. 429.
89. ESB 5915, 55th Leg., Reg. Sess. (1997); 1997 Wash. Laws Reg. Sess. ch. 142. ESB 5915 authorized any county with a population over 140,000 that was adjacent to another country could establish land banks. This was commonly known as the "Whatcom County" amendment *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, Final Decision and Order (30 June 2000).
90. House Bill 2542, 55th Leg., Reg. Sess., Final Bill Report (1998). HB 2542's opt-out provision would have applied to both those counties that failed to opt-out of GMA as well as those that chose to opt-in. See RCW § 36.70A.040. This second chance at opting out was available for a limited time, and required either the concurrence of 60% of the cities within a given county or the approval of a majority of the county's voters. See Final Bill Report, supra.
91. HB 2542, 55th Legislature, Reg. Sess., Veto Message (April 2, 1998).
92. SHB 3099, 55th Leg., Reg. Sess., Final Bill Report (1998); 1998 Wash. Laws Reg. Sess. ch. 289.
93. Land Use Study Commission, *1998 Annual Report*.
94. Land Use Study Commission, *1998 Annual Report*, ch. 11.
95. *Id.* at 4-5.
96. *Id.*

THE IMPACT OF THE GMA: *A TALE OF THREE COUNTIES*

It was the best of times; it was the worst of times. While the Central Puget Sound region has been enjoying economic growth and prosperity during the last ten or twenty years, many of Washington's rural counties have taken an economic beating.[1] Currently, unemployment rates are high, and the decline of resource-based industries has diminished work opportunities for rural residents.[2] GMA may not be solely responsible for the problem, but it certainly has played an important role in preventing effective solutions.

According to the Western Washington Board, "Rural lands are the leftover meatloaf in the GMA refrigerator."[3] While it is true that GMA leaves "rural" largely undefined and unknown, this Hearings Board comment makes it clear why the legislature charged counties, not the Boards, with the task of determining what "rural character" is supposed to mean.[4] Plainly put, those who live in, work for, and love their communities will see potential that goes far beyond yesterday's leftovers. Hearings Boards' decisions leave rural economies to deteriorate, something like that last piece of meatloaf. Unfortunately, the Boards' lack of vision does not translate to lack of control, and counties are hard pressed to find a way to turn meatloaf into homes and jobs for county citizens without incurring Hearings Board disapproval.

In an effort to provide options for rural counties, the 1997 legislature expanded the GMA's provisions covering rural development, providing increased guidance as to what "rural" means and expressly allowing counties to plan limited areas of more intensive rural development (LAMIRDs).[5] Under the 1997 amendments, counties were to establish the character of their rural areas through land use patterns

- in which open space, natural landscape, and vegetation would predominate over the built environment;
- that foster **traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;**
- that provide visual landscapes traditionally found in rural areas;
- that are compatible with use of the land by wildlife and fish;
- that reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- that generally do not require the extension of urban governmental services; and
- that are consistent with the protection of natural surface water flows and groundwater and surface water recharge/discharge areas.[6]

While Hearings Board opinions prevent sprawl, guard against extension of urban governmental services, and protect open space, they seem to have ignored the need for rural residents to "live and work" in rural areas. County efforts to preserve existing businesses or recruit new businesses to provide local jobs have been opposed by Hearings Board restrictions on the 1997 LAMIRD provisions.

There are three types of LAMIRDs authorized by the 1997 amendments:

- **Type #1: Rural development consisting of infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas.** Industrial areas need not be specifically designed to serve the existing rural population.[7] The area designated for this type of LAMIRD must be within a logical outer boundary around the existing area or use. Existing areas are delineated predominately by the built environment, but may include undeveloped lands as long as the other requirements for the development of these LAMIRDs are followed. In setting a logical outer boundary, counties are expressly required to consider the need to preserve the character of existing neighborhoods and communities and physical boundaries, as well as the prevention of abnormally irregular boundaries.[8] An existing area or use is one that was in existence at the time the county became subject to GMA planning requirements.[9]
- **Type #2: Intensification of development or new development of small scale recreational or tourist uses.** Development may include commercial facilities designed to serve the recreational or tourist use,

but may not include new residential development. As a recreational or tourist use, this type of LAMIRD is not limited to development designed to serve the existing rural population.[10]

- **Type #3: Intensification of development or new development of isolated cottage industries or small-scale businesses.** Such uses need not be principally designed to serve the rural population, but must provide job opportunities for rural residents.[11]

Counties may not, however, use the LAMIRD provisions to designate a major industrial development or master planned resort.[12]

In spite of the new flexibility the bill was supposed to provide for rural areas, Hearings Board decisions have greatly restricted counties' ability to make use of these provisions. For example, the Western Washington Growth Management Hearings Board (WWGMHB) has held that Type #1 LAMIRDs cannot include new development, despite the fact that the legislature authorized "infill, *development*, or redevelopment"[13] and expressly stated that the logical outer boundary could include undeveloped lands.[14] In addition, Type #1 LAMIRDs were exempted from the usual rules governing rural development, which required local governments to contain/control rural development, to assure visual compatibility of development with the surrounding area, to reduce the inappropriate conversion of undeveloped land into sprawling, low density development, and to protect critical areas and resource lands.[15] Clearly, the legislature anticipated that previously undeveloped land could be included in the newly authorized LAMIRDs.

> ***"There is no goal among the 13 listed in [the GMA] that encourages rural growth or rural development. The entire rural element . . . is directed toward maintaining rural character and toward limiting and constraining any existing non-rural growth. The legislative intent is to preclude expansion of development already more intensive than is appropriate in rural areas."***
> – *Dawes v. Mason County*, Compliance Order Re: Previous Findings of Noncompliance, WWGMHB Case No. 96-2-023c (2 March 2001), 16.

The Hearings Board has further restricted counties' ability to plan by focusing its analysis of logical outer boundary criteria almost exclusively on the "existing area or use" requirement. While this is certainly a key element of the legislative rural development standards, counties are not required to simply draw a line around whatever building or use existed at the time they became subject to GMA, thereby excluding every business or development outside the line. A logical outer boundary is delineated *predominately* (not exclusively) by the built environment, and counties are required to consider preservation of existing communities and prevention of irregular boundaries in developing the LAMIRD boundary.[16] By contrast, Hearings Board opinions continually reject development not shown to exist at the time a county became subject to GMA.[17]

Worse still, the Western Washington Growth Management Hearings Board has made it clear that it does not believe its discretion is limited even by "existing" areas or uses. Instead, the Hearings Board (and not the elected county officials) should determine what patterns of uses are "historical" or "typical" in analyzing a county's rural plans.[18]

What do some of the problems with GMA look like in living color? Language intended to provide counties with room to grow has been severely limited by Hearings Board opinions. As illustrated by the following county sketches, rural counties are still faced with an onerous planning mandate, bleak local economic circumstances, and no flexibility for meeting the challenge.

Due to the limited scope of this initial study, all three counties are under the jurisdiction of the Western Washington Growth Management Hearings Board. Likewise, all three are rural counties that have faced ongoing battles in attempting to adopt their comprehensive plans and development regulations. Each one, however, has faced unique challenges in complying with the GMA.

Lewis County

Lewis County, geographically the largest county in Western Washington, has more than 75 percent of its land designated as federal, state, or private resource lands.[19] About a third of the county is national forest land.[20] With the decline of the timber industry, Lewis County is attempting to make a transition from a largely resource-based economy to an economy with increased emphasis on light manufacturing and commerce.[21]

Lewis County
Population (2000): 68,600
Population Growth (1990-2000): 15.57%
Land Area (Square Miles): 2,407.8
Density (Persons per Square Mile): 28.49

The county has not shared in the economic prosperity of the Central Puget Sound region. On the contrary, a recent study of Lewis County's economy shows that, although Lewis County's average wage was 95 percent of the statewide average in 1970, this gap has widened considerably. As of 1999, the average Lewis County wage-earner was making only 71 percent of the statewide average wage.[22] Lewis County unemployment is also high, with an average three-year rate of 8.8 percent.[23] As its traditional resource-based economy has declined, Lewis County has been confronted with an immediate need to create new jobs and opportunities for economic development.

The county first became subject to the Growth Management Act (GMA) planning requirements in July of 1993, due to an increase in its population growth.[24] It adopted its comprehensive plan in June of 1999, followed by a series of development regulations.[25]

Most of the controversy over the Lewis County Comprehensive Plan has centered around its rural element. The Western Washington Growth Management Hearings Board invalidated this element of the county plan in its entirety.[26]

Historically, much of Lewis County's basic employment and economic activity has been built on jobs located outside urban growth areas.[27] In an effort to provide continuing opportunities for its projected non-UGA population, the County set aside one percent of its land for limited areas of more intensive rural development (LAMIRDs).[28] The county plan envisioned rural commercial development in or near previously developed small towns. Development regulations were to provide for small businesses and industries to locate on or near old mill sites or other lands previously used for resource-related activities. This would provide preexisting infrastructure for new development, while avoiding sprawling development into undeveloped rural areas.[29]

Lewis County designated ten existing small town LAMIRDs, including Adna, Mineral, Onalaska, Packwood, and Randle.[30] These small town developments were to be limited to areas of historic development or areas immediately affected by development, with small allowances to create regular boundaries and efficient service areas.[31] The plan also identified seven crossroads commercial areas at major intersections, four rural freeway interchange commercial areas, two industrial LAMIRDs, potential areas for recreational and tourist uses, and suburban enclaves with greater density of residential development than was otherwise permitted in rural areas. [32]

Unfortunately, the Hearings Board had other ideas. Most of the County's proposed LAMIRD sites were invalidated, and the Packwood, Onalaska and Randle LAMIRDs were slashed to a fraction of their original size.[33]

It is difficult to understand the "logical" outer boundary imposed by the Hearings Board on these remaining LAMIRDs. In Onalaska, the high school building was cut in half by the Board's suggested boundaries.[34] County residents anticipate difficulty in selling bonds for school improvements so long as the Hearings Board decision is allowed to stand.[35] The Hearings Board also excluded the Packwood Business Park and former Packwood Lumber Mill site from the Packwood LAMIRD. A local Randle store fell outside the LAMIRD, while the restaurant and post office located at the same intersection were fortunate enough to be within the Board's idea of a logical outer boundary. It would appear that the Hearings Board has focused almost exclusively on whether a particular development or use existed prior to GMA, ignoring the Act's requirements for preserving existing communities and taking into account physical landmarks.

The Hearings Board also invalidated portions of the industrial LAMIRDs designated in the Lewis County Plan. One of these, the Curtis Railyard, had historically been used by the timber industry and was unique in its ability to provide a large parcel of land with both railway and interstate access. Furthermore, the entire 357-acre site included preexisting infrastructure such as rail, roads, power, and stormwater facilities. Thus, as a dissenting Board member pointed out, the county's LAMIRD encompassed the preexisting built environment and fully complied with the GMA's logical outer boundary requirements.[36] Nevertheless, the Board insisted that the Curtis site should not be extended beyond the 67 acres currently in use as a pole yard, and that any further development would have to be made in

accordance with the major industrial development requirements of the GMA.[37] For a rural county, the cost of such requirements could prove prohibitive, thus preventing any economic development involving larger industrial areas.[38]

Lewis County is already feeling the sting of the Hearings Board decision. An electronics company was negotiating to occupy a portion of the Packwood Business Park, but was rendered a "noncompliant use" by the Board's decision.[39] Consequently, it faced the risk of not being able to expand or alter its intended operations.[40] In addition, the new company became difficult to finance, as the noncompliant nature of a business greatly reduces its appraised value.[41] Negotiations ended and approximately 35 new family-wage jobs in Lewis County were lost.[42]

In all, it is estimated that the Hearings Board decision on the Lewis County LAMIRDs directly impacts nearly 180 businesses and more than 900 jobs. These jobs, in turn, provide support for about 500 additional jobs, bringing the estimated impact of the Hearings Board decision to about **1,400 workers**,[43] nearly three times the level of countywide job growth since 1995.[44]

The county had another chance for economic development. During a limited window of time, Lewis County was given statutory authorization to designate up to two locations outside of urban growth areas as industrial land banks (ILBs) for major industrial activity.[45] The legislature had found that a land bank pilot program might provide economically disadvantaged counties with the opportunity to attract new industrial activity.[46] Due to the inherent disadvantages in approving such sites on a case-by-case basis, counties needed the chance to identify locations for major industrial activity prior to receiving a specific proposal.[47]

An initial study indicated that Lewis County would need 2,400 acres of industrial land over the next 20 years.[48] As a result, the county designated two parcels, one at the Centralia Steam Plant Major Industrial Development Area, and one at the intersection of I-5 and Highway 12. An additional 2,000 acres adjacent to the Centralia site were reserved to meet Lewis County's projected 50-year industrial lands needs.[49]

The Hearings Board found that both the Centralia Steam Plant and the I-5/Hwy 12 ILBs were noncompliant because the county *comprehensive plan*, taken alone, did not sufficiently provide for site planning and evaluation in the ILBs.[50] Although the Hearings Board was informed that recently adopted development regulations addressed these issues, the Board refused to exercise jurisdiction over the regulations. According to the Board, the time limitation for

Lewis County LAMIRDs

The LAMIRD boundaries designated by the Lewis County plan (outer line) were designed to preserve existing communities, protect local businesses and provide space for much-needed economic development. The boundaries the Hearings Board considered justifiable (inner line) would render many existing businesses nonconforming and slowly strangle the county's economy.

The Onalaska LAMIRD

The Randle LAMIRD

challenging the new regulations had not yet passed, so consideration of the regulations would be an impermissible advisory opinion.[51] Portions of these ILBs were also declared invalid.[52]

The ILB amendments, intended to provide greater flexibility to local government in planning for *future* economic development, will be of little to no value for rural counties if the details of prospective development, infrastructure, and environmental protection must be in place at the planning stage, rather than being governed by developmental regulations and implemented as opportunities for growth arise.

Lewis County's agricultural resource lands also came under attack, not only because of the amount of land the county had designated for agricultural purposes, but also because of the development density allowed in the county's development regulations.[53]

In addition to a single family dwelling unit, agricultural parcels were authorized to include farm employee housing, or farm housing for the immediate family members.[54] While it would certainly seem that this flexibility was not only in keeping with the traditional farm lifestyle, but necessary to the success of many family farms, the Hearings Board invalidated this regulation on the ground that it allowed development of agricultural lands at too great a density.[55]

The Hearings Board also disapproved of the county's "opt-out" provision for landowners whose farms, due to a change in circumstances, no longer offered a long-term reasonable rate of return on land, labor and capital invested in commercial agricultural activity.[56] While agricultural resource lands are certainly worth preserving, the county's development regulations merely provided hope for land owners otherwise facing financial ruin because their land must be used for a purpose which is no longer profitable. Furthermore, the county's specified opt-out process would have required a public hearing and review process—hardly an opportunity for full-scale abandonment of the county's agricultural resource designations.

Various elements of the Hearings Board rulings are now on appeal, including the validity of the Curtis industrial site[57] and the Board's standards for invalidating the county's LAMIRDs.[58]

Meanwhile, Lewis County planners and citizens cannot ask "What is best for this county?" rather than "Can we get this past the Hearings Boards?"

The answer to that question will cost plenty. Since January 1996, Lewis County has spent $1,130,838.52 for consultants, legal fees and other costs.[59] This figure excludes costs such as county staff time, so it is well below the actual cost of compliance.

Mason County

Unlike Lewis County, Mason County's growth rate subjected it to GMA planning requirements from the outset, although its limited total population would have allowed the county to opt out of GMA before the December 31, 1990 deadline.[60]

A significant portion of Mason County is forest land, and the Olympic National Park and National Forest cover 275 square miles of the northwest end of the county.[61] Mason County's economy has been traditionally resource-based, with particular emphasis on timber.[62]

Like a number of other rural counties, Mason is experiencing a high unemployment rate (6.7 percent three-year average), proving the need for increased job opportunities within the county.[63] As of 1999, Mason County workers were able to make only 71 percent of the statewide average wage.[64]

Mason is experiencing rapid population growth and needs room to plan effectively. (Mason's high population growth could probably be attributed in part to the county's affordable housing supply.)[65] With so many residents facing unemployment, Mason County also needs to create job opportunities for local residents. Unfortunately, the county is faced with the same cramped perspective on rural development that has prevented Lewis County from implementing its comprehensive plan.

Mason County's plan and development regulations were initially challenged under the pre-1997 standard, requiring that petitioners show noncompliance or invalidity by a mere preponderance of the evidence. Furthermore, initial challenges to the Mason County plan came prior to the significant legislative changes allowing counties greater flexibility in the development of their rural areas. Ruling that rural development could accommodate only those commercial enterprises designed to serve neighborhood needs and only those industrial enterprises which were resource-based, the Western Washington Growth Management Hearings Board invalidated the entire rural land use element of Mason County's plan, as well as a number of the county's development regulations.[66] The Board also found that the county's LAMIRDs and Urban Growth Areas

Mason County

Population (2000): 49,405

Population Growth (1990-2000): 28.86%

Land Area (Square Miles): 961.1

Density (Persons per Square Mile): 51.4

(UGAs) were too large for the projected population growth.[67]

Although it was some time before the county pared their LAMIRDs down to a size that was approved by the Hearings Boards,[68] the primary point of contention centered around the county's "matrix of permitted uses," which specified where certain types of businesses could locate. The matrix, originally invalidated by the Board in 1996,[69] was restrictive even in its original form: Any use that was not listed in the matrix had to be approved after the proponent of the use had demonstrated it was appropriate for the location proposed, in terms of trip generation, types of traffic, parking and circulation, utility demands, space needs, environmental impacts, clientele characteristics, etc.[70]

As a recent study by the Mason County Economic Development Council illustrates, it is erroneous to assume that rural businesses are, or necessarily should be, located within UGAs.[71] The study found that **69 percent** of Mason County's existing businesses were located outside of UGAs, and approximately **62 percent** were located outside of **both** UGAs and the county's established LAMIRDs. Further, of the 355 *types* of businesses operating in Mason County's rural areas in 1998, about **76 percent** (254 types) were made nonconforming by the county's Matrix of Permitted Uses.[72]

In an attempt to bring the county into compliance, the county revised its matrix, cutting previously permitted business types by 15 percent in Rural Activity Centers (RACs) and by 26 percent in other rural areas. The Board commended Mason County for "moving in the right direction," but objected that many of the uses permitted by the matrix were not principally designed to serve the rural population. For example, the Board objected to the following uses in Mason County LAMIRDs: mobile home sales, mortuaries, furniture repair, health clubs, light industry, upholstering, ambulance service, animal hospitals, pet shops, plumbing shops, auction houses, second hand stores, self-service storage facilities, small engine repair, stationery stores, and art/dance/recording studios.[73]

As a result of the 1997 amendments, industrial areas are exempt from any requirement that they be principally designed to serve the rural population.[74] According to the Hearings Board, this exemption applies only if an area is completely industrial in nature. The Mason County LAMIRDS combined commercial, industrial, and in some cases residential uses with industrial uses, creating mixed-use LAMIRDs. Therefore, the Hearings Board required evidence that the uses allowed in these areas, *including the industrial ones*, were principally designed to serve the rural population.[75] The Board reasoned that tight restrictions on rural development were necessary to channel growth into Mason County's designated Urban Growth Areas (UGAs).[76]

While the Hearings Board acknowledged that preexisting uses could continue as nonconforming uses, this decision still places onerous restrictions on any industrial land use that happens to be in a *mixed use* rather than a purely *industrial use* LAMIRD. Although the 1997 amendments protect the ability to "infill, develop and redevelop" inside LAMIRD boundaries,[77] and were intended to preserve rural economies,[78] Hearings Board's restrictions on industrial uses within mixed use areas will have the opposite effect.

Relegating Mason County businesses to a "nonconforming" status has a significant adverse impact on their economic viability of the ill-fated businesses and the county as a whole. Although these nonconforming businesses may continue operation, they may be unable to expand. Furthermore, additional businesses interested in locating in Mason County must find a place in the UGAs or find a way to meet the narrow specifications of the matrix of permitted uses. Rather than providing "opportunities to both live and work in rural areas"[79] this limits the county's rural economy to existing businesses and uses, dooming it to a slow death.

Over the five-year period from 1993 to 1998, Mason County experienced a 10 percent drop in the number of private business located within the county. In a number of cases, GMA's land use restrictions are to blame.[80] As a result, it is likely that the number of Mason County residents who must commute outside the county to find employment will increase.[81] Needless to say, the increase in long distance commuters will place additional burdens upon our state's already crippled transportation system. By its restrictive interpretation of rural development, the Hearings Board is not only

dooming local economies (See GMA Goal # 5), but impeding progress toward more efficient transportation. (Goal # 3).

Although GMA is supposed to provide a bottom-up planning framework, the Hearings Board's repeated rejection of Mason County's plan also silences local citizens' voices on land use planning issues (Goal #11). By all appearances, the Hearings Board interference is doing a great deal to tie the hands of local government and businesses without actually accomplishing the GMA's goals.

The Hearings Board's restrictive interpretation of the 1997 LAMIRD provisions is currently being reviewed in Mason County Superior Court.[82] This case will have a far-reaching impact on the ability of local governments to balance GMA's goals in accordance with local needs and circumstances.

Landowners whose use of their property was once fully compliant with the law now face severe restrictions on their ability to use and develop the same parcels of property.

The building complex pictured below is located in one of Mason County's rural areas, about a mile south of the Shelton city limits. The complex includes a rail siding and three truck docks, and has been used for various business ventures, including lumberyard, propane distribution, Christmas tree processing, hardware and building supply, and most recently, as an electronics manufacturing facility. About the time the county adopted its matrix of permitted uses, the owners lost their electronics manufacturing tenant.

Mason county property valued at zero due to land use restrictions.

Because of the matrix' restrictions on business types in rural areas, the former electronics company would have been a nonconforming use. The county refused to allow another tenant, an electronics publishing company, to locate on the property because it was not the same type of business as the last.

Faced with an unusable piece of property, the owners petitioned the Board of Equalization for tax relief and were granted a **valuation of zero** on the property. Meanwhile, they have sued the county for a taking of their property.[83]

To illustrate the restrictions placed on property use by the county's matrix, the building complex could be used for automobile repair, hardware sales, or a cabinet shop if it were located one mile north in Shelton, but because it is in a rural area, none of these uses are allowed.[84] **Despite the severe restrictions of the matrix, the Hearings Board has insisted on further limitations on the types of businesses that may locate in rural Mason County.**

Jefferson County

Located on the beautiful Olympic Peninsula, Jefferson County is one of the ten fastest-growing counties in Washington state.[85] Jefferson County initially opted to become subject to GMA's planning requirements, but it would eventually have become subject to the Act's planning requirements due to its population growth rate.[86]

The county's economy traditionally has been based on natural resource industries, with significant marine trades, manufacturing, and tourism elements.[87] Although the decline in resource-based industries has certainly impacted the Jefferson County economy, it has fared somewhat better than nearby Mason and Lewis Counties, with a three-year average unemployment rate of 6 percent.[88]

The county's early conflicts with the GMA involved the designation of interim urban growth areas (IUGAs) and the classification of mineral, forest, and agricultural lands.[89] A complete discussion of the issues presented in critical area and resource land designations is beyond the scope of this study. It is worth noting, however, that the county's forest lands ordinance was invalidated partly because it excluded property from a

Jefferson County

Population (2000): 25,953

Population Growth (1990-2000): 28.82%

Land Area (Square Miles): 1,808.8

Density (Persons per Square Mile): 14.34

forest lands designation if the property did not meet a specified level of productivity. The county's ordinance was intended to protect private property rights and balance the preservation of resource lands with the enhancement of the land's potential economic value. The Board criticized this ordinance, stating that natural resource conservation must be the paramount consideration in interim resource land ordinances. Enhancement of the land's potential economic value at the expense of conservation was not a legitimate goal in designating resource lands, according to the Board.[90] Significantly, telling counties which of GMA's planning goals they may consider, and which they may not, is hardly compatible with the concept of bottom-up planning. Counties should have the freedom to weigh private property rights and economic development needs, even in making resource lands designations. This is particularly true in light of the increasing regulatory burden that state environmental policies place on resource landowners.[91]

Jefferson County's single Urban Growth Area, the city of Port Townsend, has not been sufficient to accommodate new development or to provide adequate jobs and services for county residents. The county's attempts to designate more land for development have been repeatedly disapproved by the Hearings Board. As explained below, the county designated interim growth boundaries, and began a "special study" of other possible urban growth areas or LAMIRDs. Nevertheless, as the county has attempted to provide room for new growth, the Hearings Board has insisted on a seemingly endless cycle of additional research and planning.

During 1994, Jefferson County designated three interim urban growth areas: Port Townsend, Port Ludlow, and the "Tri-Area," which included the unincorporated communities of Hadlock, Irondale, and Chimacum.[92] Two of these, Port Ludlow and the Tri-Area, were ruled noncompliant by the Hearings Board because the Board found that the county had not sufficiently analyzed the existing land capacity, fiscal impacts, or capital facilities plans for these IUGA designations. In addition, the Board held that critical areas and resource lands should be designated and protected prior to establishment of non-municipal UGAs. The Board suggested that a UGA designation might be appropriate for these areas in the future, but required further analysis.[93] As a result of this ruling, Jefferson County designated a single IUGA, the city of Port Townsend.[94]

The Board also took issue with the county's continued allowance of development in areas outside the IUGA and the density of development the county chose to allow in rural areas.[95] Four hundred acres of undeveloped commercial/industrial development zones still existed outside the IUGA. Although county development regulations limited the extension of urban services to areas outside Port Townsend, the Board did not believe these measures were sufficient.[96] Sanctions for noncompliance were officially recommended against the county.[97]

Jefferson County tightened its development restrictions and adopted a compliant comprehensive plan in 1998.[98] Port Townsend was designated as the county's sole urban growth area.[99] In addition, Port Ludlow was designated as a Master Planned Resort.[100] In order to accommodate demand for commercial lands and projected development, Jefferson County's comprehensive plan envisioned a "special study" which would further examine Glen Cove and the Tri-Area, allowing the county to determine a permanent land use status for those areas.[101] The Glen Cove/Tri-Area study involved six major tasks.[102] Four tasks have been completed for some time, including an inventory of existing commercial/manufacturing lands and an estimate of projected demand; preparation of a regional economic analysis for east Jefferson County; development of alternatives for designation of the Tri-Area and for projected commercial/manufacturing land; and environmental review of the various alternatives.[103] Relying on the advice of the Department of Community, Trade and Economic Development, the county plan stated that during the course of the study its designated growth boundaries, including its LAMIRDs, would be considered interim.[104]

The study's regional economic and land use analysis concluded the county would require about 280 net acres of commercial/industrial land in order to meet projected employment growth.[105] This 280-acre estimate was based on a wide range of assumptions and variables, including a projected job density of between 18 and 35 employees per acre, which is based on urban standards

and may or may not apply in a rural setting.[106] Thus, the actual need for commercial/industrial land may differ from the projected 280 acres. The inherent difficulty of projecting the exact amount of land that may be needed underscores the need for local planning flexibility.

In an attempt to meet these projected demands, the county sought to amend its comprehensive plan, adding a cumulative 16 acres for potential development by expanding the interim boundaries of several LAMIRDs. The Hearings Board ruled these amendments noncompliant, stating that commercial development would have to be channeled into the Port Townsend UGA or accommodated under the GMA provisions for major industrial developments.[107] (The ability to some day create a major industrial development will do nothing to solve the county's current economic problems. For Jefferson County, major industrial developments are not an adequate solution.)[108]

The Board also indicated that the remaining tasks in the Glen Cove/Tri-Area special study had to be completed before any revisions to LAMIRD boundaries could take place.[109] The county appealed the Board's decision to superior court, but was again informed that it must complete the Glen Cove/Tri Area study before any amendments to its plan.[110] This limitation on the county's planning discretion is questionable, particularly in light of the fact that the Jefferson County plan allows for boundary amendments upon completion of the study, but does not require completion prior to any amendments.[111]

Jefferson County has examined a number of options for development outside of Port Townsend. Glen Cove and the Tri-Area were designated as "Provisional Urban Growth Areas" in October of 1999, but this decision was made solely for planning purposes. These areas must still be regulated as rural until a formal change has been made to the county's comprehensive plan.[112] The Jefferson County Board of Commissioners has passed a motion declaring the special study complete.[113] Planning will continue for the Tri-Area to be designated as a UGA.[114] Glen Cove is to remain a LAMIRD, but its tightly-drawn boundaries are to be expanded. These changes will be a part of the county's yearly comprehensive plan amendment process, beginning in May 2002.[115]

Meanwhile, Jefferson County has spent more than 3 million dollars on its attempts to comply with the Growth Management Act, excluding any state funding.[116] This is a significant burden for a county facing budget cuts in other areas, such as juvenile and family court and parks and recreation.[117]

The concentration of growth into a single UGA has presented difficulties for rural residents who live a considerable distance from Port Townsend. It would appear that the county economy is losing business to the urban areas of surrounding counties due to its inability to provide a sufficient range of goods and services.[118]

A number of county residents have also expressed concern over the lack of local employment opportunities in areas that are a considerable distance from the designated UGA.[119] Such concerns are not unfounded. Jefferson County's median household income currently lags behind the state average[120] and housing is becoming less affordable.[121] Jefferson County has significantly restricted the land available for economic development outside its UGA in an effort to comply with Hearings Board mandates. If GMA is supposed to be a bottom-up planning process, the county must have the opportunity to weigh and balance the Act's goals. It is time to give the county the flexibility to meet the needs of local residents and projected market demands.

Endnotes

1. Twenty-four of Washington's thirty-nine counties are "economically distressed" in the sense that they have a three-year average unemployment rate of over 5.9%. All of these counties are rural. Washington Research Council, "Growth In Perspective: Rural Development," *PB 01-21* (29 September 2001) 1-2.
2. *Id.,* 1-2, 5-6. See individual county sections for further details.
3. *City of Port Townsend v. Jefferson County,* WWGMHB Case No. 94-2-006, Final Order, 21 (1 August 1994).
4. RCW § 36.70A.070(5)(c). Although "rural development" has been given a statutory definition since the Jefferson County decision referenced in the previous note, "rural" is still defined largely by what it is not, rather than by what it is. RCW § 36.70A.070(5).
5. RCW §§ 36.70A.030(14)-(16) and 36.70A.070(5). For additional details on the 1997 amendments, see the legislative history section of this study.
6. RCW § 36.70A.030(14) (emphasis added).
7. RCW § 36.70A.070(5)(d)(i).
8. RCW § 36.70A.070(5)(d)(i) and (iv).
9. RCW § 36.70A.070(5)(d)(v).
10. RCW § 36.70A.070(5)(d)(ii).
11. RCW § 36.70A.070(5)(d)(iii).
12. RCW § 36.70A.070(5)(e).
13. RCW § 36.70A.070(5)(d)(i).
14. RCW § 36.70A.070(5)(d)(iv).
15. RCW § 36.70A.070(5)(c).
16. *Id.*
17. E.g., *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c, Final Decision and Order, (5 March 2001); *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, Final Decision and Order (30 June 2000); *Olympic Environmental Council v. Jefferson County*, WWGMHB Case No. 00-2-0019, Final Decision and Order, (22 November 2000).
18. *Panesko v. Lewis County*, Final Decision and Order, 16.
19. 1999 Lewis County Comprehensive Plan (as amended 18 December 2000), 4-2.
20. *Id.*
21. *Id.,* 3-2.
22. E.D. Hovee & Company, *Economic Impacts of WWGMHB LAMIRD Decision* (July 2001), 7.
23. Washington Research Council, "Growth in Perspective: Rural Development," *PB 01-21* (18 September 2001) 2.
24. *Panesko v. Lewis County,* WWGMHB Case No. 00-2-0031c, Final Decision and Order, 1 (5 March 2001). *See also* RCW § 36.70.040(5).
25. *Butler v. Lewis County*, WWGMHB Case No.99-2-0027c, Final Decision and Order (30 June 2000) and *Panesko*, Final Decision and Order.
26. *Mudge v. Lewis County,* WWGMHB Case No. 01–2-0010c, Final Decision and Order (10 July 2001); *Butler,* Final Decision and Order, 66.
27. 1999 Lewis County Comprehensive Plan (as amended 18 December 2000), 4-61.
28. 1999 Lewis County Comprehensive Plan (as amended 18 December 2000) 4-2, 4-3.
29. 1999 Lewis County Comprehensive Plan (as amended 18 December 2000) 4-65.
30. 1999 Lewis County Comprehensive Plan (as amended 18 December 2000) 4-68; 4-69.
31. 1999 Lewis County Comprehensive Plan (as amended 18 December 2000) 4-68.
32. 1999 Lewis County Comprehensive Plan (as amended 18 December 2000) 4-70 through 4-75.
33. *Panesko v. Lewis County,* WWGMHB Case No. 00-2-0031c, Order on Motion to Rescind Invalidity (26 February 2001); *Panesko v. Lewis County,* WWGMHB Case No.00-2-0031c, Final Decision and Order (5 March 2001).
34. Diane Evans, "Hearings Board ruling strangles Lewis County," *Business to Business* (April 2001).
35. "Our Views: Ludicrous ruling must be opposed," *The Chronicle* (19 April 2001).
36. *Panesko,* Final Decision and Order (Henrikson, dissenting).
37. *Panesko,* Final Decision and Order, 22-23.
38. *Panesko,* Final Decision and Order (Henrikson, dissenting).
39. Diane Evans, "Packwood Town Meeting delivers varying bad news: Local doctor announces decision to leave, potential employer of 35 turns away—but citizens urged to fight GMA," *East County Journal* (23 May 2001); "Our Views: East county loses jobs from ruling," *The Chronicle* (23 May 2001).
40. *Panesko,* Final Decision and Order, 33; *Butler,* Final Decision and Order, 63.
41. Diane Evans, "Packwood Town Meeting delivers varying bad news: Local doctor announces decision to leave, potential employer of 35 turns away—but citizens urged to fight GMA," *East County Journal* (23 May 2001).
42. *Id.*
43. E.D. Hovee & Company, *Economic Impacts of WWGMHB LAMIRD Decision* (July 2001) 13.
44. *Id.* 8, 15.
45. RCW § 36.70A.367; 1998 Wash. Laws ch. 289.
46. 1998 Wash. Laws Reg. Sess. ch. 289 § 1.
47. 1996 Wash. Laws Reg. Sess. ch. 167 § 1.
48. E.D. Hovee & Company, *Lewis County Industrial Land Needs Analysis* (November 1997). *See also* Donna J. Batch Development Resources, *Lewis County Prime Industrial Lands Study* (February 1999).
49. 1999 Lewis County Comprehensive Plan (as amended 18 December 2000) 4-12.

50. *Butler,* Final Decision and Order, 53-56 .
51. *Id.*, 9-10.
52. *Id.,* 55-56.
53. *Butler,* Final Decision and Order, 35-37.
54. Lewis County Code §17.30.620.
55. *Butler*, Final Decision and Order, 37.
56. Lewis County Code §17.30.690. *Butler*, Final Decision and Order, 37.
57. See *Lewis County v. Western Washington Growth Mgmt. Hearings Bd.,* Wash Ct. App. No. 27496-5-II
58. See *Lewis County v. Western Washington Growth Mgmt. Hearings Bd.,* Lewis County Superior Court Nos. 01-2-00602-7, 01-2-00600-1 and 01-2-00601-9.
59. Lewis County Community Development, "GMA Costs" (5 December 2001).
60. Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present and Future,* 16 U. Puget Sound L. Rev. 867, 901 (1993).
61. Mason County Economic Development Council website, "1998/1999 Demographic Profile and Statistics," <http:/ /hood.hctc.com/~masonedc/statistics.htm.> (October 2001).
62. Washington State Labor Market Information website, Mason County Profile (1997), <http://www.wa.gov/esd/ lmea/pubs/profiles/mason.pdf.> (October 2001).
63. Washington Research Council, "Growth in Perspective: Rural Development," *PB 01-21* (18 September 2001), 2.
64. Mason County Economic Development Council website, "1998/1999 Demographic Profile and Statistics."
65. Glenn E. Crellin, "Housing Supply," *Washington REALTOR News* (21 March 2001) <http://www.warealtor.com/ news_events/past_articles/archive2001/archivewcrer/ wcrersupply.asp> (7 September 2001).
66. *Dawes v. Mason County,* WWGMHB 96-2-0023, Final Decision and Order (5 December 1996). Mason County refers to its LAMIRDs by other names, such as Rural Activity Centers. For continuity, the term LAMIRD will be used throughout the study, unless reference to a specific type of Mason County LAMIRD is required for accuracy.
67. *Id.*
68. The WWGMHB found that the county failed to meet the burden of disproving the invalidity of its LAMIRD boundaries in *Dawes v. Mason County,* WWGMHB Case No. 96-2-0023, Order Finding Invalidity, Partial Compliance, Continued Noncompliance, and Continued Invalidity (14 January 1999). In *Dawes v. Mason County,* WWGMHB Case No. 6-2-0023c, Compliance Order Re: Previous Findings of Invalidity, 6 (15 December 2000), the Board rescinded its previous findings of invalidity on Mason County's rural element, approving the county's new RAC/LAMIRD boundaries.
69. The matrix was contained in Mason County Ordinance No. 82-96, which was invalidated in its entirety by the Western Washington Growth Management Hearings Board in *Dawes v. Mason County,* WWGMHB Case no. 96-2-0023, Final Decision and Order (5 December 1996).
70. Mason County Ordinance No. 82-96 § 1.03.020 (adopted 17 June 1996).
71. Economic Development Council of Mason County, *Business Demographics and the Impact of Land Use Restrictions on the Mason County Economy, Phase II Report* (April 2000). As this study explains, rural businesses simply are not dependent on urban services and therefore do not necessarily locate, or need to locate, in urban areas.
72. *Id.* See Issue C.
73. *Dawes v. Mason County,* WWGMHB Case No. 6-2-0023c, Compliance Order Re: Previous Findings of Invalidity 5-6 (15 December 2000).
74. RCW § 36.70A.070(5)(d)(i).
75. *Dawes v. Mason County,* WWGMHB Case No. 96-2-0023c, Order Denying Motion for Reconsideration (17 January 2001). See also *Dawes v. Mason County,* WWGMHB Case No. 96-2-0023c, Compliance Order Re: Previous Findings of Noncompliance (2 March 2001) and *Dawes v. Mason County,* WWGMHB Case No. 96-2-0023c, Order Denying Motion for Reconsideration (2 April 2001).
76. *Dawes v. Mason County,* Compliance Order Re: Previous Findings of Noncompliance, 15-17 (2 March 2001).
77. RCW § 36.70A.070(5)(c)
78. RCW § 36.70A.030(14)(b).
79. Economic Development Council of Mason County, *Business Demographics and the Impact of Land Use Restrictions on the Mason County Economy, Phase II Report,* Issue A (April 2000).
80. *Id.*
81. *Id.* See Trends and Projections.
82. *Mason County v. Western Washington Growth Mgmt Hearings Bd.,* Mason County Superior Court, Nos. 01-2-00128-4, 01-2-00129-2, 01-2-00316-3 and 01-2-00352-0.
83. Jay Hupp, Mason County Economic Development Council Assistant Director, memorandum to Corrie White (5 December 2001).
84. Matrix of Permitted Uses, Mason County Ordinance No. 82-96.
85. Economic Development Council of Jefferson County website, "Relocation and Investor's Guide," <http: // www.edcjc.com/guide/population.html> (September 2001); "Population Growth by County,"*The News Tribune*, <http://www.tribnet.com/news/census/ county_growth.asp.> (September 2001).
86. 1998 Jefferson County Comprehensive Plan (as amended 1999) 1-9. See also RCW § 36.70A.040(1). Jefferson

County's plan and other helpful information regarding the county's efforts to comply with GMA are available online: <http://www.co.jefferson.wa.us/commdevelopment/complan.htm>

87. 1998 Jefferson County Comprehensive Plan (as amended 1999) 7-2 *et seq*; Economic Development Council of Jefferson County website, "Relocation and Investor's Guide," <http://www.edcjc.com/guide/econobase.html.> (September 2001).
88. Washington Research Council, "Growth in Perspective: Rural Development," *PB 01-21* (19 September 2001) 2.
89. For a summary of Jefferson County's early GMA Compliance History, see 1998 Jefferson County Comprehensive Plan (as amended 1999), Appendix E. *See also Port Townsend v. Jefferson County,* WWGMHB Case No. 94-2-0006, Final Order (10 August 1994) and *Olympic Environmental Council v. Jefferson County,* WWGMHB Case No. 94-2-0017, Compliance Hearing and Order (17 August 1995).
90. *Olympic Environmental Council*, WWGMHB Case No. 94-2-0017, Compliance Hearing Order, 5 (17 August 1995).
91. For example, see Diane Brooks, "Measure to cut farm regulation hotly contested," *Seattle Times* (3 November 2001); James Geluso, "County extends buffer deadline for farmlands," *Skagit Valley Herald* (28 November 2001); "Skagit County's buffer plan tossed," *Daily Journal of Commerce* (27 November 2001).
92. *Port Townsend v. Jefferson County,* WWGMHB Case No. 94-2-0006, Final Order, 2-3 (10 August 1994).
93. *Id.* See also *Loomis v. Jefferson County,* WWGMHB Case No. 94-2-0066, Final Decision and Order, (6 September 1995) (finding amended development regulation designating Port Ludlow as an IUGA noncompliant).
94. *Port Townsend v. Jefferson County,* WWGMHB Case No. 94-2-0006, Compliance Hearing Order (14 December 1994).
95. *Port Townsend v. Jefferson County*, Compliance Hearing Order, WWGMHB Case No. 94-2-0006 (14 December 1994).
96. *Id.,* 5-7.
97. *Id.,* 9.
98. 1998 Jefferson County Comprehensive Plan (as amended 1999) 3-22 through 3-23; Department of Community Development, "Chronology of Land Use Planning and Urban Growth Activities," *Jefferson County Viewpoint* (October 2000) 4.
99. 1998 Jefferson County Comprehensive Plan (as amended 1999) 1-11.
100. 1998 Jefferson County Comprehensive Plan (as amended 1999) 1-1. GMA permits counties to designate master planned resorts outside of urban growth areas. A master planned resort must be a self contained planned unit development in a setting of significant natural amenities. The primary focus must be on providing destination resort facilities consisting of short-term visitor accommodations with a range of recreational facilities. RCW § 36.70A.360.
101. Jefferson County Resolution No. 58-01 (25 June 2001).
102. Department of Community Development, "Tri-Area and Glen Cove Planning Efforts," *Jefferson County Viewpoint* (October 2000) 3.
103. *Id.* See also Tri-Area and Glen Cove Special Study: Scope of Services (revised 15 August 2001).
104. Jefferson County Board of Commissioners, letter to Governor Gary Locke (5 December 2000) 2; Steve Wells, Assistant Director Washington Department of Community, Trade and Economic Development, letter to Richard Wojt, Jefferson County Board of Commissioners Chair (4 December 1998). See also 1998 Jefferson County Comprehensive Plan, 1-11, 3-69 and 3-70.
105. Jefferson County Community Development website, "Glen Cove Land Use Options: A Strategic Analysis" (September 2001) 2; <http://www.co.jefferson.wa.us/commdevelopment/default.htm.> (December 2001).
106. *Id.* See also Richard Trottier, Trottier Research Group, memorandum to Reid Shockey (27 September 1999) (explaining calculation of 280 acre estimate) and Richard Trottier, *Regional Economic Analysis and Forecast* (26 January 1999).
107. *Olympic Environmental Council,* WWGMHB Case No. 00-2-0019, Final Decision and Order, (11 November 2000); RCW §§ 36. 70A.365 and .367. Jefferson County Board of Commissioners, letter to Governor Gary Locke (5 December 2000) 1.
108. See *Panesko v. Lewis County,* Final Decision and Order, WWGMHB Case No. 00-2-0031c (5 March 2001) (Henrikson, dissenting).
109. *Olympic Environmental Coumcil v. Jefferson County,* Final Decision and Order, WWGMHB Case No. 00-2-00019 (22 November 2000), 5.
110. *Jefferson County v. Olympic Environmental Council*, Memorandum Decision, Jefferson County Cause No. 00-2-00346-2 (5 June 2001).
111. 1998 Jefferson County Comprehensive Plan (as amended 1999), 3-65 through 3-66, 3-70.
112. Jefferson County Community Development, "Urban Growth Area Update—Tri-Area & Glen Cove," Jefferson County Viewpoint (October 2000), 2.
113. Al Scalf, Jefferson County Community Development Director, email to Corrie White (4 December 2001).
114. *Id.*
115. *Id.*
116. Jefferson County, GMA Cost Analysis (1990-November 2000). Counties may obtain grants from the state for growth management purposes, but state funds are excluded from these cost calculations. RCW § 36.70A. 490 and .500.

117. Charles Saddler, Jefferson County Administrator, memorandum to elected officials and department heads (19 October 2001).
118. 1998 Jefferson County Comprehensive Plan (as amended 1999), 3-8 and 3-13.
119. 1998 Jefferson County Comprehensive Plan (as amended 1999), 3-21.
120. Washington State Office of Financial Management, Median Household Income Estimates by County 1989 to 2000 and Forecast for 2001, <http://www.ofm.wa.gov/poptrends/table16.pdf> (December 2001); *See also* Gary Rowe, Jefferson County Deputy Administrator, Jefferson County Financial Condition Report (July 2001), 45.
121. Glen Cove/Tri-Area Special Study, Final Decision Document (11 June 2001), 5; Al Scalf, Jefferson County Director of Community Development, memorandum to Board of County Commissioners and Planning Commission, "Item 5: Housing Affordability Index, Jefferson County and Washington State, 1995-2000" (12 July 2001).

RECOMMENDATIONS

With all its complexity, GMA poses one major question: "Says who?" Will local governments be given freedom to plan and flexibility to weigh the Act's conflicting planning goals, or will the Hearings Boards continue to dictate and micro-manage local land use and stifle local economies?

At present, GMA has succeeded in costing local governments millions of dollars, trampling private property rights, and frustrating local citizens who care about their communities and who believe that government is no longer responsive to their land use concerns. Meanwhile, the Act's impact on many of its own goals has hardly been encouraging. Housing is not affordable. Traffic is congested. Economic prosperity is still concentrated in the Central Puget Sound area, while rural counties are experiencing high unemployment. State directed planning has overcome local involvement.

With all its flaws, GMA is a reality in Washington state. There are, however, opportunities for local government, industry, labor, and concerned citizens to become involved in both the policymaking and planning process. For its entire existence, GMA has been part of a tug-of-war between various interest groups. Some want no growth. Some want more growth. Some want growth, they just want it somewhere other than where it is actually happening. Some believe more state control will guarantee better land use planning, while others argue that local governments will best be able to tailor growth policies to local circumstances. Needless to say, the side that persists in holding the rope and pulling stands a better chance of success than the side that lets go.

Not all of the following recommendations will be applicable in every situation. Some of them, if implemented, may negate the need for others. The first recommendation, elimination of the growth management hearings boards, would render many of the recommendations that follow unnecessary. It would also be the single most effective change to GMA for purposes of providing a truly "bottom-up" planning process. On the other hand, it will probably be the most difficult change to implement, at least in our current political climate. In the meantime, additional recommendations are offered to soften the blow of GMA on local governments and economies.

Regardless of the alternatives that are selected, those who want to see changes should hang on to the rope and keep pulling.

Eliminate the Growth Management Hearings Boards

Although the Growth Management Hearings Boards wield incredible power, they are not directly accountable to the citizens whose lives, homes, and businesses are governed by their decisions. GMHB members are appointed by the governor to six year terms, and are not even subject to senate confirmation.[1] This is hardly consistent with the constitutional principle of government by the consent of the governed.[2] Consequently, the quasi-judicial Hearings Boards should be eliminated and any lawsuits regarding GMA compliance should be heard by the judiciary.

Some have argued that judges lack the land use expertise necessary to decide GMA appeals.[3] The argument is a hollow one, in light of the fact that the GMA petition process is supposed to determine compliance with the law, not the advantages or disadvantages of a particular local land use decision. Judges frequently decide the application of law to subjects otherwise outside of their expertise, and it is always possible to obtain expert advice when this becomes necessary. Unlike the appointed Hearings Board members, judges are directly accountable to the people whose lives and land their decisions impact.

Solving the state's land use conflicts within our carefully balanced three-branch government system would be preferable to allowing an unelected, unaccountable, quasi-judicial agency to trump the decisions of local elected officials.

Furthermore, in light of our state's current budget problems it is time to streamline state bureaucracy. The Boards have a biennial budget of over $3 million,[4] and this reflects just a portion of the cost for maintaining the current Hearings Board Review system. Presently, the Boards appear to be defeating rather than defending the GMA goals. Why not find a better use for taxpayers' money?

Get involved in Hearings Board appointments

As discussed previously, the Hearings Boards pose a significant threat to locally controlled, citizen-responsive land use planning and should be eliminated. For the present, however, they are an integral part of the GMA system.

Due to the fact that Hearings Board members are appointed, rather than elected, citizens have limited opportunity for input regarding who serves on the Boards, and who does not. Be that as it may, it pays to make the most of the opportunities that are available.

Board members serve six-year terms, staggered by two years, so that no more than one member per board is eligible for reappointment or replacement at a given time. The following are the dates on which the various board members' terms will expire:

Central Puget Sound Growth Management Hearings Board

Lois North—6/30/02
Joseph W. Tovar—6/30/04
Edward G. McGuire—6/30/06

Western Washington Growth Management Hearings Board

Nan Henriksen—6/30/00 (still serving on date of publication)
William H. Nielsen—6/30/02
Les Eldridge—6/30/04

Eastern Washington Growth Management Hearings Board

Judy Wall—6/30/00 (still serving on date of publication)
Dennis A. Dellwo—6/30/02
D.E. "Skip" Chilberg—6/30/04.[5]

Additional information regarding upcoming vacancies on the Hearings Boards may be found on the governor's website.[6]

While the names of potential appointees are not available from the Governor's Office, the current Board vacancies provide an opportunity that must not be ignored. Those who are interested in influencing Hearings Board appointments should contact the governor and emphasize the factors that need to be considered in his next Hearings Board appointments. The current Boards' lack of deference to local elected officials should be protested, and the governor should be asked to appoint Board members who consider all the GMA goals in a balanced manner, instead of stifling local economies.

One letter may or may not make a difference, but scores of letters regarding upcoming appointments are bound to get some attention. Find individuals and groups with similar concerns and mount a coordinated effort. Make the most of whatever opportunities are available to influence the process.

Require senate advice and consent for Hearings Board appointments

In 1996, the Land Use Study Commission reported that of the five Boards with quasi-judicial and appeal responsibilities similar to the Growth Management Hearings Boards, only the GMHBs were not subject to senate confirmation.[7] Amending the GMA to require senate confirmation of Hearings Board appointees would provide citizens with a better opportunity to influence the appointment process. Requiring senate confirmation would restore a measure of accountability to citizens—a reform that is desperately needed and long overdue.

Eliminate overly broad standing provisions

The GMA's standing provisions determine which citizens have a sufficient stake in local land use planning to challenge a particular decision before the Hearings Boards.

While citizen involvement is an important element of GMA, overly broad standing provisions thwart rather than promote this concept. Instead of encouraging citizens to become actively involved in the growth management planning process, liberal standing provisions allow any citizen who submits any comment on a particular policy to drown out the voices of others who worked and sweated over the adoption of a local plan.

GMA allows citizens to challenge comprehensive plans or regulations if

1. The citizen participated orally or in writing before the county or city regarding the matter on which review is requested;
2. The citizen is certified by the governor within 60 days of filing the request for review with the Hearings Board; or
3. The citizen has standing under the Administrative Procedures Act (APA).[8]

These standing provisions have been interpreted quite liberally by the Hearings Boards and by the courts, which have held that participating in a "matter" does not require a petitioner to raise the specific "issues" that later form the basis for his or her petition. Rather, if a petitioner's participation in local decision making is reasonably related to the "issues" raised before a Hearings Board, this will be sufficient to establish standing.[9]

Citizens who simply dislike the decisions reached by their elected representatives should take their concerns to the ballot box, rather than force compliance with their personal views on growth management through expensive litigation or the threat of invalidity. (Incidentally, a number of citizen groups are backed by larger environmental interests.)[10] GMA land use decision making should be a local legislative process. Barring clearly illegal or prejudicial action on the part of local officials, changes to local policy should be made through the local legislative or elective process rather than a governor-appointed state board.

In contrast to the GMA, the Land Use Petition Act (LUPA) grants standing only to the owner of property subject to the challenged decision or to another person adversely affected by the decision who is able to show 1) that the decision has or is likely to prejudice him; 2) that his or her interests were among those that the local jurisdiction was required to consider in making its decision; 3) that a judgment in his or her favor would eliminate or redress this prejudice; and 4) that he or she has exhausted any administrative remedies to the extent required by law.[11] Once these standing requirements are met, a petitioner has standing to challenge local officials' interpretation of the law or failure to follow lawful procedures.[12]

Such a standing provision for GMA petitions should allow citizens to bring legitimate challenges to unlawful local actions, while preventing a disgruntled minority from legislating by lawsuit. Sanctions for frivolous petitions should also be considered.

Make economic development a mandatory element of growth management plans

A number of the broad planning goals of the GMA potentially conflict. For example, GMA's affordable housing and economic development goals can be incompatible with preserving open space or preventing sprawl. This should come as no surprise, due to GMA's original design as a broad planning framework, and its application both to counties struggling with the symptoms of rapid growth and to counties experiencing too little growth.[13]

As the circumstances in Lewis, Mason, and Jefferson Counties illustrate, the Hearings Boards seem to take preservation of open space and prevention of sprawl far more seriously than economic development. This is completely inconsistent with the concepts of "bottom-up" planning process and public participation. GMA's goals are listed without any assignment of priority, leaving local governments with the responsibility of weighing and balancing their land use priorities.[14] (Try explaining to the unemployed citizens of a rural county, with the vast majority of its land already preserved as open space, why strict rules against rural development are more important than finding jobs. Urban areas recruit businesses to create jobs, so why should rural areas be any different?)

> ***"Washington state arguably has a dual economy, one in which the Central Puget Sound region faces problems associated with rapid growth and much of the rest of the state faces problems associated with too little growth."***
> – SHB 2929, 51st Leg., 1st Ex. Sess., Final Bill Report (1990)

Although the GMA goals are not prioritized, certain ones are featured in mandatory elements of local comprehensive plans (see p. 4). Making economic development a mandatory element for local comprehensive plans should influence the Hearings Boards to take counties' economic needs more seriously. Some local governments, such as Jefferson County[15] and the city of Kirkland[16] already include this element in their plans, so requiring inclusion of economic development is not likely to place a significant burden on local planning. On the contrary, it may encourage greater deference to local efforts to balance the GMA's goals.[17]

Policymakers should also consider a minor change to the wording of GMA's economic development goal.[18] In its list of planning goals, the GMA requires counties to "[e]ncourage economic development throughout the state that is *consistent with adopted comprehensive plans* . . .."[19] By using the past tense

"adopted," the statute leaves room for the Hearings Boards to downplay economic development as an afterthought. Economic development ranks equally with the other goals, and this should be emphasized in the Act's language.

Rural counties should undertake an analysis of rural character, including historical business locations, types and employment levels prior to developing their plans. Without this analysis, rural character can be neither preserved nor sustained. A new rural character may be created, but this is not what the Act intended.

Show greater deference to local land use decisions

GMA was supposedly a framework of planning goals, with the responsibility for balancing and harmonizing these goals resting on local communities.[20] Elimination of the Hearings Boards will do a great deal to protect local discretion from unwarranted state interference.

Other reforms may also deserve consideration, such as further increasing the standard of review applied by the Boards to local decisions. For example, the 1997 amendments would have prohibited the Boards from invalidating local plans unless a city/county has acted in an arbitrary or capricious manner.[21] This standard is typically used to review legislative enactments, and it would be appropriate to apply it to local growth management decisions.[22] (Ironically, the Growth Management Hearings Boards' orders are entitled to greater deference during judicial review than local government decisions receive while they are under Hearings Board scrutiny.)[23]

The Hearings Boards must not substitute their ideas of how the GMA goals should be balanced, under the guise of requiring consistency with the Act.

Allow counties to opt out of GMA planning requirements

It is apparent that GMA is not meeting the planning needs of a number of Washington counties, particularly in rural, economically distressed areas. Counties need to be given the flexibility to make land use decisions that address the real needs of their local citizens, rather than following an endless cycle of GMA planning and replanning.

In years past, policymakers have considered various options for counties to address growth management issues. For example, the 1997 Legislature enacted a "GMA-flex" provision, which would have allowed counties to meet the goals of the GMA through alternative methods.[24] This section was vetoed by Governor Locke.[25] Taking a slightly different tactic, the 1998 Legislature passed a bill giving those counties that initially chose to become subject to full GMA planning requirements another chance to opt-out.[26] Unfortunately, the Governor vetoed the bill in its entirety, leaving even smaller, slowly growing counties with no way out of GMA.[27]

Counties should be given the opportunity to opt out of GMA planning requirements. GMA should serve as a tool for counties to meet local needs. The Act has proven to be a clumsy tool, and it is time to allow counties to explore other methods for managing growth.

Provide market-based incentives that promote growth goals

As the 1996 Land Use Study Commission Report noted, "In a free market society, it is not possible to dictate that people must live in the urban areas . . . . Unless the urban growth areas are desirable places to live, it will be difficult to achieve the anti-sprawl goals of the GMA."[28]

Unfortunately, the current GMA system tends to ignore market principles. If land is not available in a given area, is available at an exorbitant price, or requires an impossibly slow permitting process, growth will go elsewhere. Furthermore, if a range of housing prices and types is not available, buyers will go elsewhere. While some prefer condominiums to single-family detached homes, others are willing to locate further from their jobs to buy a home that is better suited to their family lifestyle.[29]

Rather than ignoring these factors, why not plan for them by providing incentives for new growth to locate in existing UGAs and LAMIRDs? If a developer or business can clearly see that the obstacles and costs of development have been diminished, this may influence decisions on where to locate. (For an example of how to make the local permitting and environmental review process more user-friendly, consider the reforms implemented by Renton.)[30] Local governments seeking to increase urban densities should provide a coordinated and streamlined permit process and decreased regulatory burdens to encourage development inside UGAs.

Provided their flexibility and discretion are protected from undue Hearings Board interference, areas experiencing insufficient economic growth could recruit new development using similar methods. Whether they are urban or rural, counties and cities should consider a comprehensive overhaul of their permitting and regulatory systems, looking for new ways to become more user friendly.

While the law authorizes impact fees for new development, there is substantial evidence that growth will pay for itself without being burdened by this disincentive.[31] Impact fees contribute to high housing costs. Lack of available and affordable housing will then force workers to commute from further away, adding their vehicles to the state's traffic congestion problem.[32] Counties and cities that resist the temptation to burden development with layer upon layer of regulatory costs will encourage balanced growth that will ultimately benefit their communities.

Eliminate unnecessary layers in the planning process

GMA planning requirements are a significant burden on local governments in terms of time, staffing requirements, and planning expense. This burden could be lessened by eliminating unnecessary steps in the local planning process. For example, counties and cities are required to send their comprehensive plans, development regulation to the Department of Community, Trade, and Economic Development (now Office of Community Development) for review and comment, but the Department has no authority to approve or disapprove local plans.[33] Furthermore, the comments of the Department provide limited protection to local government because the Hearings Boards do not necessarily follow the Department's recommendations.[34]

While there are benefits to providing local governments with technical assistance or comments on their planning process, a mandatory review may be more hassle than help. Policymakers may wish to consider eliminating Department review of local plans and regulations or possibly making the process optional instead of mandatory.

Consider a judicial challenge to GMA's countywide planning policy requirement

As discussed previously (see pp. 4–5) countywide planning policies (CPPs) may be binding on the land use decisions of county elected officials.[35] GMA requires county officials to adopt countywide planning policies in collaboration with city officials.[36] This arrangement dilutes the voting power of citizens in unincorporated areas of the county, giving city residents a disproportionate voice in establishing countywide policies. City residents are afforded greater representation in the establishment of CPPs because they are able to influence the process through the election of city representatives as well as the election of county representatives.

An equal protection challenge to the GMA-mandated CPP process may be necessary. Although CPPs have been upheld in the past, the court had assumed that CPPs merely established a collaborative process and did not involve the exercise of governmental powers.[37] Based on the idea that CPPs were not binding on county and city planning decisions, the court held that CPPs did not involve the exercise of governmental powers and that citizens in unincorporated areas were not entitled to a "one person, one vote" standard of representation.

Because more recent case law suggests that CPPs are binding on county planning, the possibility of another challenge should be examined.[38]

Conclusion

What has Washington gained for its citizens under the current Growth Management Act? Not, as designed, affordable housing; not decreased traffic congestion; not diversified economic prosperity; not bottom-up planning by elected officials and their communities. A sensible person reviewing the results of GMA would conclude that the Act is in dire need of reform.

The first step toward meeting the original goals requires an answer to this fundamental question: Who is in charge? Unelected, quasi-judicial Boards or locally elected officials exercising the responsibilities given to them by the terms of the Act? Right now, the unelected Board members are in the driver's seat, with no intention of taking their hands off the steering wheel. Someone—preferably state lawmakers and not the court system—needs to tell them to sit in the back seat and mind only the business given directly to them by the law.

Endnotes

1. RCW § 36.70A.260.
2. Wa. Const. art. I, § 1.
3. *Id.*
4. State of Washington, *Activity Summary By Agency,* Growth Management Hearings Board 2001-03 Biennium Estimated Expenditures (December 10, 2001). Governor Locke's supplemental budget would reduce this amount to just under $3 million. Office of Financial Management, Growth Management Hearings Board Budget Information (20 December 2001).
5. Karen Keegan, Washington State Governor's Office, telephone conversation with Corrie White (12 October 2001).
6. Governor's Office website, "Boards and Commissions," <http://www.governor.wa.gov/boards/boards.htm>.
7. Land Use Study Commission, "Board Appointments and Senate Confirmation," *Issue Paper #3* (1996) (Second Draft), 2.
8. RCW § 36.70A.280. Standing under the APA is available to anyone who has been prejudiced or is likely to be prejudiced by an agency decision, as long as the agency was required to consider that person's interests in making its decision and a judgment in favor the that person would eliminate or redress any prejudice. RCW § 34.05.530.
9. *Wells v. Western Washington Growth Mgmt. Hearings Board,* 997 P.2d 405 (Wash. Ct. App. 2000).
10. 1000 Friends of Washington provides legal and organizational support to local petitioners. 1000 Friends of Washington website "Growth Management," <http://www.1000friends.org/current_work/growth_management.cfm>. (28 December 2001). 1000 Friends of Washington, and even some county-level petitioner groups, receive funding from sources such as the Bullitt Foundation. Bullitt Foundation website, <http://www.bullitt.org/grantee_alphabet.lasso> and <http://www.bullitt.org/details_bullitt.lasso?id=242>
11. RCW § 36.70C.060.
12. RCW § 36.70C.130.
13. SHB 2929, 51st Leg., 1st Ex. Sess., Final Bill Report (1990).
14. WAC § 365-195-060.
15. 1998 Jefferson County Comprehensive Plan, chapter 7.
16. 1995 Kirkland Comprehensive Plan (amended December 2001), chapter VIII.
17. Adding economic development as a mandatory comprehensive plan element was recommended by the *Washington Competitiveness Council Final Report* §3.3.7 (December 2001).
18. RCW § 36.70A. 020(5).
19. *Id.* (emphasis added).
20. RCW § 36.70A.3201.
21. ESB 6094 § 17, 55th Legislature, 1997 Regular Session (1997).
22. Land Use Study Commission, "Standard of Review," *Issue Paper # 4* (1996) 3. See also RCW § 36.70C.130(2).
23. RCW § 34.05.570(3)(i).
24. ESB 6094 § 4, 55th Leg., Reg. Sess. (1997); 1997 Wash. Laws Reg. Sess. ch. 429 § 4.
25. ESB 6094, 55th Leg., Reg. Sess., Partial Veto Message (May 19, 1997).
26. House Bill 2542, 55th Leg., Reg. Sess., Final Bill Report (1998).
27. HB 2542, 55th Legislature, Reg. Sess., Veto Message (April 2, 1998).
28. Land Use Study Commission, 1996 Annual Report, 6.
29. Washington Research Council, "Growth in Perspective: Impact of Government Regulations and Fees on Housing Costs," *PB 01-18* (24 May 2001), 5.
30. "Renton: A Case Study in Regulatory Reform," *Washington Competitiveness Council Final Report*, Appendix C (December 2001).
31. RCW § 82.02.050; Washington Research Council, *Myths and Facts Regarding the Costs of Growth in Washington* (2001).
32. See Washington Research Council, "Growth in Perspective: Impact of Government Regulations and Fees on Housing Costs," *PB 01-18* (24 May 2001).
33. RCW § 36.70A.106.
34. *City of Port Townsend v. Jefferson County*, WWGMHB Case No. 94-2-006, Final Order, 14-16 (1 August 1994)
35. *King County v. Central Puget Sound Growth Mgmt Hearings Bd.,* 979 P.2d 374 (Wash. Sup. Ct. 1999).
36. RCW § 36.70A.210.
37. *Postema v. Snohomish County,* 922 P.2d 176 (Wash. Sup. Ct. 1996).
38. *King County v. Central Puget Sound Growth Mgmt. Hearings Bd.,* 979 P.2d 374 (Wash. Sup. Ct. 1999).

GLOSSARY

APA: The Administrative Procedure Act (APA) governs the adjudicative and rulemaking functions of administrative agencies. RCW § 34.05

Cluster Zoning: Cluster zoning allows new development on one portion of the land, leaving the remainder for uses such as agriculture or open space.

Comprehensive Plan: A comprehensive plan is a generalized coordinated land use policy statement adopted by the governing body of a city or county pursuant to GMA.

County-wide Planning Policy: County-wide planning policies, or CPPs, are written policy statements used as a framework for the adoption of county and city comprehensive plans. CPPs are established by counties in collaboration with local cities.

CPP: Countywide Planning Policy

CPSGMHB: Central Puget Sound Growth Management Hearings Board

Critical Areas: Critical areas include wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas.

De Novo Review: De novo review is a fresh look at a decision. A court reviewing an agency decision de novo considers the issues as if they had not been decided before.

Development Regulations: Development regulations are controls placed upon development or land use by a county or city. Examples would include zoning, shoreline master programs or subdivision ordinances.

Critical Areas: Critical areas include wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. All counties and cities are required to designate critical areas.

DCTED: Department of Community, Trade and Economic Development

EWGMHB: Eastern Washington Growth Management Hearings Board

GSC: The Growth Strategies Commission (GSC) was created by Governor Booth Gardner and was charged with the responsibility of recommending methods for coordinating and enforcing local GMA compliance.

ILB: An Industrial Land Bank (ILB) is an area designated by a county for future major industrial development. RCW § 36.70A.367.

IUGA: An Interim Urban Growth Area (IUGA) is an area temporarily designated for urban growth prior to the adoption of a county comprehensive plan. RCW § 36.70A.110(5).

LAMIRD: Limited Area of More Intensive Rural Development

Limited Area of More Intensive Rural Development: Rural areas designated by a county for development, redevelopment, or intensification of development, pursuant to RCW § 36.70A.070(5)(d).

LUSC: The Land Use Study Commission (LUSC) was created by the legislature in 1995, and given responsibilities such as evaluating various land use laws, drafting a consolidated land use procedure and evaluating the mechanisms for local planning.

OCD: The Office of Community Development (OCD) is responsible for providing cities and counties with technical assistance in complying with GMA.

OFM: The Office of Financial Management (OFM) develops projected population growth figures, which are used by local counties in designating the size and density of urban growth areas. RCW § 36.70A.110. OFM figures are also used to determine whether a county is required to plan under GMA. RCW § 36.70A.040(5).

Savings Clause: A savings clause is a statutory provision that revives prior policies or regulations in the event that a new regulation is found invalid.

Shoreline Management Act: The Shoreline Management Act, adopted in 1971, requires local governments

to develop a master program regulating the use of shorelines within their jurisdiction. Local master programs must be consistent with Department of Ecology Guidelines. RCW § 90.58.

Sliding Scale Zoning: Under GMA's authorized agricultural zoning techniques, this type of zoning allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of total acreage increases.

Urban Growth: Under the GMA, urban growth refers to growth that makes intensive use of land for the location of buildings, structures and impermeable surfaces, to the degree that it is incompatible with use of the land for resource-based uses or rural development. RCW §36.70A.030(17).

UGA: Urban Growth Area

Urban Growth Area: An area officially designated for urban growth pursuant to RCW § 36.70A.110.

Vested Applications: Under Washington law, vesting occurs when a complete application for a building permit (RCW § 19.27.095) or for a subdivision (RCW § 58.17.033) is filed. Once the completed application is filed, the project must be considered under the regulations in effect at that time.

WWGMHB: Western Washington Growth Management Hearings Board