Washington's Growth Management Revolution
Goes to Court

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I. INTRODUCTION

The environmental consciousness revolution of the 1970s was a dominant political force in Washington. Between 1970 and 1972, a sweeping array of innovative environmental regulatory programs became law.1 For example, the Shoreline Management Act2 established state-supervised local planning and regulatory requirements for the use and development of most of the state’s bodies of water and their shorelines and immediate uplands. Furthermore, the State Environmental Policy Act3 (SEPA), perhaps the nation’s most potent “little NEPA,” 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 substantive authority to protect and enhance the natural and “built” environment. However, such progressive environmental regulatory laws operated as overlays on local land use planning and regulation, and attempts to reform4 Washington’s antiquated patchwork of land use legislation5 failed. As a result, the state’s environmentally-based land use regulatory laws rested on a faulty foundation.

Until the adoption of the Growth Management Act6 (GMA) in 1990, local land use planning and regulation was optional and, if undertaken, was subject to modest state procedural standards and virtually no substantive requirements at all. Counties and cities, to

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4. See Settle & Gavigan, supra note 1, at 875-76.

5. Id.

6. With some exceptions, the Growth Management Act is codified at title 36, chapter 70A of the Revised Code of Washington (RCW). [All citations to ch. 36.70A of the Revised Code of Washington are to the 1998 edition unless otherwise indicated - Eds.]
the extent they chose to plan and regulate land use, were not obligated to coordinate or achieve consistency with the plans and regulations of neighboring jurisdictions. There was no requirement that facilities of regional importance be accommodated or that each locality allow for a fair share of the region's housing needs. With the exception of "shorelines," local government had no obligation to protect environmentally critical areas from the consequences of development. It was purely a matter of local option to allow land suited for commercial farming, forestry, or mining to be irreversibly converted to other uses. The state did not require cities and counties to coordinate the provision of public facilities with new development, or to plan for the concentration of urban development in limited areas so that public services and facilities could be efficiently provided.

The flawed foundation of Washington's environmental revolution began to crumble under the weight of burgeoning prosperity and rapid growth during the 1980s. The booming economy did what the advocates of environmental quality and good government had been unable to do. Abstract policy arguments for land use regulatory reform failed to sufficiently capture the interest of voters to gain the legislature's attention. However, the economic boom of the 1980s, by generating the worst traffic congestion in the west, escalating urban skylines, bulldozing farms, decimating forests, and turning sparkling salmon-bearing streams into storm sewers, converted hordes of formerly mild-mannered citizens into vocal activists. In 1988, these activists sponsored the successful Seattle Citizens Alternative Plan (CAP) initiative, limiting the height and intensity of and setting annual quotas for new downtown office buildings. In 1989, they demanded state growth management legislation.

While the champions of radical new state growth management requirements for local governments were a powerful force, the defenders of the status quo were potent adversaries. Revolutionary battles were fought on many fronts, and the outcome was always in doubt. The governor's office, legislators, legislative committees, the Growth Strategies Commission, and a plethora of interest groups skirmished during a period extending from the 1989 through 1991 legislative

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8. See generally Settle & Gavigan, supra note 1.
sessions, straddling a bitterly contested initiative campaign. 9 The Growth Management Act that somehow survived the fierce legislative gauntlet was enacted by the 1990 and 1991 legislatures in two installments, known at the time as GMA I 10 and GMA II. 11 Because the recommendations of the Growth Strategies commission were variously embraced, rejected, and ignored by the wrangling legislature, the GMA was not the finely-honed product of a law revision commission. 12 Both installments of the Act were riddled with politically necessary omissions, internal inconsistencies, and vague language, sometimes consciously designed to defer the final reckoning to another day and, perhaps, another forum. Because the legislature declined to grant substantive rulemaking authority to GMA’s “godparent” agency, 14 the meaning and effect of important and controversial elements of this revolutionary legislation were left to the three Growth Management Hearings Boards (Growth Boards) established by GMA II, 15 the courts, and future legislative amendments.

The Growth Boards now have interpreted, to some extent, the procedural and substantive requirements of the Act. 16 The legislature has amended the GMA every year since its enactment to modify or clarify its requirements, sometimes in reaction to Growth Board decisions. Courts generally have been last to enter the stage of Washin-

9. Id. at 881-96.
12. See generally Settle & Gavigan, supra note 1.
13. Id.
14. See WASH. REV. CODE § 36.70A.190(4)(b). Whether the State Department of Community Development (now Community, Trade, and Economic Development) should be given rulemaking authority was hotly contested in the legislative process. Finally, the agency was given authority to adopt only “procedural criteria” and “guidelines.” The GMA “proce-
dural criteria” were adopted on October 29, 1992, and are codified in chapter 365-195 of the Washington Administrative Code (1999). See generally Settle & Gavigan, supra note 1, at 899.
15. WASH. REV. CODE §§ 36.70A.250, .345.
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9. Id. at 881-96.
ton's growth management revolution, given their role in the review process. Aside from a few cases deciding whether local enactments implementing GMA requirements were subject to referendum or initiative, whether the GMA precluded municipal incorporation or annexation, whether the GMA foreclosed certain interim regulations and moratoria, whether approvals of development proposals violated the Act, and whether challenged GMA provisions were constitutional, the meaning and effect of GMA requirements generally have been adjudicated only after local GMA implementation measures have been adopted by a county or city and appealed to a Growth Board.

Given the time consumed by local GMA implementation processes, Growth Board appeals, trial court proceedings, and reported decisions of the Washington Court of Appeals and Supreme Court interpreting GMA provisions are recent phenomena.

The purpose of this Article is to analyze and explain court decisions in cases involving challenges to the GMA itself, Growth Board rulings on local compliance, and GMA constraints on specific projects. Special emphasis will be given to the relative degrees of judicial deference accorded to the decisions of local governments and Growth Boards, respectively. Because most GMA requirements are conceptual, not definitive, and often ambiguous, a pervasive, recurring issue is whether the legislature intended to authorize local governments or the Growth Boards to fill in GMA's blanks, that is, to give specific meaning to GMA's often broadly stated requirements. This Article also addresses judicial resolution of issues concerning procedural prerequisites to obtaining judicial review of GMA compliance. An introductory overview of the Act's requirements provides context for the case law analyses that follow.

23. See WASH. REV. CODE § 36.70A.300 (unless all parties have agreed to direct review in superior court of a petition to a Growth Board). See also WASH. REV. CODE § 36.70A.295.
II. OVERVIEW OF GMA SUBSTANTIVE AND PROCEDURAL REQUIREMENTS

This summary of the Act’s substantive and procedural requirements is designed to set the stage for the court decisions that have addressed growth management issues. While Growth Board interpretations occasionally will be mentioned to put flesh on bare GMA bones, comprehensive exposition of Board decisions is beyond the scope of this Article.

With few exceptions, GMA requirements do not apply statewide, but only to counties meeting statutory criteria and to other counties choosing to be bound by the Act. If a county is subject to the GMA, so are all of its cities. By choice or mandate, twenty-nine of the state’s thirty-nine counties are governed by the GMA. Once a county is subject to the GMA, there is no way out under the present legislation.

A. Substantive Requirements

The substantive roots of Washington’s growth management system are thirteen “planning goals.” The goals are to be used “exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

1. Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
2. Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
3. Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

24. Several GMA requirements apply to non-GMA counties and cities: their development regulations must be consistent with any adopted comprehensive plan. WASH. REV. CODE §§ 35.63.125, 35A.63.105, 36.70.545 (1998); they must designate and protectively regulate critical areas, WASH. REV. CODE §§ 36.70A.170, .060(2); and they must designate, but need not protectively regulate, natural resource lands. Id. Neither GMA nor non-GMA local governments may approve subdivisions and short subdivisions without adequate public facilities, WASH. REV. CODE §§ 58.17.060, .110, nor building permits without adequate potable water supplies, WASH. REV. CODE § 19.27.097 (1998).

25. As of December 1992, the GMA counties included: 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 entered GMA’s realm on July 1, 1993, by reaching population and rate of growth thresholds. In September 1993 Stevens County chose to become a GMA county. Approximately 95% of the state’s population now resides in GMA counties.

26. See WASH. REV. CODE § 36.70A.040(1).

27. See WASH. REV. CODE 36.70A.020:
Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

1. Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
2. Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
3. Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
sively for the purpose of guiding the development of comprehensive plans and development regulations." Unlike some states' growth management systems and Washington's Shoreline Management Act, the GMA does not require state administrative approval of local plans and regulations. Thus, local fidelity to GMA goals is not systematically enforced, but depends upon appeals to the Growth Boards and the courts.

The Act explicitly denies any order of priority among the thirteen goals, even though some of them are mutually competitive. This is a matter of some irony because local comprehensive plans are required to be internally consistent. However, the goals collectively convey some conceptual guidance for growth management. The goals call for carefully planned, compact, generally contiguous concentrations of future development in "urban growth areas" that are ade-

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) 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.

(9) Open space and recreation. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

28. Id.
31. See id. § 36.70A.070.
quately served by public facilities and services; viable natural resource-based industries (e.g., timber, agriculture, and fishing) protected 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 balanced economic development throughout the state.32

The extent to which the GMA goals are implemented by specific substantive requirements varies significantly. The Act contains five core substantive mandates that are prescribed with varying degrees of specificity. First, new growth must be concentrated in Urban Growth Areas (UGAs) that are contiguous with existing urbanized areas and meeting other specified standards.33 Second, new development may not be allowed unless adequate transportation, and perhaps other public facilities, will be available concurrently with the development.34 Third, counties and cities may not exclude regionally essential public facilities and must accommodate affordable housing.35 Fourth, environmentally critical areas must be designated and protected.36 Finally, natural resource lands of long-term commercial significance for agricultural, forest product, and mining industries must be designated and protected.37

1. Urban Growth Areas

The concentration of future growth into UGAs was borrowed from the Oregon system38 and is the Act’s most controversial requirement.39 By directing most of the state’s future population increase into existing cities, urbanized areas, and other contiguous territory as needed, 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. This noble experiment will

32. See supra note 27.
33. See WASH. REV. CODE §§ 36.70A.020(1) and (2), 110.
34. See WASH. REV. CODE §§ 36.70A.020(12), .070(6).
36. See id. §§ 36.70A.020(10), .060, .170, .172, .175.
37. See id. §§ 36.70A.020(8), .060, .131, .170, .177.
39. See WASH. REV. CODE § 36.70A.110.
attempt to wean Washingtonians from the sprawling, low-density development patterns that have prevailed throughout the nation since World War II.

Counties have final authority to designate UGAs. However, they are constrained by process requirements to assure that they negotiate with affected cities. Counties were given this 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.\footnote{See id. § 36.70A.110(1).} However, cities are intensely interested in UGA designation because it affects the nature and extent of their future growth. Every ten years, the UGA designation process must be repeated for the succeeding twenty-year period.\footnote{See id. § 36.70A.110(2).}

In addition to extensive process constraints, county UGA designation is subject to major substantive requirements. The UGAs, in which "urban densities" must be allowed and "greenbelt and open space areas" must be included, must be sufficient to accommodate the twenty year population projections of the state’s Office of Financial Management (OFM).\footnote{See id. § 36.70A.130(3).} Territory beyond city limits may be included in UGAs only if it "already is characterized by urban growth," is "adjacent to" such areas, or is a "new fully contained community."\footnote{See id. §§ 36.70A.110(1), .350. RCW 36.70A.110(3) 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.} 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.\footnote{See id. § 36.70A.110(1).} 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.

The GMA granted similar, but conceptually distinct, authority to allow "master planned resorts" in remote areas ineligible for UGA designation.\footnote{See WASH. REV. CODE § 36.70A.360.} A county may allow such resorts in its comprehensive plan and development regulations only if statutory criteria are met.\footnote{See id. § 36.70A.360(1)-(5).} Unlike "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.

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." However, the Act does not specify minimum standards of development density or intensity for UGAs. Urban growth is vaguely defined as that which involves intensive improvement of land incompatible with primary natural resource use, and which necessitates "urban governmental services" when "allowed to spread over wide areas." Nor did the Act, as originally adopted, 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. "Rural" was not defined. However, a major 1997 amendment contains elaborate new guidance on permissible development in rural areas.

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47. See id. § 36.70A.110(1).
48. See id. §§ 36.70A.030(14), (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.").
50. RCW 36.70A.070(5), as amended by 1997 Wash. Laws ch. 429 § 7, now provides as follows:

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;
(ii) Assuring visual compatibility of rural development with the surrounding rural area;
(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and
(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW
Since the Act's passage, the Growth Boards have clarified the role of state population projections and allocations related to the UGAs. Initially, the OFM prescribed population projections expressed in a range. A county may not size UGAs for a population greater than the high side of this OFM range. However, where a county has elected to plan for the highest point in the OFM range, the Western Growth Board has strictly scrutinized UGA sizing and potential development density in rural areas outside of UGAs. Other Growth Board decisions have shed some light on how the sizing of the UGAs may conform to the Act. Generally, the boards continue to closely scrutinize the sizing of UGAs to avoid urban sprawl.

Counties are required to designate UGAs in which urban growth is encouraged. Several board decisions have addressed the minimum density within UGAs. A density of four dwelling units per acre has been held to comply with "urban growth." Lower densities have been closely scrutinized, but sometimes upheld. Densities lower than four dwelling units per acre have been upheld because of prevalent development hazards and critical areas.

Outside of UGAs, the Boards also have grappled with what is acceptable density in rural areas to prevent urban sprawl. Densities

36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or
(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

53. See Achen v. Clark County, WWGMHB No. 95-2-0067, Compliance Order and Order of Invalidity (Oct. 1, 1996). The Washington Court of Appeals recently cast doubt on the validity of the latter element of the Board's decision. In reviewing a closely related Growth Board decision, the court held that the Board exceeded its authority in construing the Act to require the county to plan both rural and urban growth to avoid exceeding OFM population projections. The court held that the plain meaning of the statute clearly provided that OFM projections constrain county planning only for urban growth areas, not rural areas. See Clark County Natural Resources Council v. Clark County, 94 Wash. App. 670, 972 P.2d 941 (1999).
55. See WASH. REV. CODE § 36.70A.110.
57. See Litowitz v. Federal Way, CPSGMHB No. 96-3-0005, Final Decision and Order (July 22, 1996); Benaroya v. Redmond, CPSGMHB No. 95-3-0072c, Final Decision and Order (March 25, 1996).
greater than one dwelling unit per five acres have been deemed suspect even though the statute called for a variety of rural densities. 58 In one recent case, the Western Board held that a maximum rural density (minimum lot size) of one dwelling unit per five acres was excessive in roughly the northern half of Clark County. 59

A major difficulty in making the transition to GMA's antisprawl regime is existing substandard lots in rural areas. The Western Board has strongly suggested that the aggregation of contiguous substandard lots in single ownership should be required, notwithstanding strong county objections that such a requirement is unfair, may be a constitutional taking or violation of substantive due process, and tends to reward landowners who evade such requirements by lot swaps and sales. 60 Even where Skagit County apparently required such aggregation, the Western Board found fault because the requirement allowed aggregation into lots smaller than one acre. 61

2. Concurrency

One of the Act's most significant substantive requirements, the so-called "concurrency" requirement, was borrowed from Florida. 62 Concurrency compels local governments to deny regulatory approval of proposed development if transportation facilities or strategies necessary to meet the specified level of service (LOS) standard will not be available concurrently with new development. 63 "Concurrent" means that facility improvements, demand management, or system management strategies sufficient to satisfy LOS 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. 64 The Act explicitly requires that the transportation concurrency requirement be implemented by local adoption and enforcement of "ordinances." 65 They must prohibit development that would cause transportation facilities to operate below LOS standards established in the transportation element of a local GMA plan unless transportation

60. See id.
61. See Friends of Skagit County, WWGMHB No. 95-2-0065 (Aug. 28, 1996).
63. See WASH. REV. CODE § 36.70A.070(6)(e).
64. See id.
65. See id.
facility improvements or strategies to accommodate the increased demand are in place concurrent with the development. 66

The transportation concurrency requirement leaves central issues unresolved. Are there state-mandated limits on LOS standards a local government 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 issue not resolved by the Act is whether the concurrency requirement 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 includes "public facilities and services" generally and does not single out transportation facilities. 67 However, the Act goes on to explicitly require concurrency only for transportation facilities. 68 Whether the GMA goal effectively establishes a general public facilities and services concurrency standard was not resolved by the legislature.

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, 69 funding deficiencies preclude public facility improvements sufficient to meet concurrency standards for the new development that are 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 all of these questions unanswered.

The Growth Boards have addressed a few of the questions left unanswered by the legislature. The Western Board has held that the concurrency requirement extends beyond transportation facilities to public facilities and services necessary to support development. 70

66. See id.
67. See id. § 36.70A.020(12).
68. See id. § 36.70A.070(6)(e).
69. Impact fees, previously subject to severe limitations, were expressly authorized for GMA counties and cities subject to definitive procedural and substantive requirements. These provisions, although adopted as part of GMA I, were not codified in RCW chapter 36.70A, but at RCW §§ 82.02.050-090 (1998). See Settle & Gavigan, supra note 1, at 923-25.
70. See Taxpayers for Responsible Government v. City of Oak Harbor, WWGMHB No. 96-2-0002, Final Decision and Order (July 16, 1996).
While the Board's ruling seems to grant broad substantive discretion to a city, it imposes burdensome procedural requirements.

The substantive effect of concurrency requirements ultimately depends on locally set level of service standards. In cases challenging such standards for transportation facilities, the Growth Boards have granted local governments virtually limitless discretion. Use of a "failing road" standard was within local discretion.\textsuperscript{71} Similarly, a virtual "gridlock" level of service for Seattle streets was upheld. According to the Central Board, the Act requires only a gauge of performance—it does not dictate what is "too congested."\textsuperscript{72}

3. Essential Public Facilities and Affordable Housing

The GMA directs local governments to be regionally responsible by accommodating essential public facilities and affordable housing. The Act requires that GMA plans include a process for identifying and siting "essential public facilities" (EPFs) that are "typically difficult to site, such as airports, state education facilities, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, and group homes."\textsuperscript{73} Substantively, local comprehensive plans may not preclude the siting of EPFs.\textsuperscript{74}

Similarly, local GMA plans must include a housing element containing policies for the preservation, improvement, and development of housing sufficient to satisfy the local fair share of regional housing needs.\textsuperscript{75} 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 multifamily housing, and group homes and foster care facilities.

While the Act implies that each county and city must bear a fair share of regional housing needs, the statute fails to define the requirement and how it is to be met.\textsuperscript{76} Similarly, the Act fails to define the requirement of state and local cooperation in siting such indispensable but locally unpopular facilities as airports, prisons, and garbage

\textsuperscript{71} See Achen v. Clark County, WWGMHB No. 95-2-0067, Final Decision and Order (Sept. 20, 1995).

\textsuperscript{72} See West Seattle Defense Fund v. City of Seattle, No. 94-3-0016 CPSGMHB, Final Decision and Order (April 4, 1995).


\textsuperscript{74} WASH. REV. CODE § 36.70A.200(2).

\textsuperscript{75} See id. § 36.70A.070(2); WASH. ADMIN. CODE § 365-195-310 (1999).

\textsuperscript{76} See WASH. REV. CODE §§ 36.70A.020(4), .070(2).

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71. See Achen v. Clark County, WWGMHB No. 95-2-0067, Final Decision and Order (Sept. 20, 1995).
72. See West Seattle Defense Fund v. City of Seattle, No. 94-3-0016 CPSGMHB, Final Decision and Order (April 4, 1995).
74. WASH. REV. CODE § 36.70A.200(2).
75. See id. § 36.70A.070(2); WASH. ADMIN. CODE § 365-195-310 (1999).
76. See WASH. REV. CODE §§ 36.70A.020(4), .070(2).
dumps, beyond prohibiting local plans from precluding such facilities. The county-wide planning policy process must be employed to coordinate local plan policies on the distribution of affordable housing and siting of essential facilities. However, given the vague statutory language, local governments can only guess at the nature and extent of the substantive requirements.

In the first case addressing the local obligation to accommodate housing needs and essential public facilities, the Central Board synthesized, from five sections of the Act, "a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population." The Board, on several independent grounds, held that a Bellevue ordinance regulating the location of group homes for children, including children with handicaps, violated GMA housing and EPF provisions.

In Litowitz v. City of Federal Way, the petitioner unsuccessfully argued that the city failed to comply with the GMA requirement that the city accommodate the housing needs of all economic segments of the population; failed to identify sufficient land for governmental assisted housing, multifamily housing, and group homes, and failed to make adequate provision for existing and projected needs of all economic segments of the community. The Board stressed that the requirement pertained to the city as a whole and did not obligate the city to allow high density residential use of any specific parcel of land.

The Boards also have defined railroad and airport facilities as essential public facilities. The Central Board held that the City of Auburn’s comprehensive plan designation of railroad land for light industry, where all significant activities must take place indoors, precluded the siting of additional railroad facilities, which the Board deemed to be EPFs. The Board broadly defined “essential public facilities”:

77. See id. § 36.70A.200. Such facilities sometimes are referred to as LULUs (locally undesirable land uses) or NIMBYs (not in my back yard) uses.
78. See id. § 36.70A.210(c), (e).
80. See id.
81. CPSGMHB No. 96-3-0005, Final Decision and Order (July 22, 1996).
82. WASH. REV. CODE § 36.70.020(4).
83. See id. §§ 36.70.020(4), .070(2).
84. See id. § 36.70.070(2).
85. See Hapsmith v. City of Auburn, CPSGMHB No. 95-3-0075c, Final Decision and
Significantly, essential public facilities may be large or small, many or few, and may be either capital projects (e.g., airports and prisons) or uses of land and existing structures (e.g., mental health facilities and group homes). The characteristic they share is that they are essential to the common good, but their local siting traditionally has been thwarted by exclusionary land use policies, regulations, or practices. For this reason, RCW 36.70A.200 has, in effect, preempted such behavior.\(^{86}\)

In *Port of Seattle v. City of Des Moines*,\(^ {87}\) the Central Board addressed whether an airport is an EPF and whether city plan policies violated the Act by precluding an EPF. The Port of Seattle proposed a new runway and other improvements at the airport. The expansion required a large volume of fill dirt. The borrow site for the fill was within Des Moines, and trucks hauling this fill dirt would travel through the city. The city's plan obligated the city to oppose the necessary excavation and hauling operations. Because the policy precluded the necessary support activities for expansion of an EPF, the Board held that the city did not comply with the GMA.\(^ {88}\) The Board interpreted "essential public facilities" as including new airports as well as the expansion of airports existing at the date of GMA's adoption.\(^ {89}\)

4. Natural Resource Lands and Environmentally Critical Areas

The first required step in local implementation of the GMA is the designation and adoption of interim development regulations to protect natural resource lands (agriculture, timber, and mineral lands) and critical areas (wetlands, potable water aquifer recharge areas, fish and wildlife habitat, frequently flooded areas, and geologically hazardous areas).\(^ {90}\) 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 goals and definitions reveals two quite different legislative purposes.\(^ {91}\) Natural resource lands are protected not for the sake of their ecological role, but to assure the viability of the resource-based industries that depend on them.\(^ {92}\)

Order (May 10, 1996).

86. *Id.*, quoting *Children's Alliance*, CPSGMHB No. 95-3-0011 (July 25, 1995).
87. CPSGMHB No. 97-3-0014, Final Decision and Order (Aug. 13, 1997).
88. *Id.*
89. *Id.*
90. See WASH. REV. CODE §§ 36.70A.030, .060, .170.
91. See WASH. REV. CODE §§ 36.70A.030(2), (8), and (11).
92. See *id.* § 36.70A.020(8) ("Natural resource industries. Maintain and enhance natural resource-based industries, including protective timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and dis-
Allowing conversion of resource lands to other uses, or allowing incompatible uses nearby, impairs the viability and productivity of resource industries. Critical areas are protected because their development would be ecologically detrimental or hazardous to life or property.

The designation and interim protective regulation of both categories of land is required as the first step in growth management implementation. This precludes urban growth area status for areas unsuited to such development and, in the case of critical areas, prevents irreversible environmental harm during the lengthy process of preparing GMA comprehensive plans and development regulations.

The interim designations and regulations, required as the first step in the GMA process, expire on the adoption of final development regulations. 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. The natural resource regulations must "assure the conservation" of designated agricultural, forest, and mineral resource lands, and must "assure that the use of lands adjacent to [resource lands] shall not interfere with their continued use, in the accustomed manner and in accordance with best management practices." The critical area regulations must "protect" designated critical areas.

The statutory definitions provide general standards for designation of such lands, 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 have heard numerous challenges of the legal sufficiency of natural resource lands and critical area regulations.

The Boards accord relatively little deference to cities and counties in designating and protecting critical areas because the statutory mandates are explicit and quite definitive. All critical areas must be designated, yet there is some local discretion to establish differential levels of protection. The state designation guidelines generally are characterized by the Boards as advisory (i.e., they must be "considered") rather than mandatory. But some decisions, without discussion, give the guidelines seemingly conclusive effect.

courage incompatible uses.

93. See id. § 36.70A.060(3).
94. Id. § 36.70A.060(1).
95. See id. § 36.70A.060(2).
96. See id. §§ 36.70A.030(2), (3), (8), (9), (10), (11), (17).
97. See id. § 36.70A.050(1); WASH. ADMIN. CODE ch. 365-190 (1999).
The Boards have disagreed about the meaning and effect of the "best available science" requirement. A 1996 GMA amendment requires counties and cities to "include" best available science in designating and protecting critical areas and to give special consideration to preservation of anadromous fisheries. But the Boards are divided on whether the best science requirement is procedural or substantive.

Other Board decisions relating to critical areas have more clearly filled GMA's gaps. Shoreline Master Programs now are GMA development regulations that must protect critical wetland areas. Department of Ecology (WDOE) decisions approving or denying amendments of local Shoreline Master Programs of cities or counties planning under GMA are now appealable to the Growth Boards rather than the Shoreline Hearings Board (SHB).

One Board decision addressed groundwater protection. Under two separate GMA provisions, potable water aquifer recharge areas must be protected by critical area regulations, and groundwater used as a public water supply must be protected in the land use element of GMA plans. The Board recognized these overlapping requirements and observed that critical area regulations would prevail in case of conflict with the land use element of plans.

In determining the validity of provisions for natural resource land, the Boards have been demanding of local government, often finding deficiencies in designation and protection of agricultural, forest, or mineral resource lands. The Western Board has broadly applied the twin tests of "long term commercial significance" and "not characterized by urban growth" on an area-wide basis, while the Central Board has more narrowly allowed potential resource land to be

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99. See, e.g., Heal v. City of Seattle, CPSGMHB No. 96-3-0012, Final Decision and Order (Aug. 21, 1996).
100. See, e.g., Easy v. Spokane County, EWGMHB No. 96-1-0016, Final Decision and Order (April 10, 1997); Clark County Natural Resources Council v. Clark County, WWGMHB No. 96-2-0017, Final Decision and Order (Dec. 6, 1996). See also Tulalip Tribes v. Snohomish County, WWGMHB No. 96-3-0029, Final Decision and Order (Jan. 8, 1997).
101. See Seaview Coast Conservation Coalition v. Pacific County, WWGMHB No. 95-2-0076, Second Compliance Order and Finding of Invalidity (Feb. 6, 1997).
103. See Wash. Rev. Code §§ 36.70A.060, .070(1).
evaluated on a parcel-by-parcel basis. In most of the recent cases where designation and protection of natural resource land by counties has been challenged, the counties have been held not in compliance with relevant GMA requirements, and invalidity orders have been frequent.

B. Procedural Requirements

While GMA’s substantive requirements “grab the headlines,” the Act’s voluminous requirements are mainly procedural. Even the substantive mandates are contained within required processes. Thus, procedurally, the Act requires local designation of interim and final urban growth areas that meet several significant substantive standards. Procedurally, the Act requires local adoption of concurrency standards that meet minimal substantive standards. Procedurally, the Act requires local planning for housing that meets vague substantive standards. Procedurally, the Act requires local adoption of a system for identifying and siting essential public facilities that must be implemented to avoid the substantive preclusion of such uses and structures. Procedurally, the Act requires the interim and final designation and regulatory protection of critical areas and natural resource lands that meet various specific and general substantive standards.

Whether the Act’s three consistency requirements are regarded as procedural or substantive is a semantic question. The plans of adjacent counties and cities must be consistent. Local development regulations, capital budget decisions, and other activities must be consistent (“in conformity”) with local plans. Also, plans must be internally consistent. In each instance, while substantive consist-

105. Compare Achen v. Clark County, WWGMHB No. 95-2-0067, Final Decision and Order (Sept. 20, 1995) and Benaroya v. City of Redmond, CPSGMHB No. 95-3-0072, Final Decision and Order (March 25, 1996). However, the Supreme Court of Washington, in dicta, said that the Board erred in so construing GMA designation criteria. City of Redmond v. Central Puget Sound Growth Management Hearings Bd., 136 Wash. 2d 38, 959 P.2d 1091 (1998).
106. See Settle & Gavigan, supra note 1, at 904-20.
107. See WASH. REV. CODE § 36.70A.110.
108. Id. §§ 36.70A.020(12), 070(6).
109. Id. § 36.70A.070(2).
110. See id. §§ 36.70A.020(4), .070(2), .400, .410.
111. Id. § 36.70A.200(1).
112. Id. §§ 36.70A.030, .040, .060, .170.
113. Id. §§ 36.70A.200(2), .410, .450.
114. See, e.g., id. §§ 36.70A.030, .060; WASH. ADMIN. CODE ch. 365-190 (1999).
115. See WASH. REV. CODE § 36.70A.100.
116. See id. §§ 36.70A.040(3) and (4), .120.
117. See id. § 36.70A.070.
ency is required, substantive content generally is not imposed by the state.

The Act's central procedural requirements will be briefly described in roughly chronological order in the following sections. The numerous Growth Board decisions adjudicating even more numerous issues of local compliance with GMA's many and often detailed procedural requirements are beyond the scope of this Article, with the exception of those that have been judicially reviewed.

1. Adoption of Countywide Planning Policies

The countywide planning policy (CPP)\textsuperscript{118} is the vehicle to implement the requirement that the plans of adjacent counties and cities be coordinated and consistent.\textsuperscript{119} Counties, characterized as "regional governments," have ultimate authority to adopt CPPs, but only after completing extensive cooperative processes to assure that cities, characterized as "primary providers of urban governmental services," are fully heard.\textsuperscript{120} Analogous multicounty planning polices must be adopted by counties with populations exceeding 400,000 and contiguous urban areas—presently only King, Pierce, and Snohomish counties.\textsuperscript{121} Other counties may do so.\textsuperscript{122}

2. Designation and Protective Regulations of Critical Areas and Natural Resource Lands

Both the designation and regulation of critical areas and natural resource lands were to be done in two stages. Preliminary or interim designation and regulation were subject to GMA's earliest deadline, September 1, 1991.\textsuperscript{123} Later, designation and regulation were to be finalized, after plan adoption, as development regulations.\textsuperscript{124} In practice, local compliance with the critical area and natural resource lands requirements sometimes straddled the CPP process, which was not adopted until 1991 as part of GMA II.

3. Designation of Urban Growth Areas

UGA designation, as ultimately required by a GMA amendment, has also become a two-step process.\textsuperscript{125} As in the case of critical

\textsuperscript{118} See id. § 36.70A.210.
\textsuperscript{119} See id. § 36.70A.100.
\textsuperscript{121} See WASH. REV. CODE § 36.70A.210(7).
\textsuperscript{122} See id.
\textsuperscript{123} See id. §§ 36.70A.060, 120.
\textsuperscript{124} See id. § 36.70A.060(3).
\textsuperscript{125} See id. § 36.70A.110(5).
areas and natural resource lands, interim UGA designation is designed to avoid inappropriate use and development of land inside and outside UGAs during lengthy planning processes. UGA designations must be finalized at the time of comprehensive plan adoption and included in the plan. While counties have ultimate authority to designate UGAs, they are constrained by extensive process requirements designed to assure that cities are heard.

4. Adoption of Comprehensive Plans

The most pervasive and burdensome requirement that the Act imposes on GMA counties and cities is to develop and adopt comprehensive plans addressing numerous specified subjects and satisfying statutory procedural and substantive standards. The comprehensive plan is the central nervous system of the GMA. It receives and processes all relevant information and sends policy signals to shape public and private behavior. 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 Act and extensively explained by the CTED Procedural Criteria.

Most significantly, the Act requires that plan policies coordinate the provision of public facilities, especially transportation facilities, with private land development. A GMA plan may not be a mere community wish list; it must be an internally consistent document. 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. A GMA plan may not be ignored; it must be implemented by enactment of development regulations consistent with its policies. Also, counties and cities must “perform their act-

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127. WASH. REV. CODE § 36.70A.110(5), (6). But see Association of Rural Residents, 974 P.2d 863 (holding that interim UGA designations constituted development regulations, discussed at infra Part III.K).

128. See WASH. REV. CODE § 36.70A.110(1).

129. See id. § 36.70A.040.

130. See id. § 36.70A.070.


132. See id. §§ 36.70A.070, .200.


134. See WASH. REV. CODE § 36.70A.070(3), (4), (6).

135. See id. § 36.70A.070.


137. See id. § 36.70A.120.
vities and make capital budget decisions in conformity with" their comprehensive plans. 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." Even state agencies must comply with local GMA plans and implementing regulations.

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

The land use element must contain policies and maps determining 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, as well as to future population growth; the protection of groundwater quality and quantity; and the management of drainage, flooding, and storm-water runoff.

While the land use element is a purely procedural requirement, the housing element provisions contain substantive limits as well. 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.

The Act's procedural requirements for the utilities element are modest. The plan must merely specify the location and capacity of all existing and proposed utilities, including but not limited to, electrical, telecommunication, and natural gas lines.

The transportation element is subject to the most rigorous procedural and substantive requirements of all. Procedurally, the rela-

138. Id.
139. Id., § 36.70A.130.
140. See id., § 36.70A.103.
141. See id., § 36.70A.070.
142. Id., § 36.70A.070(5).
143. See id., § 36.70A.110.
144. Id., § 36.70A.070(1).
145. See id., § 36.70A.070(1); WASH. ADMIN. CODE § 365-195-305 (1999).
147. See id.
149. See WASH. REV. CODE § 36.70A.070(6); WASH. ADMIN. CODE § 365-195-325
tionship 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 identified; a multiyear financing plan must be prepared; and demand management strategies must be formulated.\footnote{150} In addition, 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.\footnote{151}

The capital facilities element also has both procedural and substantive dimensions.\footnote{152} Procedurally, plans must contain an 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.\footnote{153} Substantively, the cost of planned capital facilities must be within projected available funding.\footnote{154} To ensure that the land use element, capital facilities element, and financing plan are consistent, there is a requirement that the land use element be reassessed and revised if expected funding is inadequate for a proposed capital facility expansion.\footnote{155}

The rural element required in county comprehensive plans is a land use element for areas not designated for urban growth, agriculture, timber production, or mineral extraction.\footnote{156} Substantively, the rural element generally must not allow urban growth, must "provide for a variety of rural densities and uses," and assure visual compatibility of rural development with the surrounding rural area.\footnote{157}

Comprehensive plans may include any other elements and consistent subarea components.\footnote{158} Plans must be developed in substantial

\footnotetext{150}{See WASH. REV. CODE § 36.70A.070(6)(a)-(e).} \footnotetext{151}{See id. § 36.70A.070(6)(c)(iii).} \footnotetext{152}{See WASH. REV. CODE § 36.70A.070(3); WASH. ADMIN. CODE § 365-195-315 (1999). The term "capital facilities" is not defined in the statute or procedural criteria. Perhaps the definition of "public facilities" is expected to do double duty.} \footnotetext{153}{See WASH. REV. CODE § 36.70A.070(3).} \footnotetext{154}{Id.} \footnotetext{155}{Id.} \footnotetext{156}{See WASH. REV. CODE § 36.70A.070(5); WASH. ADMIN. CODE § 365-195-330 (1999).} \footnotetext{157}{Id.} \footnotetext{158}{See WASH. REV. CODE § 36.70A.080(1), (2).}
compliance with statutory public participation requirements\textsuperscript{159} and be adopted by variable deadlines, the earliest of which was July 1, 1994.\textsuperscript{160}

5. Adoption of Development Regulations

The last major step in local GMA compliance is the enactment of development regulations that are consistent with and implement the comprehensive plan.\textsuperscript{161} The regulations must be developed in substantial compliance with the statutory public participation requirements.\textsuperscript{162}

The term "development regulations" encompasses any official control of land use and development, including explicitly authorized "innovative techniques" such as density bonuses, cluster housing, planned unit developments, and transferable development rights.\textsuperscript{163} Development regulations include the required natural resource land, critical area,\textsuperscript{164} and shoreline regulations.\textsuperscript{165}

III. GMA IN THE COURTS

In the late 1960s, powerful social forces demanded that government be environmentally conscientious and socially responsible. In Washington, the courts were sympathetic, proactively extending common law doctrines in keeping with rapidly changing social consciousness and values before the legislature had responded. For example, the Supreme Court of Washington, in two decisions, virtually stopped all development in and over both navigable\textsuperscript{166} and nonnavigable\textsuperscript{167} waters under common law public trust and riparian rights doctrines,

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{159} See id. § 36.70A.140.
\item \textsuperscript{160} 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 CTED's authority, under RCW 36.70A.045, to extend the comprehensive plan deadline by up to 180 days. WASH. REV. CODE § 36.70A.040, as amended by 1993 Wash. Laws 1st Sp. Sess. 1804, ch. 6, § 1.
\item \textsuperscript{161} See WASH. REV. CODE § 36.70A.120.
\item \textsuperscript{162} See id. § 36.70A.140.
\item \textsuperscript{163} WASH. REV. CODE §§ 36.70A.030(7), .090.
\item \textsuperscript{164} See id. § 36.70A.060(3).
\item \textsuperscript{165} See WASH. REV. CODE ch. 90.58 (1999); Seaview Coast Conservation Coalition v. Pacific County, WWGMHB No. 95-2-0076, Second Compliance Order and Finding of Invalidity (Feb. 6, 1997).
\item \textsuperscript{166} See Wilbour v. Gallagher, 77 Wash. 2d 306, 462 P.2d 232 (1969). See also SETTLE, WASHINGTON LAND USE, supra note 2, at § 4.2.
\item \textsuperscript{167} See Bach v. Sarich, 74 Wash. 2d 575, 445 P.2d 648 (1968).
\end{enumerate}
\end{footnotesize}
respectively. In doing so, the court galvanized affected interest groups, which induced the legislature and electorate to adopt comprehensive shoreline management legislation.168

Similarly, in two decisions, the court infused old doctrines with new meaning to invalidate, on both procedural and substantive grounds, local approvals of a mammoth aluminum production plant169 and an oil refinery170 at environmentally sensitive sites on the shores of Puget Sound. In these cases, a potent "appearance of fairness" doctrine was derived from common law due process, and the traditionally deferential "spot zoning" doctrine was retooled to closely scrutinize the wisdom of local land use policy choices. In another case presaging a central element of the state's growth management legislation by a decade, the court required that local land use actions rationally serve not merely local public interests, but the general welfare of the entire affected region.171

In addition to anticipating and even inducing environmental and land use legislation, Washington courts have broadly construed novel statutes, sometimes imbuing them with potent effects that even their sponsors had not contemplated. The courts not only expansively construed the requirements of the Shoreline Management Act (SMA),172 but employed the State Environmental Policy Act (SEPA) to extend SMA's reach.173 SEPA's terse, predominantly procedural provisions were broadly construed174 to impose controversial constraints that were not generally foreseen as SEPA barely caused a ripple in navigating the legislative process.175 Moreover, the courts infused SEPA with a potential substantive bite that allows state and local agencies to deny proposals even when they satisfy definitive land use regulations.176

In the 1980s, popular support for environmental protection and quality of life remained strong, but was complicated by taxpayer revolt. Prevailing public opinion demanded that government provide ever higher levels of environmental quality and community amenity

168. See generally SETTLE, WASHINGTON LAND USE, supra note 2, at § 4.2.


175. See SETTLE, SEPA, supra note 3, at § 2.

without raising taxes. In response, public officials increasingly imposed the cost of enhancing the quality of life on narrow segments of society through severe restrictions on the use of private property and through regulatory exactions of public goods. This new political reality—that the benefits of environmental protection are widely shared while the burdens often are narrowly borne—has tempered judicial support for novel land use and environmental regulation during the past decade. The courts continue to support innovative and burdensome regulatory requirements that disappoint traditional expectations as long as the burdens are reasonably necessary and fairly allocated.\textsuperscript{177} However, where heavy regulatory burdens seem to be unreasonably burdensome or opportunistically assigned to a few for the benefit of many, they have not survived judicial scrutiny.\textsuperscript{178}

The GMA, in pursuit of noble goals, requires local governments to plan for public facilities and regulate the use of private property in ways that often radically disappoint traditional expectations and make some property owners richer and others poorer. As in the past, Washington courts generally have embraced and deferred to the environmentally conscientious and socially responsible policies chosen by the legislature in the GMA.\textsuperscript{179} However, in contrast to the SMA and SEPA, the courts, perhaps mindful of GMA’s extremely discordant legislative history, have not been inclined to expansively construe the Act’s requirements.\textsuperscript{180} Moreover, as the GMA is implemented by local governments, subject to Growth Board review, and real effects are felt, Washington courts can be expected to maintain their traditional vigilance for substantive and procedural fairness.

\textbf{A. Judicial Attitude Toward the GMA, In General}

The courts generally have embraced the purposes, goals, and central principles of the Act. Apparent judicial concern that uninformed, disgruntled citizens might undermine the legislature’s statewide growth management goals has led the courts to deny the availability of referenda and initiatives to override GMA implementation decisions of local governing bodies.\textsuperscript{181} Facial constitutional challenges

\textsuperscript{177} See, e.g., Margola Assocs. v. City of Seattle, 121 Wash. 2d 625, 854 P.2d 23 (1993); Jones v. King County, 74 Wash. App. 467, 874 P.2d 853 (1994).


\textsuperscript{179} See, e.g., Anderson I, 123 Wash. 2d 151, 868 P.2d 116 (1994).

\textsuperscript{180} See, e.g., Skagit Surveyors and Engineers, LLC v. Friends of Skagit County, 135 Wash. 2d 542, 958 P.2d 962 (1998).

\textsuperscript{181} See generally Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994); Anderson I, 123 Wash. 2d 151, 868 P.2d 116 (1994); Save Our State Parks v. Board of Clallam
of core GMA requirements have been quite summarily rejected.\(^{182}\) It
remains to be seen whether specific "as applied" challenges may fare
better. In dicta, the courts routinely recite the legislative findings
supporting GMA's central purposes to concentrate growth in UGAs
while protecting environmentally critical areas, natural resource
industries, and efficient public facilities and services from the
consequences of sprawl.\(^{183}\)

Even in cases where no GMA issue was before the court, the
state's growth management principles have been invoked. In \textit{Erickson
& Associates v. McLerran},\(^{184}\) the court refused to expand the vested
rights doctrine because of, inter alia, GMA's legislative findings that
intensified land use regulation is necessary to protect the quality of
Washington's communities and environment. In \textit{King County v.
Washington State Boundary Review Board for King County},\(^{185}\) the
court held that an environmental impact statement was required for a
proposed annexation because GMA's UGA provisions made urban
development of the annexed area virtually inevitable.

While generally supportive of the legislature's growth manage-
ment purposes, the courts have not been inclined to broadly construe
the Act's constraints on local government unless clear and specific
legislative intent has supported expansive interpretation. Thus, in
\textit{Vashon Island Committee for Self-Government v. Washington State
Boundary Review Board for King County},\(^{186}\) the court broadly con-
strued then-applicable statutes to preclude incorporation outside of
urban growth areas to effectuate the clear and specific legislative intent
to allow urban development only in designated UGAs. However, in
\textit{Clark County National Resources Council v. Clark County Citizens
United},\(^{187}\) the court refused to depart from plain statutory meaning in
holding that the county was required to base only its potential de-
velopment within UGAs, not potential development outside UGAs, on
OFM population projections. Nor have the courts been willing to

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\(^{184}\) 123 Wash. 2d 864, 876, 872 P.2d 1090, 1097 (1994).


endorse expansive interpretations of the Growth Boards unless they are firmly rooted in statutory language and legislative intent.

In Skagit Surveyors and Engineers, LLC v. Friends of Skagit County, the first state supreme court case reviewing a Growth Board decision, the court held that the Board had exceeded its authority by invalidating development regulations adopted prior to the GMA. The court recalled its general reluctance to find that an agency had implied authority, especially where the agency was created by a statute, like GMA, with no provision for liberal construction. The justiciable issue, the court stressed, was whether the asserted Growth Board authority was supported by statutory language or clear legislative intent, not whether such authority would be wise public policy that would foster the broad purposes of the Act:

Whether it would be beneficial, useful or reasonable for a growth management hearings board to have the power to invalidate pre-Act ordinances is not at issue, only the statutory authorization of that power. Even if we agreed with 1000 Friends that public policy would be better served if the board were granted stronger remedial powers, we are not in a position to create those powers. Our role is to interpret the statute as enacted by the Legislature, after the Legislature's determination of what remedy best serves the public interests of this state; we will not rewrite the statute.

Similarly, in HEAL v. City of Seattle, the most recent GMA case, the Washington Court of Appeals, in reviewing an issue of the Board's authority, stressed that "the Legislature grants agencies authority, and takes a dim view of agencies granting themselves additional authority. This was a recurring theme in recent regulatory reform efforts in the Legislature." Even though the court held that the Board had too narrowly limited its authority in deciding that it had jurisdiction to review critical area regulations, but not critical area policies, the court commended the Central Puget Sound Board's "reluctance to assert jurisdiction beyond that expressly granted." The court declined to award fees to the winning party because the Board's decision was "substantially justified."

189. See Skagit Surveyors, 135 Wash. 2d at 565, 958 P.2d at 973.
190. Id. at 567, 958 P.2d at 974.
192. Id. at 872.
193. Id.
194. Id.
The Skagit Surveyors and HEAL cases exemplify significantly different inclinations on issues of Board authority by the Western Washington Growth Management Hearings Board (WWGMHBB) and the Central Puget Sound Growth Management Hearings Board (CPSSGMHB). The WWGMHB has tended to construe its authority more expansively and has been reined in by the courts. The CPSSGMHB has interpreted its authority more restrictively. Indeed, in HEAL, the court sympathetically held that the CPSSGMHB had too narrowly limited its own authority.\footnote{See id.}

The courts seem to recognize that, unlike SEPA and SMA, GMA was spawned by controversy, not consensus. The relative spheres of state mandate and local autonomy were the product of extremely difficult legislative compromise. It is no accident that the GMA contains no provision for liberal construction. Thus, broad interpretation of GMA requirements and deference to Growth Board decisions have not necessarily occurred. The courts have analyzed each issue in light of statutory language and legislative history to determine whether the legislature intended to impose an asserted requirement on local government, and, in cases of broad or ambiguous GMA requirements, whether the legislature intended local governments or the Growth Boards to "fill in the blanks."

B. Obtaining Judicial Review of GMA Issues

There are several potential routes to judicial review of GMA claims. Choosing the wrong route for a given GMA issue may be fatal. Under the principle of exhaustion of administrative remedies, claims that legislative action or inaction violates GMA requirements generally must be pursued before the Growth Boards as a prerequisite to judicial review\footnote{See WASH. REV. CODE § 34.05.534 (1998). See also Simpson Tacoma Kraft Co. v. Department of Ecology, 119 Wash. 2d 640, 646, 835 P.2d 1030, 1034 (1992); cf. Citizens for Mount Vernon v. City of Mount Vernon, 133 Wash. 2d 861, 865-68, 947 P.2d 1208, 1211-12 (1997) (holding that exhaustion principle did not require appeal to Board of issues beyond its jurisdiction); King County v. Central Puget Sound Growth Management Hearings Bd., 91 Wash. App. 1, 25-26, 951 P.2d 1151, 1164 (1998), aff'd in part, rev'd in part, 979 P.2d 374 (Wash. 1999) (holding that failure to appeal issue to Board precluded its adjudication in a LUPA action).} unless all parties to a petition before a Board agree to direct review in superior court.\footnote{See WASH. REV. CODE § 36.70A.295.} Growth Board decisions are reviewable in superior court by express provision of the GMA.\footnote{See id. § 36.70A.300(5). In Project for Informed Citizens v. Columbia County, 92 Wash. App. 290, 293-94, 966 P.2d 338, 340-41 (1998), the court rejected the implausible argument that "a final decision" subject to judicial review under RCW 36.70A.300(5) referred only
Such review is governed by the Administrative Procedure Act (APA),200 except as modified by the GMA.200 This statutory means of obtaining judicial review is exclusive for parties aggrieved by Growth Board decisions.

Thus, in Torrance v. King County,201 an unsuccessful petitioner to the Growth Board who had elected not to seek statutory review of the Board decision was denied the right to obtain extraordinary judicial review through constitutional writ of certiorari because an adequate remedy at law was available by statute.202 Similarly, in King County v. Central Puget Sound Growth Management Hearings Board,203 the court held that judicial review of UGA designation, a GMA issue within the Board's jurisdiction, could not be obtained pursuant to the Land Use Petition Act (LUPA)204 because LUPA explicitly precluded its availability to review "[l]and use decisions of local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as . . . the growth management hearings board."205

When parties agree to bypass the Growth Board and proceed directly to superior court, the Growth Board must concur. With a few exceptions, in cases of "direct judicial review," the court is subject to the same jurisdictional limitations as the Growth Board.206 In such cases, the court is authorized to "use its remedial and contempt powers to enforce compliance" with GMA requirements.207 Under the APA, the parties may elect to bypass the superior court and obtain direct review in the court of appeals or, at its discretion, the supreme court.208 The first case in which the supreme court reviewed a Growth Board decision followed this route.209

Cases raising GMA issues that were outside the subject matter jurisdiction of the Growth Boards have reached the courts through

to the Board's first order in a petition but not a subsequent compliance or noncompliance order after remand. The court astutely projected the perverse consequences that the asserted interpretation would cause.

199. WASH. REV. CODE § 36.70A.300(5).
202. See id. at 792-93, 966 P.2d at 896.
204. WASH. REV. CODE ch. 36.70C (1998).
206. See WASH. REV. CODE § 36.70A.295(3)-(4).
207. See id. § 36.70A.295(5).
208. See id. § 34.05.518 (1998).
land use petitions,\textsuperscript{210} statutory writs of certiorari,\textsuperscript{211} constitutional writs of certiorari,\textsuperscript{212} declaratory judgment actions,\textsuperscript{213} writs of mandamus,\textsuperscript{214} and damage actions.\textsuperscript{215}

Growth Board jurisdiction does not include state and local regulatory actions on proposed projects.\textsuperscript{216} Aggrieved proponents or opponents must go to court for adjudication of GMA issues. Since 1995, a petition under LUPA generally has been the exclusive means of obtaining judicial review of project-level regulatory actions, and a number of GMA cases have followed this route. Prior to LUPA, judicial review of quasi-judicial regulatory approvals and denials was available by statutory writ of certiorari, and at least one GMA case reached court this way.\textsuperscript{217} Although Growth Board jurisdiction includes "amendments" to development regulations,\textsuperscript{218} the state supreme court has held that project-specific, quasi-judicial rezones may not be appealed to the Board, and are subject only to judicial review.\textsuperscript{219}

The Washington Court of Appeals has held that declaratory judgments are available only if there is no adequate remedy at law, and that review by the extraordinary constitutional writ of certiorari is an adequate remedy at law.\textsuperscript{220} Because both declaratory judgment actions and constitutional writs of certiorari are available only when there is no adequate remedy at law, which one is preempted when both are potentially available? The court of appeals held that a declaratory judgment action becomes unavailable under such circumstances.


\textsuperscript{212} See King County, 91 Wash. App. at 17 n.29, 951 P.2d at 1159; cf. Torrance v. King County, 136 Wash. 2d 783, 787-91, 966 P.2d at 893-96 (1998) (constitutional writ unavailable to review Growth Board decision).

\textsuperscript{213} See, e.g., Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994); Anderson I, 123 Wash. 2d 151, 868 P.2d 116 (1994).


\textsuperscript{216} See Mount Vernon, 133 Wash. 2d at 867-68, 947 P.2d at 1211-12.


\textsuperscript{218} See WASH. REV. CODE §§ 36.70A.280(1)(a); 290(2).

\textsuperscript{219} Mount Vernon, 133 Wash. 2d at 867-68, 947 P.2d at 1212.

Because the constitutional writ is consistently characterized as a last resort, a legal safety net based on the judiciary’s inherent power to protect the citizenry against governmental abuse, this holding is surprising.

In APA appeals of Growth Board decisions, timely filing of the petition and service on all parties of record is jurisdictional and, thus, strictly required as a prerequisite to judicial review. Failure to comply with APA’s jurisdictional prerequisites is fatal. Substantial compliance does not suffice. The strictness of the requirement is demonstrated by the dismissal of a petition in Litowitz v. Federal Way. Five couples appealed the city’s GMA plan to the Growth Board. After the Board’s decision, only two of the couples appealed to superior court. They served their petition on the Board, the city, and other adverse parties, but not on the other three couples who had been allied and apparently represented by the same attorney in the Board proceedings. The fact that they were actually aware of the petition was irrelevant because substantial compliance did not suffice.

Similarly, in Skagit Surveyors and Engineers, LLC v. Friends of Skagit County, petitions were dismissed for failure to serve several parties. In both cases, the courts allowed the service deficiency to be raised at any time by parties other than those unserved because the requirement was jurisdictional. The APA provision has been amended to allow service on the parties’ attorneys. However, the

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222. The Bellevue decision was also surprising in allowing review by constitutional writ even though only the functionally and legally distinct statutory writ of certiorari was sought. See generally SETTLE, WASHINGTON LAND USE, supra note 2, at §§ 8.2 and 8.3.
223. See WASH. REV. CODE § 34.05.542(2) (1998).
227. Id. at 68, 966 P.2d at 422.
228. Id.
229. Id. at 69, 966 P.2d at 423.
231. Thus, even though the attorneys of the unserved parties were served, the claims of the groups included in the phrase “Skagit Surveyors and Engineers” were not adjudicated despite the groups’ top-billing in the title of the case. Skagit County’s petition, properly served on all parties, was adjudicated. The court rejected the argument that the county’s petition also should have been dismissed because while all parties in the Board proceedings were served, they were not all named in the body of the petition as required by RCW 34.05.546(5) (1998). The court declined to hold that strict compliance with RCW 34.05.546 was a jurisdictional requirement. Substantial compliance with this nonjurisdictional APA requirement sufficed.
232. The Skagit Surveyors court acknowledged that “a different result would be reached in this case now, under the amended version of the statute.” 135 Wash. 2d at 557, 958 P.2d at 969.
requirements remain strict and jurisdictional, and must be satisfied within the thirty-day limitation period, which also is jurisdictional. 233

1. Standing

Resolution of GMA issues may implicate both administrative and judicial standing. The GMA generally grants administrative standing 234 to petition the Growth Boards to the state, GMA counties and cities, persons who have participated orally or in writing in local government proceedings on the matter appealed, persons certified by the Governor, and "persons aggrieved" under the APA. 235 GMA's administrative standing provisions are extremely generous, allowing anyone who has spoken or submitted written comments in a local proceeding on GMA issues to appeal local plans and regulations related to such issues to the Growth Boards. 236 A participant in local GMA proceedings has standing to petition the Growth Boards even if the person would suffer no injury within the zone of interests protected by the GMA that could be redressed by the Board. 237

GMA's judicial standing provision does not employ the language of its administrative standing provisions. The Act tersely authorizes any "party aggrieved" by a final decision of the Hearings Board to appeal to superior court. 238 Is any "party" to a Board proceeding who is disappointed by the outcome "aggrieved" and entitled to seek judicial review? This question was answered in the affirmative. 239 The Washington Court of Appeals rejected the argument that the GMA's "party aggrieved" should be regarded as equivalent to APA's "person aggrieved," which has been interpreted much more narrowly than


234. See WASH. REV. CODE § 36.70A.280(2) and (3). Only cities and the governor may appeal countywide planning policies to the Growth Boards. See WASH. REV. CODE § 36.70A.210(6).

235. See WASH. REV. CODE § 34.05.530 (1998).

236. See id.

237. Under the APA, RCW 34.05.530 (1998), a person is aggrieved or adversely affected and has a standing to obtain judicial review of agency action when:

1. The agency action has prejudiced or is likely to prejudice that person;

2. That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

3. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.


238. See WASH. REV. CODE § 36.70A.300(3).

GMA's extremely broad administrative standing provisions. The court acknowledged GMA's ambiguity, but could not "discern why the GMA would grant party status at the Board level, then withdraw it at the superior court level through the use of the APA standard." The court concluded that GMA grants standing in superior court to any petitioner with standing before the Board who failed to receive the relief sought from the Board. Other GMA cases that have addressed standing issues have applied general state standing doctrine.

2. Exhaustion of Administrative Remedies

The only GMA case to explicitly address exhaustion of administrative remedies as a prerequisite to judicial review was Citizens of Mount Vernon v. City of Mount Vernon. The court acknowledged that exhaustion would require an appeal to the Growth Board of issues within its jurisdiction as a precondition to judicial review. However, the court concluded that a petition to the Board was not available because the challenged city regulatory action approving a Planned Unit Development (PUD) fell "outside the scope of review granted to the Board." The court did not address the potential argument that PUD approval requires a zoning amendment, as the court acknowledged, and amendments of development regulations are explicitly within the Board's statutory jurisdiction. Because the court averred that the "Board cannot render a decision on a specific development project," perhaps it would interpret the Board's jurisdiction over "amendment" as including only legislative amendments of broad applicability, and not amendments to accommodate a specific project. Apparently, the court found it unnecessary to address the argument, because the PUD was challenged as violative of the city's underlying zoning and not of GMA requirements, which are the subject matter jurisdiction of the Growth Board.

240. See id. at 295, 966 P.2d at 341.
241. Id. at 296, 966 P.2d at 342.
242. Id. at 296-97, 966 P.2d at 342.
244. 133 Wash. 2d 861, 947 P.2d 1208 (1997).
245. Id. at 868, 947 P.2d at 1212.
246. See WASH. REV. CODE §§ 36.70A.280(1)(a), .290(2).
247. Citizens of Mount Vernon, 133 Wash. 2d at 868, 947 P.2d at 1212.
The Mount Vernon case also addressed the issue preclusion branch of the exhaustion doctrine, rejecting the argument that the petitioners were precluded from arguing that the PUD approval violated city zoning because that issue had not been raised in the city's regulatory proceedings. The court concluded that the general arguments made by the citizen-opponents in such proceedings were broad enough to include the specific issue raised in court, sympathetically observing that "[i]ndividual citizens did not have to raise technical, legal arguments with the specificity and to the satisfaction of a trained land use attorney during a public hearing." 248 The court's empathetic permissiveness is at odds with prior decisions, which the court acknowledged but did not overrule. 249

The GMA, as interpreted by the courts, creates powerful incentives for opponents of local land use policies to appeal them to the Growth Boards. In addition to the exhaustion doctrine, other GMA features compel local dissidents to file a timely Growth Board appeal or be foreclosed from contesting local GMA enactments. Even supporters of local GMA implementation should intervene in Board appeals, lest they be barred from obtaining judicial review if the Board should decide that the local policies or regulations they favor violate the GMA.

The saga of Mr. Torrance 250 teaches an important lesson. He successfully lobbied King County to include in its plan and regulations provisions that would allow an acceptable use of his land. However, the fruits of his labors were jeopardized when local dissidents appealed his favored provisions to the Growth Board. Apparently, he failed to monitor whether appeals had been filed, did not know about the appeal and, thus, did not intervene in the Board proceeding to protect his interests. The Board ruled that his favored provisions violated the GMA. 251 Mr. Torrance did not seek judicial review of the Board's decision. Because he had not become a "party" by intervening, he probably lacked standing to obtain judicial review as he was not a "party aggrieved." 252 The court's opinion does not say whether Mr. Torrance participated in county proceedings after remand from the Board. However, a county amendment eliminated his favored provisions, and he did not appeal the amendment to the

248. Id. at 870, 947 P.2d at 1213.
251. See id. at 785, 966 P.2d at 892.
Board. He apparently did not seek judicial review of the Board’s determination that the county’s amendments were in compliance with the Act.

Subsequently, during the annual consideration of proposed amendments, Mr. Torrance unsuccessfully requested an amendment that would have reinstated his favored regulation.253 This time he did appeal the county’s action denying his requested amendment to the Board. But the Board rejected his appeal, ruling that it was too late to appeal the earlier county actions, and the county’s mere failure to amend did not violate the Act. In effect, the Board ruled that one who has failed to file a timely appeal of a county enactment generally cannot overcome the omission by requesting an amendment that would acceptably change the previous enactment and then appealing the county’s denial to the Board. No court has decided whether the Board’s refusal to hear such appeals is in compliance with the GMA. Mr. Torrance did not seek judicial review of the Board’s rejection of his appeal. However, prior to the Board’s decision, he had filed a LUPA action, later amended to include a request for constitutional writ of certiorari, challenging the county’s refusal to adopt his proposed amendments. The supreme court held that review of the county’s action could be obtained only through a GMA/APA appeal of the Board’s decision for the county. In the final analysis, because of his tactical choices, Mr. Torrance was barred from obtaining both Board and judicial review of the county’s action.

Another potential trap for citizens aggrieved by local GMA enactments was removed by the state supreme court in its most recent GMA case.254 The Board, trial court, and court of appeals all had endorsed the proposition that where the countywide planning policy directed the designation of a specific urban growth area, the Board lacked jurisdiction to decide whether the UGA designation in the county’s comprehensive plan violated the Act’s UGA limitations. The trial court and appellate court both ruled that the Board only had authority to review the directive CPPs if timely appealed.255 This interpretation of the Act would have effectively foreclosed citizens from obtaining Growth Board review of county compliance with the Act’s UGA requirements, because the right to appeal CPPs to the Board is limited only to cities or the governor.256

253. See WASH. REV. CODE § 36.70A.130.
255. See id. at 379.
256. See WASH. REV. CODE § 36.70A.210(6).
The state supreme court reversed, holding that while CPPs are indeed directive and binding upon counties and their constituent cities, aggrieved citizens do have recourse. They are entitled to Board review of local GMA provisions that are directed by CPPs, even if the directive CPPs were not appealed to the Board.\textsuperscript{257} The court reasoned that this interpretation of the Act was necessary to effectuate GMA's public participation\textsuperscript{258} and UGA designation\textsuperscript{259} provisions.\textsuperscript{260}

3. Timeliness

The only timeliness issue adjudicated in a reported GMA case\textsuperscript{261} was unusual. The Central Puget Sound Growth Management Hearings Board, upon reconsideration, decided that King County violated the GMA by improperly designating Bear Creek Urban Planned Developments (UPDs) in its UGA. The Board reasoned that (1) the CPPs did not direct this UGA designation and (2) the county had not otherwise justified the designation under GMA's UGA standards.\textsuperscript{262} The county appealed to King County Superior Court, contending that (1) the CPPs did direct the UGA designation, and (2) the county had justified the designation. Opponents of the Bear Creek UGA designation, "Friends of the Law," also appealed the Board's decision, but to Snohomish County Superior Court, asserting that the Board improperly limited its jurisdiction and raising issues about the validity of the county plan during the period of remand after the Board's determination of noncompliance.\textsuperscript{263} This lawsuit was dismissed because of service of process defects.\textsuperscript{264} Friends of the Law then filed the same appeal as a "cross-petition" in the county's superior court action more than thirty days after service of the Growth Board's final order. Friends of the Law's cross-petition was dismissed as untimely under the GMA and APA thirty-day limitation period.\textsuperscript{265}

Friends of the Law argued that the cross-petition was timely because it raised issues ancillary to King County's petition and was filed within the time limits under the civil rules. The court disagreed, holding that because the issues raised in the cross-petition were not ancillary, the civil rules were inapplicable, the APA limitation period

\textsuperscript{257} See King County, 979 P.2d at 381-82.
\textsuperscript{258} See WASH. REV. CODE § 36.70A.140.
\textsuperscript{259} See id. § 36.70A.110(5).
\textsuperscript{260} See King County, 979 P.2d at 382.
\textsuperscript{262} See WASH. REV. CODE § 36.70A.110(1)-(4).
\textsuperscript{263} See King County, 91 Wash. App. at 17 n.39, 951 P.2d at 1159.
\textsuperscript{264} See id. at 17 n.30, 951 P.2d at 1160.
\textsuperscript{265} See id. at 17, 951 P.2d at 1160.
was jurisdictional and, thus, the cross-petition must be dismissed. The court sympathetically rejected the policy argument that the court’s rigid application of the thirty-day limit to both appeals and cross appeals would lead to wasteful and unnecessary filing of protective appeals. However, unfortunately, because the APA contains no separate period for filing cross-petitions, and because APA’s service and timeliness requirements are jurisdictional,\textsuperscript{266} the court said the persuasive policy argument must be made to the legislature. The state supreme court recently upheld the court of appeals on this issue, observing that the APA’s strict timeliness requirements “reflect the high value placed on finality in administrative processes.”\textsuperscript{267}

4. Mootness

In the \textit{King County} case, the court also decided that an important GMA issue was moot. The Growth Board had decided that a King County UGA designation violated the GMA. After remand, the county apparently articulated its justification for the designation. The Board ruled that in compliance reviews after remand, its authority was limited to determining only “procedural compliance and not substantive compliance with the goals and requirements of the GMA.”\textsuperscript{268} Thus, the Board found procedural compliance because the county had articulated justifications, but the Board declined to determine whether they complied with the Act’s substantive UGA provisions.

A citizen group appealed the Board’s compliance determination, challenging the Board’s self-imposed limitation to reviewing only procedural compliance. However, because the superior court previously had ruled that the Growth Board erred in finding the county’s UGA designation was not directed by the CPP and was not compliant with GMA, the court ruled that the Board’s compliance review should not have happened and its propriety was moot. The court of appeals agreed that the Growth Board erred in finding a GMA violation in the first place because the Board lacked jurisdiction to decide whether a UGA designation directed by the CPP complied with the Act. Thus, the Board’s compliance review was a legal nullity and the challenge was moot. Despite the claim’s mootness, the court acknowledged its potential merit, observing that the “distinction between procedural and substantive compliance . . . is perplexing and may lack support in

\textsuperscript{266} See id. at 18-19, 951 P.2d at 1160-61.

\textsuperscript{267} \textit{King County}, 979 P.2d at 383, (citing JEM Broadcasting Co. v. Federal Communication Comm’n, 22 F.3d 320 (D.C. Cir. 1994)).

the provisions of the GMA." 269 Nevertheless, the court declined to invoke the public interest exception to the mootness doctrine.

The state supreme court recently reversed the court of appeals on the mootness issue. 270 Because the supreme court reversed the trial court and the court of appeals as to the Board’s jurisdiction to decide whether UGA designations directed by the CPP complied with statutory requirements, the lawfulness of the UGA designation was no longer moot, and that issue was remanded to the Board. 271 The supreme court noted that the Board’s previous ruling—that it would only determine procedural, and not substantive, compliance—was “an anomaly,” 272 and was abandoned by the Board in a subsequent unrelated case. 273 The Board now reviews local corrective actions taken after determinations of noncompliance for both procedural and substantive compliance. 274

5. GMA Noncompliance v. “Invalidity”: Effect on Vesting

When a Growth Board has ruled that local plan provisions or regulations are violative of GMA’s requirements, they are doomed, but not dead, unless they are subject to an “invalidity” order or until, after remand, they have been revised or repealed to comply with the Act. A 1995 GMA amendment 275 was enacted to clarify ambiguity about the legal status of local enactments after a Growth Board had determined that they were not in compliance with GMA requirements, but before they were locally amended.

The Growth Boards have no authority to adopt and impose local plan provisions or regulations. 276 The Boards’ remedial powers are limited to remanding noncompliant provisions to local government for rectification within a specified period of time. 277 Upon failure to achieve compliance after remand, the Board may recommend that the governor impose sanctions. 278 As a result of the Boards’ limited remedial powers, the uncertain legal status of noncompliant local provisions has tended to paralyze development, and the duration of the paralysis could be extended during judicial review of Board decisions.

269. Id. at 23, 951 P.2d at 1163.
270. See King County, 979 P.2d at 382.
271. See id.
272. Id. at 380 n.4.
273. See id.
274. See id.
277. See id. § 36.70A.300(3)(b).
278. See id. § 36.70A.330(3).
The 1995 amendment, along with a more definitive 1997 amendment, brought noncompliant GMA plans and regulations out of limbo by providing that "a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand . . . unless the Board makes a determination of invalidity." The statute goes on to provide that "[a] determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county."

Thus, the court of appeals held, and the state supreme court recently affirmed, that, absent an "invalidity" determination, county plan UGA designations remained in effect and development applications were properly processed after a Growth Board had found the UGA designations violative of the Act. A Board determination of invalidity must be included in a final order, supported by findings of fact and conclusions of law, that the continued validity of specified noncompliant plan provisions or regulations would "substantially interfere with the fulfillment of [GMA] goals." The court of appeals rejected the notion of an implied determination of invalidity and refused to impose the determination upon the Board as a matter of law.

Once a determination of invalidity has been properly issued and received by a city or county, the specified local provisions become legally inoperative and are not subject to vesting, except for subsequently filed permit applications for owner-built single-family homes, remodeling and expansion of existing structures, and lot line adjustments. The Supreme Court of Washington narrowly construed the Board's authority in holding that pre-GMA regulations were not subject to a determination of "invalidity." Having so held, the court

280. WASH. REV. CODE § 36.70A.300(4).
281. Id. § 36.70A.302(2).
283. See WASH. REV. CODE § 36.70A.302(1).
285. See WASH. REV. CODE § 36.70A.302(3).
286. See Skagit Surveyors, 135 Wash. 2d at 557-68, 958 P.2d at 970-74. The court acknowledged an exception to the rule if the ordinance adopting a GMA plan or regulations contains a "savings clause intended to review prior policies or regulations in the event the new plan or regulations are determined to be invalid." Skagit Surveyors, 135 Wash. 2d at 560, 958 P.2d at 971. In such cases, the Board has authority to decide "whether the prior policies or
declined to reach the issue of whether application of GMA's invalidity provisions, by creating a regulatory void, would violate the constitutional dimension of Washington's vested rights doctrine. If there is a constitutional right to determine the regulations governing a proposed development, is an invalidity order, which precludes the opportunity to vest, unconstitutional? 287

6. Standards of Review

The GMA does not specify standards of judicial review. Thus, courts apply standards of review applicable to the means of obtaining judicial review employed by the claimant. GMA issues are most commonly raised through APA petitions, as this is the exclusive means of reviewing Growth Board decisions. The APA standard of review has been discussed in several GMA cases, but apparently has not been an issue. 288 Standards of review are also specified in the other statutes authorizing judicial review. Standards of review applicable to constitutional writs of certiorari are the product of judicial interpretation. 289

A potential source of confusion is the relationship between the standard of administrative review applied by the Board and standards of judicial review applied by courts reviewing Board decisions. The GMA originally directed the Boards to find GMA noncompliance if the petitioner persuaded a Board by a preponderance of the evidence. 290 A 1997 GMA amendment changed the standard to the more deferential clearly erroneous standard 291 and was accompanied by legislative findings directing the Boards to accord local governments broad discretion. 292 A court applying this standard of judicial review must include in its calculus the Board's standard of administrative review. For example, if a court is applying the arbitrary and capricious standard, it must decide whether the Board was arbitrary and capricious in deciding that a county GMA enactment was or was not clearly erroneous.

Aside from the specific statutory standards of judicial review, the courts traditionally have deferred to the legal interpretations of agent-

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287. See Skagit Surveyors, 135 Wash. 2d at 578-79, 958 P.2d at 979-98 (Talmadge, J., dissenting.)
291. See WASH. REV. CODE § 36.70A.320(3).
292. See id. § 36.70A.320(1).
cies charged with administering a law. However, the courts have stressed that they will defer to agency interpretations only when the law is ambiguous and only when the interpretation is within the agency's expertise. In GMA cases, the courts often must decide whether to defer to a Growth Board or a local government. In the King County case, the court of appeals deferred to the county's interpretation, rather than the Board's, of an ambiguous countywide planning policy provision because it was the county's law.

C. Constitutional Challenges

There have been several constitutional challenges of various requirements of the GMA itself. In contrast, another case involved constitutional claims based on devaluation of property caused by local land use regulations implementing the GMA. All of the challenges have been unsuccessful.

In Snohomish County v. Anderson, several elements of the Act, including the provision for countywide planning policies and sanctions for noncompliance by withholding various state revenue sources, were challenged under the state constitution. All of the challenges were dismissed on procedural grounds.

In Postema v. Snohomish County, similar constitutional challenges of the CPPs failed for lack of standing and justiciability. In dicta, the court nevertheless discussed at some length a "one person, one vote" equal protection challenge. Postema claimed that a committee of county and city elected officials charged with developing and recommending a CPP violated his equal protection rights because, as a county resident, he voted only for the county members of the committee, while city residents voted for both city and county members. The court said the claim was without merit because the committee was purely advisory and possessed no governmental powers.

In Diehl v. Mason County, the county contended that broad Growth Board discretion over the validity of local plans and regulations made the GMA unconstitutionally vague. The court disagreed with the general proposition because the Board's authority is limited to determining whether local plans and regulations violate the specific terms of the GMA or substantially interfere with its stated goals.

293. See, e.g., City of Redmond, 136 Wash. 2d at 46, 959 P.2d at 1094.
295. See id.
Moreover, the court found the vagueness claim implausible in this case because the county enactments found noncompliant by the Board clearly violated specific requirements of the Act. The court also rejected the argument that the Board's authority to invalidate the enactments of local legislative bodies violated separation of powers. The court disagreed that the Board is purely an executive body encroaching on local legislatures. Rather, the court held that the Board was properly authorized to act quasi-judicially to effectuate state legislation.

In Jones v. King County, a landowner contended that county regulations, apparently implementing GMA, greatly reduced permissible development, thereby devaluing the land in violation of constitutional taking and substantive due process limitations. The court rejected the challenges under the distinctive regulatory taking and substantive due process doctrines developed by the Washington Supreme Court.

D. Urban Growth and Rural Sprawl

The required concentration of population in urban growth areas and the reciprocal prohibition of development at urban, or even suburban, densities in rural areas are the Act's two most central and pervasive goals. Although the Act denies any order of priority among its thirteen goals, it is fitting, and probably no accident, that "Urban Growth" and "Rural Sprawl" top the list. By concentrating population in tightly limited UGAs, public facilities and services can be more efficiently provided, natural resource industries and environmentally critical areas can be protected, and options for future development can be preserved. Similarly, by severely restricting

301. See WASH. REV. CODE §§ 36.70A.020(1) and (2); 36.70A.030(14), (15), and (16); .110; .350; .360; .362; .365; .367 (1998).
302. See WASH. REV. CODE §§ 36.70A.020 (preamble).
303. See id. § 36.70A.020(1) and (2).
development densities and intensities in rural areas beyond UGA limits, the need for inefficient systems of public facilities and services can be avoided or minimized, natural resource industries and critical areas (predominantly in rural areas) can be protected, and future options can be preserved. While the reciprocal goals are unquestionably rational, they are politically controversial because, when rigorously implemented and enforced, they may cause significant redistribution of wealth and impose a settlement pattern at odds with traditional American preferences.

Legislative controversy spawned statutory ambiguity about the locus of the line between state mandate and local policy discretion in determining the size of urban growth areas, development intensity within them, and permissible uses and densities in rural areas. The Growth Boards generally have resolved the ambiguity in favor of state mandate, expansively interpreting the Act to effectuate these central goals. The legislature has responded with GMA amendments affording greater discretion to counties and cities. So far, the courts have defended the Act's broad goals for urban and rural areas, while generally deferring to local policy choice in their implementation unless contrary to clear and specific statutory requirements. The courts have effectuated clearly manifested legislative intent in construing ambiguous GMA provisions, but have refused to "legislate" to rectify legislative impasse or default.

The Supreme Court of Washington declined to extend the state's vested rights doctrine to a petition to incorporate Vashon Island that would have allowed incorporation outside the county UGA under a

306. See ROBERT C. ELLICKSON & A. DAN TARLOCK, LAND USE CONTROLS, 14-15 (1981), quoting B. BRUCE-BRIGGS, LAND USE AND THE ENVIRONMENT, NO LAND IS AN ISLAND (1975) ("... 85% of urban families wanted single family homes on good sized lots. Gallup polls found that only one in eight Americans wishes to live in the cities, with about 30% preferring suburbs, about the same choosing small towns, and a quarter of all Americans preferring to live on a farm. An Opinion Research Corporation survey found that one-third of Americans would prefer open country. Americans want single-family homes, they want land, and the only way to achieve this is 'suburban sprawl'.")
307. See Settle & Gavigan, supra note 1, at 881-96.
308. See discussion infra Part III.K.
previous statute.\textsuperscript{311} The court also construed ambiguous provisions of the present statute to preclude incorporation outside the UGA.\textsuperscript{312} 

In another case, the state court of appeals declined to interfere with an annexation decision of the City of Spokane.\textsuperscript{313} Arguments that the UGA barred the annexation had no plausible legal basis at that time, when neither the city or county had GMA plans, and the city had not designated a UGA. The court rejected the argument that the city was obligated to comply with the county’s pre-GMA comprehensive plan as legally groundless. The court also declined the invitation to deny the annexation on the basis of GMA’s “policy against urban sprawl.” The court reasoned that this GMA “policy” did “not apply before the date the Act required GMA counties and cities to implement their comprehensive plans.”\textsuperscript{314} A more fundamental reason to reject the argument would have been that GMA’s sprawl avoidance goal has no independent legal effect.\textsuperscript{315}

There are two cases reviewing county UGA designations. In \textit{King County},\textsuperscript{316} the state supreme court held that a UGA designation specifically directed by the CPP was subject to Board review for compliance with GMA’s UGA limitations, even though the CPP had not been appealed to the Board. After acrimonious public debate, the county had included several “Bear Creek urban planned developments” (UPDs) within the UGA. A citizen group appealed the designations to the Board. After initially upholding the county, the Board, upon reconsideration, decided that the CPP did not call for UGA designation of the UPDs, and that the county had not otherwise justified the designation under the UGA provisions of the Act. The Board ruled that the designations were noncompliant and remanded them to the county. While developing additional justifications for the designations, the county obtained judicial review of the Board’s decision and won. The trial court and court of appeals held that the CPP did indicate that the UPDs should be in the UGA, and found it unnecessary to decide whether the designations otherwise satisfied the UGA requirements of the GMA. The citizen group apparently had argued that in addition to complying with the county’s CPP, the designations must comply with the UGA prescriptions of the GMA. The state


\textsuperscript{312} See id. at 771-72, 903 P.2d at 959.

\textsuperscript{313} Glenrose Community Ass’n v. City of Spokane, 93 Wash. App. 839, 971 P.2d 82 (1999).

\textsuperscript{314} 93 Wash. App. at 849, 971 P.2d at 87.

\textsuperscript{315} See discussion infra Part III.L.

\textsuperscript{316} King County v. Central Puget Sound Growth Management Hearings Bd., 979 P.2d 374 (Wash. 1999).
The court of appeals was more deferential to the county than the Board in the realm of the Act's UGA provisions, which may be GMA's most definitive and potent substantive requirements. In reversing the court of appeals, the state supreme court was not necessarily shifting the balance of power from local government to the state. The lower court's holding, that UGA designations (and, logically, other local GMA enactments) mandated by the CPP were immune from substantive review by the Board, would have made GMA requirements practically unenforceable, contrary to the Act's manifest intent.

However, in subjecting local UGA designations to Board review for fidelity to the Act, the supreme court had no occasion to address the relative discretion of local governments and the Board to interpret ambiguous or broad language in the Act's UGA provisions. Subsequent to the Board's determination of noncompliance, the county justified the UGA designation under the Act's "fully contained community" (FCC) provisions. On remand from the supreme court, how much discretion the Board will accord the county's interpretation and application of GMA's FCC provisions remains to be seen.

In Diehl v. Mason County, the court upheld the Board's determination that the county's UGA designations violated the Act. The court's decision is consistent with the general trend of judicial deference to local government in close cases, because this was not a close case. The county clearly and substantially violated very specific, unambiguous requirements of the Act. Counties are required to base the size of UGAs, and development allowed within them, on the Office of Financial Management (OFM) twenty-year population projections. The OFM projections are stated in terms of a range. The size of UGAs and the urban development allowed within them must be designed to accommodate population growth within the OFM range. The county thought the OFM numbers were too low.

317. See id.
318. See WASH. REV. CODE § 36.70A.350(1)(a)-(2).
320. See WASH. REV. CODE § 36.70A.120.
322. See Diehl, 94 Wash. App. at 653, 972 P.2d at 547.
However, rather than appealing the OFM population projection to the Board, the county used its own higher forecasts. The Board’s decision on this clear and flagrant violation of one of the most specific GMA requirements, which presumably infected the county’s UGA sizing and development regulations, was not a close case and was summarily upheld by the court.

Every city must be within a county’s UGA, no matter how extensive a city’s territory, how underdeveloped, and how little population growth is projected. Perhaps this arbitrary GMA requirement explains the Act’s seemingly irrational allowance of natural resource land designations within UGAs, which was at issue in City of Redmond v. Central Puget Sound Growth Management Hearings Board. Generally, it would contradict the purposes and functions of both UGAs and natural resource industry protection to place them in juxtaposition, because urban uses and intensities are deemed incompatible with the long-term commercial feasibility of resource industries and large vacant tracts of land interspersed in urban areas reduce the concentration of population and the efficiency of public facilities and services. Indeed, such a land use pattern might be characterized as sprawl.

Designation of agricultural land within a city might make sense when the land has immense commercial agricultural utility and the city has far-flung borders, little population, and a slow rate of growth. But the City of Redmond hardly meets these specifications, and the disputed areas that were designated “agricultural” apparently had modest commercial agricultural utility. The Growth Board ruled that the city’s designation violated the GMA. The supreme court disagreed that the designation was improper, but agreed that the city violated the GMA by failing to establish a system of transferable development rights (TDR) where resource land has been designated within a UGA. The court recognized that the TDR requirement was designed both to compensate owners of severely restricted urban land and to increase the density and intensity of development in the best-suited urban areas to which development rights would be transferred.

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328. See id. at 44, 989 P.2d at 1093.
329. See id. at 56-57 nn.9-10, 989 P.2d at 1099.
If UGAs are designed to concentrate population and development in limited areas, the other side of GMA’s antisprawl coin is the restriction of population and development in rural areas and resource lands outside of UGAs. Here, too, the courts have supported GMA’s central purposes while deferring to local government except in cases of clear violation of specific statutory requirements or flagrant violation of broad GMA mandates. Moreover, the courts have refused to defer to the Boards’ expansive interpretations of GMA’s substantive mandates.

In Clark County Natural Resources Council v. Clark County Citizens United, the court strictly applied clear statutory language in holding that Office of Financial Management (OFM) population projections were relevant only to county planning and regulatory provisions for urban growth within UGAs. The OFM projections were held legally irrelevant to county provisions for “nonurban” or “rural” growth. The Growth Board relied upon OFM projections in finding that the county’s provisions for rural growth, in combination with provisions for urban growth, were excessive. Because the Board decided that county provisions for rural development violated the GMA on the basis of this finding, the Board exceeded its authority. The court applied a de novo standard of review to the legal question of the effect of OFM population projections.

While acknowledging that deference to an agency’s legal interpretation is appropriate “when that will help the court achieve a proper understanding of the statute,” this was not such an occasion. The court stressed that “it is ultimately for the court to determine the purpose and meaning of statutes, even when the court’s interpretation is contrary to that of the agency charged with carrying out the law.” Because the “Board misread the statute and exceeded its authority,” the court reasoned that deference “would perpetuate, not correct its error.”

In Diehl v. Mason County, the court upheld the Board’s determination that the county’s provisions for development in rural areas violated the Act. It was not a close case. The county had designated over 5000 acres for “rural activity centers” development at densities of two to eight dwelling units per acre, approximating the densities

331. See WASH. REV. CODE § 36.70A.110.
332. Clark County Natural Resources Council, 94 Wash. App. at 677, 972 P.2d at 944.
334. Id.
allowed in the county’s UGA. In other rural areas, lots as small as 2.5 acres were allowed. The court did not specify the level of permissible development intensity in rural areas, but generally affirmed the Board’s determinations, suggesting that what would be permissible in rural areas would depend on the merit of the county’s justification.

The Diehl case and Clark County Natural Resources Council v. Clark County Citizens United were decided within a two week period, but are inconsistent on a significant GMA issue. In Diehl, the court relates with apparent approval one of the Board’s reasons for deciding the county’s rural development regulations were noncompliant—that, in combination with urban development, they would allow population growth exceeding the OFM projection. The subsequent Clark County Citizens United case emphatically decided that OFM projections were irrelevant to “nonurban” or “rural” growth. Yet the Diehl case, decided about a week earlier, is not mentioned. Presumably, the reasoning in Diehl that is inconsistent with Clark County Citizens United, and probably was not necessary for its decision, is not good law.

In a case that hinged upon vesting, the court of appeals decided that interim UGA designations constituted development regulations and trumped pre-GMA development regulations that would have allowed the proposed development. The County had granted approvals to a proposed plat and planned unit development (PUD) outside the UGA in Kitsap County. Under PUD regulations in effect at the time of application, when vesting occurred, the approved density of roughly one dwelling unit per acre was allowed. However, the site was outside the interim UGA that had been adopted prior to the time of vesting. The court held that the interim UGA was a development regulation compelled by state law and, thus, preempted the PUD regulations that permitted the approved density at the time of vesting. This case followed the judicial trend to effectuate GMA’s central purpose of concentrating growth and avoiding sprawl. However, it is also a rare example of liberal construction of GMA requirements to override local government that the supreme court has been unwilling to do.

337. Diehl, 94 Wash. App. at 655-57, 972 P.2d at 547-49.
338. Clark County Citizens United, 94 Wash. App. at 676, 972 P.2d at 943-44.
The courts and, to a lesser extent, the Boards, afford wide latitude to local attempts to meet broadly or vaguely stated GMA requirements. However, local default cannot possibly satisfy such requirements. In *Diehl v. Mason County*, the Board found that the county had made no attempt whatsoever to comply with GMA's open space requirement that each county include "greenbelts and open space areas in its GMA element" and "identify open space corridors within and between urban growth areas."341 Because the county had not even mentioned open space in its UGA element, the court summarily upheld the Board's finding of noncompliance.

**E. Concurrency**

No case has addressed the ultimate substantive requirement that local governments deny proposed development approval if the proposal would cause the level of services on local transportation facilities to fall below local standards in the transportation element of the comprehensive plan.342 The court of appeals has upheld a Board finding of noncompliance based on numerous deficiencies in the capital facilities element of the county's plan.343 Most significantly, the court rejected the county's argument that the GMA required level of service standards only for transportation facilities. The court inferred a level of service requirement for other public facilities from GMA capital facilities planning requirements relating to inventories of existing facilities and proposed locations and capacities of new or expanded facilities.344

**F. Essential Public Facilities**

The potentially powerful GMA requirement that local plans and regulations accommodate essential public facilities (EPFs)345 was instrumental in a court of appeals decision invalidating a city council's disapproval of a conditional use permit for a state work release facility, an EPF.346 The court held that the planning director's decision granting the permit was supported by substantial evidence and that the city council improperly relied on evidence of the irrational fears of neighbors in overturning the director's decision. The court reasoned

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341. 94 Wash. App. at 659, 972 P.2d at 550.
342. See WASH. REV. CODE § 36.70A.070(6)(b).
343. See *Diehl*, 94 Wash. App. at 657-58, 972 P.2d at 549.
344. See id.
345. See WASH. REV. CODE § 36.70A.200(2).
that under the Act’s EPF provision, irrational fears could not be the basis for precluding the siting of the work release facility.

G. Housing

One case has addressed GMA’s broadly stated obligation to provide housing for all economic segments of the population.347 In Diehl v. Mason County,348 the court upheld the Board’s determination that the county had violated the duty to “make adequate provisions for existing and projected [housing] needs of all economic segments of the community.”349 The Board’s counterintuitive reasoning, which the court uncritically accepted, accords little policy discretion to local government and immense power to the Boards. In the same decision, the Board had faulted the city for allowing too much housing with oversized UGAs and greatly excessive density in over 5,000 acres of rural activity centers! The county proudly argued that by such measures it was providing for affordable housing. The Board implausibly responded that under the county’s plan and regulations so much housing would be built that new urban infrastructure would be needed, and because the costs of such facilities would have to be borne by the new housing, it would not be affordable. Under the Board’s and court’s reasoning, any local plan could be found violative of this GMA housing requirement.

H. Critical Areas

Two cases have addressed GMA’s critical area requirements. In Diehl v. Mason County,350 the Board included in the long list of the county’s sins the failure to adequately protect351 aquifer recharge areas, one of the Act’s five categories of critical areas.352 The Board reasoned that the county’s measures addressing hazardous waste, water quality, and the “effects of development” were “laudable,” but insufficient.353 The Board faulted the county for failing to protect aquifers from threats other than hazardous waste and sewage, such as agricultural and household chemicals, animal waste, and the “effects of increased development . . . .”354 The Board also found the county deficient because many of the protections mentioned in its plan and regulations

349. See Diehl, 94 Wash. App. at 658, 972 P.2d at 549.
351. See Wash. Rev. Code § 36.70A.060(2).
353. See Diehl, 94 Wash. App. at 658, 972 P.2d at 549.
354. Id.
were works in progress that had not been adopted. The court embraced the Board’s reasoning and concluded that the county had not satisfied GMA’s duty to protect aquifers.

In the most recent GMA case, *HEAL v. City of Seattle*, the court of appeals addressed two issues related to the Act’s requirement that “[i]n designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas.” The Board had held that it had jurisdiction to review local “regulations,” but not local “policies” related to critical area protection, because the GMA only required local governments to adopt critical area regulations, not policies.

The court sympathetically disagreed with the Board’s strict construction of its statutory authority. The court held that if a city or county elects to adopt critical area policies, they are within Board jurisdiction for the “limited purpose of reviewing whether the policies are in compliance with the requirement to include the best available science in the process of developing the policy.”

The Board had also decided that the “best available science” requirement was procedural, rather than substantive. This was an issue on which the Boards disagree. The court of appeals, on the basis of the process-oriented statutory language, as well as analogous federal cases construing a similar requirement in the federal Endangered Species Act, agreed with the Central Puget Sound Board. The court held that best available science must be included in the record and substantively considered in the development of critical area policies and regulations. In so holding, the court stressed that the best available science requirement was not intended to dictate “any particular substantive outcome” or to be the sole factor to be considered.

The court concluded that the legislature intended local governments to balance such scientific evidence with many other “goals and factors to fashion locally appropriate regulations.” The court observed that the “Legislature has given great deference to the substantive outcome of the balancing process.”

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356. WASH. REV. CODE § 36.70A.172(1).
357. See *HEAL*, 979 P.2d at 867.
358. *Id.*
359. See *id.* at 869-70, citing Bennett v. Spear, 520 U.S. 154 (1997); Louisiana v. Verity, 853 F.2d 322 (5th Cir. 1988).
360. *Id.* at 870.
361. *Id.*
362. *Id.*
363. *Id.*
I. Natural Resource Lands

In two cases, the courts have reviewed issues concerning the proper designation of resource lands, but not the requisite protection of natural resource industries. In both cases the court upheld the designation criteria employed by local government and ruled that the Boards had imposed improper criteria. The cases have nothing else in common.

In City of Redmond v. Central Puget Sound Growth Management Hearings Board, the city had designated fallow valley land as agricultural resource land. The Board ruled that the designation was improper for two reasons. First, the land failed to satisfy either of the two statutory designation standards. The record did not show that it was primarily devoted to agricultural use and that it had long-term commercial agricultural significance. Second, the city failed to establish a program of transferable development rights (TDRs), as the Act requires when resource lands are designated within a UGA. The court upheld the Board’s decision on the basis of the city’s failure to establish a TDR program but devoted most of the opinion to dicta disagreeing with the Board’s interpretation of one of the two statutory designation standards. The Board had ruled that the landowner’s actual use and intent determined whether land was “primarily devoted to” commercial agricultural use. The court disagreed, concluding that the land could be “devoted” to agricultural use by the city’s zoning. The court ignored the fact that the Board had also based its disagreement with the city’s designation on the lack of any evidence in the record that the land had long-term commercial significance.

While in the Redmond case the Board had ruled that the city’s agricultural designation criteria were too strict, in Manke Lumber Company v. Diehl the Board had ruled that Mason County’s forest designation criteria were too permissive. The Board had ruled that the county violated the GMA by (1) employing, as designation criteria, a 5,000-acre minimum parcel size and property tax classification as of a date prior to establishing the criterion; (2) mapping designated forest land before adopting designation criteria; and (3) excluding land that should have been designated. The court reversed the Board, hold-

365. See WASH. REV. CODE § 36.70A.030(2).
366. See City of Redmond, 136 Wash. 2d at 44, 959 P.2d at 1093.
367. See. WASH. REV. CODE § 36.70A.060(4).
368. See City of Redmond, 136 Wash. 2d at 49-53, 959 P.2d at 1095-97.
369. See id. at 49-50, 959 P.2d at 1095-96.
371. See Manke Lumber Co., 91 Wash. App. at 800, 959 P.2d at 177.
ing that the county’s interpretation of the designation criteria was within its discretion under the Act and administrative “minimum guidelines,” there was not substantial evidence supporting the Board’s conclusion that the county had improperly mapped the parcels before adopting designation criteria, and there was no evidence of any excluded parcel. In holding that the Board had exceeded its authority, the court stressed the broad range of local discretion in GMA implementation.

J. Countywide Planning Policies

The supreme court decided Snohomish County v. Anderson in two installments. In Anderson I the court held that countywide planning

373. See Manke Lumber Co., 91 Wash. App. at 803-04, 959 P.2d at 1179:
The GMA directs counties and cities to determine what land is “primarily devoted to ... long-term commercial timber production.” RCW 36.70A.030(8). The GMA confers broad discretion on local governments making this determination. The Washington State Growth Strategies Commission’s chair, in a cover letter, explained to Governor Gardner the rationale for conferring discretion on local governments as follows: “[O]ur strategy’s success rests primarily on planning decisions being made at the local level and those plans being given a presumption of validity.” “The Commission believes the foundation blocks of a statewide growth strategy are local governments. Locally elected officials working with their citizenry are best able to tailor broad growth policies to their communities.” FINAL REPORT OF THE WASHINGTON STATE GROWTH STRATEGIES COMMISSION: A GROWTH STRATEGY FOR WASHINGTON STATE [hereinafter FINAL REPORT], at 4 (September 1990).
The state should play a critical role in assisting local governments and regional organizations in carrying out its growth strategy. As part of that role the state should develop guidelines and regulations and provide technical assistance for planning and implementing all aspects of growth legislation. However, the state should facilitate rather than dictate local comprehensive planning, and should speed up rather than slow down its process. The state should not become an unwieldy layer of review and approval, but a facilitator and an arbiter for local government.

Final Report, at 15.

In 1997, the Legislature reiterated its intention that, within the general GMA framework, local governments assume broad discretion in developing specific comprehensive plans tailored to local circumstances:

In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county’s or city’s future rests with that community.

RCW 36.70A.320(1) (emphasis added).
policies (CPPs) were not subject to referendum because the GMA requires the "legislative authority," rather than the county as a governmental entity, to adopt CPPs. Following a line of Washington cases, the court reasoned that the legislature, by assigning the duty to the county legislative authority, manifested intent that its decision not be subject to referendum. This conclusion was buttressed by the elaborate statutory procedural requirements for development and adoption of CPPs, which, the court reasoned, could not be satisfied through the referendum process. While this reasoning is superficially appealing, it is vulnerable to the argument that law is not made but rejected if a referendum is successful. Following voter rejection, the county legislative body could then go through the statutory process again. The court also suggested that CPPs should not be subject to local referendum because CPPs are not matters of local governance, but are part of a statewide program of growth management. While so deciding, the court stressed that the CPP did not affect any legal rights.

In Anderson II, the court rejected a flurry of constitutional challenges of the GMA, again stressing that the CPP "does not establish, dissolve or modify any legal rights." In Postema v. Snohomish County, the court of appeals rejected several constitutional challenges of the CPP process that were not properly raised in Anderson II. Again, the court minimized the legal effect of CPPs. But in King County v. Central Puget Sound Growth Management Hearings Board, the court breathed potency into a CPP. The court held that the CPP was binding upon the county and, presumably, its constituent cities. The court reasoned that CPPs are:

the major tool provided in the GMA to ensure that the comprehensive plans of each city within a county agree with each other. If the CPPs served merely as a nonbinding guide, municipalities would be at liberty to reject CPP provisions and the CPPs would not ensure consistency between local comprehensive plans.

375. See Anderson I, 123 Wash. 2d at 156, 868 P.2d at 118.
376. See id. at 159, 868 P.2d at 120 (noting that permitting the referendum would "jeopardize an entire state plan and thus would extend beyond a matter of local concern.")
377. See id. at 154, 868 P.2d at 117 ("The ordinance does not establish, dissolve, or modify any legal rights. It merely establishes very general goals governing such issues as development of urban and rural areas, housing, and transportation. . . .")
379. Id. at 842, 881 P.2d at 245.
381. See 83 Wash. App. at 578, 922 P.2d at 179.
382. 979 P.2d 374 (Wash. 1999).
383. Id. at 381.
In a petition to the Board, a citizen group had challenged the inclusion of several adjacent "urban planned developments" (UPDs) in the county’s UGA. They argued that the UGA designation was inconsistent with the CPP and violated the Act’s UGA requirements. The Board, upon reconsideration, ruled that the UGA designation did not comply with the Act because (1) the CPPs were internally inconsistent and not binding on the county’s UGA designation, and (2) the county had not adequately justified its inclusion of the UPDs in the UGA under the Act’s UGA requirements. The county appealed the Board’s decision to superior court, claiming that the CPP did direct the UGA designation and that the county had adequately justified its designation under GMA’s provisions.

In court, the citizens argued that the designation was not directed by the CPP, but even if it were, it violated the Act’s UGA requirements. They contended that if CPPs were directive, and conclusive of the propriety of UGA designations, they would be insulated from public accountability because only cities and the state may appeal CPPs to the Board.384 The trial court and court of appeals rejected the argument, holding that the county was obligated to designate the UGA in accordance with the directives of the CPP.385 Accordingly the court declined to review the designation’s compliance with statutory UGA restrictions, effectively holding that actions taken by a county in accordance with a CPP directive conclusively comply with statutory requirements.386 By so holding, the court imbued CPPs with a legal effect not suggested by the GMA.387

However, the state supreme court reversed the court of appeals. The supreme court agreed that the CPP was directive and binding but unanimously held that the directive CPP did not immunize the county’s responsive UGA designation from Board review.388 The court reasoned that this interpretation of the Act was necessary to achieve consistency with GMA’s public participation and UGA designation requirements.389

The CPPs are explicitly designed to satisfy the GMA requirement that the plans and regulations of adjacent cities and counties be coordinated and consistent.390 In one case, the court held that a county
violated this interjurisdictional coordination and consistency requirement by using different population projections than a city in negotiating the UGA.  

K. Comprehensive Plans and Development Regulations

Prior to GMA's adoption, none of Washington's three planning and zoning enabling acts clearly required that zoning and other local regulatory laws be consistent with separately enacted local comprehensive plans. While paying little attention to the differing specific language in the three enabling acts, the courts rejected the argument that substantive consistency between zoning regulations and plan provisions was required and, for a time, held that only "general conformance" was required. Then, without overruling the "general conformance" cases, the courts effectively held that no correspondence between zoning regulations was required because the plan, as a mere guide, had no independent legal effect. Thus, zoning regulations prevailed over inconsistent plan provisions.

It was generally assumed that a purpose and effect of the GMA was to change the prior law and require consistency between plans and regulations. The GMA explicitly required that comprehensive plans meeting exacting requirements be adopted and that development regulations be consistent with and implement the comprehensive plan. Moreover, the Act separately required that each GMA county and city "perform its activities and make capital budget decisions in conformity with the comprehensive plan." Thus, in one case, the supreme court assumed that a city's regulatory actions must conform to its comprehensive plan, but upheld the city's action because it had not yet adopted its plan and, thus, there was "no plan in place to violate."

In another case, the court of appeals relied upon GMA's requirement that regulations be consistent with plans in holding that a community council acted unlawfully. Community councils have

395. See, e.g., Cougar Mountain Assocs. v. King County, 111 Wash. 2d 742, 765 P.2d 264 (1988).
396. See WASH. REV. CODE § 36.70A.040(3) and (4).
397. Id. § 36.70A.120.
statutory authority to disapprove city planning and zoning provisions.401 The community council had not disapproved the city’s plan, but later rejected zoning provisions adopted to implement the plan. Apparently reasoning that the statute governing community councils must be construed to satisfy GMA requirements, the court held that the council’s action violated the Act’s requirement that regulations must be consistent with plans. The court said the community council would have to have disapproved of city plan provisions in order to disapprove of their implementing zoning regulations.

The state supreme court confounded land use planners and lawyers in Citizens for Mount Vernon v. City of Mount Vernon by seemingly ignoring GMA’s consistency requirements and reciting the pre-GMA rule that regulations prevailed over inconsistent plans.402 However, this was mere dicta because the court did not decide that the inconsistent zoning, which prohibited the challenged development, was valid, but rather that a GMA plan provision, which arguably allowed the development, could not be the sole basis for the city’s approval of the proposal when applicable regulations did not allow it.403

Nothing in the GMA provides that plans can be used, without any implementing regulations, as the sole basis for approving development. However, the court acknowledged that a provision of the 1995 regulatory reform statute, RCW 36.70B.030(1), directed local government to determine, in making project permit decisions, a “proposed project’s consistency with applicable development regulations, or in the absence of applicable regulations, the comprehensive plan.” On the basis of this provision, the project proponents contended that the plan did allow the project and that the “plan can be used to make a specific land use decision.”404 The court rejected this argument because “our cases hold otherwise,”405 explicitly referring to pre-GMA cases holding that regulations did not have to be consistent with plans. The court did not interpret or even mention the GMA’s consistency provisions. Thus, the court may not have been denying that GMA requires consistency between plans and regulations, but may have been merely construing and applying RCW 36.70B.030(1). This pro-

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403. See id. at 870, 947 P.2d at 1213.
404. Id. at 872-73, 947 P.2d at 1214.
405. Id. at 873, 947 P.2d at 1214.
vision authorizes the use of plans in project review only "in the absence of applicable regulations." 406 In this case, applicable regulations were not absent. Thus, the statute did not authorize use of the plan as a basis for project approval.

Of course, the development proponent might have argued that applicable regulations were absent because they were inconsistent with the plan and, thus, were void. The court might have rejected this contention by reasoning that the GMA presumes the validity of plans and regulations, and that they remain effective absent a Board appeal and even if a Growth Board has found noncompliance, unless the Board has issued an invalidity order or the plans and regulations have been repealed or amended by local government. 407 Thus, the court might have reasoned (and might have meant by the unfortunate language chosen) simply that plans generally do not have independent regulatory effect. That was the law before GMA, 408 and it continues to be the law, subject to the statutory exceptions. 409 However, the exceptions apply only when applicable regulations do not exist. 410 The court did not deny or discredit, indeed, did not even mention GMA's consistency requirement. The court did not say that Growth Boards lack authority to find implementing regulations, or even preexisting regulations, noncompliant with the GMA.

In another case, the court acknowledged that implementing regulations could be found noncompliant and invalidated by the Growth Boards for inconsistency with UGA designations, which, when final, become part of comprehensive plans, and that preexisting regulations could be found noncompliant, (but not "invalid") and sanctions recommended, for the same reason. 411 What if, in this case, the developer instead had challenged the zoning for inconsistency with the plan before the Growth Board and had won? Nothing in the court's reasoning compels the conclusion that the court would have reversed the Board, and it seems highly unlikely that the court would have done so.

The court also might have reasoned that the zoning was not inconsistent with the plan and, thus, the plan clearly could not have been employed under RCW 36.70B.030(1) because unquestionably

407. See discussion supra Part II.B.5.
409. See WASH. REV. CODE § 36.70B.030(1).
410. See id.
valid applicable regulations existed. The court could have found the underlying zoning consistent because it apparently allowed the same general uses as the plan contemplated, but at lower levels of development intensity. States that require regulations to be consistent with plans generally do not require that the regulations allow the highest density or intensity allowed by plans.\textsuperscript{412} If the underlying zoning was consistent with the plan, the city would not have had authority under RCW 36.70B.030(1) to apply its plan rather than the more restrictive zoning regulation.

In sum, while the opinion's language may have been misleading, the court did not have to decide whether the GMA requires regulations to be consistent with plans. The court merely had to decide that a plan does not have independent regulatory effect to allow development that is prohibited by applicable regulations, unless or until they have been invalidated under the GMA. RCW 36.70B.030(1) does not provide to the contrary.\textsuperscript{413}

\textit{Association of Rural Residents v. Kitsap County},\textsuperscript{414} a court of appeals decision potentially reviewable by the supreme court, has some similarities with the \textit{Mount Vernon} case, but critical differences


\textsuperscript{413} The alternative argument in support of the city's development approval had nothing to do with GMA's plan consistency requirement. Rather, the developer argued that, in approving the planned unit development (PUD), the city rezoned the land, and, thus, the zoning was consistent with the plan. The court again reached the right decision, but perhaps for the wrong reason. The court agreed that PUD approval constituted a rezone but the rezone was invalid "spot zoning." The court applied the spot zoning doctrine mechanically and inconsistently with its recent cases. See, e.g., SANE v. City of Seattle, 101 Wash. 2d 280, 676 P.2d 1006 (1984). The court acknowledged that the "main inquiry is whether the zoning action bears a substantial relationship to the general welfare of the affected community," quoting from SANE, and that the "vice of 'spot zoning' is not the differential regulation of adjacent land but the lack of public interest justification," citing \textit{SETTLE, WASHINGTON LAND USE, supra} note 2, \S 2.11(c), but then concluded the rezone was unlawful spot zoning merely because it treated a large parcel of land differently from its surroundings. See Citizens for Mount Vernon v. City of Mount Vernon, 133 Wash. 2d 861, 875-76, 947 P.2d 1208, 1215-16. Because the PUD was consistent with the city plan, presumably it had public interest justification. At least the court did not explain why the general welfare was not substantially served by the PUD.

A more appropriate reason for rejecting this argument would have been that the PUD approval in this case did not rezone the parcel. This is so because PUD approval is a very special kind of rezone. It locates on the zoning map a "floating zone" provided in the zoning text but not the map. Under the terms of the text, the "floating zone" can be brought to earth through a map amendment (rezone) only in specified mapped zones. Since the floating zone text did not allow the special PUD rezone to occur in the mapped zone of this parcel, the rezone was unlawful and void. A city must comply with its own regulations until they are legislatively changed by the city. Here the zoning text of the floating PUD provision did not allow a PUD rezone of this parcel. The city did not legislatively amend the PUD text to allow the rezone. Therefore, the city's attempted quasi-judicial rezone through PUD approval was unlawful.

as well. As in Mount Vernon, opponents of a locally approved planned unit development (PUD) claimed that the project violated the GMA. In both cases, the local PUD approvals were overturned by the courts, but under different circumstances and for very different legal reasons. In Mount Vernon, the zoning regulations did not allow the PUD, and the court, in effect, held that a plan generally does not have regulatory effect and could not be the sole basis for regulatory approval before or after the GMA. The court invalidated the city’s attempt to give the plan independent regulatory effect but did not base its decision on the GMA.

In Rural Residents, the regulations allowed the PUD, but the development, with a density of about one dwelling unit per acre, was proposed on a site outside the interim urban growth area (IUGA). Even though the county’s IUGA designations had been found non-compliant with the Act, they had not been invalidated and, thus, remained in effect. The issue was what the effect of the IUGA was under these circumstances.

Under the GMA, interim UGAs are explicitly characterized as development regulations, while final UGAs seem to be regarded as comprehensive plan provisions. The Act also provides that UGA designations, without an “interim” or “final” modifier, are to be included in comprehensive plans. While this provision does not distinguish between interim and final UGAs, it should be interpreted as referring only to the latter, because IUGAs are designated before plan adoption and must be finalized “at the time of” plan adoption. In short, the status of IUGAs under the Act is clear. They are development regulations. While, under the language of the Act, arguably final UGAs may metamorphosize into plan provisions, that intriguing issue was not presented in Rural Residents, because only the IUGA had been designated.

The developer argued, on the basis of the Mount Vernon case, that the more specific pre-GMA PUD regulation allowing the proposed development must prevail over the more general GMA defini-

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415. See Mount Vernon, 133 Wash. 2d at 873-74, 947 P.2d at 1214-15.
416. See id.
417. See 974 P.2d at 866.
418. See WASH. REV. CODE § 36.70A.110(5) ("...[E]ach county shall adopt development regulations designating interim urban growth areas ...")
419. See id. ("Final urban growth areas shall be adopted at the time of comprehensive plan adoption ... ").
420. See id. § 36.70A.110(6) ("Each county shall include designations of urban growth areas in its comprehensive plan.").
421. See id. § 36.70A.110(5).
422. Id.
tion of "urban growth." \textsuperscript{423} The court disagreed, reasoning that Mount Vernon involved conflict between the city's regulations and the city plan, while in Rural Residents there was no conflict between the county regulations and plan, but "between local regulations and a state statute both defining in their different ways where urban growth is permissible." \textsuperscript{424} Because the "intention behind the mandate for designation of interim urban growth areas clearly was to prevent urban growth from occurring in rural areas while the planning process continued," \textsuperscript{425} the court reasoned, the statute's IUGA requirement, in combination with its definition of "urban growth," prohibited what the county regulations allowed. Where in conflict, a statute prevails over a local ordinance.

The court's actual reasoning is a radical departure from Washington GMA case law, because it converts a statutory requirement that counties adopt IUGAs into a self-executing statutory prohibition of urban development outside of IUGAs. The statute, by its terms, obligates counties to adopt IUGAs, subject to Growth Board review and potential invalidation and subject to sanctions for plan provisions and development regulations violative of the Act.

The statute does not prohibit private urban development outside of IUGAs. The only way to convert a statutory obligation of counties, subject to limited Growth Board review and remedies, into a direct statutory prohibition of private development is through extremely liberal interpretation to effectuate legislative intent. However, the legislature did not provide that the Act was to be liberally construed, as it was riddled with legislative compromise. Thus, the supreme court has stressed that it will not "legislate" to fill GMA gaps.\textsuperscript{426}

The Rural Residents court's reasoning deviated from most previous GMA cases, and the court could have used reasoning more consistent with precedent. The court might have reasoned that because the Act explicitly characterizes county IUGA designations as "development regulations," the conflict was not between local regulations and the legislative intent underlying a broad statutory aspiration, but between two different county regulations—the IUGA regulation and the PUD regulation. The court then could have interpreted the GMA-required county IUGA designation in light of the purposes of the statutory requirement and could have concluded that the conflict

\textsuperscript{424} Id. at 870.
\textsuperscript{425} Id. at 869.
between the county's IUGA and PUD regulations must be resolved in favor of the later enactment, both because it was later and because it was required by state law. The court hinted at such a rationale by holding that "the designation of an interim urban growth area can be . . . an effective development regulation."\(^{427}\) The court did not articulate the logical conclusion of this characterization.

L. The Legal Effect of GMA Goals

GMA's thirteen broad goals offer a potential basis for expansive judicial interpretation of GMA's requirements. However, the courts, conscious of the tenuous legislative balance underlying the Act, generally have not been inclined to use the goals to convert vague substantive principles into specific constraints on local discretion. Thus, in *Skagit Surveyors*, the first supreme court decision reviewing a Growth Board decision, the court announced that it would not broadly construe the Board's power because the legislature carefully delimited Board authority and did not provide that the Act should be liberally construed.\(^{428}\)

The GMA, as originally enacted, narrowly limited the legal effect of the goals, prescribing that they "shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations."\(^{429}\) However, a 1995 amendment gave the goals a new role by authorizing the Boards to determine "invalidity" on the basis of whether a noncompliant local plan or regulation would "substantially interfere with the fulfillment of the goals of this chapter."\(^{430}\) And, ironically, a 1997 amendment, designed to reduce the Boards' substantive authority and increase local policy discretion, contained language that could be construed to have the opposite effect. In changing the Boards' standard of review from "preponderance of the evidence" to the more deferential "clearly erroneous," the amendment provided that a Board must find compliance unless it "determines that the action by the state, county, or city is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of this chapter."\(^{431}\) The literal language of the 1997 amendment provides a basis for the argument that the goals are not mere "guiding" principles, but substantive standards to be applied by the Boards. However, given the context of this 1997

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428. See *Skagit Surveyors*, 135 Wash. 2d at 558, 958 P.2d at 970.
430. 1995 Wash. Laws ch. 347 § 110 (codified at WASH. REV. CODE § 36.70A.302(1)(b)).
amendment, legislative intent would have to be ignored if it were construed to elevate the legal status of the GMA goals, effectively increase state mandate, and reduce local policy discretion.

In one case, the court of appeals, apparently considering only the statute's literal language, observed that the "GMA clearly allows the Board to consider both the goals and specific requirements of the GMA when considering a petition alleging noncompliance."432 The court confused the authority conferred upon the Boards in 1995 to use the goals as criteria in deciding whether to impose the new remedy of "invalidity" with much broader authority to employ the goals as standards for determining noncompliance. Ironically, the court relied upon *Skagit Surveyors* in finding that the Board had implied authority, even though the supreme court rejected a similar implied authority argument in that case.433

An apparent attempt to induce the court to transform a GMA goal into a specific requirement that would have barred an annexation to the City of Spokane was unsuccessful.434 The court rejected the argument on the narrow ground that the GMA goals did not have such prescriptive effect before the city had adopted its GMA plan. The court might have said that the GMA goals do not have independent prescriptive legal force at all.

**IV. CONCLUSION**

Political controversy and compromise riddled the GMA with vague and wavering lines between state mandate and local discretion. The Growth Boards, whose members have expertise and experience extending beyond law to professional planning and policy-making, occasionally have been inclined to fill legislative gaps to produce a coherent program of growth management. The legislature has responded with occasional amendments generally reducing the extent of state mandate, as construed by the Boards, and increasing local discretion. The courts, oriented to the rule of law, while appreciative and supportive of GMA's central purposes and principles, generally have required GMA's legal effects on local government and private landowners to be firmly rooted in statutory language. While respectful of Growth Board expertise, the courts have not hesitated to curtail expansive interpretations of vague or broad statutory provisions. Cognizant of the Act's turbulent legislative history, the courts usually

433. See id.
have refrained from recognizing specific legal requirements on the basis of broad legislative intent.