

ARTICLES

The Growth Management Revolution in Washington: Past, Present, and Future

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I. INTRODUCTION

"Growth management" is a common description of the emerging era of land use regulation in the United States.¹ While only a minority of American communities have entered the new age, with² or without state compulsion,³ the growth management trend is clear. "Growth management" generally describes quite sweeping reform of public policies concerning the regulation of private land development, the provision of public facilities and services, the protection of areas of special environmental value or vulnerability, and the allocation of the benefits and burdens of urbanization throughout extra-local regions.⁴

Until recently, public policy concerning private land development generally was limited to *what* was developed *where* within a local government's territory.⁵ Traditional zoning, with or without usually half-hearted comprehensive plans,⁶

1. See generally JOHN M. DEGROVE, *PLANNING AND GROWTH MANAGEMENT IN THE STATES: THE NEW FRONTIER FOR LAND POLICY* (1992); THOMAS G. PELHAM, *STATE LAND USE PLANNING AND REGULATION: FLORIDA, THE MODEL CODE AND BEYOND* (1979); SUSAN M. SINCLAIR, NATIONAL GOVERNOR'S ASSOCIATION, *EXPECTATIONS AND OPPORTUNITIES: GROWTH MANAGEMENT IN THE LATE EIGHTIES* (1988); Frank J. Popper, *Understanding American Land Use Regulation Since 1970*, 54 J. AM. PLAN. ASS'N 291-301 (Summer 1988).

2. Delaware, Florida, Georgia, Maine, New Jersey, Rhode Island, and Vermont enacted growth management legislation in the 1980s. See NATIONAL CONFERENCE OF STATE LEGISLATURES, *STATE CONSERVATION AND GROWTH MANAGEMENT POLICY* ch. 6 (1990). Hawaii and Oregon pioneered state-supervised land use planning and regulation in 1961 and 1973, respectively. *Id.*

3. See, e.g., *Construction Industry Ass'n of Sonoma County v. Petaluma*, 522 F.2d 897 (9th Cir. 1975), *cert. denied*, 424 U.S. 934 (1976) (permits for new residential development limited to 500 units per year by city to coordinate new development with policies of the comprehensive plan); *Golden v. Planning Board of Ramapo*, 285 N.E.2d 291 (N.Y.), *appeal dismissed*, 409 U.S. 1003 (1972) (township, without state compulsion, adopted local growth management system that coordinated new development with public facility expansion over an 18 year period; new development was not permitted until adequate public facilities would be available). See also James F. Blumstein, *A Prolegomenon to Growth Management and Exclusionary Zoning Issues*, 43:2 LAW & CONTEMP. PROBS. 5 (1979); Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385 (1977); Robert H. Freilich & John W. Ragsdale, *Timing and Sequential Controls—The Essential Basis for Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Region*, 58 MINN. L. REV. 1009 (1974).

4. See sources cited *supra* note 1.

5. See Blumstein, *supra* note 3, at 5-11; DONALD G. HAGMAN & JULIAN C. JUERGENSMAYER, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* 259 (2d ed. 1986).

6. Formal comprehensive plans traditionally were not required in most states, and when zoning was required to be in accordance with a comprehensive plan, the "plan" was generally a mere abstract quality of rational coherence that could be found in the

focused narrowly on whether given uses and improvements of sites would be compatible with their immediate surroundings, largely ignoring the temporal dimension of private development and public facility adequacy, environmental quality, and regional fairness.⁷ Even such narrow planning and zoning has been optional for local governments in Washington.⁸

The inadequacy of Washington's patchwork state legislation governing local land use regulation⁹ has been decried by professional commentators¹⁰ and law revision commissions¹¹ for the last two decades. However, altruism and rational discourse alone rarely induce major land use regulatory reform. The nation's first comprehensive zoning ordinance, long advocated by social reformers, was enacted because of the political clout of New York carriage-trade merchants fearful of the invading garment industry.¹² Washington's Shoreline Management Act¹³ probably would not have been adopted through the tireless efforts of the Washington Environmental Council alone. But when business and labor interests scrambled to cut their potential losses as a result of the Washington Supreme Court's landmark "Lake Chelan" decision,¹⁴ comprehensive

zoning scheme itself. See RICHARD L. SETTLE, WASHINGTON LAND USE AND ENVIRONMENTAL LAW AND PRACTICE §§ 1.3-1.7 (1983) [hereinafter SETTLE, WASHINGTON LAND USE]; Charles M. Haar, *In Accordance With a Comprehensive Plan*, 68 HARV. L. REV. 1154, 1157 (1955).

7. See generally G. Bruce Clement and Egil Krogh, Jr., Comment, *Regional Planning and Local Autonomy in Washington Zoning Law*, 45 WASH. L. REV. 593 (1970); Jerome L. Hillis & Richard R. Wilson, *Land Use Planning in Washington: Overdue for Improvement*, 10 WILLAMETTE L. REV. 320 (1974).

8. See *Shelton v. Bellevue*, 73 Wash. 2d 28, 37, 435 P.2d 949, 954 (1968); SETTLE, WASHINGTON LAND USE, *supra* note 6, at §§ 1.4, 2.2.

9. See SETTLE, WASHINGTON LAND USE, *supra* note 6, at §§ 1.4-1.5(a), 2.2; Hillis & Wilson, *supra* note 7, at 321-25.

10. See generally Hillis & Wilson, *supra* note 7; Cheryl A. Sylvester, *Phoenix Rising? The Washington Land Use Act*, 11 URBAN L. ANN. 131 (1976); Clement and Krogh, Comment, *supra* note 7.

11. For example, in 1971 the legislature created the State Land Planning Commission to make recommendations to the legislature for the improvement of land use management in the state. 1971 Wash. Laws 1516, 1st Ex. Sess., ch. 287. The Commission recommended to the 1973 Legislature sweeping legislative reform that came to be known as the State Land Planning Act. Wash. H.B. 791, 43rd Leg., Reg. Sess. (1973). In 1988, the Local Governance Study Commission presented a similarly critical assessment of Washington Land Use Law.

12. See SEYMOUR I. TOLL, ZONED AMERICAN 164 (1969).

13. WASH. REV. CODE ch. 90.58 (1992).

14. See generally *Wilbour v. Gallagher*, 77 Wash. 2d 306, 462 P.2d 232 (1969). In this case, the Washington State Supreme Court held that the filling of privately owned shorelands periodically submerged by the waters of Lake Chelan was unlawful and subject to abatement because it interfered with public use of the waters when they

shoreline regulation became inevitable.¹⁵ In the early 1970s, the legislature nearly adopted a comprehensive state-supervised land use regulatory system, not only because the distinguished legal reformers of the American Law Institute had proposed the Model Land Development Code, but also because Congress was on the verge of enacting a bill containing large subsidies for states with such legislation.¹⁶ When the middle-east oil embargo diverted public attention and the expected federal subsidy vanished, so did the state legislature's interest in land use regulatory reform.

Since near misses nearly twenty years ago, comprehensive reform of Washington land use regulatory legislation has been simmering on the back burner. In 1989, the pot began to boil. Central Puget Sound area motorists fumed in "gridlock" traffic. They denounced dense, downtown development,¹⁷ fretted over soaring housing prices, and lamented the loss of forests, farms, and salmon-spawning streams.¹⁸ Thus, the growth management revolution was fomented not by the poor and downtrodden, nor by academic theorists, but by the middle-class suburban masses who sensed escalating degradation of community, environment, and quality of life. They demanded change. The revolutionary battles were fought on many fronts, and the outcome was always in doubt. The Governor's office, diverse elements of the legislature, the Growth Strategies Commission, and all relevant interest groups skirmished during a period extending from the 1989 through the 1991 legislative sessions, straddling a bitterly fought initiative campaign.¹⁹ The resulting Growth Management Act ("GMA") was enacted by the

flowed over the shorelands. This holding jeopardized all development on fill in the state's navigable waters.

15. SETTLE, WASHINGTON LAND USE, *supra* note 6, at § 4.2.

16. The Federal Land Use Policy and Planning Assistance Act, S. 268, 93rd Cong., 1st Sess. (1973). This bill was first introduced by Senator Henry M. Jackson in 1970.

17. Concern over downtown development in Seattle culminated in the voters' passage of the CAP Initiative, which imposed height limitations and annual quotas for office buildings. Initiative 31, Seattle, Wash., The Citizens Alternative Plan Initiative (passed May 16, 1989) (codified at SETTLE, WASH., MUNICIPAL CODE § 23.49.011 (1989)) [hereinafter Initiative 31]. See *The Voters Put a Lid on it: CAP Winners Savor the Message Sent to City Hall*, SEATTLE TIMES, May 17, 1989, at A-1.

18. See *The Pierce Report 1; Congestion and Sprawl: A Thousand and One Delayed Decisions Are Taking Their Toll, and Environmental Time Is Running Out Fast in Puget Paradise*, SEATTLE TIMES, Oct. 1, 1989, at A-14 [hereinafter *The Pierce Report*].

19. Initiative 547, The Keep Washington Livable Initiative (filed Mar. 27, 1990) [hereinafter Initiative 547]. For a background discussion on Initiative 547, see generally *infra* notes 139-57 and accompanying text.

1990 and 1991 legislatures in two hotly contested installments known respectively as "GMA I"²⁰ and "GMA II."²¹

GMA I and GMA II, shaped or deformed as they were by last-gasp political compromises, contain unresolved internal inconsistencies, politically necessary vague language, and significant gaps. Consequently, while the general concepts of the GMA are understandable in the abstract, there is much uncertainty about what they will mean in practice. Whether and when such uncertainty will be resolved by additional legislation, Department of Community Development (DCD) guidance, rulings of the new Growth Planning Hearings Boards, and interpretations by the courts remain to be seen.

Accordingly, the purpose of this Article is to trace the complex history of the GMA, analyze the Act's major features, and identify unresolved issues in Washington's growth management revolution.

II. A PRELIMINARY OVERVIEW OF THE GMA

With few exceptions, the new requirements and authority established by the GMA do not apply statewide. If a county is subject to the GMA, so are all of the cities within it.²² Counties are governed by the GMA either by choice or because they exceeded specified population and rate of growth thresholds.²³ By choice or mandate, twenty-nine of the state's thirty-nine counties and the cities within them now are governed by the GMA.²⁴ Once a county is in the GMA, there is no way out under the present legislation.²⁵

The central and most controversial policy of the GMA is to concentrate new development in compact urban growth areas contiguous with presently urbanized areas.²⁶ For two reasons

20. Growth Management Act, 1990 Wash. Laws 1972, 1st Ex. Sess., ch. 17.

21. Growth Management Act (Revised Provisions), 1991 Wash. Laws 2902, 1st Spec. Sess., ch. 32.

22. WASH. REV. CODE § 36.70A.040(1) (1992).

23. *Id.* § 36.70A.040(1), (2).

24. As of December 1992, the GMA counties include: Benton, Chelan, Clallam, Clark, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Island, Jefferson, King, Kitsap, Kittitas, Mason, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Snohomish, Thurston, Walla Walla, Whatcom, and Yakima. Lewis and Spokane counties became GMA counties on July 1, 1993, by reaching population and rate of growth thresholds. In September 1993, Stevens County became a GMA county by choice. Approximately 94% of the state's population now resides in GMA counties.

25. WASH. REV. CODE § 36.70A.040(1), (2) (1992).

26. *Id.* §§ 36.70A.020(1), .020(2), .030(14), .110.

the GMA rejects the sprawling development patterns that have proliferated since World War II. First, by minimizing the area devoted to development, land with environmentally critical qualities and commercially valuable natural resources can be protected and preserved.²⁷ Second, by concentrating development in contiguous areas, public facilities may be provided more efficiently and with less environmental harm.²⁸

GMA counties and cities are required to adopt comprehensive plans within statutory deadlines.²⁹ GMA plans must meet rigorous specifications, especially for public transportation facilities.³⁰ The pivotal elements of the plans are (1) delineation of urban growth areas in which virtually all of the county's projected twenty-year population increase is to be accommodated at relatively high density³¹ and (2) determination of the timing, location, funding, and requisite levels of service of adequate transportation and other public facilities to serve new development.³² Contrary to prior law,³³ GMA plans must be (1) internally consistent,³⁴ (2) coordinated and consistent with the plans of adjacent counties and cities in a region,³⁵ and (3) implemented by development regulations that are consistent with those plans.³⁶

GMA development regulations, which include but are not limited to zoning, subdivision, site plan review, planned unit development, natural resource, and critical area regulations, must be in place by the deadline for adopting comprehensive plans, unless a six month extension is obtained.³⁷ Most significantly, development regulations must protect three categories of natural resource lands³⁸ and five categories of environmentally critical areas³⁹ and must prohibit development if adequate

27. *Id.* §§ 36.70A.020(8)-(10); 36.70A.030(2), (5), (8)-(11), (17); 36.70A.060; 36.70A.170.

28. *Id.* § 36.70A.020(1), (3), (10), (12); 36.70A.070(1), (3), (6); 36.70A.110; 58.17.060; 58.17.110.

29. *Id.* § 36.70A.040(3).

30. WASH. REV. CODE § 36.70A.070 (1992).

31. *Id.* § 36.70A.110.

32. *Id.* §§ 36.70A.020(12); 36.70A.070(1), (3), (16).

33. See generally SETTLE, WASHINGTON LAND USE, *supra* note 6, at §§ 1.3-1.7.

34. WASH. REV. CODE § 36.70A.070 (1992).

35. *Id.* § 36.70A.100.

36. *Id.* § 36.70A.120.

37. *Id.* §§ 36.70A.030(7), .060.

38. Agricultural, forest, and mineral resource lands. WASH. REV. CODE §§ 36.70A.030, .060 (1992).

39. Critical areas include the following: wetlands, potable water aquifer recharge

transportation, potable water and, arguably, other public facilities would not be concurrently available.⁴⁰

GMA plans and regulations are legally effective upon adoption without state or regional approval.⁴¹ However, the state, another GMA county or city, or aggrieved persons may appeal to a state Growth Planning Hearings Board for administrative adjudication of whether challenged provisions of comprehensive plans and development regulations comply with GMA requirements.⁴² Where the Board finds noncompliance, the Governor may impose sanctions.⁴³

While subject to many new requirements, GMA counties and cities also are beneficiaries of significant new or clarified authority. The GMA authorizes impact fees to defray the cost of public facilities necessitated by new development;⁴⁴ innovative regulatory techniques, including transferable development rights, density transfer, incentive or bonus regulation, cluster housing, and planned unit developments;⁴⁵ and an additional increment of real estate excise tax to fund new capital facilities.⁴⁶

Several GMA requirements apply to non-GMA counties and cities: their development regulations must be consistent with any adopted comprehensive plans;⁴⁷ they must designate and protectively regulate critical areas; and they must designate, but need not regulate, natural resource lands.⁴⁸ GMA and non-GMA local governments may not approve subdivisions and short subdivisions without adequate public facilities⁴⁹ or building permits without adequate potable water supplies.⁵⁰

areas, fish and wildlife habitat, frequently flooded areas, and geologically hazardous areas. *Id.*

40. *Id.* §§ 36.70A.070(6)(c) (transportation), 19.27.097 (water), 36.70A.020(12) (other public facilities and services).

41. *Id.* § 36.70A.320.

42. *Id.* §§ 36.70A.250-290.

43. WASH. REV. CODE §§ 36.70A.330, .340 (1992).

44. *Id.* §§ 82.02.050-090.

45. *Id.* § 36.70A.090.

46. *Id.* § 82.02.020.

47. *Id.* §§ 35.63.125, 35A.63.105, 36.70.545.

48. WASH. REV. CODE §§ 36.70A.170, .060(2) (1992).

49. *Id.* §§ 58.17.060, .110.

50. *Id.* § 19.27.097.

III. THE PAST

A. *Washington's Anachronistic Land Use Legislation*

In no other state was the revolution in environmental consciousness and commitment more evident. Between 1970 and 1972, Governor Daniel J. Evans proposed, and the Washington State Legislature enacted, a sweeping array of groundbreaking environmental legislation.⁵¹ For example, the Shoreline Management Act⁵² established comprehensive, state-supervised, regionally-responsible, environmentally-based planning and regulatory requirements for the use and development of most of the state's waters and adjacent shorelands. And the State Environmental Policy Act⁵³ (SEPA) imposed a regime of environmental review on all state and local government actions with potentially adverse environmental consequences and conferred on all public agencies broad authority to protect the natural and "built" environment. Both Acts emphasized the ecology of the environment and the interdependencies of all forms of life and environmental systems.⁵⁴ Both recognized the ecological irrelevance of local boundaries and required regional environmental responsibility.⁵⁵ However, such progressive regulatory programs operated as overlays on general land use planning and regulation. As such, they rested on a crumbling foundation. For, ironically, the environmental revolution of the early 1970s failed to leave its mark on Washington's existing land use legislation—the most fundamental and pervasive environmental laws of all. The house was elaborately remodeled without repairing a faulty foundation and leaky roof.

The failure to reform Washington land use law while adopting landmark environmental legislation was not for lack of effort. In 1971, the legislature created the Washington State

51. See Charles B. Roe & Charles W. Lean, *The State Environmental Policy Act and Its 1973 Amendments*, 49 WASH. L. REV. 509, 510 (1974).

52. WASH. REV. CODE ch. 90.58 (1992). See generally SETTLE, WASHINGTON LAND USE, *supra* note 6, ch. 4; Geoffrey Crooks, *The Washington Shoreline Management Act of 1971*, 49 WASH. L. REV. 423 (1974).

53. WASH. REV. CODE ch. 43.21C (1992). See generally RICHARD L. SETTLE, THE WASHINGTON ENVIRONMENTAL POLICY ACT, A LEGAL AND POLICY ANALYSIS (1987 & cum. supp. 1993) [hereinafter SETTLE, ENVIRONMENTAL POLICY ACT]; Roe & Lean, *supra* note 51.

54. See generally sources cited *supra* notes 51-53.

55. *Id.* See SAVE v. Bothell, 89 Wash. 2d 862, 576 P.2d 401 (1978) (holding that local government must rationally consider extra-local regional environmental impacts).

Land Planning Commission to study the state's existing land use planning and development control laws; to make recommendations for reform, including more rigorous specifications for local planning and an appropriate state role to protect regional interests; and to prepare corrective legislation.⁵⁶ The commission's proposed State Land Planning Act,⁵⁷ based on the Model Land Development Code of the American Law Institute,⁵⁸ addressed all of the major deficiencies of traditional local land use planning and included all of the elements of modern state growth management systems. The State Land Planning Act was introduced as a bill in the 1973 regular legislative session and, with revisions, again in 1974. The House of Representatives passed the bill both times; the Senate did not.⁵⁹

Thus, prior to the Growth Management Act, local land use planning and regulation was optional.⁶⁰ Cities and counties could choose to operate under the state's oldest and most permissive Planning Commissions Act⁶¹ rather than the more demanding Optional Municipal Code⁶² for cities, or the Planning Enabling Act⁶³ for counties. Local governments electing to operate under the crude and extremely lenient Planning Commissions Act were subject to few constraints. Zoning and related forms of regulation were not mandatory. A formal comprehensive plan to guide local public facility development and regulatory actions was neither required nor a prerequisite to zoning authority.⁶⁴ Moreover, first-class cities and counties with home rule charters were not even subject to the trivial

56. 1971 Wash. Laws 1516, 1st Ex. Sess., ch. 287.

57. H.B. 791, 43rd Leg., Reg. Sess. (1973).

58. See Hillis & Wilson, *supra* note 7, at 329; Sylvester, *supra* note 10, at 134.

59. See Sylvester, *supra* note 10, at 143-44. Environmental and good government interests probably would have prevailed if a pivotal potential motivating force had materialized. Senator Henry Jackson had proposed the Federal Land Use Policy and Planning Assistance Act, S. 268, 93d Cong., 1st Sess. (1973), which would have granted generous subsidies to states with laws meeting federal standards, like the proposed Washington Act. See Sylvester, *supra* note 10, at 144. The federal bill enjoyed extensive bipartisan support, had passed the U.S. House, and seemed destined to clear the Senate when the traumatic middle-east oil embargo diverted Congressional attention to more pressing economic problems and the expected subsidy vanished. See Hillis & Wilson, *supra* note 7, at 335.

60. See SETTLE, WASHINGTON LAND USE, *supra* note 6, at §§ 1.3, 1.4, 2.2.

61. WASH. REV. CODE ch. 35.63 (1992).

62. *Id.* ch. 35A.63.

63. *Id.* ch. 36.70.

64. See SETTLE, WASHINGTON LAND USE, *supra* note 6, at §§ 1.3-1.4; Hillis & Wilson, *supra* note 7, at 321-25.

requirements of the Planning Commissions Act. A 1964 state supreme court decision held that under the state constitution's general delegation of the police power, such cities, and by logical extension home rule counties, could plan and zone free of any of the three state enabling acts.⁶⁵

Local subdivision regulation has been mandatory and less myopic than zoning, directly addressing the adequacy of public facilities to serve contemplated development.⁶⁶ But assurance of adequate public facilities generally has been limited to those on or near the site of the subdivision. Furthermore, the host of lots prematurely created prior to modern subdivision regulation escaped such requirements entirely.⁶⁷

More recent special purpose environmental and natural resource legislation, like Washington's Shoreline Management Act⁶⁸ and Forest Practices Act,⁶⁹ sometimes overrides local inertia and provides effective protection. But they are functionally and geographically limited and may not be coordinated with general systems of local land use regulation.

In addition, Washington's SEPA overlays all local regulatory and public facility development actions. SEPA potentially provides sufficient data and substantive authority to coordinate private development and public facilities, to protect environmental quality, and to avoid adverse regional impacts.⁷⁰ However, ad hoc SEPA review, without comprehensive regional public facilities plans, policies, and programs, cannot systematically serve these purposes. Moreover, these planning goals will be pursued through SEPA only to the extent of a given local government's voluntary commitment⁷¹ and sufficient expertise⁷² to do so. While the substantive authority conferred by

65. See *Nelson v. Seattle*, 64 Wash. 2d 862, 866, 395 P.2d 82, 84 (1964).

66. See WASH. REV. CODE §§ 58.17.010, .110 (1992); John W. Reps, *Control of Land Subdivision by Municipal Planning Boards*, 40 CORNELL L. REV. 258, 269 (1955); SETTLE, WASHINGTON LAND USE, *supra* note 6, at § 3.1(a).

67. See SETTLE, WASHINGTON LAND USE, *supra* note 6, at §§ 3.1(a), 3.14.

68. WASH. REV. CODE ch. 90.58 (1992). See generally, SETTLE, WASHINGTON LAND USE, *supra* note 6, ch. 4; Crooks, *supra* note 52.

69. WASH. REV. CODE ch. 76.09 (1992); WASH. ADMIN. CODE ch. 222 (1992). See Jan S. Pauw, *Timber*, in WASHINGTON REAL PROPERTY DESKBOOK ch. 20 (1989).

70. See, e.g., *West Main Assocs. v. Bellevue*, 49 Wash. App. 513, 518, 742 P.2d 1266, 1269 (1987). See SETTLE, ENVIRONMENTAL POLICY ACT, *supra* note 53, at § 18(b).

71. While there is some dicta to the contrary, no reported Washington court decision has imposed a duty to mitigate adverse environmental impacts. See SETTLE, ENVIRONMENTAL POLICY ACT, *supra* note 53, at § 18(c).

72. The statutory and administrative requirements for the exercise of SEPA's substantive authority are demanding and complex. In the overwhelming majority of

SEPA is great, there is no obligation to use it.

In some cases, the Washington State Supreme Court attempted to shore-up the flimsy foundation of Washington land use legislation by imposing major procedural requirements designed to foster responsibility, integrity, and public confidence in local land use regulation while also providing a basis for effective judicial review. Thus, today, local land use regulatory proceedings characterized as quasi-judicial must be actually and apparently fair, and decision-makers must be actually and apparently unbiased.⁷³ Moreover, there must be adequate notice⁷⁴ and verbatim records of such proceedings,⁷⁵ and decisions must be supported by detailed written findings of fact and conclusions of law.⁷⁶

Sensing the danger of local parochialism in metropolitan urban areas, the supreme court breathed a requirement of regional responsibility into Washington's permissive land use law by requiring that local officials take into account extra-local environmental impacts of their land use regulatory actions.⁷⁷ However, the requirement probably was too general to provide meaningful guidance to local governments and lower courts. Unsurprisingly, the court has not elaborated on this isolated decision to establish a more definitive regional responsibility standard. Judicial invalidation of regulatory action often motivates state or local legislative reform, but the courts are institutionally ill-suited to supervise the establishment of court-ordered regulatory systems.⁷⁸

cases challenging SEPA-based denials or mitigating conditions, they have been invalidated for failure to conform to SEPA's intricate requirements. *See, e.g.,* Cougar Mt. Assocs. v. King County, 111 Wash. 2d 742, 765 P.2d 264 (1988). *See* SETTLE, ENVIRONMENTAL POLICY ACT, *supra* note 53, at § 18(b).

73. *See, e.g.,* Chrobuck v. Snohomish County, 78 Wash. 2d 858, 867, 480 P.2d 489, 495-96 (1971); Smith v. Skagit County, 75 Wash. 2d 715, 739, 453 P.2d 832, 842 (1969). *See* SETTLE, WASHINGTON LAND USE, *supra* note 6, ch. 6.

74. *See, e.g.,* Barrie v. Kitsap County, 84 Wash. 2d 579, 584-85, 527 P.2d 1377, 1380-81 (1974); Glaspey & Sons, Inc. v. Conrad, 83 Wash. 2d 707, 710, 521 P.2d 1173, 1175 (1974). *See* SETTLE, WASHINGTON LAND USE, *supra* note 6, at § 2.5(a).

75. *See, e.g.,* Parkridge v. Seattle, 89 Wash. 2d 454, 464, 463, 573 P.2d 359, 365, 365 (1978); Bennet v. Board of Adjustment, 23 Wash. App. 698, 597 P.2d 939 (1979). *See* SETTLE, WASHINGTON LAND USE, *supra* note 6, at § 2.5.

76. *See, e.g.,* Parkridge v. Seattle, 89 Wash. 2d 454, 464, 573 P.2d 359, 365 (1978). *See* SETTLE, WASHINGTON LAND USE, *supra* note 6, at § 2.5.

77. S.A.V.E. v. Bothell, 89 Wash. 2d 862, 869, 576 P.2d 401, 405 (1978). *See* S.O.R.E. v. Snohomish County, 99 Wash. 2d 363, 372, 662 P.2d 816, 821 (1983) (holding that local regulatory decisions must reflect rational consideration of extra-local environmental impacts).

78. An extreme example is the epic struggle between the New Jersey courts and

Several Washington court decisions, however, have been unresponsive of comprehensive planning.⁷⁹ Construing vague statutory language essentially equivalent to that from which the Oregon Supreme Court derived a strict requirement that comprehensive plan provisions prevail over inconsistent zoning,⁸⁰ Washington courts have decided to the contrary. In case of conflict, regulations prevail over plan provisions. The plan is a mere guide.⁸¹

The most neglected aspect of local land use planning and regulation has been the coordination of private development with the provision of public facilities. Pre-GMA Washington laws failed to require integration of public facility planning, financing, and land development regulation. Indeed, in the early 1980s, the courts⁸² and the legislature⁸³ impeded local efforts to finance public facility expansion through fees charged to new development for proportionate incremental increases in public facility capacity.

In short, under pre-GMA law, local governments were largely autonomous in the realms of general land use and public facility planning and development regulation. At the same time, planning and regulatory actions were subject to SEPA's extensive environmental review process requirements,⁸⁴ and quasi-judicial regulatory actions were subject to rigorous judicially-imposed procedural requirements.⁸⁵ As a result, Wash-

local governments that began when the New Jersey Supreme Court held that local land use regulatory systems must accommodate a fair share of regional housing needs at all economic levels. See *South Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d 713 (N.J.), *appeal dismissed and cert. denied*, 423 U.S. 808 (1975). See also John M. Payne, *Judicial Enforcement of Affordable Housing Policies*, 16 REAL EST. L.J. 20 (1987).

79. See, e.g., *Cougar Mountain Assocs. v. King County*, 111 Wash. 2d 742, 757, 765 P.2d 264, 272 (1988); *Barrie v. Kitsap County*, 93 Wash. 2d 843, 848-49, 613 P.2d 1148, 1152 (1980); *Shelton v. Bellevue*, 73 Wash. 2d 28, 39, 435 P.2d 949, 956 (1968); *Carlson v. Beaux Arts Village*, 41 Wash. App., 402, 408, 704 P.2d 663, 666, *review denied*, 104 Wash. 2d 1020 (1985). See SETTLE, WASHINGTON LAND USE, *supra* note 6, at §§ 1.5-1.7.

80. *Baker v. Milwaukie*, 533 P.2d 772, 775-76 (Or. 1975).

81. See cases cited *supra* note 79.

82. See, e.g., *San Telmo Assocs. v. Seattle*, 108 Wash. 2d 20, 24, 735 P.2d 673, 675 (1987); *Hillis Homes v. Snohomish County*, 97 Wash. 2d 804, 809-10, 650 P.2d 193, 195-96 (1982).

83. See WASH. REV. CODE § 82.02.020 (1992). See also *R/L Assocs., Inc. v. Seattle*, 113 Wash. 2d 402, 407, 780 P.2d 838, 841 (1989).

84. WASH. REV. CODE ch. 43.21C (1992). See generally SETTLE, ENVIRONMENTAL POLICY ACT, *supra* note 53.

85. See, e.g., *Parkridge v. Seattle*, 89 Wash. 2d 454, 464, 573 P.2d 359, 365 (1978); *Bennet v. Board of Adjustment*, 23 Wash. App. 698, 700-02, 597 P.2d 939, 940-41 (1979). See also SETTLE, WASHINGTON LAND USE, *supra* note 6, at § 2.5.

ington land use law has been long on procedure and short on substance.

A few Washington counties and cities, without statutory compulsion, adopted land use planning and regulatory systems with some of the elements now required by the GMA.⁸⁶ However, such local growth management initiatives depended on knowledgeable, creative professional staff and courageous elected officials. Prior to the GMA, city council members who voted for rigorous transportation facility concurrency requirements could not escape the wrath of aggrieved developers by saying "the state made us do it." Moreover, there was uncertain legal authority to employ such innovative regulatory devices as public facility concurrency requirements, impact fees, transferable development rights, and planned unit developments, especially with their attendant risk of costly litigation, judicial invalidation, and liability for damages.⁸⁷ Given the lack of legal compulsion to manage growth and the cost and political risks of doing so, few local governments did.

B. *The Impetus for Reform*

A booming economy in the Puget Sound area did what the forces of environmental protection and good government had been unable to do. Abstract policy arguments in favor of land use regulatory reform never sufficiently captured the interest of the general public to induce legislation. Much more tangibly, the economic boom of the late 1980s,⁸⁸ by generating the worst traffic congestion in the west, transforming urban skylines, bulldozing farms and forests, and turning sparkling streams into storm sewers, converted hordes of formerly mild-mannered Puget Sound residents into true believers.⁸⁹ In 1988,

86. For example, the City of Bellevue has a special regulatory program for wetlands and other environmentally critical areas, and a sophisticated traffic management system that coordinates new development with transportation facilities through a concurrency requirement. BELLEVUE, WASH., BELLEVUE CITY CODE chs. 14.10, 20.25H (1992).

87. See, e.g., *South Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d 713 (N.J.), cert. denied, 423 U.S. 808 (1975); *Lutheran Day Care v. Snohomish County*, 119 Wash. 2d 91, 829 P.2d 746 (1992); WASH. REV. CODE § 64.40.020 (1992).

88. See WASHINGTON STATE EMPLOYMENT SECURITY DEP'T, WASHINGTON STATE LABOR MARKET AND ECONOMIC REPORT 1 (1989).

89. See *The Pierce Report*, supra note 18, at 2 (stating that "[p]eople who live here feel the impact every day: on more crowded freeways, in longer lines, in less breathable air"); WASHINGTON STATE DEP'T OF TRANSPORTATION, 1990 REPORT TO THE LEGISLATURE: TRANSPORTATION POLICY PLAN FOR WASHINGTON STATE 1 (1990); WASH. STATE DEP'T OF ECOLOGY, 2010 REPORT 38 (1989) (estimating that "Washington

they passed the Seattle CAP initiative,⁹⁰ limiting heights and setting annual floor area quotas for new downtown office building development. In 1989, they demanded state growth management legislation.

C. *The Tortuous Legislative History of the GMA*

The GMA was not the elegantly designed, finely-honed product of a law revision commission adopted verbatim by a grateful legislature.⁹¹ The fierce legislative gauntlets run by GMA I and II left countless scars: politically necessary omissions, internal inconsistencies, and intentionally vague language to defer to another day the moment of truth. Resulting uncertainty about the meaning and effect of important and controversial elements of GMA I and II eventually will be resolved by the Growth Planning Hearings Boards, the courts, or, perhaps, the legislature. To resolve numerous interpretive issues,⁹² the boards, courts, and parties before them will have to divine what the legislature meant from the GMA's extremely complex legislative history.⁹³

This section of the Article traces the difficult legislative

loses 8000 acres of forest land and 1500 acres of farmland annually, most to new development"); *Jam Sessions*, SEATTLE TIMES, July 18, 1989, at F-1; *Roads Are Choking on State's Growth*, SPOKANE REVIEW, Oct. 9, 1989, at B-2; *A Problem Nationwide: Anti-growth Movements Flourish as Quality of Life Declines*, SEATTLE TIMES, Nov. 5, 1989, at A-20; *The Difficult Politics of Growth Management*, 1 THE WASH. J. 5 (Dec. 11, 1989).

90. Initiative 31, *supra* note 17.

91. The Growth Strategies Commission (GSC) was an important source of ideas and information. But GMA I was adopted before the GSC had finished its work, and GMA II incorporated some, but by no means all, of the Commission's recommendations.

92. In the first decision by a Growth Planning Hearings Board, the Board ruled that the county was not required to protectively regulate all wetlands on the basis of a GMA II amendment that altered the language of the operative provision of GMA I. See *Clark County Natural Resources Council v. Clark County*, Western Washington Growth Planning Hearings Board, No. 92-02-001 (final order 1992). Specifically, the Board stated as follows:

Clark County correctly pointed out that the original enactment of this section [1990 1st ex. s. c17 § 5] [sic] required adoption of development regulations "precluding land uses or developments that are incompatible with the critical areas that are required to be designated. . .", while the 1991 amendment required adoption of development regulations "that protect" critical areas. Because of that language change and the overall scheme of the Act which authorizes discretion by local government in formulating policy decisions, we hold that .060(2) does not require regulation of each and every wetland.

Id. at 4-5.

93. See Appendix A for a legislative chronology of the GMA and Appendix B for a glossary of Washington legislative terms.

journey of the GMA. To assist the reader, there is a legislative chronology of the GMA in Appendix A, and a glossary of Washington legislative terminology in Appendix B.⁹⁴

1. 1989: The Growth Strategies Commission's Difficult Birth

In the late 1980s, when hordes of western Washington voters became true believers in growth management, so did their legislators.⁹⁵ However, given the sudden explosion of public opinion, the lack of legislative interest during the previous decade, and the complexity of the subject, they had no reform legislation ready to introduce.

House Speaker Joe King responded. He put growth management high on his agenda for the 1989 legislative session, announcing that there would be no action on a proposed gas tax increase until legislation addressing growth management had been adopted.⁹⁶ In turn, the House passed House Bill (HB) 2140⁹⁷ which established ten state planning goals and a Growth Strategies Commission (GSC). The Commission was directed to review growth management programs in other states and recommend a strategy for Washington in accordance with HB 2140's state planning goals.⁹⁸ But the bill died in the

94. Most of the legislative process is public with open records of the proceedings. Sources of legislative history include the following: (1) House and Senate Journals, which record formal action on bills—introduction of bills, assignment to committees, action by committees, and any floor action by the House and Senate; (2) Legislative Digests, which record in a more readable style most of the information contained in the Journals; (3) Bill Books, which contain all changes in the language of each bill as it moves through the legislature; (4) tape recordings of committee hearings and floor debate on bills; and (5) documents in the committee bill file.

Most major legislation must pass either through a conference committee (as did GMA I, E.S.H.B. 2929) to resolve differences in the versions of a bill passed by the House and Senate. Occasionally, a negotiating committee is used to overcome impasse on proposed legislation between the House and the Senate where one or both chambers have not passed a bill (as did GMA II, Re.S.H.B. 1025). The proceedings of these committees are not public and records of their deliberations are not available.

95. Elected officials in the Puget Sound region were shocked when incumbent King and Snohomish County Council members lost elections to growth management advocates in 1989. See *The Difficult Politics of Growth Management*, 1 THE WASH. J. 5 (Dec. 11, 1989).

96. *House Speaker Backs State Growth Strategies Proposal*, OREGONIAN, Feb. 23, 1989, at E-4; *House Speaker's Strategy Links Gas Tax to Planning*, SEATTLE TIMES, Feb. 23, 1989, at C-1; *Control Growth or No Gas Tax, Warns Speaker*, BREMERTON SUN, Feb. 23, 1989, at D-5.

97. See Appendix A for a summary of legislative action on H.B. 2140.

98. H.B. 2140 also proposed a Growth Strategies Account in the Motor Vehicle Fund to receive half of any gas tax increase authorized by the legislature between January 1 and July 1, 1989. Wash. H.B. 2140, 51st Leg., Reg. Sess. (1989). Expenditures

Senate, and the gas tax was not increased in 1989.

Later, the GSC was reborn in the 1989-91 Biennium Budget Bill.⁹⁹ A provision in the budget bill created a GSC with seventeen members appointed by the House Speaker and Senate President. The GSC was directed to develop strategies for: (1) accommodating and guiding the state's growth, focusing on the Puget Sound region and fast-growing counties elsewhere; (2) linking transportation and land use planning; (3) enhancing regional planning; and (4) coordinating state and local governments. The GSC was to be staffed by employees of the State Department of Community Development (DCD), for which \$350,000 was appropriated.

The budget bill, including the GSC provision, passed the legislature on May 10, 1989.¹⁰⁰ The GSC was then vetoed by Governor Gardner on the ground that DCD, an executive agency, should not provide staffing for a legislative commission.¹⁰¹ In his veto message, however, the Governor promised that the GSC would be born yet again by executive order, and it was on August 31, 1989.¹⁰² The Governor's GSC was also composed of seventeen members, which included thirteen private citizens and four legislators. It was directed to study and recommend growth management strategies, essentially as required by the previously failed GSC bills, and to provide a preliminary report during the 1990 legislative session, with a final report by June 30, 1990.¹⁰³

2. 1990: GMA I and Initiative 547

The pivotal year in the quest for a state growth management system was 1990. In late 1989, as the 1990 legislative session drew near, the Governor's fully-constituted GSC was set to begin its assignment, and several interest groups already were formulating growth management proposals.¹⁰⁴ House Speaker Joe King sensed that the political window of opportunity was as open as it ever would be and decided not to wait for

from the fund were authorized only upon enactment of growth management legislation. *Id.*

99. Wash. S.S.B. 5352, § 221(18), 51st Leg., 1st Ex. Sess., 1989 Wash. Laws 2871, 2908, ch. 19.

100. *Id.* See Appendix A for a summary of legislative action on the GMA.

101. See Veto Message on SSB 5352 *supra* note 99, at 2890.

102. Wash. Exec. Order No. 89-08, Wash. St. Reg. 89-18-071 (1989).

103. *Id.*

104. The diverse interest groups included the Washington Environmental Council and the Association of Washington Business.

the GSC report in June 1990, as the report would come too late to be acted on by the 1990 Legislature. Instead, he created a unique informal legislative committee to draft a growth management bill.¹⁰⁵ The committee was composed of the chairs of the six House committees concerned with growth-related matters: Trade and Economic Development, Local Government, Transportation, Natural Resources and Parks, Environmental Affairs, and Housing. Foreshadowing the "year of the woman" in 1992 state and federal political races, all of the committee heads were women.¹⁰⁶

Representative Maria Cantwell coordinated the ambitious enterprise. Each committee chair was responsible for drafting proposals on the aspects of growth management within the jurisdiction of her committee. Collectively, the individual proposals became House Bill (HB) 2929,¹⁰⁷ which was introduced in the House on January 26, 1990. However, in a complex legislative maneuver during the week prior to the introduction of HB 2929, the individual committee proposals, which became HB 2929, were introduced as four separate bills.¹⁰⁸

The local government and housing bill (HB 2734) was referred to the Local Government Committee. The natural resources and environmental protection bill (HB 2741) was referred to the Natural Resources and Parks Committee. The transportation bill (HB 2781) was referred to the Transportation Committee. And the economic development bill (HB 2881) was referred to the Trade and Economic Development Committee. The committees, after conducting public hearings on their respective bills, each passed a substitute bill¹⁰⁹ and sent it on to the Appropriations Committee. In an unusual departure from its traditional role, the powerful Appropriations Committee refrained from substantive scrutiny of the bills. Instead, the Appropriations Committee consolidated the bills verbatim, except for correction of one minor inconsis-

105. See Democratic Media Services, Press Release, Wash. State House of Representatives (Jan. 15, 1990).

106. They were Representatives Maria Cantwell, Mary Margaret Haugen, Ruth Fisher, Jennifer Belcher, Nancy Rust, and Busse Nutley. In 1992, Maria Cantwell was elected to Congress and Jennifer Belcher won the race for state Commissioner of Public Lands.

107. See Appendix A for a summary of legislative action on H.B. 2929.

108. See Appendix A for a summary of legislative action on H.B. 2734, H.B. 2741, H.B. 2841, and H.B. 2881.

109. See Appendix B for a Glossary of Washington Legislative Terminology.

tency,¹¹⁰ into Substitute House Bill (SHB) 2929, and passed SHB 2929 on February 8, 1990.¹¹¹ After amendment by the full House, Engrossed Substitute House Bill¹¹² (ESHB) 2929 was passed by a vote of 72 to 21 on February 15, 1990.¹¹³

Changes made to HB 2929 through the various Committee substitute bills¹¹⁴ and House amendments¹¹⁵ pertained to minor details, leaving the basic nature and purposes of the bill intact.

As introduced, HB 2929:

- (1) established state goals to guide local comprehensive plans;
- (2) required, as of January 1990, sixteen of the state's thirty-nine counties, and the cities within them, to adopt growth management comprehensive plans consistent with those of adjacent localities, designating urban growth areas and containing land use, housing, public facilities and transportation elements;
- (3) required those counties and cities to implement their plans through development regulations, channeling growth into urban growth areas, requiring adequate transportation facilities concurrent with new development, and protecting natural resource lands and environmentally critical areas;

110. The Transportation Committee deleted the housing element of the comprehensive plan in H.B. 2781. That deletion was inconsistent with H.B. 2734 as passed by the Local Government Committee.

111. WASHINGTON STATE LEGISLATURE, 1989-90 LEGISLATIVE DIGEST AND HISTORY OF BILLS, VOLUME 2, at 802 (1990) [hereinafter 1989-90 LEGISLATIVE DIGEST].

112. See Appendix B for a glossary of Washington Legislative Terminology.

113. 1989-90 LEGISLATIVE DIGEST, *supra* note 111, at 802-03. Five members were absent.

114. Significant changes to H.B. 2929 made during committee review of its component bills included: additional restriction of impact fee and real estate excise tax authorizations (Local Government Committee); more specific definition of the transportation facilities concurrency requirement (Transportation Committee); exceptions to the ten-year waiting period for conversion of forest land (Natural Resources and Parks Committee); mandate that development permit applications be approved or denied within 30 days and, if denied, that conditions which must be met for approval be stated (Trade and Economic Development Committee). Hearings on H.B. 2929 before the House Appropriations Comm., 51st Leg., Reg. Sess. (Feb. 8, 1990).

115. Amendments to S.H.B. 2929 in the House included: requirement that comprehensive plans address public utilities and open space corridors, Wash. S.H.B. 2929, House Floor Amend. 222, 233 (1990); requirement that comprehensive plans address stormwater run-off into waters of the state, Wash. S.H.B. 2929, House Floor Amend. 244 (1990); revisions of provisions precluding new development without a water source, Wash. S.H.B. 2929, House Floor Amend. 251, 252, 253 (1990); and requirement that ten percent of areas removed from forest designation be retained as forested greenbelt, Wash. S.H.B. 2929, House Floor Amend. 264 (1990).

- (4) authorized impact fees and an additional real estate excise tax to fund new public facilities;
- (5) restricted the vested rights doctrine;
- (6) amended the state platting statute by requiring adequate public facilities for new subdivisions;
- (7) provided for conservation of farm and timber lands;
- (8) required adequate water sources for new development;
- (9) mandated coordination of land use and transportation planning;
- (10) authorized regional transportation planning organizations;
- (11) encouraged statewide economic development;
- (12) authorized state funding and technical assistance for counties and cities governed by the Act; and
- (13) directed the GSC to develop a system to ensure compliance with the Act.

Once passed by the House, ESHB 2929 moved to the Senate and was referred to the Government Operations Committee.¹¹⁶ After one public hearing,¹¹⁷ the Committee passed a striking amendment¹¹⁸ on March 1, 1990. The striking amendment, in effect, substituted a new bill that differed significantly from the House version while retaining the ESHB 2929 title.¹¹⁹ On the next day, the full Senate passed ESHB 2929, as amended by the striking amendment, by a vote of 35 to 12.¹²⁰ The House refused to concur with the Senate's striking amendment and requested a conference committee.¹²¹ Finally, the conference committee¹²² failed to reach agreement by the end

116. 1989-90 LEGISLATIVE DIGEST, *supra* note 111, at 802-03.

117. *Id.* at 787.

118. See Appendix B for a Glossary of Washington Legislative Terminology.

119. The Senate striking amendment extended the growth management requirements to more counties and cities but reduced the requirements. The Senate version of E.S.H.B. 2929 was only 47 pages while the House version was 88 pages. The Senate version directed DCD to adopt guidelines for local comprehensive plans consistent with the state goals. The House version did not. The Senate version also eliminated the following: the authorization for impact fees; restriction of the vested rights doctrine; amendments to the state platting statute; conservation measures for farms, timberlands, and water resources; and requirements for protecting natural resource lands and critical areas. To promote affordable housing, the Senate version further mandated that "mother-in-law" apartments be allowed in all single-family residential zones.

120. 1989-90 LEGISLATIVE DIGEST, *supra* note 111, at 787.

121. *Id.* at 803. See Glossary of Washington Legislative Terminology.

122. The conference committee was composed of Representatives Cantwell, Nutley, and Betrozoff and Senators McCaslin, Amondson, and Vognild.

of the 1990 regular session on March 8, 1990.

Governor Gardner then called for a special session of the legislature to begin the next day, and the legislature reconvened the same conference committee on ESHB 2929. The conferees met regularly and reached agreement, not coincidentally, on the final day of the special session, April 1, 1990.¹²³ That evening, the House and Senate both adopted the free conference report¹²⁴ and passed ESHB 2929 by a vote of 32 to 16 in the Senate and 72 to 21 in the House.¹²⁵ After vetoing fifteen of the eighty-nine sections,¹²⁶ Governor Gardner signed ESHB 2929 into law on April 24, 1991.¹²⁷

Because the House and Senate were unable to reach agreement on important issues, the final version of ESHB 2929, as adopted by the conferees and passed by the legislature, contained a number of major omissions. ESHB 2929 explicitly acknowledged the gaps and directed the GSC to develop recommendations to remedy the deficiencies and report to the legislature and Governor by October 1, 1990.¹²⁸ Thus, ESHB 2929, the Growth Management Act of 1990 (GMA I), was an unfinished growth management program from its inception, and adoption of GMA II was expected to occur in the 1991 legislative session.

The final version of ESHB 2929, as agreed upon by the conference committee, passed by the legislature, and partially

123. One of the authors who closely monitored the conference committee process through frequent contact with conferees likened it to a roller coaster ride. Throughout the process, agreement seemed alternately certain or impossible. Because some of the conferees were staunch supporters of a rigorous state growth management program, while others wanted none at all, negotiation was difficult. Five of the six conferees signed the conference report. Senator McCaslin did not sign.

124. See Appendix B for a Glossary of Washington Legislative Terminology.

125. 1989-90 LEGISLATIVE DIGEST, *supra* note 111, at 803.

126. In his veto message, the Governor explained that he vetoed the following sections: Section 18, which required special districts to conform to the state policy goals and local comprehensive plans, because it excluded port districts and municipal airports; Sections 25, 26, 27, 28, and 29, which authorized local governments to contract with developers for construction of required public facilities, because of unaddressed questions about state prevailing wage laws; Section 45, which restricted development impact fees, because a portion of the section may have precluded appropriate mitigation of adverse environmental impacts under SEPA; Sections 75, 83, and 84, which established new economic development programs, because of their inappropriate source of funding; and Sections 76, 78, 79, 80, and 81, because they prescribed economic development programs without a source of funding. 1989-90 LEGISLATIVE DIGEST, *supra* note 111, at 993 (recording veto message on S.H.B. 2929).

127. S.H.B. 2929, 51st Leg., 1st Ex. Sess., 1990 Wash. Laws 1st Ex. Sess. 1972, ch. 17 (partial veto).

128. *Id.*

vetoed by the Governor, (1) had thirteen state growth planning goals solely for the purpose of guiding the preparation of plans and regulations; (2) employed more restrictive criteria than the Senate version for determining counties (and their cities) that must comply with most of the requirements of GMA II, allowing other counties to be bound perpetually by choice; (3) included more extensive comprehensive plan elements than the Senate version and without the Senate's provision for DCD guidelines; (4) did not include the vesting provisions the Senate version removed¹²⁹ or the "mother-in-law" apartment provisions it added; (5) reinstated most of the House protections for natural resource lands and critical areas and the amendments to the state platting statute, requiring adequate public facilities for new subdivisions; (6) included impact fee and excise tax authorizations; and (7) contained the House version's broader charge to the GSC concerning recommendations for GMA II.

Still, GMA I left a long list of important questions unanswered. The major unresolved issues of GMA I may be summarized as follows:

(1) GMA I required comprehensive plans of adjacent counties and cities to be coordinated and consistent, but it failed to specify a process for achieving such coordination and consistency.¹³⁰

(2) GMA I required consultation, and offered state mediation, between a GMA county and its cities in designating urban growth areas (UGAs), but failed to further specify a process for reaching agreement.¹³¹

(3) GMA I required consultation between the state, counties, and cities on plans for siting unpopular essential public facilities, but failed to determine the locus of ultimate authority to make such siting decisions or specify a process for overcoming impasse.¹³²

(4) GMA I called for allocation of adequate land for the

129. The current vesting doctrine holds that a property owner has a vested right to use his or her property under the terms of regulations applicable at the time the property owner *applies* for a building or development permit. See generally *Valley View v. Redmond*, 107 Wash. 2d 621, 733 P.2d 182 (1987). Section 27 of E.S.H.B. 2929, which passed the House but was not included in the version signed into law, would have changed the vesting doctrine to one in which a right vests upon the *issuance* of a valid building or development permit and upon reliance on the permit by the property owner. Wash. E.S.H.B. 2929, § 27, 51st Leg., Reg. Sess. (1990).

130. 1990 Wash. Laws 1st Ex. Sess. 1972, ch. 17, § 10.

131. *Id.* § 11(2).

132. *Id.* § 15.

development of all forms of housing for all economic levels and implied that each GMA county and city should bear its fair share of regional housing needs, but neither the implicit fair share requirement, nor a process for meeting it, was specified.¹³³

(5) GMA I provided no administrative review of the pivotal twenty-year population forecasts that UGA designations must accommodate.¹³⁴

(6) GMA I failed to address the question of whether incorporation may occur outside of UGAs.

(7) GMA I made no provision for urban scale development in the form of new communities or resorts in remote, undeveloped locations ineligible for UGA status.¹³⁵

(8) GMA I was silent on the applicability of GMA plans and development regulations to the activities of state agencies, and as a result of a veto, special districts.

(9) GMA I failed to sufficiently close the short subdivision loophole.

(10) GMA I failed to address the vested rights doctrine.

(11) GMA I provided no state or regional administrative review to ensure that local plans and regulations are consistent with the GMA planning goals and other requirements.

(12) GMA I failed to include penalties for local noncompliance with GMA deadlines and other requirements.

Several other growth management bills also were introduced during the 1990 legislative session. None passed a committee in the chamber of origin.¹³⁶ However, one bill, advocated by environmental interest groups, became the basis for an initiative to the people following the 1990 session.¹³⁷

After the 1990 Regular Session ended with the conference committee deadlocked on the House and Senate versions of ESHB 2929, and agreement continued to appear unlikely after the conference committee had been reconvened in early March, a coalition of environmental organizations drafted, and on March 27, 1990, filed Initiative 547 (I-547).¹³⁸ I-547 was

133. *Id.* §§ 2(4), 7(2).

134. *Id.* § 11(2); WASH. REV. CODE § 43.62.035 (1992).

135. See S.H.B. 2929, § 11, 51st Leg., 1st Ex. Sess., 1990 Wash. Laws 1st Ex. Sess. 1972, ch. 17, § 11.

136. H.B. 3003 and S.B. 6860 were identical bills introduced in both chambers as drafted and advocated by the Washington Environmental Council and other environmental groups. S.B. 6425 was introduced by Senator Talmadge and others. S.B. 6889 was introduced by Senator Bluechel and others.

137. *Id.*

138. Initiative 547, *supra* note 19. The environmental groups that participated in

derived from a bill its sponsors had unsuccessfully proposed earlier in the 1990 legislative session.¹³⁹ The sponsors had announced that their purpose was to keep pressure on the legislature to pass growth management legislation.¹⁴⁰ However, they were also motivated by perceived shortcomings in both versions of ESHB 2929 and were flush with confidence as a result of their recent victories in campaigns for the City of Seattle "CAP Initiative"¹⁴¹ and the statewide "Toxics Initiative,"¹⁴² where they were far outspent by business, labor, and development interests.

When the legislative deadlock finally was broken and GMA I passed on April 1, 1990, the environmental groups initially decided not to proceed with I-547 because the initiative had served its ostensible purpose. GMA I, although incomplete, was potent growth management legislation that radically changed Washington law for GMA counties and cities while establishing several important new requirements for non-GMA counties and cities, as well. Moreover, GMA I directed the GSC to develop recommendations on the issues left unresolved so that supplementary legislation could be adopted during the 1991 legislative session.¹⁴³ However, concern that the Senate might block passage of an acceptable GMA II, and optimism that the exploding popularity of growth management in the central Puget Sound region¹⁴⁴ would carry to victory an environmentally optimal statewide growth management law, caused environmental leaders to change their minds and pro-

drafting and supporting Initiative 547 were the following: Washington Environmental Council, National Audubon Society, Seattle Audubon Society, Heart of America Northwest, Sensible Growth Alliance, Snohomish County Improvement Alliance, Puget Sound Alliance, Vision Seattle, and Citizens for Growth Management. Telephone interview with David A. Bricklin, Seattle attorney (Apr. 5, 1993).

139. H.B. 3003 and S.B. 6860 were identical bills proposed by the Washington Environmental Council and other environmental groups.

140. See *Growth-curb Initiative Filed to Put Pressure on Legislators*, SEATTLE POST-INTELLIGENCER, Mar. 16, 1990, at 13-2; *Group Changes Stance; Initiative Seeks Growth Plan for Entire State*, SPOKANE SPOKESMAN-REVIEW, Apr. 13, 1990, at B-7.

141. Initiative 31, *supra* note 17, imposed height limitations and annual quotas for office buildings in downtown Seattle.

142. Initiative 97, Seattle, Wash., Toxics Initiative (passed by voter approval Nov. 8, 1988), enacted as 1989 Wash. Laws 5, ch. 2, codified at WASH. REV. CODE § 70.105D (1992).

143. Growth Management Act, 1990 Wash. Laws 1972, 1st Ex. Sess., ch. 17.

144. In 1989, about 60% of the state's population was concentrated in the four central Puget Sound counties, King, Pierce, Snohomish, and Kitsap. GARY PIVO & RUSSELL LIDMAN, GROWTH IN WASHINGTON: A CHARTBOOK charts 6 and 7 (Washington State Institute for Public Policy 1990).

ceed with I-547. Their confidence seemed well-founded given the ease with which they collected sufficient voter signatures to qualify I-547 for the November election and the strongly favorable public opinion polls at that time.

I-547 was much less deferential to local governments and more protective of the environment than GMA I. I-547 applied to all of the state's counties and cities,¹⁴⁵ imposed ten stringent state goals amplified by sixty-four sub-goals that governed not only local plans but all local regulatory actions,¹⁴⁶ and established two powerful "regional growth management review panels" to govern virtually all aspects of growth management in eastern and western Washington, respectively.¹⁴⁷ The review panels would have adopted interpretive rules,¹⁴⁸ established a dispute resolution system,¹⁴⁹ and approved required local plans before they became effective.¹⁵⁰ The panels also would have reviewed and commented on local development regulations required to fully implement comprehensive plans¹⁵¹ and imposed sanctions for noncompliance with the initiative.¹⁵²

But while polls showed strong "grass roots" support for I-547 during the summer of 1990, an unusual coalition formed to oppose the initiative. Governor Gardner, legislative leaders, business and labor groups, local governments, and newspaper editorial boards called for the defeat of I-547. Many opposed the initiative on the basis of process rather than substance. They argued that the people should allow the legislature to finish the Growth Management Act before taking the law into their own hands. Legislative leaders promised to pass legislation addressing all of the major issues left unresolved by GMA I.¹⁵³ Governor Gardner promised to keep the legislature's "feet

145. Initiative 547, *supra* note 19, at §§ 9, 21.

146. *Id.* § 2.

147. *Id.* § 4.

148. *Id.*

149. *Id.*

150. Initiative 547, *supra* note 19, at § 14.

151. *Id.* § 21.

152. *Id.* § 2.

153. In a well-publicized letter to Richard Ford, Chairman of the Growth Strategies Commission, the four caucus leaders of the legislature promised to pass legislation in the 1991 session addressing the major gaps in GMA I identified by the GSC. Letter from House Speaker Joe King, House Minority Leader Clyde Ballard, Senate Majority Leader Jeannette Hayner, and Senate Minority Leader Larry Vognild to Richard Ford, Chairman of the Growth Strategies Commission (Sept. 28, 1990) (on file with author Charles G. Gavigan).

to the fire" until it did.¹⁵⁴

Meanwhile, as the GSC carried out its legislative assignment during the spring and summer of 1990, it was influenced by the apparent popularity of I-547. As a result, its recommendations for GMA II, in its Final Report of September 25, 1990,¹⁵⁵ were much more ambitious than had been expected.¹⁵⁶ The GSC recommendations provided additional ammunition for the Governor, legislative leaders, and others in the campaign against I-547. In the end, the opposition campaign succeeded. Although I-547 had a substantial lead in early September polls, it was overwhelmingly defeated in November,¹⁵⁷ leaving the task of completing the GMA to the legislature.

3. 1991: GMA II

After the defeat of I-547, the Governor remained true to his word. He directed his staff to draft a growth management bill for the 1991 legislative session based on the GSC recommendations.¹⁵⁸ The Governor's far-reaching bill embodied

154. When signing E.S.H.B. 2929, Governor Gardner stated: "We fully intend to pursue further action to ensure that measure [E.S.H.B. 2929] is strengthened and clarified." See 1990 Wash. Laws 1st Ex. Sess. 1972, 2035, ch. 17 (1990) (partial veto). Gardner opposed I-547, arguing that the legislative process should be allowed to complete its course. *Tough Growth Report Surprises Gardner*, SEATTLE TIMES, July 10, 1990, at D-1. Gardner promised to lead an initiative in 1992 if the legislature did not pass GMA II. See *Growth Bill Shows Balance*, BREMERTON SUN, July 3, 1991, at A-1.

155. WASHINGTON STATE GROWTH STRATEGIES COMMISSION, FINAL REPORT: A GROWTH STRATEGY FOR WASHINGTON STATE (Sept. 25, 1990) [hereinafter GSC FINAL REPORT]. The GSC recommended that the legislature: (1) refine the goals of GMA I and require that state agencies conform to the GMA goals; (2) broaden the applicability of the GMA to require all federally-defined metropolitan counties (e.g., Spokane) to comply; (3) require all counties and cities to designate and protect natural resource lands and critical areas; (4) add several mandatory comprehensive plan elements to those required by GMA I; (5) provide for regional planning; (6) limit vesting of development rights until GMA plans and regulations have been developed; (7) establish an arbitration process to resolve GMA disputes; (8) authorize the state to challenge local plans for noncompliance with the GMA; (9) charge the Governor to enforce local compliance with the GMA; and (10) establish a process to identify and protect lands and resources of statewide importance. See generally *id.*

156. Compare the low expectations of GSC Chairman Richard Ford and member James Ellis as reported in *The Difficult Politics of Growth Management*, THE WASH. J. 5 (Dec. 11, 1989), with Governor Gardner's reaction to the preliminary report of the GSC submitted seven months later as reported in *Land Use Plan Stuns*, SEATTLE TIMES, July 10, 1990, at D-1.

157. I-547 was defeated in the November 6, 1990 general election by a vote of 327,339 for, to 986,508 against. (Election results on file with the Office of the Washington State Secretary of State, Olympia, Wash.)

158. See generally H.B. 1025, 52nd Leg., Reg. Sess. (1991).

many of the GSC recommendations with some departures, such as the creation of an administrative hearing board to resolve growth management disputes rather than an arbitration process.¹⁵⁹ The executive request bill was introduced in the House on January 16, 1991,¹⁶⁰ and followed the course pioneered by HB 2929 a year earlier. The informal committee on growth management, composed of the six relevant House committee chairs, reconvened.¹⁶¹ Like HB 2929 the year before, House Bill (HB) 1025 was subdivided into separate bills that were introduced in the House on February 6, 1991, and assigned to one of the six policy committees.¹⁶² Each committee held hearings and passed a substitute bill that was sent to the House Appropriations Committee, which consolidated the six bills as adopted by the policy committees and passed Substitute House Bill (SHB) 1025 on March 9, 1991.¹⁶³ However, unlike SHB 2929 a year earlier, legislators from both parties, who were committee chairs and minority leaders involved with growth management legislation, negotiated changes in SHB 1025 that were incorporated into a striking amendment prior to action by the full House.¹⁶⁴ After amending the striking amendment,¹⁶⁵ the full House passed ESHB 1025 by a vote of

159. Compare the arbitration provision in the GSC FINAL REPORT, *supra* note 155, at 49-50, with Wash. H.B. 1025, §§ 33-36, 52nd Leg., Reg. Sess. (1991).

160. 1989-90 LEGISLATIVE DIGEST, *supra* note 111, at 802.

161. The House Committee Chairs were Representatives Jennifer Belcher, Maria Cantwell, Ruth Fisher, Mary Margaret Haugen, Dick Nelson, and Nancy Rust.

162. H.B. 1668 (Local Government Committee), H.B. 1669 (Trade and Economic Development Committee), H.B. 1670 (Natural Resources and Parks Committee), H.B. 1671 (Transportation Committee), H.B. 1672 (Housing Committee), H.B. 1673 (Environmental Affairs Committee), 52nd Leg., Reg. Sess (1991).

163. See Appendix A for a summary of Committee action on each bill.

164. See Appendix B for a Glossary of Washington Legislative Terminology. The most significant changes effected through the House striking amendment were: (1) revision of the definition of agricultural land to include tidelands cultivated for shellfish; (2) a more precise statement of several state GMA goals; (3) a requirement that SEPA be incorporated into the planning process as early as, and to the fullest extent, possible; (4) less restrictive air quality provisions; (5) differentiation among counties and cities based on population for new comprehensive plan design and housing element requirements; (6) revision of several mandatory plan elements; (7) revision of new fully-contained community provisions; (8) revision of fair share housing requirements; (9) revision of regional planning requirements; (10) provision for interim urban growth areas; (11) clarification of open space provisions; (12) revision of the period for appeals to Growth Management Hearing Boards; and (13) provisions for notice to potential purchasers of property near designated natural resource lands. Wash. S.H.B. 1025, House Floor Amend. 316 (1991).

165. The major amendments on the House floor softened the revisions of the vested rights doctrine and strengthened density requirements for urban growth areas

59 to 38 on March 20, 1991.¹⁶⁶ ESHB 1025 was sent to the Senate.

In the Senate, ESHB 1025 was referred to the Government Operations Committee, which held a hearing on a proposed striking amendment that would have pared down GMA II so severely that it gained the nickname "growth lite" in the popular press.¹⁶⁷ But the striking amendment was not passed out of committee and the Senate took no action on ESHB 1025 during the regular session.

After the session ended, keeping the legislature's collective "feet to the fire" as he promised, Governor Gardner organized an ad hoc committee of legislative leaders and representatives of the Governor's Office to negotiate an agreement on GMA II legislation.¹⁶⁸ This negotiating committee, which was called the "five-corners" committee because it was composed of representatives of the four legislative caucuses and the Governor's Office, met from May 22 until June 19, 1991, when negotiations were formally terminated.¹⁶⁹

Next, at the request of legislative leaders, business and local government representatives negotiated a GMA II proposal that seemed promising enough to reconvene the five corners negotiating committee. Soon after, agreement among the five corners was reached. However, the proposal agreed on by the negotiating committee was substantially different from the one proposed by local government and business representatives a few days earlier, and it appeared that they might try to change or unravel the agreement. Instead, an unlikely heroine, Senator Hayner, helped fend-off the attack on the five corners agreement. Senator Hayner, although no fan of growth management, was committed to keeping the promise legislative leaders had made in the heat of the I-547 campaign,¹⁷⁰ and on

in the Puget Sound region. Wash. S.H.B. 1025, House Floor Amend. 307 (density), 345 (vesting) (1991).

166. WASHINGTON STATE LEGISLATURE, 1991-92 LEGISLATIVE DIGEST AND HISTORY OF BILLS, VOLUME 2, at 15 (1992) [hereinafter 1991-92 LEGISLATIVE DIGEST].

167. *Hard-nose Plan or Growth Lite?*, J. AM., Apr. 11, 1991, at A-1; *Republicans Shrink Growth Control Bill*, MORNING NEWS TRIB., Apr. 11, 1991, at B1. E.S.H.B. 1025 was 118 pages when it passed the House; the Senate proposal was a much smaller 35 pages.

168. *Gardner Calls for Huddle on Growth Legislation*, MORNING NEWS TRIB., May 16, 1991, at B3.

169. *Growth Battle in Olympia Intensifies*, WENATCHEE WORLD, June 20, 1991, at 16; *Growth Bill Impasse*, EVERETT HERALD, June 20, 1991, at 8A.

170. *See King and Hayner deliver a growth bill in Olympia*, SEATTLE TIMES, June 30, 1991, at A-14 (stating "Last year's growth management act was King's doing, and he

June 27, 1991, the House adopted a striking amendment and passed Reengrossed Substitute House Bill (ReSHB) 1025 encompassing the five corners agreement by a vote of 69 to 22.¹⁷¹ The next day, the Senate passed ReSHB 1025 by a vote of 29 to 15.¹⁷² The Governor, after vetoing one section,¹⁷³ signed ReSHB 1025 on July 16, 1991.

As finally enacted, GMA II addressed most of the major gaps in GMA I, although it was but a shadow, or leaner version, of HB 1025, depending on one's ideological orientation. Among its major additions, GMA II (1) authorized the governor to impose sanctions for local and state agency noncompliance with the GMA;¹⁷⁴ (2) established three regional Growth Planning Hearings Boards to administratively review specified issues at the request of limited categories of petitioners;¹⁷⁵ (3) required counties in cooperation with cities to prepare county-wide planning policies to guide development of county and city plans and, thereby, ensure their coordination and consistency;¹⁷⁶ (4) required counties with populations of 450,000 or more, and contiguous urban areas (presently King, Pierce, and Snohomish), to adopt a Multi-County Planning Policy;¹⁷⁷ (5) authorized counties to allow "new fully-contained communities" and "new master planned resorts" in remote, unurbanized areas that would not qualify for UGA status under GMA I;¹⁷⁸ (6) required *all* counties and cities to adopt development regulations to protect critical areas;¹⁷⁹ (7) precluded designation of forest and agricultural lands within UGAs unless a transferable development rights program had been established;¹⁸⁰ (8) required GMA plans to provide for the

worked to keep the issue alive. Hayner generally reflected a suspicion of land use planning that pervades her party and her colleagues from east of the Cascades. Whatever her personal doubts, Hayner respected and responded to strong public sentiment for growth-management legislation with backbone.").

171. 1991-92 LEGISLATIVE DIGEST, *supra* note 166, at 15.

172. *Id.*

173. The Governor vetoed Section 19, pertaining to permissible means of preserving open space. It was vetoed because garbled language left its meaning to conjecture and the courts. See 1991 Wash. Laws 2903, 1st Sp. Sess., ch. 32.

174. WASH. REV. CODE § 36.70A.340 (1992).

175. *Id.* §§ 36.70A.250-.310.

176. *Id.* § 36.70A.210.

177. *Id.* §§ 36.70A.210(7).

178. *Id.* §§ 36.70A.350-.360.

179. WASH. REV. CODE § 36.70A.060(2) (1992).

180. *Id.* § 36.70A.060(4).

siting of unpopular but essential public facilities;¹⁸¹ (9) required state agencies to comply with local GMA plans and regulations;¹⁸² (10) extended several GMA I deadlines;¹⁸³ and (11) authorized DCD to adopt "procedural criteria" to assist local governments in complying with the Act.¹⁸⁴

By July 1991, both GMA I and GMA II had become law and they collectively became known as the GMA. Still, even as he signed ReSHB 1025, Governor Gardner alluded to the need for additional growth management legislation in 1992.¹⁸⁵ However, no significant amendments to the GMA were adopted in the 1992 legislative session.¹⁸⁶

IV. THE PRESENT: WASHINGTON'S FORMATIVE GROWTH MANAGEMENT LAW

The GMA establishes statewide goals that embody important and controversial policy choices for the accommodation of future growth. The GMA does not impose state plans and development regulations. Instead, GMA counties and cities are required to adopt land use and public facilities plans, development regulations, and capital facilities programs designed to achieve state goals that are consistent with state substantive and procedural requirements.¹⁸⁷ The state's role is limited to support and enforcement, while local governments must endure incessant, acrimonious debate, make extremely diffi-

181. *Id.* § 43.17.250.

182. *Id.* § 36.70A.103.

183. *Id.* §§ 36.70A.045, .380.

184. *Id.* § 36.70A.190(4)(b).

185. 1991-92 LEGISLATIVE DIGEST, *supra* note 166, at 15 (recording veto message by Governor Booth Gardner on Re.S.H.B. 1025).

186. GMA-related bills that passed the Legislature during the 1992 Legislative Session included the following: (1) E.S.S.B. 6401 (open space corridors)—Requires local governments to purchase a sufficient interest to preclude development of land designated as part of an open space corridor under the GMA (rather than precluding development solely by regulation in an effort to maintain the land as open space). 1992 Wash. Laws 227; (2) E.S.S.B. 6408 (capital infrastructure financing)—Limits the use of the real estate excise tax authorized under the GMA. 1992 Wash. Laws 221; (3) E.S.H.B. 2842 (impact fees)—Provides that impact fees cannot be imposed both under SEPA and the GMA for the same system improvement. 1992 Wash. Laws 1003, ch. 219.

Another bill, S.H.B. 2676, passed the legislature but was vetoed by the governor. S.H.B. 2676 encouraged regions to plan jointly with the state regarding economic projects with regional or state significance and would have allowed major industrial developments outside urban growth areas when specified criteria were met. Wash. S.H.B. 2676, 52nd Leg. (1992) (vetoed).

187. WASH. REV. CODE §§ 36.70A.040, .120 (1992).

cult political choices, and formulate complex plans and regulations. Because the earliest deadline for GMA comprehensive plans and development regulations is July 1, 1994, and may be extended,¹⁸⁸ the processes of local GMA implementation are ongoing and will not be concluded for some time. How growth really will be managed under the GMA depends on the adoption of the definitive local plans and regulations. Although the actual effects of the GMA's central requirements await local GMA action, the deadline for implementation of some requirements has passed,¹⁸⁹ and several other requirements were effective immediately without any local action at all.¹⁹⁰

Of course, the importance of the GMA lies not only in the new requirements it imposes, but also in the new authority it grants. The extent to which local governments will exercise their new powers to collect development impact fees¹⁹¹ and assess additional real estate excise tax to finance new and expanded public facilities,¹⁹² utilize innovative regulatory devices, and prepare multi-county regional plans¹⁹³ remains to be seen.

Under Washington's "bottom-up" system, with the central locus of decision-making at the local level, the operational sub-

188. *Id.* § 36.70A.040(3), as amended by 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 1. The present deadlines for GMA plans and development regulations, always subject to legislative modification and administrative acquiescence, are as follows: for counties initially subject to the GMA planning requirements, and their constituent cities, the deadlines are July 1, 1994, for counties with populations over 50,000, and July 1, 1995, for counties with populations under 50,000; for counties subsequently subject to GMA planning requirements, by population growth or choice, the deadline is four years after the triggering event. Six month extensions for development regulation adoption are available if requested prior to the deadline. *Id.* Deadlines for GMA plan submissions may be extended by DCD for up to 180 days. WASH. REV. CODE § 36.70A.045 (1992).

189. The deadline for the designation and protective regulation of natural resources lands and critical areas by GMA counties and cities was March 1, 1992 (with maximum 180-day extension from September 1, 1992). March 1, 1992, also was the deadline for the designation of natural resource lands and critical areas and protective regulation of critical areas by non-GMA counties and cities. WASH. REV. CODE §§ 36.70A.060, .170 (1992).

190. Building permits may not be issued without an adequate potable water supply for intended use. *Id.* § 19.27.097. Subdivisions and short subdivisions may not be approved without local legislative finding of adequate public facilities. *Id.* §§ 58.17.060, .110. Conversion of land from forest use within three years of forest practice must be approved by the appropriate city or town. Formerly only county approval was required. *Id.* § 76.09.060.

191. *Id.* §§ 82.02.050-090.

192. *Id.* § 82.02.035.

193. *Id.* § 36.70A.210 (mandatory for King, Pierce, and Snohomish counties); § 47.80.020.

stantive growth management requirements will emerge as local governments implement the GMA.¹⁹⁴ Inevitably, there will be major variations in local plans and regulations concerning such issues as: the nature and extent of regulatory protection of natural resource lands and critical areas; the degrees of development density inside and outside UGAs; standards of adequate levels of service for the various public facilities; interpretation of the statutory definitions of concurrency for transportation facilities and local definition of concurrency for other public facilities; provisions to ensure adequate housing for all socioeconomic levels of prospective residents; and the accommodation of locally undesirable but regionally essential public facilities. When local plans and regulations are challenged for non-compliance with the GMA, the Growth Planning Hearings Boards and, ultimately, the courts will decide the meaning of quite generally stated requirements and the extent of local variation they allow. In doing so, the Boards and courts presumably will be influenced by the Procedural Criteria recently issued by DCD,¹⁹⁵ as directed by GMA II.¹⁹⁶

The legislature has laid the foundation, and Washington's growth management edifice will be built during the next decade, under the guidance of DCD, by the collective action of a multitude of counties and cities, the Hearings Boards, and the courts. As the details emerge, the legislature can be expected to provide further direction in accord with prevailing public sentiment.¹⁹⁷

A. DCD Administrative Guidance on GMA Requirements

During the GMA's formative implementation period, there has been a paucity of legally authoritative administrative elaboration on the requirements of the Act and a wealth of informal advice from DCD. GMA I authorized DCD rule-making only for the requirement of designating natural resource lands and critical areas.¹⁹⁸ Even such narrow rule-making authority

194. WASH. ADMIN. CODE 365-195-010 (1992).

195. *Id.* ch. 365-195.

196. WASH. REV. CODE § 36.70A.190(4)(b) (1992).

197. During the 1993 legislative session, GMA amendments were adopted that extended or clarified deadlines for local compliance with the various GMA requirements, that clarified the UGA designation process and the County-wide planning process, and that expanded the Governor's enforcement authority. See 1993 Wash. Laws, 1st Sp. Sess. 1804, ch. 6, §§ 1 and 2.

198. WASH. REV. CODE § 36.70A.050 (1992).

was controversial.¹⁹⁹ The champions of local control succeeded in limiting the authorization to "minimum guidelines . . . to assist counties and cities in designating . . . [resource lands and critical areas]."²⁰⁰ DCD adopted Minimum Guidelines on November 27, 1990, and in doing so expansively construed its authority, providing guidance not only on *classification*, as directed, but also on the *regulation* of the use and development of such areas.

In GMA II, controversy between the House and Senate again arose when the House bill initially proposed to grant DCD general rule-making authority to adopt "guidelines, requirements, and standards."²⁰¹ In a subsequent version of the House bill, the authority was limited to "advisory guidelines and elements" and "benchmarks."²⁰² In the final version of GMA II, DCD's authority was restricted further and was limited to adopting "procedural criteria" in performing its technical assistance role.²⁰³ Although denominated "procedural," the recently adopted DCD criteria include extensive explanation and elaboration on the GMA's substantive requirements.²⁰⁴ DCD's apparent rationale for including substance in the criteria is derived from the legislature's direction that the "procedural criteria" assist local governments in "adopting comprehensive plans and development regulations that meet the goals and requirements" of the GMA.²⁰⁵ To provide such assistance, DCD reasoned, the criteria must explain what the goals and requirements are.²⁰⁶ Regardless of the proper scope of the "procedural criteria," they clearly articulate and explain DCD's interpretation of the requirements of the GMA and undoubtedly will influence both local governments in imple-

199. The rule-making authority extended only to the designation, and not to the protective regulation, of natural resource lands and critical areas. Notwithstanding this limitation, the Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas go beyond classification to offer extensive guidance on protective regulation. *See, e.g.*, WASH. ADMIN. CODE § 365-190-020 (1990) (stating that "Counties and cities . . . should consider the definitions and performance standards in this chapter when preparing development regulations which preclude uses and development incompatible with critical areas.").

200. WASH. REV. CODE § 36.70A.050(3) (1992).

201. Wash. H.B. 1025, § 24, 52nd Leg. (1991).

202. Wash. S.H.B. 1025 § 53, 52nd Leg. (1991).

203. WASH. REV. CODE § 36.70A.190(4)(b) (1992).

204. WASH. ADMIN. CODE ch. 365-195 (adopted Oct. 29, 1992).

205. WASH. REV. CODE § 36.70A.190(4)(b) (1992).

206. *See* WASH. ADMIN. CODE §§ 365-195-020, -030, -040 (1992).

menting the GMA, and the Hearings Boards and courts in resolving compliance issues.

B. Counties and Cities Subject to the GMA's Central Requirements

As might be expected, the determination of which counties and cities were subject to the GMA's demanding growth management requirements and beneficiaries of new fiscal and regulatory authority was politically controversial. Virtually everyone agreed that the three largest counties (King, Pierce, and Snohomish), which are contiguous and comprise most of the central Puget Sound megalopolis, should be included.²⁰⁷ Some argued that eastern Washington counties and cities should be excluded entirely.²⁰⁸ GMA I, when introduced as HB 2929 and as passed by the House, required all counties and their cities to plan if the county population exceeded 100,000 or had increased by at least ten percent during the previous ten years.²⁰⁹ The Senate version of ESHB 2929 required all counties and cities in the state to manage growth but allowed counties with a population of less than 7,500 to escape the requirements.²¹⁰ GMA I, as it emerged from the conference committee and eventually became law, was less inclusive than either the House or Senate version. It required that counties and their cities comply with the new growth management requirements only if the county had (1) a population of 50,000 and a growth rate of ten percent over the previous ten years, or (2) a growth rate of over twenty percent in the previous ten years regardless of population.²¹¹ Moreover, counties in the second category were given the option to remove themselves from the Act's central requirements within specified periods of time.²¹² Other counties could choose to be governed by the GMA. Once a county and its cities are in the GMA regime by

207. There were several growth management bills introduced in the 1990 Legislative Session. H.B. 3003, S.B. 6860, and S.B. 6425 applied to all counties and cities. S.B. 6889 applied only to King, Pierce, and Snohomish counties.

208. See WASHINGTON STATE HOUSE OF REPRESENTATIVES, HOUSE LOCAL GOVERNMENT COMMITTEE MEETING ON HB 2734 (Jan. 23, 1990).

209. E.H.S.B. 2929, § 4, 51st Leg. (1990).

210. Senate Striking Amendment to Wash. E.S.H.B. 2929, § 7, 51st Leg. (1990).

211. WASH. REV. CODE § 36.70A.040(1) (1992).

212. Counties that fell into this category as of July 1, 1990, were given until December 31, 1990, to "opt-out." Counties that subsequently fell into this category as a result of population change, may "opt-out" within 60 days of state certification of the determinative population change. *Id.* § 36.70A.040(1).

law or choice, however, they may not escape under the present legislation.²¹³ Aside from minor clarification in 1993,²¹⁴ no changes in the Act's applicability have been made since 1990. There have been unsuccessful proposals to extend GMA coverage: Initiative 547 would have applied its rigorous requirements to all counties and cities,²¹⁵ and the GSC, in its final report, proposed to include all metropolitan counties as defined by the 1990 U.S. Census, which would have added three counties, including most notably Spokane, the largest GMA holdout at that time.²¹⁶

As of September 1993, by mandate or choice, twenty-nine of the state's thirty-nine counties and their cities are subject to the new growth management requirements.²¹⁷

C. *The Policy Foundation of the GMA: The Planning Goals*

As local governments, the DCD, the Hearings Boards, and the courts put flesh on the skeletal growth management program, the statutory "planning goals" will be the most basic source of guidance.²¹⁸ The statutory limitation that the goals "shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations"²¹⁹ should not bar their role as fundamental guides to interpretation. Rather, the restrictive language probably was designed to preclude legal challenges of local regulatory approvals of specific development proposals for infidelity to the goals.²²⁰ Certainly, they are the most straightforward

213. *Id.* § 36.70A.040(2).

214. 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 1 (amending WASH. REV. CODE § 36.70A.040 (1992)).

215. Initiative 547, *supra* note 19, at §§ 2, 9, 21.

216. GSC FINAL REPORT, *supra* note 155, at 5. This proposal would have added Spokane, Franklin, and Benton counties. Spokane, Benton, and Franklin Counties subsequently came within the GMA regime—Spokane by population growth, Benton and Franklin by choice.

217. Counties included by mandate are: Chelan, Clallam, Clark, Grant, Island, Jefferson, King, Kitsap, Lewis, Mason, Pierce, San Juan, Skagit, Snohomish, Spokane, Thurston, Whatcom, and Yakima.

Three of these counties included by virtue of growth rate but not population (Jefferson, Mason, and San Juan) had the option to remove themselves by December 31, 1990. None did. Counties included by choice are: Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Kittitas, Pacific, Pend Oreille, Stevens, and Walla Walla. The Attorney General has opined that a city which overlaps GMA and non-GMA counties is a GMA city in its entirety. 1992 Op. Att'y Gen. Wash. 28 (1992).

218. See WASH. REV. CODE § 36.70A.020(1)-(13) (1991).

219. *Id.*

220. The extent of local self-determination versus state control was hotly

statement of legislative purpose in the GMA.²²¹

The GMA explicitly denies any order of priority among the thirteen goals even though some of them are mutually competitive,²²² a matter of some irony since local comprehensive plans are required to be internally consistent.²²³ However, the goals have significant meaning and collectively convey clear conceptual choices for the management of growth. The goals call for: carefully planned, compact, generally contiguous concentrations of future development in UGAs, adequately served by public facilities and services; viable natural resource-based industries (timber, agriculture, fisheries) adequately insulated from urban development pressure and incompatible uses; high levels of environmental quality; ample open space for recreation and habitat; adequate affordable housing; preservation of historic sites; protection of property rights from unfair burdens; extensive opportunities for citizen participation in planning processes; expedited and fair processing of development permit applications; and general encouragement of economic development throughout the state.²²⁴ Most of the goals are pursued more²²⁵ or less²²⁶ extensively in the requirements of the GMA. However, a few of the goals, having been mentioned, are largely ignored.²²⁷

The legal effect of the goals is uncertain. Must local governments adopt plans and regulations that *conform* to the goals or merely *consider* the goals in their deliberative

contested throughout the legislative history of the GMA. Initiative 547 prescribed 17 goals with 64 subgoals to which "land use *decisions* and regulation" of all state agencies and local governments "shall conform." Initiative 547, *supra* note 19, at § 2. Such pervasive state constraint of local discretion and the attendant potential for costly delays of litigation were frequent bases for attack during the Initiative 547 campaign.

221. The legislative findings in the GMA are too brief and general to be useful as interpretive guides. See WASH. REV. CODE § 36.70A.010 (1991).

222. See, e.g., the goals for reducing sprawl, affordable housing, and ensuring adequate public facilities in WASH. REV. CODE §§ 36.70A.020(2), (4), (12) (1992), and the goals for protection of the property rights and the environment in WASH. REV. CODE §§ 36.70A.020(6), (10) (1992).

223. *Id.* § 36.70A.070. Apparently, the fragile politics of growth management dictated that the Act tell local governments to "do as we say, not as we do."

224. *Id.* § 36.70A.020(1)-(13).

225. *E.g.*, urban growth and transportation. See *id.* §§ 36.70A.110, .350, .360 (urban growth areas), and §§ 36.70A.070(6), 47.26.080, 47.80.010-.050 (transportation).

226. *E.g.*, housing, open space, and recreation. See *id.* §§ 36.70A.070(2) (housing element), 36.70A.070(1) (land use element), 36.70A.160 (open space element).

227. *E.g.*, timely processing of development permits and historic preservation. WASH. REV. CODE § 36.70A.020(7), (13) (1992).

processes? Must the goals be used as legal standards by the Hearings Boards and courts in deciding whether challenged plans and regulations meet the requirements of the Act? Or will such plans and regulations survive administrative and judicial review by reflecting sufficient local consideration of the goals? The statutory language is ambivalent. GMA I, after providing that the goals were to "be used exclusively for the purpose of GUIDING the development of comprehensive plans and development regulations,"²²⁸ directed the GSC to "recommend . . . a specific structure or process that . . . [e]nsures county and city comprehensive plans . . . comply with [the] planning goals. . . ."²²⁹ GMA II reinforces the latter language, which effectively characterizes the goals as standards, by directing the DCD to adopt "procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals" of the Act.²³⁰ The DCD Procedural Criteria interpret the statutory language as a requirement that plans and regulations "comply with the goals as standards."²³¹ However, the DCD criteria go on to stress that there are many permissible means of pursuing the goals and that the requisite degree of detail and complexity of GMA plans and regulations varies with population, growth rates, planning resources, and scale of public facilities.²³²

While the Attorney General, whose opinions are not legally authoritative, has opined that mere rational consideration of the goals is sufficient,²³³ the first Growth Planning Hearings Board decision concluded that the goals are standards with which plans and regulations must comply.²³⁴ Nevertheless, in that case, the Board reviewed compliance deferentially,

228. *Id.* § 36.70A.020 (emphasis added).

229. *Id.* § 36.70A.800(2)(a) (emphasis added).

230. *Id.* § 36.70A.190(4)(b) (emphasis added). In the provisions for the Growth Planning Hearings Boards, GMA II also refers to petitions relating to whether a plan or regulation is "in compliance with the goals" of the Act. *Id.* § 36.70A.290(2).

231. See WASH. ADMIN. CODE §§ 365-195-020, -030(2), -030(3), -060(1) (1992).

232. See *id.* § 365-195-050(3). This compliance principle is essentially the utilitarian rule of reason employed extensively by the courts in determining the adequacy of environmental analysis required by SEPA. See WASH. REV. CODE ch. 43.21C (1992). See also *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wash. App. 439, 442, 832 P.2d 503, 505 (1992); *SETTLE, ENVIRONMENTAL POLICY ACT*, *supra* note 53, at § 14(a)(i).

233. 1992 Op. Att'y Gen. Wash. 23 (1992).

234. *Clark County Natural Resources Council v. Clark County, Western Washington Growth Planning Hearings Board*, No. 92-02-001, at 2-3 (final order Nov. 10, 1992).

in light of broad local discretion to choose appropriate means of pursuing the goals and to resolve conflicts between the goals.²³⁵ The Board's interpretation, although vague, strives to reasonably reconcile conflicting statutory language, is consistent with the DCD Procedural Criteria, and seems likely to prevail.

*D. The Central Purposes and Requirements of the GMA:
Procedural and Substantive Dimensions*

There is wide variation in the extent to which the GMA goals are pursued in the provisions of the Act. Obviously, the goals reflected in the major statutory requirements are most likely to be served. The apparent central purposes are: (1) avoiding sprawling settlement patterns by concentrating new development in urban growth areas,²³⁶ (2) ensuring adequate public facilities to serve new development by thorough infrastructure planning and concurrency requirements,²³⁷ (3) protecting critical areas from environmentally harmful activities and natural resource lands from incompatible development by directing it elsewhere,²³⁸ and (4) achieving regional responsibility among governmental units by coordinating local plans and

235. *Id.* at 10-14.

236. WASH. REV. CODE §§ 36.70A.020(1), .020(2), .070(5), .110 (1992). *See infra* part IV.D.3.

237. WASH. REV. CODE §§ 36.70A.020(12), .070(3), .070(6) (1992). "Concurrency" refers to the availability of adequate public facilities when needed to serve new development. The requirement is clear and explicit for transportation facilities, *id.* § 36.70A.070(6), and less clear for other public facilities. *See id.* §§ 36.70A.020 (12), .070(3). DCD procedural criteria interpret the ambiguous statutory language relating to concurrency:

(3) Concurrency. The achievement of concurrency should be sought with respect to public facilities in addition to transportation facilities. The list of such additional facilities should be locally defined. The department recommends that at least domestic water systems and sanitary sewer systems be added to concurrency lists applicable within urban growth areas, and that at least domestic water systems be added for lands outside urban growth areas. Concurrency describes the situation in which adequate facilities are available when the impacts of development occur, or within a specified time thereafter. With respect to facilities other than transportation facilities and water systems, local jurisdictions may fashion their own regulatory responses and are not limited to imposing moratoria on development during periods when concurrency is not maintained.

WASH. ADMIN. CODE § 365-195-060 (1992). *See* Thomas M. Walsh & Roger A. Pearce, *The Concurrency Requirement of the Washington State Growth Management Act*, 16 U. PUGET SOUND L. REV. 1025 (1993).

238. WASH. REV. CODE §§ 36.70A.020(8), .020(10), .060, .170 (1992).

regulations²³⁹ to ensure fair and efficient allocation of locally undesirable but regionally essential facilities,²⁴⁰ while compelling state agencies to comply with local plans and regulations.²⁴¹ These purposes and the statutory requirements that serve them have both procedural and substantive dimensions with variations in the relative importance of process and substance.

The GMA's requirements are generally procedural. The Act requires local governments to prepare comprehensive plans and development regulations that address specified subjects and issues, but does not dictate the conclusions to be reached or the content of the policies and regulations to be adopted. However, the entire GMA is not substantively neutral. The Act imposes several fundamental and controversial substantive principles on local governments. But even these substantive GMA mandates are not definitive, allowing substantial local discretion.

An obvious implicit premise of the GMA is that process requirements produce substantive rewards. An overarching set of required processes, designed to serve all of the Act's purposes, is the preparation of comprehensive land use and public facilities plans and consistent development regulations.²⁴² The Act assumes that even without substantive requirements, growth would be managed more satisfactorily if local governments would: (1) systematically assemble data on existing land uses, public facility deficiencies, and the locations of specified categories of natural resource lands and environmentally critical areas; (2) consciously consider and make policy choices on the location of new development, standards of adequacy and schedules of expansion for public facilities, the protection of natural resource lands and critical areas, and the accommodation of affordable housing and locally undesirable regional facilities; and (3) share data and coordinate policy-making with other cities and counties in the region. In short, well-informed deliberation is deemed superior to default in serving the purposes of growth management.

However, the GMA does not put all of its eggs in the process basket. The Act dictates several core substantive stan-

239. *Id.* §§ 36.70A.100, .210.

240. *Id.* § 36.70A.200. See *infra* part III.C.2.

241. WASH. REV. CODE § 36.70A.103 (1992).

242. See *infra* parts IV.D.4. and 5.

dards. First, new growth must be concentrated in UGAs contiguous with existing urbanized areas while also meeting other specified standards.²⁴³ Second, new development may not occur unless adequate transportation and perhaps other public facilities will be available concurrently with the new development they will serve.²⁴⁴ Third, counties and cities may not exclude essential state regional facilities²⁴⁵ and must accommodate affordable housing.²⁴⁶ Fourth, natural resource lands and critical areas must be protected.²⁴⁷ The Act's substantive requirements vary in their precision, and, thus, the extent of local discretion. Ultimately, the line between substance and procedure will depend on the extent of local discretion accorded to local government by the Growth Planning Hearings Boards and the courts.

In the succeeding subsections of this Article, the Act's central requirements will be addressed in the context of the major implementation processes. These processes, which will be treated in chronological order, are as follows: (1) designation and protection of natural resource lands and critical areas; (2) adoption of county-wide and multi-county planning policies; (3) designation of urban growth areas; (4) adoption of comprehensive plans; and (5) adoption of development regulations.

1. Designation and Protection of Natural Resource Lands and Critical Areas

The first step required for local implementation of the GMA was the designation²⁴⁸ and adoption of interim development regulations to protect natural resource lands²⁴⁹ (agriculture,²⁵⁰ timber,²⁵¹ and mineral lands²⁵²) and critical areas²⁵³ (wetlands,²⁵⁴ potable water aquifer recharge areas, fish and wildlife habitat, frequently flooded areas, and geological haz-

243. WASH. REV. CODE § 36.70A.110 (1992).

244. *Id.* §§ 36.70A.020(12), .070(6).

245. *Id.* § 36.70A.200.

246. *Id.* §§ 36.70A.020(4), .070(2)(d).

247. *Id.* § 36.70A.060.

248. WASH. REV. CODE § 36.70A.170 (1992).

249. *Id.* § 36.70A.060.

250. *Id.* § 36.70A.030(2).

251. *Id.* § 36.70A.030(8).

252. *Id.* § 36.70A.030(11).

253. WASH. REV. CODE § 36.70A.030(5) (1992).

254. *Id.* § 36.70A.030(17).

ardous areas²⁵⁵). GMA counties and cities were required to do so by September 1, 1991.²⁵⁶ Non-GMA counties and cities were required to designate natural resource lands and critical areas by September 1, 1991, and protectively regulate critical areas (but not natural resource lands) by March 1, 1992.²⁵⁷

While the two categories of special lands are lumped together in the statutory provisions requiring their designation and protection, close attention to the Act's goals²⁵⁸ and definitions²⁵⁹ reveals two quite different legislative purposes. Natural resource lands are protected not for the sake of their ecological role but to ensure the viability of the resource-based industries that depend on them. Allowing conversion of resource lands to other uses or allowing incompatible uses nearby impairs the viability of the resource industry.²⁶⁰ Critical areas are protected because their development would be ecologically detrimental or hazardous to life or property.²⁶¹

The designation and interim protection of such areas is the first formal step in growth management implementation for two reasons: to preclude urban growth area status for areas unsuited to urban development and, in the case of critical areas, to prevent irreversible environmental harm during the lengthy preparation process of GMA comprehensive plans and development regulations.

255. *Id.* § 36.70A.030(9).

256. *Id.* § 36.70A.060(2). DCD was authorized to grant extensions to a date no later than March 1, 1992. *Id.* § 36.70A.380.

257. *Id.* §§ 36.70A.060(2), .170(1). DCD was authorized to grant extensions to a date no later than March 1, 1992, for designation of the areas, and September 1, 1992, for regulation. *Id.* § 36.70A.380.

258. WASH. REV. CODE § 36.70A.020(8) (1992) ("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.").

259. *See id.* § 36.70A.030(2), (8), (11).

260. New residents of farm and forest areas, attracted to their natural beauty or bucolic charm, soon complain of traffic, noise, dust, odors, and chemical treatments caused by nearby timber or farming practices. A GMA II amendment provides that:

Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within three hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

Id. § 36.70A.060(1).

261. *See id.* §§ 36.70A.020.010, .030(5), (9), (17); WASH. ADMIN. CODE ch. 365-190 (1991).

To guide local governments in designating such areas, DCD was directed to prepare "minimum guidelines" for the classification of natural resource lands and critical areas.²⁶² The guidelines were to assist local governments in making the designations and to allow for regional differences in the state. DCD issued the Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas on November 27, 1990.²⁶³ Subsequently, a GMA II amendment imposed a strict limitation on the designation of agricultural and forest land in urban growth areas.²⁶⁴

The designations and regulations, required as the first step in the GMA process, are temporary in nature, expiring on the adoption of final development regulations.²⁶⁵ When formulating comprehensive plans and implementing development regulations, the interim designations and regulations must be reviewed and amended, if appropriate, to achieve consistency with the plan.²⁶⁶ The natural resource regulations must "assure the conservation" of designated agricultural, forest, and mineral resource lands;²⁶⁷ "assure that the use of lands adjacent to [resource lands] shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices";²⁶⁸ and must allow "uses legally existing on any parcel prior to their adoption."²⁶⁹ The critical area regulations must "protect" designated critical areas.²⁷⁰

To comply with these requirements, a local government

262. WASH. REV. CODE § 36.70A.050(1) (1992).

263. WASH. ADMIN. CODE ch. 365-190 (1992).

264. WASH. REV. CODE § 36.70A.060(4) (1992).

265. *Id.* § 36.70A.060(1).

266. *Id.* § 36.70A.060(3).

267. *Id.* § 36.70A.060(1).

268. *Id.*

269. WASH. REV. CODE § 36.70A.060(1) (1992). This provision, included in a GMA II amendment, apparently requires that such uses be lawful or, perhaps, given protective nonconforming use status under the regulations. However, it is less protective of property rights than the extremely generous provision it replaced ("may not prohibit uses *permitted* prior to their adoption"). *Id.* § 36.70A.060(1) (1990) (emphasis added); *cf. id.* § 36.70A.060(1) (1992).

270. WASH. REV. CODE § 36.70A.060(2) (1992). A GMA II amendment replaced a more specific standard ("regulations precluding land use or development that is incompatible with the critical areas") with the more general one ("regulations that protect critical areas"). *Id.* § 36.70A.060(2) (1990); *cf. id.* § 36.70A.060(2) (1992). On the basis of this change in language, the first Growth Planning Hearings Board decision ruled that the county did not violate the GMA by making the policy choice not to designate all wetlands in the county. Clark County Natural Resources Council v. Clark County, Western Washington Growth Planning Hearings Board, No. 92-02-0001 (final order Nov. 10, 1992).

must go through the process of designating areas and adopting interim regulations, then reviewing and revising them as needed prior to their incorporation into final development regulations implementing the comprehensive plan. The extent to which the GMA imposes substantive choices on local designation and regulation decisions is less certain. While a few of the substantive requirements are specific, the most broadly applicable standards are very general, allowing extensive local discretion. The first two decisions of the Growth Planning Hearings Boards confirm this conclusion.²⁷¹ They focused on process, according wide discretion to the local governments in their substantive regulatory choices.

2. County-wide and Multi-county Planning Policies: Vehicles for Regional Coordination

The second step in GMA implementation is the development of county-wide planning policies (CWPPs), and for King, Pierce, and Snohomish Counties, the development of multi-county planning policies.²⁷² CWPPs were created by GMA II to fill a huge gap left by the failure of GMA I to provide a means of coordinating the regionally important policy choices of GMA counties and their constituent cities.²⁷³

GMA I required that the comprehensive plans of adjacent counties and cities be coordinated and consistent, but it failed to specify a process for meeting the requirement.²⁷⁴ GMA I granted counties ultimate authority to designate UGAs outside city limits, required consultation on UGAs between a county and its cities, urged consensus, and offered DCD mediation, but failed to specify a sufficiently rigorous collaborative process to

271. See *Tracy v. Mercer Island*, Central Puget Sound Growth Planning Hearings Board, No. 92-3-0001 (final order Jan. 5, 1993) (generally upholding the city's interim critical area regulations against the claim that they regulated more extensively than authorized by the GMA); *Clark County Natural Resources Council v. Clark County*, Western Washington Growth Planning Hearings Board, No. 92-02-0001 (final order Nov. 10, 1992) (upholding the county's interim critical areas ordinance against numerous claims that it failed to designate all county wetlands and failed to sufficiently protect the critical areas).

272. WASH. REV. CODE § 36.70A.210 (1992).

273. While GMA II declined to create regional governments, the Act, without elaboration, characterized counties as "regional governments within their boundaries" and cities as "primary providers of urban governmental services within urban growth areas." *Id.* § 36.70A.210(1). Having done so, the Act assured advocates of local control that its characterization of county and city roles should not be construed to alter the land use powers of cities.

274. *Id.* § 36.70A.100.

make agreement on UGAs likely.²⁷⁵ GMA I required consultation between the state, counties, and cities on plans for siting unpopular public facilities, but failed to determine the locus of ultimate authority to make such siting decisions or to specify a process for overcoming impasse.²⁷⁶ GMA I called for local GMA plans and regulations to allocate adequate land for development of all forms of housing for all economic levels and implied that each county and city should bear its fair share of regional affordable housing needs, but neither the implicit fair share requirement nor a process for meeting it was specified.²⁷⁷

GMA II's response to the lack of an adequate vehicle for regional coordination was the CWPP requirement and a mandatory collaborative process between a county and its cities through which the CWPP must be developed.²⁷⁸ The CWPP is a written policy statement to be used solely to guide the preparation of local comprehensive plans to ensure their mutual consistency.²⁷⁹

GMA II established strict deadlines for several phases of the CWPP process requiring adoption by the county legislative authority no later than July 1, 1992.²⁸⁰ The Governor was authorized to require mediation to break deadlocks in the collaborative process and to impose sanctions for failure to meet deadlines.²⁸¹

275. *Id.* § 36.70A.110.

276. *Id.* § 36.70A.150.

277. WASH. REV. CODE §§ 36.70A.020(4), .070(2) (1992).

278. *Id.* § 36.70A.210.

279. WASH. REV. CODE § 36.70A.210(3) (1992) requires that a CWPP address, at least the following:

- (a) Policies to implement RCW 36.70A.110 [urban growth areas];
- (b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;
- (c) Policies for siting public capital facilities of a county-wide or state-wide nature;
- (d) Policies for county-wide transportation facilities and strategies;
- (e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;
- (f) Policies for joint county and city planning within urban growth areas;
- (g) Policies for county-wide economic development and employment; and
- (h) An analysis of fiscal impact.

Id.

280. *Id.* § 36.70A.210(2)(e). Counties not initially bound by the GMA must adopt a county-wide planning policy no later than fourteen months after "opting-in" or certification of sufficient population change to bring a county into the GMA regime. *Id.* § 36.70A.210 (1992) as amended by 1993 Wash. Laws 1804, ch. 6, § 4.

281. WASH. REV. CODE § 36.70A.210(2)(c), (2)(d), (5) (1992). At the end of 1992, several counties had not yet adopted CWPPs. No sanctions had been imposed.

The CWPP requirement is procedural, but it is a process designed to make policy choices, some of which are subject to substantive requirements.²⁸² The CWPP is appealable to the Growth Planning Hearings Board by cities and the governor.²⁸³

Counties with populations of 450,000 or more and contiguous urban areas must adopt a multi-county planning policy (MPP) in addition to CWPPs.²⁸⁴ Other counties may do so voluntarily. The CWPP process is to be followed for an MPP unless the participating counties agree on another process. Presumably the tight timelines of the CWPP process were not intended to apply. Although the terse provision for MPPs does not articulate a purpose, apparently it is to coordinate the relevant policies of contiguous, highly urbanized counties. To serve the purpose of coordination, ideally the MPP would have preceded the CWPPs of constituent counties. However, the deadlines for CWPPs made this ideal sequence practically infeasible.

3. County Designation of Urban Growth Areas

The concentration of future growth into urban growth areas (UGAs) is the GMA's most controversial requirement.²⁸⁵ By directing most of the state's future population increase into existing cities, urbanized areas, and contiguous territory, the Act seeks to minimize intrusion into resource lands and critical areas, preserve large tracts of open space easily accessible to urban residents, foster a sense of spatial identity by separating communities with great expanses of sparsely-populated rural land, and induce sufficient development density to be efficiently served by mass transportation and other public facilities.²⁸⁶ By encouraging high density in UGAs while severely

282. See *id.* §§ 36.70A.110 (urban growth area designations), .200 (siting essential public facilities), .020(4), .070(2).

283. *Id.* § 36.70A.210(6); See *Snoqualmie v. King County*, Central Puget Sound Growth Planning Hearings Board, No. 92-3-0004 (Mar. 1, 1993).

284. WASH. REV. CODE § 36.70A.210(7) (1992). Presently, only Pierce, King, and Snohomish Counties are required to do so.

285. *Id.* § 36.70A.110; WASH. ADMIN. CODE § 365-195-335 (1992). See also Keith W. Dearborn & Ann M. Gygi, *Planner's Panacea or Pandora's Box: A Realistic Assessment of the Role of Urban Growth Areas in Achieving Growth Management Goals*, 16 U. PUGET SOUND L. REV. 975 (1993).

286. See WASH. REV. CODE §§ 36.70A.020(1), .020(2), .030(14), .030(15), .030(16), .110, .350, .360 (1992). See generally GROWTH MANAGEMENT DIV., WASH. STATE DEP'T OF COMMUNITY DEV., THE ART AND SCIENCE OF DESIGNATING URBAN GROWTH AREAS, SOME SUGGESTIONS FOR CRITERIA AND DENSITIES (1992); GROWTH MANAGEMENT DIV., WASH. STATE DEP'T OF COMMUNITY DEV., ISSUES IN DESIGNATING URBAN GROWTH

limiting development intensity on adjacent land, major wealth redistribution will occur unless transferable development rights (TDR) systems accompany the expected upward and downward revisions of permissible density inside and outside of UGAs.²⁸⁷ Without effective TDR systems, which the Act authorizes and encourages,²⁸⁸ the winners in the UGA designation game will not complain, but the losers certainly will—politically, administratively, and legally. The GMA's urban growth area policy will attempt to wean Washingtonians from the sprawling, low-density development patterns that have prevailed since World War II. Whether it will succeed or eventually succumb to an irresistible public preference for formless, traffic-choked, low-density sprawl,²⁸⁹ remains to be seen and may vary among the regions of the state.²⁹⁰

After the designation of natural resource lands and critical areas and adoption of county-wide planning policies, designation of UGAs is the next logical step in GMA implementation. Whether county UGA designation is a separate process or a component of county comprehensive plans was left unclear by the GMA I and GMA II statutes.²⁹¹ However, the DCD procedural criteria²⁹² and a 1993 statutory amendment,²⁹³ now resolve the ambiguity by concluding that it is both a preliminary, distinct process and part of the plan. Thus, a county must designate interim UGAs as development regulations prior to comprehensive plan adoption²⁹⁴ because county and city

AREAS, PROVIDING ADEQUATE URBAN AREA LAND SUPPLY (1992); GSC FINAL REPORT, *supra* note 155.

287. See generally GROWTH MANAGEMENT DIV., WASH. STATE DEP'T OF COMMUNITY DEV., INNOVATIVE TECHNIQUES PART II: TRANSFER OF DEVELOPMENT RIGHTS (1992); Donald M. Carmichael, *Transferable Development Rights as a Basis for Land Use Control*, 2 FLA. ST. U.L. REV. 35 (1974).

288. WASH. REV. CODE § 36.20A.090 (1992).

289. See RICHARD MORRILL & DAVID C. HODGE, UNIV. OF WASH. DEP'T OF GEOGRAPHY, MYTHS & FACTS ABOUT GROWTH MANAGEMENT 30-38 (Jan. 1991).

290. See Dearborn & Gygi, *supra* note 285.

291. See WASH. REV. CODE §§ 36.70A.070, .110 (1992).

292. WASH. ADMIN. CODE § 365-195-335(3)(g) (1992). This ambiguity in the statute is not merely a matter of academic interest. The appealability of UGA designations to the Growth Planning Hearings Boards may depend on their characterization as either county-wide planning policies or comprehensive plans. See WASH. REV. CODE §§ 36.70A.210(6), .280(1) (1992).

293. WASH. REV. CODE § 36.70A.110 (1992), as amended by 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, §§ 2(4), (5).

294. Initially-bound GMA counties must adopt development regulations designating interim UGAs by October 1, 1993. WASH. REV. CODE § 36.70A.110 (1992), as amended by 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 2(4). Other counties must

plans must be prepared on the basis of the central UGA determination; and the UGA designation ultimately must be incorporated into the county comprehensive plan.

Counties have final authority to designate UGAs; however, they are severely constrained by process requirements that virtually require the agreement of affected cities. Counties apparently were given ultimate authority because the Act mandates that all of the territory of existing cities be included in UGAs and, hence, the land subject to discretionary UGA designation is in unincorporated county areas.²⁹⁵ Moreover, as GMA II confirmed, "counties are regional governments within their boundaries."²⁹⁶ However, cities are intensely interested in UGA designation in the unincorporated county beyond their limits because it determines the nature and extent of their future growth. GMA I attempted to reconcile the competing county and city interests by according cities process rights to initially propose UGAs, formally object to county designations, and request DCD mediation.²⁹⁷ GMA I also required counties to strive for agreement with cities and to justify in writing designations that differ from city proposals.²⁹⁸ GMA II added the more extensive, definitive requirement of the county-wide planning policy process.²⁹⁹ A 1993 amendment goes even farther, requiring interim UGA designation as a development regulation by a specified deadline after notice, hearing, and SEPA compliance.³⁰⁰ Moreover, such interim UGAs are appealable to the Growth Planning Hearings Boards.³⁰¹ However, notwithstanding the extensive process rights of cities, counties retain final authority to designate UGAs outside existing city limits. Every ten years, the UGA designation process must be repeated and the UGAs revised for the succeeding twenty-year period.³⁰²

do so within three years and three months of the date they come under the GMA regime. *Id.*

295. WASH. REV. CODE § 36.70A.110(1) (1992).

296. *Id.* § 36.70A.210(1).

297. *Id.* § 36.70A.110(2).

298. *Id.* § 36.70A.110(2), as amended by 1993 Wash. Laws. 1st Sp. Sess. 1804, ch. 6, § 2.

299. *Id.* § 36.70A.210, as amended by 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 4.

300. Wash. E.S.H.B. 1761, § 2, 53rd Leg., 1st Sp. Sess., 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 2.

301. WASH. REV. CODE § 36.70A.110 (1992), as amended by 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 2(4).

302. *Id.* § 36.70A.130(3).

In addition to the extensive process constraints, county UGA designation is subject to major substantive requirements. Given the crucial role of UGA designations in the operation of the growth management system, interpretation of these requirements by the Hearings Boards and the courts will be immensely important. The UGAs, in which "urban densities" are allowed and "greenbelt and open space areas" are required, must be sufficient to accommodate the twenty-year population projection of the state Office of Financial Management.³⁰³ Territory beyond city limits may be included in UGAs only if it "already is characterized by urban growth,"³⁰⁴ "adjacent to"³⁰⁵ such areas, or, as authorized by GMA II, is a "new fully contained community."³⁰⁶

Isolated UGAs are authorized for "new fully contained communities" as a narrow exception to the general requirement that UGAs be contiguous to existing urban areas to preclude leapfrog development.³⁰⁷ Counties are authorized but not obligated to provide for such new communities. If a county elects to do so, it must reserve an appropriate portion of the twenty-year population projection and reduce its initially-designated urban growth areas accordingly.³⁰⁸ The Act establishes very restrictive criteria that proposed new communities must meet.³⁰⁹ When an application for a new fully contained community has been approved by a county, the comprehensive plan UGA designations must be amended to include the site.³¹⁰

GMA II granted similar, but conceptually distinct, new authority to allow master planned resorts in remote areas ineligible for UGA designation.³¹¹ A county may allow such resorts, by so providing in its comprehensive plan and development regulations, only if statutory criteria are met.³¹² Unlike

303. *Id.* § 36.70A.110(2).

304. *Id.* § 36.70A.110(1) (1992). WASH. REV. CODE § 36.70A.110(3) (1992) establishes an order of priority between urban areas with and without sufficient excess public facilities to accommodate the projected growth. However, it is unclear whether this priority order pertains to designation of UGAs or phased development within UGAs. Once UGAs have been designated, cities and towns may not annex territory beyond a UGA. *Id.* § 35.13.005.

305. *Id.* § 36.70A.110(1).

306. *Id.* § 36.70A.350(1).

307. *Id.*

308. *Id.* § 36.70A.350(2).

309. *See id.* § 36.70A.350(1)(a)-(i).

310. WASH. ADMIN. CODE § 365-195-335(1), (3) (1992).

311. WASH. REV. CODE § 36.70A.070(3) (1992).

312. *Id.* §§ 36.70A.360(1)-(5).

“new fully contained communities,” the sites of “master planned resorts,” once approved, are not designated as UGAs. The apparent rationale is that they would be used primarily by transient guests rather than additional residents of the state. Hence, unlike UGAs, such resorts are not designed to accommodate projected population increase.

4. Comprehensive Plans: The Guidance System for Managing Growth

The most pervasive and burdensome requirement that the Act imposes on GMA counties and cities is to develop and adopt comprehensive plans³¹³ addressing numerous specified topics³¹⁴ and satisfying statutory procedural and substantive standards.³¹⁵ The comprehensive plan is the central nervous system of the GMA. It receives and processes all relevant information and sends policy signals to shape the behavior of public and private actions. The GMA has infused comprehensive plans with potency previously unknown in Washington. The plan must contain data and detailed policies to guide the expansion and extension of public facilities and the use and development of land, as prescribed by the Act³¹⁶ and extensively explained by the DCD Procedural Criteria.³¹⁷

Most significantly, the Act requires that plan policies coordinate the provision of public facilities, especially transportation facilities, with private land development, especially housing. A GMA plan may not be a mere community wish list. It must be an internally consistent document, and all of its elements must be consistent with a future land use map.³¹⁸ A GMA plan may not be autonomous. It must be coordinated and consistent with the GMA plans of counties and cities sharing borders or regional problems.³¹⁹ A GMA plan may not be ignored. It must be implemented by enactment of development regulations consistent with its policies.³²⁰ And, counties and cities must “perform their activities and make capital budget decisions in conformity with their comprehensive

313. *Id.* § 36.70A.040.

314. *Id.* § 36.70A.070.

315. *Id.* §§ 36.70A.070, .100, .110, .130, .140, .180, .210.

316. *Id.* §§ 36.70A.070, .200.

317. WASH. ADMIN. CODE 365-195-300 to -330 (1991).

318. WASH. REV. CODE § 36.70A.070 (1992).

319. *Id.* §§ 36.70A.100, .210.

320. *Id.* § 36.70A.120.

plans."³²¹ The discipline of GMA plans may not be avoided by opportunistic amendments. Generally, proposed amendments must be considered and decided collectively only once a year, and may not "breach the plan's internal consistency."³²² Even state agencies must comply with local GMA plans and implementing regulations.³²³

All GMA plans must address land use, housing, capital facilities, utilities, and transportation.³²⁴ County plans also must contain a rural element.³²⁵ Because cities are entirely within UGAs under the Act and are supposed to be entirely urban, eventually,³²⁶ a rural element would be irrelevant in a city plan.

The land use policies and map must determine the location and distribution of the various land uses, including agriculture, timber production, housing, commerce, industry, recreation, open spaces, and public utilities and facilities. This element also must address appropriate population densities and building intensities in relation to the various uses, future population growth, the protection of groundwater quality and quantity, and the management of drainage, flooding, and stormwater run-off.³²⁷

While the land use element is a purely procedural requirement, the housing element provisions contain substantive limits as well.³²⁸ The process required for the housing element is the assembly of data on existing and projected housing needs and the adoption of policies for the preservation, improvement, and development of housing. Substantively, the policies must make adequate provision for the housing needs of all economic segments of the community and designate sufficient land for housing, including government-assisted, low-income, manufactured and multi-family housing, group homes, and foster care facilities.³²⁹

The Act's procedural requirements for the utilities element are modest. The plan must merely specify the location

321. *Id.*

322. *Id.* § 36.70A.130.

323. WASH. REV. CODE § 36.70A.103 (1992).

324. *Id.* § 36.70A.070.

325. *Id.* § 36.70A.070(5).

326. *Id.* § 36.70A.110.

327. *Id.* § 36.70A.070(1); WASH. ADMIN. CODE 365-195-305 (1992).

328. WASH. REV. CODE § 36.70A.070(2) (1992); WASH. ADMIN. CODE 365-195-310 (1992).

329. *Id.*

and capacity of all existing and proposed utilities, including, but not limited to, electrical, telecommunication, and natural gas lines.³³⁰

The transportation element is subject to the most rigorous procedural and substantive requirements of all.³³¹ Procedurally, the relationship between land use assumptions and transportation needs must be articulated; existing air, water and land transportation facilities and services must be inventoried; regionally coordinated service standards for road and transit facilities must be adopted; means of rectifying facility deficiencies must be specified; future increases in demand for facilities must be forecast; facility expansion necessary to meet predicted demand must be specified; a multi-year financing plan must be prepared; and demand management strategies must be formulated.³³² Substantively, if funding is inadequate for needed facility expansion based on land use assumptions, adequate funding sources must be identified or the land use element must be revised to bring needed facility expansion in line with available funding.³³³

One of the Act's most significant substantive requirements is explicitly included in the transportation element provisions. This so-called "concurrency" requirement compels local governments to deny regulatory approval of proposed development if transportation facilities or strategies necessary to meet the specified level of service standard will not be available concurrently with new development.³³⁴ "Concurrent" means that facility improvements, demand management, or system management strategies sufficient to satisfy level of service standards will be in place at the time of development or a financial commitment is in place that will ensure the completion of improvements within six years.³³⁵

The capital facilities element also has both procedural and substantive dimensions.³³⁶ Procedurally, plans must contain an

330. WASH. REV. CODE § 36.70A.070(4) (1992); WASH. ADMIN. CODE 365-195-320 (1992).

331. WASH. REV. CODE § 36.70A.070(6) (1992); WASH. ADMIN. CODE 365-195-325 (1992).

332. WASH. REV. CODE § 36.70A.070(6)(a)-(e) (1992).

333. *Id.* § 36.70A.070(6)(c)(iii).

334. *Id.* § 36.70A.070(6)(e); WASH. ADMIN. CODE 365-195-510 (1992).

335. *Id.*

336. WASH. REV. CODE § 36.70A.070(3) (1992); WASH. ADMIN. CODE 365-195-315 (1992). The term "capital facilities" is not defined in the statute or DCD procedural criteria. Perhaps the definition of "public facilities" is expected to do double duty.

inventory of existing capital facilities owned by public entities, a forecast of future needs, proposed locations and capacities of new or expanded facilities, and a plan for financing such public facility development covering a period of at least six years.³³⁷ Substantively, the cost of planned capital facilities must be within projected available funding. There is a requirement that the land use element be reassessed and revised if expected funding is inadequate for proposed capital facility expansion³³⁸ to ensure that the land use element, capital facilities element and financing plan are consistent. It is debatable whether the mandatory consistency between land use, capital facilities, and capital finance plans implies that proposed development may not be approved unless adequate public facilities will be available to serve the new development. The GMA goals state such a requirement generally.³³⁹ If, as is arguable, the goals are substantive standards with which plans must conform,³⁴⁰ plans would have to contain a concurrency requirement for all public facilities. The DCD Procedural Criteria apparently rely on this reasoning in concluding that the concurrency requirement, which is explicit for transportation facilities, applies to public facilities in general.³⁴¹

County comprehensive plans must include a rural element, which, as tersely and vaguely specified by the Act, apparently must be a land use element for areas not designated for urban growth, agriculture, timber production, or mineral extraction.³⁴² Substantively, the rural element must "provide for a variety of rural densities."³⁴³

A separate section of the Act requires that GMA plans include a process for identifying and siting essential public facilities that are "typically difficult to site, such as airports, state education facilities, state or regional transportation facilities, state and local correctional facilities, solid waste handling

Under WASH. REV. CODE § 36.70A.030(12) (1992), public facilities include "streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems . . . parks and recreational facilities, and schools." If so, there is substantial overlap between the required capital facilities and transportation elements.

337. WASH. REV. CODE § 36.70A.070(3) (1992).

338. *Id.*

339. *Id.* § 36.70A.020(12).

340. *See supra* part IV.C.

341. *See* WASH. ADMIN. CODE 365-195-060(3) (1991).

342. WASH. REV. CODE § 36.70A.070(5) (1992); WASH. ADMIN. CODE 365-195-330 (1992).

343. *Id.*

facilities, and inpatient facilities including substance abuse facilities, mental health facilities, and group homes.”³⁴⁴ Substantively, local comprehensive plans may not preclude the siting of essential public facilities.³⁴⁵

Comprehensive plans may include any other elements and consistent sub-area components.³⁴⁶ Plans must be developed in substantial compliance with statutory public participation requirements³⁴⁷ and adopted by variable deadlines, the earliest of which is July 1, 1994.³⁴⁸ DCD may extend the deadlines for up to one hundred eighty days “to facilitate expeditious review and interjurisdictional coordination of comprehensive plans and development regulations.”³⁴⁹ Once adopted, GMA plans may be appealed by the state, a GMA county or city, or virtually any specially interested party to a Growth Planning Hearings Board to determine whether the plans comply with the requirements of the GMA and SEPA.³⁵⁰

5. Development Regulations

The last step in local GMA compliance is the enactment of development regulations that are consistent with and implement the comprehensive plan.³⁵¹ The regulations must be developed in substantial compliance with the statutory public participation requirements.³⁵² Once enacted, development regulations, like comprehensive plans, are appealable to a Growth Planning Hearings Board for determination of compliance with the GMA and SEPA.³⁵³

The term “development regulations” encompasses any official control of land use and development including explic-

344. WASH. REV. CODE § 36.70A.200 (1992); WASH. ADMIN. CODE 365-195-340 (1992).

345. *Id.*

346. WASH. REV. CODE § 36.70A.080(1), (2) (1992).

347. *Id.* § 36.70A.140.

348. As a result of a 1993 amendment, deadlines for comprehensive plan adoption are: July 1, 1994, for initially-bound counties with 50,000 or more people and their cities; January 1, 1995, for initially-bound counties with fewer than 50,000 people and their cities; and four years from the date a county subsequently came under the GMA regime by choice or population change for such counties and their cities. The 1993 amendment does not affect DCD’s authority under WASH. REV. CODE § 36.70A.045 (1992), to extend the comprehensive plan deadline by up to 180 days. WASH. REV. CODE § 36.70A.040 (1992), *as amended by* 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 1.

349. WASH. REV. CODE § 36.70A.045 (1992).

350. *Id.* § 36.70A.280(1).

351. *Id.* § 36.70A.120.

352. *Id.* § 36.70A.140.

353. *Id.* § 36.70A.280(1).

itly authorized "innovative techniques," such as density bonuses, cluster housing, planned unit developments, and transferable development rights.³⁵⁴ Development regulations include the required natural resource lands and critical area regulations adopted after appropriate review and revision of the interim regulations to ensure consistency with the comprehensive plan.³⁵⁵

The Act explicitly requires that the transportation concurrency requirement be implemented by local adoption and enforcement of "ordinances," presumably included in the development regulations.³⁵⁶ Such "ordinances" must prohibit development that would cause transportation facilities to operate below level of service standards established in the transportation element of the GMA plan, unless transportation facility improvements or strategies to accommodate the increased demand are in place concurrently with the development.³⁵⁷

E. Special Concurrency Requirements for All Counties and Cities

Planned and regulated concurrency between new development and adequate public facilities is, along with UGAs³⁵⁸ and protection of natural resource lands and critical areas,³⁵⁹ fundamental and pervasive in Washington's growth management system. Earlier in the Article, the concurrency requirements for GMA counties and cities were addressed as substantive requirements for GMA comprehensive plans and regulations.³⁶⁰ Beyond these requirements, the concurrency principle is expressed in two GMA amendments to state subdivision and

354. WASH. REV. CODE §§ 36.70A.030(7), .090 (1992).

355. *Id.* § 36.70A.060(3).

356. *Id.* § 36.70A.070(6)(e).

357. Facilities or strategies are deemed "concurrent with development" if they are in place at the time of development or a financial commitment has been made to complete them within six years. *Id.* § 36.70A.070(6)(e). The Act does not define "time of development."

358. See generally *supra* part IV.D.3.; Dearborn & Gygi, *supra* note 285.

359. See generally *supra* part IV.D.1.; Alan D. Copsey, *The Protection of Wildlife Under Washington's Growth Management Act*, 16 U. PUGET SOUND L. REV. 1101 (1993); Alison Moss & Beverlee E. Silva, *Regulation of Wetlands in Western Washington Under the Growth Management Act*, 16 U. PUGET SOUND L. REV. 1059 (1993).

360. See generally *supra* parts IV.D.4. and 5.; Robert H. Freilich et al., *Economic Development and Public Transit: Making the Most of the Washington Growth Management Act*, 16 U. PUGET SOUND L. REV. 949 (1993); Walsh & Pearce, *supra* note 237.

building permit laws applicable to all of the state's counties and cities.

1. Subdivisions and Short Subdivisions: Adequacy of Public Facilities

Under prior law, counties and cities had virtually unlimited discretion to summarily approve "short" subdivisions of land.³⁶¹ Local governments were not required to pay any heed to public facility adequacy and generally exacted little or nothing in the way of land dedications or fees for public facilities from short subdividers. Such leniency created perverse incentives to develop land via the supposedly exceptional short subdivision process instead of the far more demanding requirements for "long" subdivisions.³⁶² GMA I tightened this loophole by requiring, as a prerequisite to short plat approval, written findings that appropriate provisions had been made for the same list of public facilities applicable to long subdivisions and that the public interest would be served.³⁶³

Prior law imposed much more demanding procedural requirements on "long" subdivisions than on short subdivisions.³⁶⁴ The city or county considering an application for "long" plat approval was required to determine whether appropriate provision had been made for a comprehensive list of public facilities and whether the public interest would be served by the proposal.³⁶⁵ GMA I expanded the list of public facilities to include "schools," in addition to "school sites"; "roads," in addition to "streets" and "alleys"; "recreation [facilities]," in addition to "parks" and "playgrounds"; and "transit stops."³⁶⁶ The most important change was to include "school facilities," generally the most costly of all public facilities, in addition to mere "school sites." More significantly, the GMA amendment not only directed cities and counties to go through the process of determining the adequacy of such facilities, but it also required that approval be denied if any of the listed

361. A short subdivision is a division or redivision of land into four or fewer lots for purposes of sale, lease or transfer of ownership. In cities, short subdivisions may include nine or fewer lots if a city so provides by ordinance. WASH. REV. CODE § 58.17.020(b) (1992). See SETTLE, WASHINGTON LAND USE, *supra* note 6, at § 3.4.

362. See generally SETTLE, WASHINGTON LAND USE, *supra* note 6.

363. WASH. REV. CODE § 58.17.060 (1992).

364. See *id.* ch. 58.17.

365. *Id.* § 58.17.110.

366. 1990 Wash. Laws 1st Ex. Sess. 1972, ch. 17, § 52 (codified at WASH. REV. CODE § 58.17.110 (1992)).

facilities would be inadequate or the public interest would not be served.³⁶⁷

2. Building Permits: Adequate Water Supply

GMA I established³⁶⁸ and GMA II modified³⁶⁹ the requirement of "evidence of adequate [potable] water supply" prior to building permit issuance. Sufficient evidence may be in the form of a state water right permit, a letter from an approved water purveyor, or other verification of the existence of an adequate potable water supply for the proposed buildings.³⁷⁰ The standards of adequacy for various intended uses may be articulated by administrative rules adopted by the Department of Ecology after consultation with local government and may "recognize differences between high-growth and low-growth counties."³⁷¹

In non-GMA counties, this requirement may not apply county-wide. Such counties and the state Departments of Health and Ecology may mutually determine areas of the county where the requirement shall not apply. Unsuccessful attempts to reach agreement may be mediated by DCD.³⁷²

F. New Local Authority

The GMA recognized that traditional deficiencies in land use and public facilities management were caused by lack of both local will and legal ways. Thus, the GMA not only imposed new requirements but also conferred new authority on GMA counties and cities.

1. Innovative Land Use Management Techniques

GMA counties and cities are authorized and encouraged to employ "innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights."³⁷³ While all of these methods have been adopted at least occasionally by adventurous local governments, and

367. *Id.*

368. 1990 Wash. Laws 1st Ex. Sess. 1972, ch. 17, § 63.

369. 1991 Wash. Laws 1st Sp. Sess. 2903, ch. 32, § 28.

370. WASH. REV. CODE § 19.27.097(1) (1992).

371. *Id.* § 19.27.097(3).

372. *Id.* § 19.27.097(2).

373. *Id.* § 36.70A.090. See *supra* note 287 and accompanying text.

Washington courts generally have been supportive,³⁷⁴ explicit statutory authority is far more comforting.

Although the provision is extremely terse, it is a strong statement of legislative intent that GMA counties and cities have authority to adopt growth management tools of their choice subject only to any explicit statutory limitations. Unlike the GMA's authorization of impact fees,³⁷⁵ the provision for "innovative techniques" includes no procedural or substantive limitations. Thus, subject to the general requirements of the Act and constitutional limitations, local governments may freely experiment as they implement the GMA.

2. Impact Fees

During the last decade, local authority to impose regulatory exactions, in general, and impact fees, in particular, has been clouded by uncertainty in Washington. In the early 1980s, as state and federal funding for infrastructure rapidly receded, local governments, scrambling for new funding sources, increasingly imposed impact fees on new development to pay for new and expanded public facilities. Development interests resisted in the courts and the legislature and scored major victories on both fronts. The courts, applying a functional test to challenged impact fees, invalidated them as *ultra vires* taxation if their purpose was revenue generation,³⁷⁶ and upheld them, assuming a statutory source of regulatory authority, if their purpose was police power regulation.³⁷⁷ In 1982, the leg-

374. The Washington courts, without explicit statutory support, generally have upheld novel land use regulatory devices except for impact fees. However, the state's courts have not had occasion to decide the validity of transferable development rights or density bonuses. Cf. *SORE v. Snohomish County*, 99 Wash. 2d 363, 369, 662 P.2d 816, 819 (1988) (embracing flexible regulatory methods in dicta); *Lutz v. Longview*, 83 Wash. 2d 566, 568, 520 P.2d 1374, 1376 (1974) (embracing concept of planned unit development (PUD) while invalidating challenged PUD action for procedural deficiency). See *Wiggers v. Skagit County*, 23 Wash. App. 207, 217, 596 P.2d 1345, 1351 (1979) (upholding PUD against spot zoning challenge); *State ex rel. Myhre v. Spokane*, 70 Wash. 2d 207, 216, 422 P.2d 790, 796 (1967) (upholding rezoning with concomitant agreement). But see *R/L Assocs., Inc. v. Seattle*, 113 Wash. 2d 402, 407-08, 780 P.2d 838, 841 (1989) (invalidating impact fees for violation of WASH. REV. CODE § 82.02.020); *San Telmo Assocs. v. Seattle*, 108 Wash. 2d 20, 24, 735 P.2d 673, 675 (1987) (holding impact fees to be *ultra vires* taxation); *Hillis Homes v. Snohomish County*, 97 Wash. 2d 804, 809, 650 P.2d 193, 195-96 (1982) (holding impact fees to be *ultra vires* taxation).

375. WASH. REV. CODE §§ 82.02.050-.090 (1992).

376. See, e.g., *San Telmo Assocs. v. Seattle*, 108 Wash. 2d 20, 735 P.2d 673 (1987); *Hillis Homes v. Snohomish County*, 97 Wash. 2d 804, 650 P.2d 193 (1982).

377. See, e.g., *Hillis Homes v. Public Utility District No. 1*, 105 Wash. 2d 288, 299-300, 714 P.2d 1163, 1169 (1986).

islature generally prohibited impact fees with important, ill-defined exceptions,³⁷⁸ and largely ignored the effect of the prohibition on other statutory sources of regulatory exaction authority.³⁷⁹

Before long, development interests recognized that the inhospitable legal climate for development fees was not necessarily in their interests. Given the scant sources of infrastructure funding and legal authority to deny development approval for inadequacy of public facilities, systematic assessment of impact fees potentially served the interests of developers as well as the general public.

In response, the legislature authorized all counties and cities to impose impact fees for transportation facilities.³⁸⁰ Then, GMA I more broadly authorized impact fees³⁸¹ for: public streets and roads; publicly-owned parks, open space, and recreation facilities; school facilities; some fire protection facilities;³⁸² and tenant relocation assistance.³⁸³ However, the Act's authorization of tenant relocation assistance fees was granted only to mandatory GMA counties and cities,³⁸⁴ and the other four categories of impact fees were authorized only for GMA counties and cities.³⁸⁵

The authority to impose impact fees for tenant relocation assistance is subject to numerous stringent substantive and procedural limitations. However, even so limited, such impact

378. See WASH. REV. CODE § 82.02.020 (1992). The most sweeping and problematic was the exception for "voluntary agreements." Because the alternative to agreement often was denial of regulatory approval on grounds of inadequate public facilities, the voluntariness of such agreements was questionable. See, e.g., *Southwick, Inc. v. Lacey*, 58 Wash. App. 886, 894-95, 795 P.2d 712, 716-17 (1990).

379. The most important potential source of regulatory exaction authority, which was not explicitly amended or even acknowledged, is SEPA's broad substantive authority to deny or condition regulatory approvals to avoid or mitigate unacceptable environmental impacts. WASH. REV. CODE § 43.21C.060 (1992); WASH. ADMIN. CODE 197-11-660 (1991).

380. The Local Transportation Act, 1988 Wash. Laws ch. 179, § 2 (codified at WASH. REV. CODE ch. 39.92 (1992)).

381. WASH. REV. CODE §§ 82.02.050-090 (1992).

382. *Id.* § 82.02.090(7)(d) ("fire protection facilities in jurisdictions that are not part of a fire district").

383. *Id.* § 59.18.440.

384. The authority to exact relocation assistance extends only to counties and cities required to prepare GMA comprehensive plans on the basis of population or rate of population growth under WASH. REV. CODE § 36.70A.040(1) (1992). The authority does not extend to counties and cities that have chosen to be bound by the GMA under WASH. REV. CODE § 36.70A.040(2) (1992).

385. *Id.* § 82.02.050(2).

fees may violate the constitutional substantive due process requirements, as recently articulated by the Washington State Supreme Court.³⁸⁶

The authority for the other four categories of impact fees also is extensively delimited substantively and procedurally. Some of the substantive limitations mimic the relevant constitutional tests.³⁸⁷ Thus, local impact fees that meet the rigorous GMA requirements should pass constitutional scrutiny, as well. A 1992 amendment provides that GMA impact fees may not duplicate SEPA mitigation measures.³⁸⁸ The provision probably was unnecessary because such an outcome would be constitutionally impermissible.³⁸⁹

G. Enforcement, Sanctions, and Incentives

Unlike some state growth management systems³⁹⁰ and Washington's Shoreline Management Act,³⁹¹ the GMA does not require prior state administrative approval of local plans and regulations.³⁹² They are effective and presumed valid upon adoption. GMA I failed to provide for state administrative review of claims of noncompliance with the GMA, leaving enforcement to the courts. However, GMA II established three Growth Planning Hearings Boards³⁹³ to adjudicate claims that

386. See *Guimont v. Clarke*, 121 Wash. 2d 586, 854 P.2d 1 (1993); *Robinson v. Seattle*, 119 Wash. 2d 34, 830 P.2d 318 (1992); *Sintra, Inc. v. Seattle*, 119 Wash. 2d 1, 829 P.2d 765 (1992). Cf. *R/L Assocs., Inc. v. Seattle*, 113 Wash. 2d 402, 780 P.2d 838 (1989) (invalidating tenant relocation assistance requirements for lack of authority).

387. See WASH. REV. CODE §§ 82.02.020(3), .050(1)(c), .050(3), .060(7), .070(5) (1993) (mimicking the constitutional requirements articulated in *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 836-37 (1987); *Robinson*, 119 Wash. 2d at 49-56, 830 P.2d at 318; *Sintra*, 119 Wash. 2d at 12-22, 829 P.2d at 771-77; and *Unlimited v. Kitsap County*, 50 Wash. App. 723, 727, 750 P.2d 651, 653 (1988)).

388. WASH. REV. CODE § 82.02.100 (1993).

389. See cases cited *supra* notes 386-87. A 1993 amendment bars local governments from imposing impact fees after their deadline for GMA comprehensive plan adoption until they have adopted their GMA plans. 1993 Wash. Laws, 1st Sp. Sess. 1804, ch. 6, § 6.

390. See, e.g., OR. REV. STAT. ch. 197 (1991).

391. WASH. REV. CODE §§ 90.58.070(2), .090 (1992).

392. The only required extra-local approval of local comprehensive plans is by locally optional regional transportation planning organizations (RTPOs) and pertains only to the transportation element of GMA plans. It is not clear whether such RTPO certification, if required, is a prerequisite to the legal effectiveness of the plans or to the transportation elements of plans. *Id.* § 47.80.030.

393. *Id.* § 36.70A.250-340. The Act created three hearings boards: an Eastern Washington board with jurisdiction over all GMA counties and cities east of the Cascade Mountains; a Central Puget Sound Board with jurisdiction over King, Pierce, Snohomish, and Kitsap counties and their cities; and a Western Washington Board

(1) a state agency, county, or city is not in compliance with the requirements of the Act or SEPA, and (2) the twenty-year population projections of the state Office of Financial Management should be adjusted.³⁹⁴

The statutory provisions must be read carefully to determine the persons and entities with standing to obtain review of a given claim by one of the boards. Only the Governor and cities may appeal an adopted county-wide planning policy.³⁹⁵ Other petitions within the jurisdiction of the boards may be brought by the state, GMA counties and cities, a party of record in the local government proceedings subject to review, or virtually any other specially interested individual, entity, or organization.³⁹⁶ However, the state is subject to special limitations both as to officials with authority to appeal and matters that may be appealed.³⁹⁷ The only state officials who may initiate petitions to the boards are the Governor, heads of state agencies with the Governor's consent, and the Commissioner of Public Lands concerning matters related to state trust lands.³⁹⁸ Authorized state officials may appeal only whether (1) a GMA county or city has failed to adopt a plan, development regulations, or county-wide planning policies on time and (2) such local enactments comply with the requirements of the GMA.³⁹⁹ Thus, the state may not appeal SEPA compliance issues, state twenty-year population projections, and, according to the literal statutory language, amendments to GMA plans and regulations.

Petitions to the boards must be filed within sixty days of the date a county or city publishes a notice that it has adopted a GMA plan, development regulation, or amendment.⁴⁰⁰ Petitions challenging plans, regulations, and amendments must overcome a presumption of validity by persuading the board by a preponderance of the evidence that the state agency, county, or city erroneously interpreted or applied the GMA.⁴⁰¹ Pro-

with jurisdiction over the remaining GMA counties and cities west of the Cascade Mountains. See Wm. H. Nielsen et al., *Practice and Procedure Before the Growth Planning Hearings Boards*, 16 U. PUGET SOUND L. REV. 1323 (1993).

394. WASH. REV. CODE §§ 36.70A.215(6), .280 (1992).

395. *Id.* § 36.70A.215(6).

396. *Id.* § 36.70A.280(2), (3).

397. *Id.* § 36.70A.310.

398. *Id.*

399. WASH. REV. CODE § 36.70A.310 (1992).

400. *Id.* §§ 36.70A.215(6), .290(2).

401. *Id.* § 36.70A.320.

ceedings before the boards are to be conducted in accordance with statutory provisions⁴⁰² and rules of practice and procedure jointly prescribed by the boards.⁴⁰³

The boards are strictly limited in the relief they may provide to successful petitioners. Where the board decides that a state twenty-year population projection is erroneous, the board may adjust the projection. The adjusted forecast must be labeled as a "board adjusted population projection" and used solely for GMA purposes.⁴⁰⁴ Where a board concludes that a state agency, county or city is not in compliance with GMA requirements, the matter must be remanded to the agency, county or city with directions to attain compliance within a specified period not to exceed one hundred eighty days. After expiration of this period, the board must hold a hearing and make a compliance determination within forty-five days.⁴⁰⁵ A finding of noncompliance must be transmitted to the Governor with or without a recommendation that sanctions be imposed.⁴⁰⁶

GMA I failed to provide for sanctions to induce compliance. GMA II provided no direct penalties for state and local noncompliance but broadly authorized the Governor to impose sanctions once noncompliance has been determined by the Growth Planning Hearings Boards.⁴⁰⁷ A 1993 GMA amendment significantly expands the Governor's enforcement authority.⁴⁰⁸ Sanctions may be imposed by the Governor without a prior determination of noncompliance by a state Hearings Board. The Governor is required only to base sanctions on written findings of local bad faith or unreasonable delay and to consult with and report such findings to a Hearings Board before imposing sanctions. Authorized sanctions include revising allotments within state agency appropriations and withholding of funds allocated to local governments under various revenue sharing and local aid programs.⁴⁰⁹ These funding sources include the urban arterial trust account, rural arterial trust account, transportation improvement account, local incre-

402. *Id.* § 36.70A.290.

403. *Id.* § 36.70A.270(6). The boards jointly adopted rules of practice and procedure on October 15, 1992. Wash. St. Reg. 92-21-034.

404. WASH. REV. CODE § 36.70A.280(4) (1992).

405. *Id.* § 36.70A.330(2).

406. *Id.* § 36.70A.330(3).

407. *Id.* §§ 36.70A.330, .340.

408. 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 5.

409. *Id.*

ments of the state sales and use tax, motor vehicle fuel tax, liquor profit tax, liquor excise tax, and the newly authorized increment of real estate excise tax.⁴¹⁰

The attenuated enforcement process and ultimate unbridled discretion in the Governor to withhold sanctions is consistent with the state's generally modest role in Washington's growth management system. Procedurally, GMA counties and cities are required to notify DCD of their intent to adopt plans or regulations prior to adoption. DCD and other departments may then respond with suggestions during the public review process. Once plans or regulations are adopted, copies must be transmitted to DCD.⁴¹¹ While these reporting requirements may facilitate initiation of enforcement actions before the hearings boards by DCD or other state agencies, the requirement of gubernatorial consent⁴¹² indicates that formal enforcement is to be a last resort. DCD exhortation, mediation, technical and financial assistance,⁴¹³ and other incentives⁴¹⁴ are expected to be the primary means of inducing local compliance. Although GMA deadlines have passed without universal local compliance, no state enforcement actions have been commenced.⁴¹⁵

V. THE FUTURE: CRITICAL UNKNOWNNS

What Washington's formative growth management system

410. WASH. REV. CODE §§ 36.70A.340(3), 82.46.035(5) (1992).

411. *Id.* § 36.70A.106.

412. *Id.* § 36.70A.310.

413. *Id.* § 36.70A.190.

414. In addition to direct financial assistance, WASH. REV. CODE § 36.70A.190 (1992), the Act contains other incentives, the effectiveness of which is suggested by the substantial number of counties that have chosen to be bound by the GMA. Such incentives include authority to impose an additional one-fourth of one percent real estate excise tax (with voter approval for non-mandatory GMA counties and cities), WASH. REV. CODE § 82.46.035(2) (1993); preferential consideration in state loan and grant programs for counties and cities that are parties to county-wide planning policies, WASH. REV. CODE § 43.17.250 (1992); authority to impose impact fees, WASH. REV. CODE §§ 82.02.050-090, 59.18.440 (1992); and authority to employ innovative regulatory methods, WASH. REV. CODE § 36.70A.090 (1991).

415. At the December 4, 1992, House Local Government Committee hearing, DCD indicated that it would not seek to have sanctions imposed upon any local government making a good faith effort and substantial progress toward implementing the GMA. No state enforcement actions have been commenced to date. *Public Hearing on Implementation of the Growth Management Act Before the House Local Government Comm.*, 52nd Leg., Interim (Dec. 4, 1992) (statement by Mike McCormick, Director of Growth Management Division, Washington State Department of Community Development).

will become depends on several categories of unknowns. How might the legislature address issues unresolved by GMA I and GMA II? How will counties and cities implement the Act's requirements and exercise their new authority? How will the Growth Planning Hearings Boards and the courts interpret the GMA's requirements and authorizations? Will governors impose sanctions for local deviance or default? And, ultimately, will the theories of optimal human settlement patterns, upon which the GMA is based, be verified by experience?

A. Ongoing Implementation

For the first time, GMA counties and cities will be required to make and effectuate definitive, mutually consistent policies to control land development and coordinate the provision of public facilities without degradation of environmentally critical areas or displacement of natural resource industries. Undoubtedly, the GMA, as ultimately construed, will substantively limit the range of local discretion on such central policy choices as the size, location, and development density in urban growth areas; levels of service and measures of concurrency for public facilities; provision for affordable housing and locally undesirable but regionally necessary development; and protection of critical areas and natural resource lands. But even within the substantive limits set by the state, a wide range of local discretion will remain. And for the majority of land use policy choices, local discretion will be virtually unlimited, so long as the adopted policies are sufficiently consistent with those of other local governments in the region and all required procedures are followed. Thus, the substance of growth management in Washington will be determined largely by local policy choices implementing the Act.

The local implementation schedule imposed by the GMA was tight. Many local governments did not meet deadlines, now past, for designation and interim regulation of critical areas and natural resource lands and adoption of county-wide planning policies.⁴¹⁶ Even more counties and cities probably

416. The deadline for GMA counties and cities to designate critical areas and natural resource lands, WASH. REV. CODE § 36.70A.170 (1992), and adopt interim protective regulations, WASH. REV. CODE § 36.70A.060(2) (1992), was September 1, 1991. DCD was authorized to extend the deadline by up to 180 days. WASH. REV. CODE § 36.70A.380 (1992). The deadline for the adoption of county-wide planning policies was July 1, 1992. As of November 1, 1992, fourteen months after the latest date to

would have missed the deadlines for GMA comprehensive plans and development regulations if they had not been extended, and still might.⁴¹⁷ This should not be surprising. The data that must be obtained and policy choices that must be made and articulated in GMA plans and regulations far exceed prior state requirements and prevailing local practices. In addition to the demands imposed by the required scope of GMA plans, the enterprise is disciplined by the novel requirement that they be internally consistent.⁴¹⁸

Moreover, the GMA mandate that the plans of local governments within a region be coordinated and cooperatively developed through the county-wide planning policy process,⁴¹⁹ in effect, established a regional planning prerequisite to the preparation of definitive local plans. Nearly half of the GMA counties had not adopted county-wide planning policies as of November 1, 1992, just seven months prior to the original July 1, 1993 deadline for GMA comprehensive plan adoption.⁴²⁰

Even with unlimited resources, local governments would have been hard-pressed to meet the deadlines. Increasingly severe state and local budget constraints and attendant reductions in state financial and advisory support of local GMA implementation has made the deadlines practically unattainable for many counties and cities and may impair the quality of local plans and regulations as well.⁴²¹ DCD enforcement

which the deadline could have been extended, twenty-eight GMA cities and six GMA counties had not met the requirement. Nearly two-thirds of non-GMA counties and cities had not complied eight months after their March 1, 1992, deadline. Similar numbers of counties and cities had not met requirements to designate and protect natural resource lands.

As of November 1, 1992, four months after the deadline for adoption of county-wide planning policies, twelve of the twenty-six GMA counties had not complied.

417. The deadline for the adoption of GMA comprehensive plans originally was July 1, 1993, or three years from the date a county chooses to be bound, or by virtue of population change becomes bound, by GMA planning requirements. WASH. REV. CODE § 36.70A.040 (1992). To "facilitate expeditious review," DCD may extend this deadline for up to 180 days. *Id.* § 36.70A.045. The deadline for adoption of GMA development regulations was one year after comprehensive plan adoption. A 1993 GMA amendment extended these deadlines. See *infra* note 424.

418. *Id.* § 36.70A.070.

419. *Id.* § 36.70A.210.

420. See *supra* note 419.

421. The original GMA appropriation for DCD grants to local governments in the 1991-93 biennium was \$18.8 million. Wash. E.S.H.B. 1330, 52nd Leg., 1st Sp. Sess., ch. 16 (1991). In the final budget for 1991-93, the amount was reduced to \$16.0 million. Wash. E.S.H.B. 2470, 52nd Leg., Reg. Sess., ch. 232 (1992). The 1993-95 budget provided only \$12.3 million for local GMA grants. Wash. S.S.B. 5968, 53rd Leg., 1st Sp. Sess., ch. 24 (1993).

actions and gubernatorial sanctions for missed deadlines, however, are extremely unlikely. Given the political delicacy of the state's recent intrusion into a traditional bastion of local control, DCD encouragement, assistance, and persuasion is the likeliest response to tardy local implementation. Only the most blatant local insubordination is apt to induce enforcement measures.

After the most recent legislative extension, the earliest deadline for GMA plans and development regulations is July 1, 1994.⁴²² Whether or not these deadlines are extended an additional six months by DCD, as the GMA presently authorizes,⁴²³ or the legislature provides for further extensions,⁴²⁴ local development regulations fully implementing GMA plans may not be in place until the late 1990s. Until GMA regulations are adopted, applications for development approvals will be governed by existing regulations in effect on the date of the complete application under Washington's vested rights doctrine.⁴²⁵ Fears that GMA plans would be subverted by vested development rights, accelerated by the threat of more restrictive regulation, led the GSC and others to propose statutory

422. WASH. REV. CODE § 36.70A.040 (1992), amended by 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 1.

423. *Id.* § 36.70A.045.

424. The 1993 Legislature was presented with proposals to extend the deadlines for adoption of GMA plans and regulations in E.S.H.B. 1761, which extended the deadline for completion of comprehensive plans by one year. E.S.H.B. 1761 was passed by the legislature and signed into law by Governor Lowry without vetoing any of its provisions. Now, the deadline for completing comprehensive plans is the same as the deadline for completing development regulations. See also *Growth Laws Rush Counties, Author Admits*, JOURNAL AMERICAN, Feb. 17, 1993, at A-7.

When she was in the Legislature, Busse Nutley helped write the landmark growth-management laws.

Now that she's a Clark County commissioner, she has a different perspective. She was back, hat-in-hand, before her former House colleagues Tuesday to urge a reprieve from the law's stringent deadlines for compliance.

Nutley told the House Local Government Committee, headed by fellow Vancouver Democrat Holly Myers, that the legislation calls for deadlines "that are humanly impossible to meet. Just to say the deadlines aren't going to change doesn't make it happen any faster."

...

Main reasons are lack of money to hire the necessary planners, political difficulties making the controversial land-use and growth-boundary decisions, and the time-consuming, but necessary, task of getting public involvement in the process, lawmakers were told.

Id.

425. See, e.g., *Valley View v. Redmond*, 107 Wash. 2d 621, 636, 733 P.2d 182, 191 (1987); WASH. REV. CODE §§ 19.27.095, 58.17.033 (1992); *SETTLE, WASHINGTON LAND USE*, *supra* note 6, at § 2.7.

modification of vested rights, none of which was enacted.⁴²⁶ However, these fears probably were exaggerated because local governments may protect embryonic GMA plans and regulations through interim controls,⁴²⁷ and may preclude unacceptable environmental impacts by exercising SEPA's sweeping substantive authority.⁴²⁸

B. Unresolved Issues

Political constraints precluded GMA I and GMA II from definitively addressing important issues.⁴²⁹ The future of growth management in Washington depends on their resolution. Ambiguous GMA requirements can be clarified by the Growth Planning Hearings Boards and the courts. However, where growth management issues are addressed only aspirationally in the Act's goals, the boards and courts have no sufficient basis for constructing legal requirements, and resolution is up to the legislature alone.

1. Regulatory Delay

A fundamental shortcoming of the GMA was its failure to reform Washington's time-consuming, costly, and cumbersome land use regulatory processes. For over two decades, the courts and legislature have relied on process requirements to overcome substantive deficiencies in Washington land use law. Most prominently, SEPA⁴³⁰ and the appearance of fairness doctrine⁴³¹ greatly increased required regulatory processes, exponentially expanded public participation, and provided

426. GMA I directed the Growth Strategies Commission to study and recommend legislation addressing the "vesting of rights." WASH. REV. CODE § 36.70A.800(2)(g) (1991). The Commission recommended legislation that would authorize local governments to limit the vesting of rights during GMA implementation. GSC FINAL REPORT, *supra* note 155, at 51. Initiative 547 would have delayed both the vesting of rights until building permit issuance and limited their duration. Initiative 547, *supra* note 19, at § 29.

427. See, e.g., *Jablinske v. Snohomish County*, 28 Wash. App. 848, 626 P.2d 543 (1981).

428. See WASH. REV. CODE § 43.21C.060 (1992); *West Main Assocs. v. Bellevue*, 49 Wash. App. 513, 518, 742 P.2d 1266, 1269 (1987); *SETTLE, ENVIRONMENTAL POLICY ACT*, *supra* note 53, at §§ 18(b), (b)(iii); Roger A. Pearce, Comment, *Death by SEPA: Substantive Denials Under Washington's State Environmental Policy Act*, 14 U. PUGET SOUND L. REV. 143, 145 (1990).

429. See *supra* part III.C.

430. WASH. REV. CODE ch. 43.21C (1992). See generally *SETTLE, ENVIRONMENTAL POLICY ACT*, *supra* note 53.

431. See, e.g., *Chrobuck v. Snohomish County*, 78 Wash. 2d 858, 867, 480 P.2d 489, 495 (1971). See generally *SETTLE, WASHINGTON LAND USE*, *supra* note 6, ch. 6.

plausible procedural bases for litigating virtually every land use regulatory action. The proliferation of attenuated legal process requirements has burdened new development and its consumers with both the direct costs of compliance and the more significant indirect costs of long delays before final decisions on land use permit applications. While SEPA and other process requirements have served as safeguards against imprudent development, there have been no effective time limits or other checks on bureaucratic lethargy and obstructive tactics of opponents.⁴³²

SEPA not only imposed the bulk of the new process requirements but also introduced substantive uncertainty. While requiring open processes of ascertaining and considering the environmental impacts of proposed actions, SEPA granted all government agencies sweeping power to deny or conditionally approve proposals to avoid unacceptable environmental impacts. This substantive authority conferred by SEPA greatly reduced regulatory predictability because proposals in conformance with all applicable regulations nevertheless could be denied on an ad hoc basis.

The uncertainty, cost, and delay of SEPA's requirements may have been worthwhile when local governments did not designate and protect environmentally critical areas and natural resource lands, coordinate new development with the provision of public facilities, and cooperatively plan land use and public facilities with other counties and cities in a region. But

432. Time limits on regulatory decision-making are rare. Proposed preliminary plats must be approved, disapproved, or returned for modification or correction within 90 days of filing, subject to the qualification that an applicant may consent to an extension, and time consumed by SEPA compliance does not count. WASH. REV. CODE § 58.17.140 (1992). Such qualifications render the time limit virtually meaningless because an applicant threatened with denial nearly always will consent to extension, and because the time-consuming SEPA process, which typically adds at least a year, is unaffected.

1983 SEPA amendments and 1984 SEPA Rules ostensibly sought to reduce unnecessary paperwork, duplication, and delay. See *id.* § 43.21C.110 (1993). However, no binding time limits were included. Some modest reductions in potential delay may have been achieved by barring interlocutory judicial review of SEPA compliance and generally precluding successive administrative appeals of SEPA issues. See *id.* § 43.21C.075 (1992); WASH. ADMIN. CODE § 197-11-680 (1992). A 1992 SEPA amendment requires that threshold determinations be made within 90 days after a complete application is filed. However, even this generous time limit allows the applicant to agree to a 30-day extension and does not apply to all local governments. WASH. REV. CODE § 43.21C.033 (1992). See SETTLE, ENVIRONMENTAL POLICY ACT, *supra* note 53, at §§ 4, 13(d)(i). Moreover, EIS preparation, by far the greatest source of delay, is not subject to time limits at all.

now that GMA counties and cities are required to perform these functions, SEPA's burdensome process requirements and ad hoc substantive authority are more likely to be redundant and difficult to justify.

The GMA acknowledged the desirability of reducing process costs and increasing regulatory certainty by establishing a goal that "[a]pplications for both state and local permits should be processed in a timely and fair manner to ensure predictability."⁴³³ However, the stated goal is not significantly promoted through statutory requirements.⁴³⁴ The Act might have established time limits for final decisions on proposed development. The applicability and length of such limits might have depended on whether or not the proposed development was in an urban growth area, conformed to GMA plans and regulations, was a favored use like affordable housing or an essential regional facility, or met other specified qualitative and quantitative standards. SEPA's review requirements for development proposals might have been abbreviated or eliminated, and SEPA's substantive authority might have been curtailed for proposals conforming to GMA plans and regulations provided that impacts had been adequately analyzed in a prior programmatic ("non-project") environmental impact statement prepared in the course of GMA implementation.

Nevertheless, GMA I took no such initiatives. GMA II modestly authorized "environmental planning pilot projects"⁴³⁵ and generally directed state agencies, but not local governments, to be expeditious in exercising powers over "individuals, businesses, local governments, or public or private organizations," with special process requirements applicable to permits necessary for economic development in "timber impact areas."⁴³⁶ The pilot projects were to be designed "to determine whether the environmental review process mandated [by SEPA] may be enhanced and simplified . . . by fostering more

433. WASH. REV. CODE § 36.70A.020(7) (1992).

434. Concern about this shortcoming of the GMA recently was expressed with a sense of urgency by a Boeing Company official in testimony before a joint hearing of the Washington State House of Representatives. *Public Hearing on the Impacts of Aerospace Lay-offs on Washington's Economy Before a Joint Hearing of the House Commerce and Labor Comm. and Trade, Economic Dev. and Housing Comm.*, 53rd Leg., Reg. Sess. (Feb. 18, 1993) (testimony of Andy Gay, Vice President for Facilities, The Boeing Co.). See also *Red Tape Riles Boeing Chairman*, SEATTLE TIMES, Dec. 17, 1993, at E-1.

435. WASH. REV. CODE § 36.70A.385 (1992).

436. *Id.* § 43.17.065.

coordination and eliminating duplicative environmental analysis” However, ultimately, the 1991-93 budget did not provide funding for the SEPA pilot projects and none is underway.⁴³⁷

In the early 1970s, as Washington placed primary reliance on ad hoc processing of development proposals under SEPA, Oregon chose comprehensive substantive planning instead. The Oregon Land Conservation and Development Act of 1973,⁴³⁸ similar in many respects to the GMA, required local governments to adopt comprehensive plans, meeting rigorous state requirements and state planning goals, subject to the approval of a powerful state agency. The state required that local plans and implementing regulations locate most development within designated urban growth boundaries, provide for public facility installation and expansion to serve new development, and satisfy housing needs. Oregon, which has no SEPA, has recognized the relationship between definitive state standards and reduction of regulatory delay. Final local decisions on most land use applications, including administrative appeals, must be made within one hundred and twenty days.⁴³⁹ On the basis of the impressionistic observation that major developments in Portland equal, and may exceed, the quality of their Seattle counterparts, Washington’s boundless and often multi-year permit processing periods could be reduced manifold without sacrificing the public interest.

The GMA goal of regulatory predictability implicitly recognizes that definitive plans and regulations should provide greater certainty of permissible development.⁴⁴⁰ However, under present law, applicants for development approval have no assurance that they may proceed under the current regulations. SEPA casts a cloud of uncertainty that makes Washington’s seemingly permissive vested rights doctrine an empty promise. Even when permits have been obtained, their life span is generally short. Without long-term regulatory entitlements or binding development agreements, large-scale master plan developments, even if environmentally-sensitive and func-

437. Initially, \$1 million was provided for SEPA pilot projects in the 1991-93 operating Budget. Wash. E.S.H.B. 1330, 52nd Leg., 1st Sp. Sess., ch. 16 (1991). This funding was later eliminated in the 1992 supplemental operating budget. Wash. E.S.H.B. 2470, 52nd Leg., Reg. Sess., ch. 232 (1992).

438. OR. REV. STAT. ch. 197 (1991); OR. ADMIN. R. 660-15 (1992).

439. OR. REV. STAT. §§ 215.428 (counties), 227.178 (cities) (1991).

440. WASH. REV. CODE § 36.70A.020(7) (1992).

tionally and aesthetically superior, tend to be deterred. Having stated the goal, the GMA fails to include any means of promoting regulatory predictability.

2. GMA's Substantive Mandates

Another pervasive general issue ambiguously addressed by the GMA is the extent to which the policy choices of local government are substantively dictated by the Act. The relevant subissues have been treated in earlier sections of this Article.⁴⁴¹ Must local governments adopt plans and regulations that *conform* to the goals or merely *consider* the goals in their deliberative processes? How strictly will substantive elements of GMA requirements be construed and imposed on local government or, conversely, how much substantive discretion will be allowed?

a. *Urban Growth*

A central principle of the Act is the concentration of projected population growth in UGAs to facilitate the provision of public facilities and protect natural resource lands and sparsely settled rural areas from urban sprawl.⁴⁴² To accomplish these objectives, the Act calls for "urban growth" to be located within UGAs and allows growth outside of UGAs only if it is "not urban in nature."⁴⁴³ However, the Act does not specify minimum standards of development density or intensity for UGAs. It vaguely defines urban growth as that which involves intensive improvement of land incompatible with primary natural resource use and necessitating "urban governmental services" when "allowed to spread over wide areas."⁴⁴⁴ Nor does the Act specify maximum standards of density or intensity in rural areas aside from the circular provision that a "variety of rural densities . . . that are compatible with the rural character" should be allowed.⁴⁴⁵ "Rural" is not defined. Apparently, as a matter of political necessity or deliberate design, counties

441. See text accompanying notes 218-35.

442. WASH. REV. CODE §§ 36.70A.020(1), .020(2), .110 (1992).

443. *Id.* § 36.70A.110(1).

444. *Id.* §§ 36.70A.030(14), .030(16) ("Urban governmental services include those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.").

445. *Id.* § 36.70A.070(5).

and cities will have broad discretion in determining permissible development densities inside and outside of UGAs.

It also is unclear whether local accommodation of population growth projected by the state Office of Financial Management (OFM) is a minimum or maximum requirement. The issue is whether counties must designate UGAs sufficient to accommodate at least, or no more than, the growth projected by OFM. GMA I, by requiring counties to designate "areas and densities sufficient to permit the urban growth that is projected to occur," employed the language of a minimum requirement.⁴⁴⁶ However, GMA II, by providing that new fully contained communities could be approved only if the county "reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly," implies that a county may not accommodate more than its projected growth.⁴⁴⁷ If it is both a minimum and a maximum requirement that a county designate UGAs and densities sufficient to accommodate the OFM population projection exactly, no more and no less, local discretion would be strictly limited. So construed, the Act would preclude self-determination for counties with higher or lower growth aspirations, even if they entered into inter-local agreements pooling their projected population increases.

b. Concurrency

The concurrency principle, another central feature of the GMA, also is riddled with uncertainty. The Act explicitly requires counties and cities to establish level of service standards for transportation facilities and to adopt ordinances prohibiting approval of development that would cause the service level of a transportation facility to fall below the established standard.⁴⁴⁸ This requirement is subject to the qualification that development may be approved if transportation improvements or strategies, sufficient to maintain the required level of service and assured by financial commitments, will be in place "within six years."⁴⁴⁹ The transportation concurrency requirement leaves several issues unresolved. Are there state limits on level of service standards a local gov-

446. *Id.* § 36.70A.110(2).

447. *Id.* § 36.70A.350(2).

448. *Id.* § 36.70A.070(6)(e).

449. *Id.*

ernment may adopt? May a city choose congestion as a strategy to induce motorists to use public transportation? What constitutes an adequate financial commitment? And "within six years" of what? Regulatory approval? Completion of construction?

A major unresolved issue concerning the concurrency requirement is whether it applies to other public facilities. The relevant GMA goal calls for assurance of adequate public facilities to serve new development without reduction of service standards. The goal relates to "public facilities and services" generally and does not single out transportation facilities.⁴⁵⁰ However, the Act goes on to explicitly require concurrency only for transportation facilities.⁴⁵¹ Whether the GMA goal effectively establishes a general public facilities and services concurrency standard remains an open question. The DCD Minimum Guidelines are ambivalent, suggesting that the concurrency requirement does extend beyond transportation facilities with great local discretion to decide what other facilities or services are covered and to determine standards of concurrency for them.⁴⁵²

The requirement that counties and cities accommodate OFM's projected population increase, in combination with the concurrency limitation, presents a critical dilemma not explicitly resolved by the Act. What if, even with maximum permissible impact fees, funding deficiencies preclude public facility improvements sufficient to meet the concurrency standards for the new development necessary to accommodate projected population growth? Which requirement prevails? Must level of service standards be lowered or the concurrency requirement be suspended? Or is local government relieved of the obligation to accommodate projected population growth? Or does the GMA implicitly impose upon local governments an affirmative obligation to provide adequate public facilities to support projected growth? The Act leaves these questions unanswered.

c. Natural Resource Lands and Critical Areas

The sweeping requirements that counties and cities designate and protectively regulate natural resource lands and critical areas fail to specify the nature and extent of protection the

450. *Id.* § 36.70A.020(12).

451. *Id.* § 36.70A.070(6)(e).

452. WASH. ADMIN. CODE 365-195-060(3) (1992).

interim and final regulations must provide.⁴⁵³ Statutory definitions⁴⁵⁴ and the DCD Minimum Guidelines provide standards for designation of such lands,⁴⁵⁵ but the Act is terse on the requisite level of preservation of natural resource lands and nearly mute on substantive standards for local protection of critical areas. As a result, the Boards and courts may expect numerous challenges of the legal sufficiency of natural resource lands and critical areas regulations. Two of the early cases decided by the Boards involved such issues.⁴⁵⁶ Unsurprisingly, these initial decisions have accorded local government broad discretion in selecting levels of regulatory protection for critical areas, where statutory guidance is minimal, while allowing somewhat less discretion in designation of critical areas, where there are statutory definitions and relevant DCD Minimum Guidelines.⁴⁵⁷

d. Housing and Regionally Essential Facilities

The Act broadly requires GMA counties and cities to be regionally responsible in accommodating their shares of affordable housing and siting regionally essential but locally undesirable facilities. The Act requires local plans to contain a housing element allocating adequate land for all forms of housing to serve all economic levels. The Act implies that each county and city must bear a fair share of regional housing needs, but fails to define the requirement and how it is to be met.⁴⁵⁸ Similarly, the Act briefly prescribes a requirement of state and local cooperation in siting such indispensable but locally unpopular facilities as airports, prisons, and garbage dumps.⁴⁵⁹ However, it fails to define the obligation beyond prohibiting local plans from precluding such facilities. The

453. See WASH. REV. CODE § 36.70A.060 (1992).

454. *Id.* §§ 36.70A.030(2), (5), (8), (9), (10), (11), (17).

455. WASH. ADMIN. CODE ch. 365-195 (1992).

456. Clark County Natural Resource Council v. Clark County, Western Washington Growth Planning Hearings Board, No. 92-02-0001 (final order 1992); Gutschmidt v. Mercer Island, Central Puget Sound Growth Planning Hearings Board, No. 92-3-0006 (final order Sept. 17, 1992).

457. Tracy v. Mercer Island, Central Puget Sound Growth Planning Hearings Board, No. 92-3-0001 (Jan. 5, 1993) (ruling that a city could go beyond GMA requirements in protecting environmentally sensitive areas but must honor the statutory definitions in designating "critical areas" when purporting to follow the Act's mandate).

458. WASH. REV. CODE §§ 36.70A.020(4), .070(2) (1992).

459. *Id.* § 36.70A.200. Such facilities sometimes are referred to as LULUs (locally undesirable land uses) or NIMBYs (not in my back yard).

county-wide planning policy process must be employed to coordinate local plan policies on the distribution of affordable housing and siting of essential facilities.⁴⁶⁰ However, given the vague statutory language, local governments can only guess at the nature and extent of the substantive requirements. Until the legislature speaks more clearly, or the Boards and courts put flesh on the statutory bones, the traditional practice of siting low-income housing and locally undesirable public facilities at the points of least political resistance may continue to prevail. Aside from the definitional deficiencies of GMA's local obligations to the region, the lack of any provision for regional pooling of tax revenues leaves in place powerful local fiscal incentives to minimize land uses that generate greater marginal public costs in excess of marginal public revenues. The present controversy concerning the expansion of air transportation terminal facilities in the Puget Sound region will test the effectiveness of the GMA's regional responsibility requirements.⁴⁶¹

VI. CONCLUSION

The transition from Washington's anachronistic patchwork of state land use laws to a modern growth management system has been revolutionary rather than evolutionary. The new doctrine rests on controversial premises about socially desirable development patterns and constraints. GMA implementation will make some property owners richer and others poorer. Growth management proponents will strive to expedite rigorous local implementation and strengthen statutory prescriptions. Opponents will try to cut their losses by influencing local plans and development regulations and may even seek to roll back the revolution in legislative or voter initiative forums. Given such continuing political tension, regional variation in the potency of conflicting forces, and wide local discretion in the state's "bottom-up" growth management system, the Act, as implemented, will vary significantly from locality to locality and region to region. While the substantive policy choices of some counties and cities may disappoint the expectations of the GMA's most fervent supporters, policy choices will be made.

460. *Id.* § 36.70A.210(c), (e).

461. See PUGET SOUND REGIONAL COUNCIL AND PORT OF SEATTLE, FLIGHT PLAN PROJECT, FINAL ENVIRONMENTAL IMPACT STATEMENT (Oct. 6, 1992); *Normandy Park v. Port of Seattle*, No. 93-3-04001-6 (King County Super. Ct., Wash., 1993).

No longer may critical land use issues be ignored. They may not be resolved uniformly or optimally. However, in sharp contrast to prevailing past practices, they will be resolved by deliberation rather than default.

**Appendix A: Legislative Chronology of the GMA
(GMA I and II)**

1989

- February 22, 1989: HB 2140, which created a Growth Strategies Commission, was introduced in the House of Representatives and was referred to the House Trade and Economic Development Committee.
- March 1, 1989: SHB 2140 was passed by the House Trade and Economic Development Committee and referred to the Appropriations Committee.
- March 5, 1989: SHB 2140 was passed by the Appropriations Committee.
- March 15, 1989: ESHB 2140 was passed by the House of Representatives.
- March 31, 1989: ESHB 2140 was passed by the Senate Government Operations Committee and referred to the Senate Ways and Means Committee, where the bill "died."
- May 10, 1989: SSB 5352, the operating budget which contained a provision creating a Growth Strategies Commission, passed the legislature.
- June 2, 1989: Governor Gardner vetoed the provision in the Operating Budget bill that created the Growth Strategies Commission.
- August 31, 1989: Governor Gardner created a Growth Strategies Commission by Executive Order 89-08.

1990

- January 26, 1990: HB 2929 was introduced in the House of Representatives and was referred to the House Appropriations Committee. HB 2929 was comprised of four bills that were introduced individually and went through four separate policy committees:
- (1) HB 2734, was introduced on January 19 and was referred to the House Local Government Committee where a public hearing was held on January 23. SHB 2734 was subsequently passed by the Local Government Committee on February 6, and was immediately referred to the House Appropriations Committee;
 - (2) HB 2741 was introduced on January 19 and referred to the House Natural Resources and Parks Committee for public hearings on January 26 and February 1. SHB 2741 was passed by the Natural Resources and Parks Commit-

tee on February 1, and was immediately referred to the House Appropriations Committee;

(3) HB 2841 was introduced on January 24 and referred to the House Transportation Committee where a public hearing was held on January 29. SHB 2841 was passed by the Transportation committee on February 1, and referred to the House Appropriations Committee;

(4) HB 2881 was introduced on January 24 and referred to the House Trade and Economic Development Committee. Public hearings were held on January 16 and January 24. SHB 2881 was passed by the committee on February 6, and referred to the House Appropriations Committee.

February 8, 1990: SHB 2929 (a compilation of SHB 2734, 2741, 2841, and 2881) was passed by the House Appropriations Committee.

February 15, 1990: ESHB 2929 was passed by the House of Representatives.

February 16, 1990: ESHB 2929 was referred to the Senate Government Operations Committee.

March 1, 1990: ESHB 2929, after public hearing, was amended through a striking amendment by the Senate Government Operations Committee and was then passed by that committee.

March 2, 1990: ESHB 2929 as amended by the Senate, was passed the entire Senate.

March 3, 1990: The House refused to concur with the Senate's striking amendment to ESHB 2929; a conference committee was appointed.

March 8, 1990: Regular session ended; ESHB 2929 was returned to the House of Representatives.

March 9, 1990: The House once again passed ESHB 2929 on the first day of special session. The Senate again amended and then passed ESHB 2929. The House once again refused to concur with the Senate's amendments. Therefore, the conference committee was reappointed.

March 27, 1990: Initiative 547 was filed.

April 1, 1990: The conference committee's report was adopted and ESHB 2929 passed both the Senate and House as amended by the Free Conference Committee.

April 24, 1990: Governor Gardner signed ESHB 2929 after partial veto (15 sections).

May, 1990: Sponsors of Initiative 547 went forward with the initiative despite passage of ESHB 2929.

September 25, 1990: The Growth Strategies Commission Report was issued.

November 6, 1990: Initiative 547 was defeated by a vote of 327,339 for and 986,508 against.

1991

January 16, 1991: HB 1025, an executive request bill by Governor Booth Gardner based on the Growth Strategies Commission recommendations, was introduced in the House of Representatives and was referred to the House Appropriations Committee. This bill was divided into six individual bills.

February 6, 1991: The resulting individual bills were introduced in the House and were each referred to one of six separate policy committees:

- (1) HB 1668 was referred to the House Local Government Committee where public hearings were held on February 13, 20, and 27. SHB 1668 was passed by the Local Government Committee on March 4, and was referred to the House Appropriations Committee;
- (2) HB 1669 was referred to the House Trade and Economic Development Committee where a public hearing was held on February 12. SHB 1669 was passed by the committee on March 5 and was referred to the House Appropriations Committee;
- (3) HB 1670 was referred to the Natural Resources and Parks Committee, where public hearings were held on February 14, 15, and 18. SHB 1670 was passed by Natural Resources and Parks Committee on February 27, and was referred to the House Appropriations Committee;
- (4) HB 1671 was referred to the Transportation Committee where a public hearing was held on February 20. SHB 1671 was passed by the Transportation Committee on March 4; 2SHB 1671 was passed by the House on May 19; was passed by the Senate on April 19 as amended; the House concurred with the Senate's amendments and passed the bill on April 23; and Governor Gardner signed the bill on May 15 after partial veto. SHB 1671 proceeded through the legislature separately and never became part of ESHB 1025;

(5) HB 1672 was referred to the House Housing Committee where public hearings were held on February 7, 19, and 22. SHB 1672 was passed by the Housing Committee on March 5, and was referred to the House Appropriations Committee);

(6) HB 1673 was referred to the House Environmental Affairs Committee, where a public hearing was held on February 28. SHB 1673 was then passed by the Environmental Affairs Committee on March 5, and was referred to the House Appropriations Committee.

March 9, 1991: SHB 1025 (a compilation of SHB 1668, 1669, 1670, 1672, and 1673) was passed by the House Appropriations Committee.

March 20, 1991: ESHB 1025 was passed by the House.

March 25, 1991: ESHB 1025 was introduced in the Senate and was referred to the Senate Government Operations Committee.

April 26, 1991: The Senate Government Operations Committee held a hearing on ESHB 1025.

April 28, 1991: The 1991 Regular Session ended. ESHB 1025 was returned to the House.

May 22, 1991: First meeting of "five corners" negotiating committee on growth management, comprised of representatives from the four legislative caucuses and the Governor.

June 27, 1991: "Five corners" negotiating committee reached agreement. ESHB 1025 was amended in accordance with "five corners" agreement, became ReSHB 1025, and was passed by House.

June 28, 1991: ReSHB 1025 was passed by the Senate.

July 16, 1991: Governor Gardner signed ReSHB 1025 after partial veto.

Appendix B: Glossary of Washington State Legislative Terminology

AMENDMENT: A change to a bill made by a committee or chamber (House of Representatives or Senate) of the legislature.

AMENDMENT, STRIKING: A striking amendment replaces the entire text of a bill, retaining only the title. The new text may include minor or major changes of the original text. The striking amendment is essentially equivalent to the substitute bill device. However, only a committee of the chamber of origin may use a substitute bill, while any committee and either chamber may employ a striking amendment.

BILL: Proposed legislation that is sponsored by a member of the House or Senate. When a bill is signed by a legislator and submitted to the Office of the Code Revisor, it is assigned a number in the order received. A bill is formally introduced by a "first reading" on the floor of the House or the Senate. A bill retains its label as a "House" or "Senate" bill, e.g. House Bill (HB) 2929, regardless of amendments made by the other chamber.

BILL, ENGROSSED: A bill passed by the chamber of origin after being amended by that chamber is called an engrossed bill. Thus, a House bill (HB) that is amended by the House is thereafter an "engrossed House bill" (EHB).

BILL, SUBSTITUTE: A standing committee in the chamber of origin, as an alternative to amendment, may change a bill through a "substitute bill" which replaces the text of the original bill while retaining the original bill number. The new text may include minor or major changes. The substitute bill device is functionally equivalent to an amendment but enjoys several legislative procedural advantages and, hence, is frequently employed. A bill for which a committee has adopted a substitute is called a substitute bill (SSB or SHB). If a substitute bill is amended by the chamber of origin, it becomes an engrossed substitute bill (ESSB or ESHB).

BILL, REENGROSSED: A bill that is amended, passed by the chamber of origin, and later passed again by that chamber after additional amendment is a "reengrossed bill" (ReHB or ReSB). While rare, such bills occur when an engrossed bill, after passing the chamber of origin, fails to pass the other chamber and is returned to the chamber of origin. The chamber of origin then amends the bill again and passes it

during a special session. If the bill was a substitute bill prior to amendment, passage, reamendment, and passage, it is called a reengrossed substitute bill (ReSHB or ReSSB).

CHAMBER: The House of Representatives and the Senate are referred to as chambers of the legislature.

CODE REVISOR: The Office of the Code Revisor serves as the processing center for all proposed legislation and eventually organizes and publishes enacted laws in the Revised Code of Washington.

COMMITTEE, STANDING: Each legislature establishes standing committees by rule. Committee members are appointed by the Speaker of the House or the President of the Senate. Most bills are referred to a "policy" committee on the basis of subject matter and committee expertise. Bills with fiscal effects also must be passed by one of three House fiscal committees (Appropriations, Capital Budget, or Revenue) or the Senate Ways and Means Committee. A committee may pass a bill as introduced, as amended, or as a substitute bill. Technically, committee actions are not official until adopted by the full chamber.

COMMITTEE, CONFERENCE & FREE CONFERENCE: An ad hoc committee jointly established by the House and Senate to resolve differences between versions of the same bill that have been passed by the House and the Senate. A conference committee consists of three members from each chamber. At least four committee members, including at least two from each chamber, must sign a "conference committee report" before it may be considered by the full House and Senate. The entire report must be adopted or rejected, without amendment, by the respective chambers. A report which employs new language in its recommended version of the bill is called a "free" conference committee report, and the full chambers may not act on the report until at least 24 hours after the report was signed unless a two-thirds majority of both chambers waives this requirement.

COMMITTEE, "FIVE CORNERS" NEGOTIATING: A "Five Corners Negotiating Committee" is a rarely employed process that attempts to overcome impasse where a bill was passed by one chamber but not the other. The ad hoc committee includes representatives of the Governor and the four legislative caucuses (House and Senate, Republicans and Demo-

crats), hence "five corners." Where agreement is reached, the committee's recommendations usually are incorporated by amendment into the bill that was passed by one chamber. Additional amendments are unusual because of the fragility of the political compromise reached by the committee.

VETO: The governor has constitutional power (WASH. CONST. art. III, § 12) to preclude a bill passed by the legislature from becoming law by declining to sign it. The governor may veto part of a bill by striking one or more formal sections of the bill prior to signing.