

LOCAL LAND USE AUTHORITY IN WASHINGTON STATE

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SUMMARY

In interpreting Washington's landmark Growth Management Act, RCW 36.70A, a state growth management hearings board has declared as "a fundamental axiom of growth management: 'the land speaks first.'" The board stated: "Only after a county's agricultural, forestry, and mineral resources have been identified and actions taken to conserve them, and its critical areas, including aquifers, are identified and protected is it then possible and appropriate to determine where, on the remaining land, urban growth should be directed ..."¹

The Growth Management Act (GMA) was adopted in 1990—and revised in 1991 and subsequently—in response to intense population growth and land development in Washington State and to the threats that sprawling development presented to the state's natural resources and quality of life. Local governments implement the goals and mandates of the GMA through planning and development regulations adopted under their delegated land use authority.

Washington's shorelines, surface waters, and groundwater are among its most important natural resources, and are protected by state and federal statutes, administrative rules, and agencies. Local governments in Washington have primary responsibility for land use regulation, however, and even the state-created mandates of the GMA are implemented through a "bottom-up" system of local control. In other rulings, the state hearings board has noted that the GMA "is founded on the premise that local governments rather than the state government have the primary duty and authority for growth-management policy-making and, further, that the choices made by those local governments may be different in different parts of the state." This approach has been characterized by that board "as unique among states."²

Washington's land use law implemented smart growth principles even before smart growth became widely known. The Growth Management Act, the Shoreline Management Act of 1971, the State Environmental Policy Act of 1971, and other statutes require or encourage local governments to exercise their land use powers to direct growth to appropriate areas, to preserve the environment, and to plan for future growth at local, landscape, and regional scales.

Although Washington state's land use law relies on a bottom-up approach and gives discretion to localities to adopt plans and land use techniques that suit their local circumstances, opportunities abound for state agencies to guide, assist, and encourage localities to protect important state objectives such as drinking water supply and quality. To illustrate, counties, cities, and towns required to comply with the GMA must identify critical areas and adopt development regulations to protect them. Critical areas include wetlands, habitat conservation areas, and critical recharge areas for drinking water aquifers. The GMA does not direct localities as to how they should identify these critical

areas or in determining how to protect them through regulation. A state agency with responsibility for drinking water protection could form a partnership with local governments in priority locations and assist them in these tasks through training, providing data and GIS services, and best regulatory practices including sample land use regulations from other localities. A further invitation to state agency assistance is found in the requirements that localities use best available science in designating and protecting critical areas and that local regulations ensure no net loss of values in critical areas.

Other illustrations include the following: Under the State Environmental Policy Act local planning commissions that approve development applications are required to mitigate any probable adverse environmental impacts by reference to mitigation measures contained in local comprehensive plans and land use regulations or elsewhere in state law. This provides an opportunity for state agencies to provide model language for measures that mitigate development's impact on drinking water to be included in local comprehensive plans and land use regulations. Under state law, both building permits and subdivision approvals are conditioned on a showing that adequate potable water is available to serve the proposed new populations served by developments. Localities that are subject to the GMA must include an element in their comprehensive plans that provides for the protection of groundwater used for public water supplies. Open space corridors must be identified, favorable property tax assessments may be levied on certain natural resource areas, and the purchase of priority open space is authorized. Comprehensive planning at the watershed level is encouraged. All of these provisions, among others contained in this report, provide opportunities for partnerships between relevant state agencies and local governments.

This report outlines the authority of local governments in Washington to regulate the use of private land, and focuses on traditional and non-traditional land use tools that allow local governments to protect water and other natural resources, to manage growth, and to preserve quality of life. Part I outlines the types of local governments in Washington State. Part II sets out fundamental sources of local land use authority in the state. Part III discusses the Shoreline Management Act of 1971, the State Environmental Policy Act of 1971, and the Growth Management Act. Part IV describes local authority specifically to protect groundwater and water quality. Part V reviews innovative local land use techniques that can be used by local governments to protect water and other resources.

TABLE OF ACNONYMS

RCW Revised Code of Washington

WAC Washington State Administrative Code

GMA Growth Management Act

SEPA State Environmental Policy Act

SMA Shoreline Management Act

CTED Department of Community, Trade, and Economic Development

DOH Department of Health

MRSC Municipal Research and Services Center of Washington

WAPRAC *West's Washington Practice Series* (West 2007)

I. LOCAL GOVERNMENTS IN WASHINGTON STATE

Washington State has a land area of 66,544 square miles, and a population of 6,131,445.³ According to the 2002 U.S. Census of Governments, the state has 39 county governments, 279 municipal governments, and 1,173 special district governments.⁴

The basic units of local government in Washington---counties, cities, towns, and special purpose districts---have been delegated legal authority by the state to adopt a variety of land use regulations, and to adopt local land use plans. Some localities have engaged in informal cooperation. The Growth Management Act has formalized interlocal relationships to some extent and has encouraged greater cooperation and efficiencies in shared services.⁵

Counties: As legal subdivisions of the state, with fixed boundaries established by the legislature, counties are identified by the GMA as regional governments. The county planning policy is the initial framework for comprehensive planning under the GMA.

Cities and Towns: Under the GMA, cities are recognized as primary providers of urban services within urban growth areas.

Washington statutes classify cities and towns on the basis of population at the time of organization or reorganization: First Class Cities are defined under the Revised Code of Washington at RCW 35.01.010; Second Class Cities at RCW 35.01.020; and Towns at RCW 35.01.040. Under the authority of the Optional Municipal Code, RCW Ch. 35A, unincorporated areas may incorporate as code cities and statutory cities or towns may reorganize as code cities.

Cities, towns, and counties planning under the GMA which have shared borders or regional interests are required to cooperate in planning. The state legislature has encouraged further cooperation between jurisdictions through the Local Government Services Agreements Act of 1994, RCW Ch. 36.115.

Special Purpose Districts: Special purpose districts, which are also called special districts, are limited purpose local governments. In a 2003 study, Washington's Municipal Research and Services Center (MRSC) described this form of local government:

As with other local governments, special purpose districts are "creatures of the state" and only have those powers granted to [them] by the state. Almost every municipality, every county, and many state agencies have relationships with special districts. Cities, towns, and special districts share services through interlocal contracts and annexation. The county legislative body creates most of the special districts and the county offices provide administrative services to special districts. State departments and agencies provide the regulatory framework in which many of the districts operate.⁶

MRSC lists three categories of special districts in Washington:

- Districts in which the governing body acts independently from the legislative body that creates it;
- Districts created principally as a method of financing a particular service;

- Entities sometimes referred to as special districts, but which are significantly different. These include boards of joint control; certain legal authorities formed by interlocal agreement for power generation; metropolitan municipal corporations; and operating agencies.⁷

II. FUNDAMENTAL LOCAL LAND USE AUTHORITY

Counties, Cities, and Towns

Under the police power provisions of the Washington State Constitution, “any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”⁸

Dillon’s Rule: Courts in Washington have followed Dillon’s Rule limiting the authority of municipal corporations to that granted by the legislature: “[A] municipal corporation’s powers are limited to those conferred in express terms or those necessarily implied. If there is any doubt about a claimed grant of power it must be denied. The test for necessary or implied municipal powers is a legal necessity rather than a practical necessity.”⁹

Under traditional sources of authority in Washington, counties, cities, and towns are authorized but not required to adopt planning and land use regulations:

- Counties may establish planning and zoning regulations under the Planning Commission Act, RCW 35.63, or the Planning Enabling Act, RCW 36.70.
- Cities and towns may establish planning and zoning regulations under the Planning Commission Act, RCW 35.63, or under the Optional Municipal Code, RCW Ch. 35A.63.

Under the home rule provisions of the Washington State Constitution, Art. XI, § 10, cities with a population of 10,000 or more may choose a home rule form of government with a charter that may include planning and zoning powers. Home rule in Washington, however---unlike some other states---does not allow local governments to supersede state law: “[A] home rule city is subordinate to the legislature as to any matter upon which the legislature has acted, whether it be regarded as of state, local, or joint concern. In the event of an inconsistency, the statute prevails.”¹⁰

In at least one case, Washington courts have found that a first-class city may zone under its police powers where it had not zoned under the enabling act.¹¹

Planning and Zoning Enabling Acts:

Under Washington’s enabling statutes, the county or city legislative body must create a planning commission or agency before adopting land use regulations. The local legislature is also authorized to create a board of adjustment, which reviews and approves conditional or special use permits and variances. In some cases, the legislature may appoint a hearing examiner or a zoning adjustor, who may take on some duties of the planning board or board of adjustment.

Under each of the enabling acts, the planning commission or agency creates and recommends a comprehensive plan to the local legislature. The comprehensive plan is not effective until it is adopted by ordinance by the local legislature. Unlike zoning regulations, the comprehensive plan does not restrict the use of land. Washington courts have found the comprehensive plan to be “only a general ‘guide’ or ‘blueprint’ to zoning.”¹² Under the Planning Commission Act, RCW 35.63, cities, towns, and counties are not required to adopt a comprehensive plan before adopting zoning regulations. Under RCW 35A.63, code cities and towns may adopt zoning after the approval of a comprehensive plan. Under RCW 36.70, counties may adopt zoning for areas covered by a formal comprehensive plan.

- **Planning Enabling Act:** RCW Ch. 36.70. A county must form a planning agency, which is defined as a commissioner or a department of county government. The planning agency prepares and recommends a comprehensive plan for adoption by the legislature. The legislature may adopt zoning regulations and other “official controls” only after recommendation by the planning agency. The legislature must also form a board of adjustment unless it has appointed a hearing examiner. A county may choose to appoint a zoning adjustor, who has the powers of the board of adjustment; the board of adjustment is then retained to hear appeals of the adjustor’s decisions.
- **Planning Commission Act:** RCW Ch. 35.63. A city, town, or county is authorized to form a planning commission. The planning commission prepares and recommends a comprehensive plan for adoption by the local legislature. The planning commission also recommends for adoption the city, town, or county’s original zoning ordinances. The legislature is authorized to form a board of adjustment, and to appoint a hearing examiner.
- **Optional Municipal Code:** RCW Ch. 35A.63. A city or town is authorized to form a planning agency, which may be “any person, body, or organization designated by the legislative body to perform a planning function or portion thereof.” The planning agency prepares and recommends a comprehensive plan for adoption by the legislature. It is not required to recommend zoning regulations, although it may be part of a required hearing on the adoption or amendment of zoning ordinances. Cities with a population of 2,500 or more must form a board of adjustment; smaller cities may do so. Code cities may also appoint a hearing examiner.

Zoning Powers:

Under the county Planning Enabling Act, “Zoning maps as an official control may be adopted only for areas covered by a comprehensive plan containing not less than a land use element and a circulation element.” RCW 36.70.720: The text of a zoning ordinance may be prepared without a comprehensive plan, but the map cannot be adopted without one. RCW 36.70.730. The mapping of “the total area of a county to be brought under the control of zoning may be divided into areas possessing geographical, topographical or urban identity” and may be done in stages. RCW 36.70.740.

RCW 36.70.750, Zoning – Types of Regulations, states: “Any board, by ordinance, may establish classifications, within each of which, specific controls are identified, and which will:

- (1) Regulate the use of buildings, structures, and land as between agriculture, industry, business, residence, and other purposes;
- (2) Regulate location, height, bulk, number of stories and size of buildings and structures; the size of yards, courts, and other open spaces; the density of population; the percentage of a lot which may be occupied by buildings and structures; and the area required to provide off-street facilities for the parking of motor vehicles.

Zones may be established, RCW 36.70.360. Regulations within zones must be uniform. RCW 36.70.360.

Under the Planning Commission Act, a local council or board is authorized to adopt use, bulk, and area regulations. RCW 35.63.080. The council or board is authorized to divide the municipality into zones and may establish “development plans for the whole or any portion of the municipality as may be deemed best suited to carry out the purposes of this chapter.” RCW 35.63.110.

Under the Optional Municipal Code, after the comprehensive plan is approved the local legislature may adopt an official map and a zoning ordinance, including use, bulk, and area regulations, “and such other standards, requirements, regulations, and procedures as are appropriately related thereto.” RCW 35A.63.100.

Under each of the enabling acts, municipalities may rezone, or amend the zoning map, by action of the local legislature on the recommendation of the planning body or hearing examiner. RCW 36.70.550; RCW 35.63.120; RCW 35A.63.100. Amendment of the zoning text is not rezoning. Text amendment is authorized by RCW 36.70.800; RCW 35.63.120; RCW 35A.63.080.

Subdivision Act: RCW Ch. 58.17. Counties, cities, and towns are required to adopt regulations governing the division of land. Local ordinances must conform to procedures established by the state statute. The statute declares that “the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state.” RCW 58.17.110.

An adequate potable water supply is required for approval of new subdivisions. RCW 58.17.110.

Subdivisions into five or more parcels must have a full application, or “long platting.” Smaller subdivisions may have shorter process and a “summary” form of approval. To prevent developers from dividing land in stages to avoid the full application process, the state statute prohibits any further division of a short subdivision within five years unless the developer uses the long process.

Washington’s SEPA may require the filing of environmental impact statement at the preliminary subdivision plat stage if the development will “significantly affect the environment.”

Building Permits: Washington State requires that an applicant for a building permit show there is adequate water supply. The local government may require connection to an existing available water supply. RCW 19.27.097.

Special Purpose Districts

This report will focus on public utility districts as an example of a special purpose district.

Public Utility Districts: Authorized in 1930 by Washington State's first legislative initiative,¹³ public utility districts (PUDs) are locally owned and controlled nonprofit utilities supplying electrical, water and sewer, and broadband services. Public utility districts are governed by RCW Ch. 54. There are 28 public utility districts in Washington, covering more than half the state's land area.¹⁴

Public utility districts are formed by petition or by resolution of the legislative body and have elected governing boards.¹⁵ PUDs are identified as municipal corporations by RCW 39.50.010. As municipal corporations, or state agencies, PUDs are subject to SEPA. PUDs have the right of eminent domain. They may own and maintain land to supply water and power. Municipalities approve the PUDs' construction of infrastructure and may regulate the operation of a PUD's facilities.¹⁶

Together with cities, towns, and counties, the Washington State Department of Ecology lists public utility districts, water districts, and sewer districts as governmental entities for purposes of defining a municipal water supplier under the 2003 Municipal Water Law, at RCW 90.03.015(4)(b).¹⁷

Public utility districts are defined as a local government under the statute regulating Open Space, Agricultural, Timber Lands – Current Use – Conservation Futures, at RCW 84.34.310(3).

- **Planning Powers:** RCW 54.04.120 grants public utility districts “the same powers ... with reference to a public utility district as a county planning commission has with reference to a county.” The planning powers of the president of a public utility district are equivalent to the powers of the chairman of the board of county commissioners. These powers do not extend, however, to the adoption, regulation, or enforcement of comprehensive plans, zoning, land use, or building codes.

RCW 54.16.010 authorizes public utility districts to make plans and studies for the generation and distribution of electricity and for water supply

- **Cooperative Watershed Management:** RCW 54.16.360 authorizes public utility districts to participate in intergovernmental watershed and habitat protection and management agreements, including watershed partnerships under the GMA (RCW 39.34.210).
- **Interlocal Agreements:** Public utility districts may join in interlocal agreements to create legal or administrative entities for power generation. RCW 87.03.825 - .840.

- **Environmental Mitigation Activities:** Recent amendments to RCW Ch. 54 allow a public utility district to develop plans for reducing greenhouse gas emissions and to mitigate impacts of its operation through the purchase, trade, or banking of greenhouse gas credits. RCW 54.16.390 [Wash. Laws 2007 Ch. 349. eff. July 22, 2007].

III. THE SHORELINE MANAGEMENT ACT, THE STATE ENVIRONMENTAL POLICY ACT, AND THE GROWTH MANAGEMENT ACT

Overview

The protection of natural resources is at the center of Washington’s land use legislation. In interpreting the GMA, a state growth management hearings board has declared as “a fundamental axiom of growth management: ‘the land speaks first.’”¹⁸

All cities and counties in the state, regardless of whether they plan under the GMA, must designate natural resource lands. Natural resource lands are:

- agricultural lands, RCW 36.70A.030(2);
- forest lands, RCW 36.70A.030(8); and
- mineral resource lands, RCW 36.70A.030(11).

Minimum guidelines for designation are provided by the Department of Community, Trade, and Economic Development (CTED), WAC Ch. 365-190.

All cities and counties in the state, regardless of whether they plan under the GMA, must designate critical areas, RCW 36.70A.170(1), and must adopt development regulations to protect critical areas, RCW 36.70A.060(2). Critical areas are defined under the GMA as including:

- wetlands;
- critical recharge areas for aquifers used for potable water;
- fish and wildlife habitat conservation areas;
- frequently flooded areas; and
- geologically hazardous areas. RCW 36.70A.030(5).

Although local governments may allow some impacts on critical areas, local regulations must result in no net loss of values or function. RCW 36.70A.172(1); WAC 365-195-825(2)(b). It may be necessary to regulate some pre-existing uses in order to protect critical areas.¹⁹

All counties and cities must “include” the best available science in designating and protecting critical areas. RCW 36.70A.172(1); WAC 365-195-915. In its wetlands guidance document, the Washington State Department of Ecology interprets this requirement:

Local governments must substantively consider the best available science when adopting development regulations to designate or protect critical areas.

The adopted regulations must protect the functions and value of the critical areas. If the local government determines this protection can be assured using an approach different from that derived from the best available science, the local government must demonstrate on the record how the alternative approach will protect the functions and values of the critical areas.²⁰

Development regulations under the GMA include zoning, subdivision, binding site plan, and critical areas ordinances and shoreline master programs. RCW 36.70A.030(7).

The Shoreline Management Act of 1971 (SMA)

The State of Washington has “approximately 50,000 miles of rivers and streams, 7,800 lakes, and 3,200 miles of coastline.”²¹ Washington’s Shoreline Management Act, RCW Ch. 90.58, established “a cooperative program of shoreline management between local government and the state.” RCW 90.80.050. Extensive legislative findings declare that “the shorelines of the state are among the most valuable and fragile of its natural resources.” RCW 90.58.020. Local governments are responsible for planning and regulating their shorelines in conformance with state policies. Washington State is responsible for providing assistance and ensuring compliance. RCW 90.58.020. Through local environmental designations and development permits, the SMA aims both to preserve shoreline functions and ecosystems and to allow appropriate development.

“Shorelines,” under the SMA, are:

all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes. RCW 90.58.030(2)(d).

“Shorelines of statewide significance are listed at RCW 90.58.030(2)(e).

The SMA defines “shorelands” or “shoreland areas” as:

those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology. RCW 90.58.030(2)(f).

Under the SMA, local governments are required to adopt shoreline master programs. Counties or cities planning under the GMA must include their shoreline goals and policies as an element of their comprehensive plan adopted under that Act. Use regulations and other parts of a local shoreline master program are classified as development regulations. RCW 36.70A.480.

Proposals for shoreline development must be consistent with the policies of the SMA. RCW 90.58.140. Policies of the SMA and the GMA “must be harmonized in the process of overall land use planning and regulation.”²² “Development” under the SMA has been broadly defined to include dredging, filling, and hydraulic clam harvesting.²³ Washington courts have held that local governments may enact zoning regulations stricter than the requirements of the SMA,²⁴ and that the SMA’s authorization of conditional use permits and variances allows local governments to broaden their regulation of shoreline activity beyond the SMA definition of development.²⁵

The SMA is to be liberally construed: “This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.” RCW 90.58.900.

Shoreline permit and enforcement procedures are found at WAC 173-27-010 *et seq.*

The State Environmental Policy Act of 1971 (SEPA)

Like the environmental policy acts of a number of other states, Washington’s State Environmental Policy Act (SEPA), RCW 43.21C, is modeled on the National Environmental Policy Act (NEPA) and aims to introduce environmental analysis and mitigation into early stages of the land use review process. Washington’s SEPA is intended to “declare a state policy which will encourage productive and enjoyable harmony between man and his environment” and to “promote efforts which will prevent or eliminate damage to the environment and biosphere.” RCW 43.21C.010. The legislature recognizes that “each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.” RCW 43.21C.020(3).

SEPA defines the environment broadly. Elements of both the “natural” and the “built” environments are required in analysis of environmental impacts under the Act. RCW 43.21C.110(1)(f). The SEPA rules state: “‘Environment’ means, and is limited to, those elements listed in WAC 197-11-144, as required by RCW 43.21C.110(1)(f). Environment and environmental quality refer to the state of the environment and are synonymous as used in these rules and refer basically to physical environmental quality.” WAC 197-11-740.

Under WAC 197-11-144, the natural environment includes:

- Earth: geology, soils, topography, unique physical features, erosion/enlargement of land area;
- Air: air quality, odor, climate
- Water: surface water movement/quantity/quality, runoff/absorption, floods, ground water movement/quality/quantity, public water supplies;
- Plants and Animals: habitat and diversity of species, unique species, fish and wildlife migration routes; and
- Energy and Natural Resources: amount required/rate of use/efficiency, source/availability, nonrenewable resources, conservation and renewable resources, scenic resources.

The built environment includes:

- Environmental Health: noise, risk of explosion, risk of release of toxic materials;
- Land and Shoreline Use: relationship to existing land use plans and to estimated population, housing, light and glare, aesthetics, recreation, historic and cultural preservation, agricultural crops;
- Transportation: transportation systems, vehicular traffic, waterborne, rail, and air traffic, parking, movement/circulation of people or goods, traffic hazards;
- Public Services and Utilities: fire, police, schools, parks or other recreational facilities, maintenance, communications, water/storm water, sewer/solid waste, other governmental services or utilities.

Washington's SEPA applies to local government land use decisions regarding comprehensive planning, development regulation, and project review.²⁶ Since the enactment of the Land Use Regulatory Reform Act of 1995, a process of integrated project review has streamlined the incorporation of environmental analysis into the local project review process, eliminating some overlap and duplication of SEPA requirements with those of the GMA and other statutes. RCW 43.21C.240. In its 1995 findings, the state legislature declared:

Existing plans, regulations, rules, or laws provide environmental analysis and measures that avoid or otherwise mitigate the probable, specific adverse environmental impacts of proposed projects should be integrated with, and should not be duplicated by, environmental review under 43.21C RCW. Laws 1995, Ch. 347 § 202(1)(b).

The Land Use Regulatory Reform Act allows counties, cities, or towns to determine in the course of project review that "specific probable adverse environmental impacts" are adequately addressed by development regulations, the comprehensive plan, and other laws. If this determination is made in conformance with the statute, and if local approvals are conditioned "on compliance with these requirements or mitigation measures," the local government "shall not impose additional mitigation under this chapter during project review. Project review shall be integrated with environmental analysis under this chapter." RCW 43.21C.240(2)-(3).

The state Department of Community, Trade, and Economic Development (CTED), which offers guidance to communities planning under the GMA, recommends that local governments follow three SEPA Guidelines:

- All land use decisions by the community should be accompanied by SEPA documents ... unless a specific exemption is spelled out in writing.
- All SEPA-based mitigation must be based on written adopted policies, with written findings as to how the project creates the need for the condition (the nexus); and how the condition properly mitigates the impact (reasonableness).
- Environmental policies should be specific and consistent with comprehensive plan policies.²⁷

The editors of *West's Washington Environmental Law and Practice* comment that as a result of the 1995 legislation, "SEPA's primary role is to focus on gaps, requiring review only of those impacts not addressed under other statutes," and that "in many contexts

SEPA's role is now subordinate to other environmental and land use statutes" which impose environmental review requirements that satisfy SEPA mandates.²⁸

The SEPA rules are found at WAC Ch. 197-11.

The Growth Management Act

The Growth Management Act (GMA), RCW 36.70A, was adopted in 1990, and revised in 1991 and subsequently, in response to intense population growth and land development in Washington State and to the threats that sprawling development presented to the state's natural resources and quality of life.

One GMA hearings board has noted that the Act "is founded on the premise that local governments rather than the state government have the primary duty and authority for growth-management policy-making and, further, that the choices made by those local governments may be different in different parts of the state." This approach has been characterized by that board "as unique among states."²⁹ Local authority is constrained, however, by GMA requirements that local plans and regulations conform with specific state mandates under the Act and with certain regional policies, and that they be consistent with the plans of neighboring jurisdictions.³⁰

Population and rate of population growth determine which counties are required to plan under the GMA. RCW 36.70A.040. Counties and cities exempt from GMA population and growth thresholds may still choose to plan under it. RCW 36.70A.040(2). Financial and technical aid is available from the state for counties that adopt GMA planning. RCW 36.70A.190. In all, 29 of the 39 counties in the state are planning under the GMA. Because all cities and towns within a county planning under the GMA must also plan under it, the great majority of municipalities in Washington now plan under the GMA.

The Department of Community, Trade, and Economic Development (CTED) oversees implementation of the GMA and offers guidance and grants to communities planning under the Act.

Goals of the GMA: In adopting the GMA, the legislature found that "uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and wise use of our lands, pose a threat to the environment, sustainable development, and the health, safety, and high quality of life enjoyed by residents of this state." RCW 36.70A.010.

The 14 goals of the GMA are not prioritized but are meant to be considered by each community planning under the GMA and to be applied to individual circumstances. RCW 36.70A.020. "In recognition of the broad range of discretion that may be exercised by counties or cities consistent with the requirements of this chapter, the legislature intends for the [GMA Hearings Boards] to grant deference to the counties and cities in how they plan for growth." RCW 36.70A.3201. Washington courts and GMA hearings boards have held, however, that each community planning under the GMA must take all the goals into account in creating a comprehensive plan.³¹ CTED advises cities and counties to "state in writing how they have balanced the goals and how their plans and regulations further those goals."³²

The GMA goals are: to encourage growth in areas with adequate infrastructure; to reduce urban sprawl; to coordinate transportation and increase transportation efficiency; to provide affordable housing; to promote economic development; to protect private property rights; to encourage a predictable and timely permitting process; to preserve the natural resource industries of timber, fish, and agriculture; to retain open space wildlife habitat and recreational opportunities; to protect the state's environment and quality of life, "including air and water quality, and the availability of water;" to encourage citizen participation in planning; to ensure adequate public facilities and services for new development; to encourage historic preservation of lands, sites, and structures; and to incorporate the goals and policies of the SMA into local plans. RCW 36.70A.020; RCW 36.70A.480.

Planning Under the GMA:

County Planning Policy: A county-wide planning policy, adopted by the county legislature, is the basis of the county's comprehensive plan and of the plans of cities and towns within the county under the GMA. The county planning policy must be consistent with the plans of neighboring local governments and with the goals of the GMA. RCW 36.70A.210.

County-wide planning policies adopted under the GMA are mandatory documents: "they are not non-binding guides on local governments."³³ The policies have both procedural and substantive effects.³⁴ Procedures are specified for the coordination and consistency of county and city plans. Substantively, the county-wide policies must "serve a legitimate regional purpose," must not "alter the land use powers of cities," and must "otherwise be consistent with relevant provisions of the GMA."³⁵ Under the GMA, local governments are required both to plan for a projected 20-year population growth and to protect critical natural resources.

Natural Resource Lands/Critical Areas/Best Available Science: Regardless of population growth, all counties and cities in the state must identify natural resource lands, RCW 36.70A.030; identify critical areas, RCW 36.70A.170(1); and adopt critical areas protections, including best available science, RCW 36.70A.060(2).

Counties planning under the GMA must adopt interim development regulations to protect natural resource lands and critical areas during the period of adopting a comprehensive plan. RCW 36.70A.060; RCW 36.70A.170.

The Washington Administrative Code contains minimum guidelines for the classification and designation of agricultural lands, forest lands, mineral lands, and critical areas. WAC Ch. 365-190. The Administrative Code also sets out procedures for the adoption of comprehensive plans and development regulations, and for the inclusion of best available science. WAC Ch. 365-195.

Urban Growth Areas: Counties planning under the GMA are required to designate urban growth areas (UGAs) designed to accommodate a projected 20-year population growth. Counties must consult with affected cities in designating UGAs. UGAs are areas where urban growth has already occurred and which are appropriate for further development. RCW 36.70A.110. Open space must be included in planning for UGAs. RCW 36.70A.110(2). Urban government services needed in UGAs are defined at RCW 36.70A.030 as, "those governmental services historically and typically delivered by

cities,” including “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 non-urban areas.”

Rural Areas: Counties must adopt a rural element that includes lands not designated for urban growth, agriculture, forest, or mineral resources. RCW 36.70A.070(5). The legislature has found that “in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns” that help to preserve traditional rural life styles and economies and are compatible with habitat and open space preservation. RCW 36.70A.011.

Rural government services are defined at RCW 36.70A.030:

“Rural government services” or “rural services” include those public services and public facilities historically and typically delivered at an intensity found in rural areas, and may include domestic water systems ...and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110

Comprehensive Plans:

In addition to the designation of UGAs and rural areas, some other mandatory elements of comprehensive plans under RCW 36.70A.070 include:

- Land Use. This element requires the designation of “the proposed general distribution and general location and extent of the uses of land,” and must include population densities and estimates of future population growth. Further, it must “provide for protection of the quality and quantity of groundwater used for public water supplies.” Urban planning to encourage physical activity should be considered, and drainage and stormwater guidance and mitigation are required where appropriate. RCW 36.70A.070(1).
- Housing. An inventory and analysis of existing and projected housing needs is required, taking into account the needs “of all economic segments of the community.” RCW 36.70A.070(2).
- Capital Facilities. An inventory of existing capital facilities is required, together with a forecast of future needs and a six-year plan for funding, which must be coordinated and consistent with the land use element. The land use element must be reassessed if funding is insufficient for existing needs. Parks and recreational facilities are included in this element. RCW 36.70A.070(3).
- Utilities. This element must identify “the general location, proposed location, and capacity of all existing and proposed utilities,” which include electrical lines, telecommunication lines, and natural gas lines. RCW 36.70A.070(4).

The GMA requires the identification of open space corridors within and between urban growth areas, RCW 36.70A.040, and authorizes their purchase by cities, towns, or counties planning under the Act. RCW 36.70A.160. Sites for public purposes including utility corridors and stormwater management facilities must be identified. RCW 36.70A.150.

Consistency and concurrency requirements for county and city planning and development regulations under the GMA are important to landscape-scale protection of water and other natural resources. RCW 36.70A.100.

Comprehensive plans created under the GMA are considered valid upon adoption.

Local Project Review Act. RCW Ch. 36.70B. Development regulations used to accomplish the purposes of the GMA include zoning, subdivision, binding site plan, and critical areas ordinances and shoreline master programs. RCW 36.70A.030(7). The Local Project Review Act was adopted in 1995 to reduce conflicts and duplications in the local permitting and approval process. RCW 36.70B.010. The Act establishes integrated project review requirements for GMA counties and cities, which are optional as well as for non-GMA governments. RCW 36.70B.150. In addition to setting out procedures for permit review, the Act authorizes the creation of development agreements through which a city, town, or county and a developer may agree on standards and mitigation that will apply to a particular project, consistent with development regulations RCW 36.70B.170.210

Growth Management Hearings Boards. RCW 36.70 250. Three regional GMA hearings boards are established to hear petitions alleging that plans or regulations adopted under the GMA or SMA are inconsistent with the statutes. The hearings boards have been found by Washington courts to have jurisdiction over compliance of GMA plans and regulations with SEPA.³⁶ Direct judicial review in superior court is available if all parties to the proceeding before the board agree in writing. RCW 36.70.295.

IV. WATER RESOURCE PROTECTION

The Washington State Department of Ecology notes that in a number of environmental areas, while state agencies have “an oversight and/or support role,” local governments and special districts have “primary authority or major implementation efforts” in resource protection. These areas include: solid waste management; growth management and land use; sewage systems, both on- and off-site; road construction and maintenance; shorelands management; stormwater management; provision of drinking water; used oil and household toxics; and irrigation water and return flows.³⁷

Washington’s Water Code, RCW Ch. 90.03, which governs surface waters, sets out the state’s policy “to promote the use of the public waters in a fashion which provides for obtaining maximum net benefits arising from both diversionary uses of the state’s public waters and the retention of waters within streams and lakes in sufficient quantity and quality to protect instream and natural values and rights.” RCW 90.03.005. The Water Resources Act of 1971, RCW Ch. 90.54, establishes water resource policy, declaring that a comprehensive planning process involving the state, local governments, and other interested entities, and focusing on regional planning, is essential to preserve the state’s water resources and meet its long-term needs. RCW 90.54.010. The Water Pollution Control Act, RCW Ch. 90.48, declares that the state will maintain “the highest possible standards to ensure the purity of all waters of the state” consistent with public health and enjoyment, the protection of wildlife, and industrial development. RCW 90.48.010. The Act defines pollution as including an injurious effect. RCW 90.48.020.

Under RCW 43.21A.064, the Department of Ecology is authorized to enforce water rights and water resource laws. The Department regulates groundwater quality and discharges under the Water Quality Standards for Groundwaters of the State of Washington, WAC Ch. 173-200. It provides Implementation Guidance for Ground Water Quality Standards in Ecology Publication 96-02 (revised October 2005).

Local Authority to Protect Water Resources

All local governments in Washington can make use of three major regulatory mechanisms to protect water resources:³⁸

- Critical areas designation and protection: The required designation of natural resource lands and designation of critical areas provides an inventory of local resources, including water resources. RCW 36.70A.030; RCW 36.70A.170(1). Critical area ordinances protect aquifer recharge areas. RCW 36.70A.060.
- Washington State requires that an applicant for a building permit show there is adequate water supply. The local government may require connection to an existing available water supply. RCW 19.27.097.
- Potable water supply is required for approval of new subdivisions. RCW 58.17.110:

Water Resources and the GMA

The GMA offers communities an important tool for the protection of water resources in encouraging coordinated planning on a landscape scale. CTED cites three mandates of the GMA as being of particular importance local water protection: the requirements to cleanse water before it enters Puget Sound; to protect critical aquifer recharge areas; and to protect potable water supplies.³⁹

The goals of the GMA include the enhancement of water quality and availability, RCW 36.70.020(10), and ensuring that adequate public facilities and services are available to support development, “RCW 36.70A.020(12). “Domestic water systems” are a public facility. RCW 36.70A.030(12).

The protection of the quality and quantity of groundwater for public water supplies and adequate public facilities are required in comprehensive plans adopted under the GMA. RCW 36.70A.070.

The Department of Health explains that amendments to the GMA define domestic water service as both a rural and an urban service:

With domestic water systems now part of the definition for both “urban governmental service” and “rural governmental service,” it is clear that water utilities are not prohibited by the GMA from providing domestic water services in rural areas. Water service must be designed at the level of service designated appropriate by the local land use authority for that area. Water service must also be provided in accordance with the Department of Health’s minimum design criteria for public water systems (WAC 246-290-222, 230, and 235).⁴⁰

Critical areas designated under the GMA include critical aquifer recharge areas for potable water. Critical areas must be designated and protected by ordinance. RCW 36.70A.030(5); RCW 36.70A.060. Wellhead protection areas can be identified as a type of critical aquifer recharge area under the GMA.”⁴¹

The GMA further authorizes local governments to use innovative regulatory techniques that can protect water quality. RCW 36.70A.090. [See Section V, below.]

Watershed Management Act RCW Ch. 90.82

Finding that “the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests,” RCW 90.82.010, the state legislature adopted the Watershed Management Act in 1998. Under the Act, a local planning unit may develop plans for a Watershed Resource Inventory Area (WRIA) or for multi-WRIAs. RCW 90.82.060; WAC Ch. 173-500. Such initiatives are voluntary, but must comply with the statute. Every county within the WRIA, the largest city, and the utility with the largest supply of water, together with all tribes with lands within the WRIA, must be included, and provision must be made for citizen participation in planning for resource management. The Act requires assessment of water quantity within the area and estimates of present and future supply and use. RCW 90.82.70. Water quality, habitat protection, and instream flow elements may be included.

Wellhead Protection

The Department of Health’s Wellhead Protection Program Guidance Document notes that public water system purveyors “have primary responsibility for developing and implementing local wellhead protection programs.”⁴² The state wellhead protection program applies to Group A public water systems, which are roughly defined as community systems serving 15 or more service connections or 25 year-round residents, or non-community systems meeting certain other requirements. A municipality or subdivision might be a community water system. WAC 246-290-020(5). Wellhead protection planning is required by RCW 43.20.050, RCW 70.119A.060, and RCW 70.119.080. p. 23 RCW 70.119A.060

The DOH states that local governments can implement wellhead protection measures by non-regulatory means, such as best management practices, as well as by adopting zoning regulations limiting activity around water supplies or local design and operational standards.⁴³

The DOH recommends the formation of local wellhead protection committees, consisting of representatives of local governments and agencies as well as citizens, to help in inter-jurisdictional planning for water protection. “Coordinators of local government programs such as watershed management and growth management need to be involved in local wellhead protection implementation efforts beginning in the very early stages.”⁴⁴

Municipal Water Law of 2003 RCW Ch. 90.03

The Municipal Water Law of 2003 amended the Board of Health Code, RCW 43.20; the Public Water Systems laws, RCW 70.119A; and the Water Code, RCW 90.03, to provide

“greater water right flexibility and certainty” for many water systems.⁴⁵ The Department of Health has summarized major provisions of the law that affect water system planning, including the following:

- The law defines a municipal water supplier. RCW 90.03.015(3) & (4). Together with cities, towns, and counties, the Washington State Department of Ecology lists public utility districts, water districts, and sewer districts as governmental entities for purposes of defining a municipal water supplier under the 2003 Municipal Water Law, at RCW 90.03.015(4)(b).
- The law states that “the number of water service connections and population are not limiting attributes of water rights for water systems that have a DOH approved water system plan (WSP) or other approval that specifies the number of connections.” RCW 90.03.260(4) & (5).
- The law directs the DOH and the Department of Ecology “to coordinate WSP approval procedures with water right determination procedures for both WSP and small water system management programs (SWSMP).” RCW 90.03.386(1).
- The law allows “a municipal water supplier to expand the place of use in its water right to all areas included within the service area described in their approved WSP or SWSMP.” The water right holder must be “in compliance with the terms of its WSP” and its service area must be “consistent with applicable approved comprehensive plans, land use plans, development regulations, coordinated water system plans, and watershed plans.” RCW 90.03.386(2).
- The law requires “new services within a water system’s service area to be consistent with applicable approved local land use plans, comprehensive plans, and development regulations. Water utilities must delineate retail service areas in their WSP. Water systems with DOH approved WSPs now have a duty to provide service to new connections within their retail service area.” RCW 43.20.260.

Under the Municipal Water Law, the Department of Health was charged with developing a Water Use Efficiency Program, which took effect on January 22, 2007.⁴⁶ The Department states that there are three “fundamental elements” of the program:

- Planning Requirements for municipal water suppliers, which include collection of data, forecast of demand, evaluation of WUE measures, calculation of distribution system leakage, and implementation of a WUE program;
- Distribution Leakage Standard, which must be met by municipal water suppliers and requires meters for production and consumption so as to calculate leakage; and
- Goal Setting and Performance Reporting, requiring a public process and an annual report.⁴⁷

The Department of Health notes that a municipal water supplier generally includes systems that have 15 or more residential connections and systems that provide water to a city, town, public utility district, sewer district, or water district.⁴⁸

The Department of Ecology has set out its interpretation of the Municipal Water Law and the Department’s procedures for managing municipal water rights in an advisory document, 2003 Municipal Water Law Interpretive and Policy Statement (eff. February 5, 2007).

Nonpoint Source Pollution

Stormwater: Under the GMA, local governments in the Puget Sound region must adopt stormwater controls. RCW 36.70A.070(1). See Nonpoint Rule (Puget Sound) WAC Ch. 400.12. All local governments may address stormwater impacts through low impact development programs and techniques.

Combined Sewer Overflows: Under the Water Pollution Control Act, RCW 90.48, municipalities are required to develop detailed plans for the reduction of combined sewer overflows.

On-Site Sewage Systems: Under its authority to “assure safe and reliable public drinking water,” RCW 43.20.050(2)(a), the State Board of Health adopts rules that may be enforced by “local boards of health ... and all other officers and employees of the State or any county, city, or township thereof.” RCW 43.20.050(4). State Department of Health regulations for on-site sewage systems, adopted under this authority, are administered by the DOH and local boards of health. Local regulations must be approved by the DOH, WAC 246-272-02001, and must be as strict as the state standards set out in WAC Ch. 246-272. Among “areas of special concern,” the Washington Administrative Code lists sole source aquifers identified by the U.S. EPA; critical aquifer recharge areas identified under the GMA; designated public water supply wellhead protection areas; and special protection areas under the state groundwater water quality standards. WAC 246-272-21501.

V. INNOVATIVE LOCAL LAND USE TECHNIQUES

The Growth Management Act states that a comprehensive plan “should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit development, and the transfer of development rights.” RCW 36.70A.090.

Planned Unit Development (PUD): Although it is not mentioned in Washington’s land use enabling acts, PUD has been approved by Washington courts as a kind of floating zoning, which must be authorized by local ordinance. *Lutz v. City of Longview*, 520 P.2d 1374 (1974).⁴⁹

Transfer of Development Rights (TDR): Counties and cities in Washington have initiated TDR programs. King, Snohomish, and Thurston Counties have incorporated TDR into their codes. Redmond, Seattle, and Bainbridge Island are among the cities that have implemented TDR.⁵⁰

In 2007, the state legislature created a regional TDR program for the Puget Sound. Ch. 482, Laws of 2007.

On-Site Density Transfers for Critical Areas: Density transfer incentives have been offered to developers by a number of local governments in Washington. The Spokane County Code includes incentive provisions for both on-site and off-site transfers of density or development rights. Spokane County Code § 11.20.080. The Richland

Municipal Code offers on-site density transfers for sensitive areas. Richland Municipal Code § 22.10.340.

Additional Incentives: The Spokane County Code incentives provisions include property tax and federal income tax advantages as well as on-site density transfers and transfer of development rights. Spokane County Code § 11.20.080.⁵¹ Reasonable use exceptions have been enacted where local critical area protections leave no reasonable use of a property. Mitigation banking, flexible buffer widths, small project waivers, and individual stewardship plans have also been incorporated into local codes.⁵²

Purchase of Development Rights: Under RCW 84.34.055, the county legislature may direct the planning board to establish open space priorities, to be adopted after a public hearing in a county open space plan and public benefit rating system. Open space preservation is a goal of the GMA. RCW 36.70A.020(9). The GMA requires the identification of open space corridors within and between urban growth areas, RCW 36.70A.040, and authorizes their purchase by cities or counties planning under the Act. RCW 36.70A.160. Local governments may acquire “by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.” RCW 36.70A.160.

The acquisition and preservation of open space by local governments is declared a public purpose for which funds may be expended at RCW 84.34.200. Development rights, or “conservation futures,” may be acquired by local governments or nature conservancies and other non-profit entities under RCW 84.34.220.

Development rights, easements, and other interests in open space and agricultural land may be acquired for preservation by local governments and certain non-profit entities under RCW 64.04.130.

Open space funding bonds at the local level: King County has initiated a local open space bond.⁵³

Favorable Tax Assessment: Washington State’s Open Space Taxation Act, RCW Ch. 84.34, permits the valuation of timber, agricultural, and open space lands at the level of current use rather than highest and best use. At RCW 84.34.010, the legislature declares that “it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.”

Moratoria on Development: Moratoria on development are authorized under the Planning Enabling Act at RCW 36.70.795; under the Planning Commissions Act at RCW 35.63.200; and under the Optional Municipal Code at RCW 35A.63.220. Washington courts have upheld moratoria as legitimate zoning tools in *Sprint Spectrum, L.P., v. City of Medina*, 924 F.Supp. 1036 (W.D. Wash. 1996).

Stormwater/Low Impact Development: Communities in Washington State have been leaders in adopting low impact development techniques for the management of stormwater runoff, and in adopting green building provisions to conserve energy and prevent environmental pollution. The City of Seattle’s Stormwater Treatment Manual offers extensive guidance to local governments considering the adoption of low impact

development techniques. King County describes green building techniques and policies at <http://www.metrokc.gov/ddes/acrobat/cib/55.pdf>.

The State of Washington adopted LEED/Green building provisions in Ch. 12 Laws of 2005, amending RCW 28A.150, RCW 28B.10, and RCW 39.04, and adding RCW 39.35D, regarding high performance public buildings.

Community Revitalization/Brownfields: Washington State has authorized the use of tax increment financing to support community revitalization and redevelopment, at RCW 39.89, and has adopted Brownfields programs. The Department of Community, Trade, and Economic Development manages a revolving loan fund, and provides technical assistance to parties interested in redeveloping a Brownfields property. Technical assistance is offered in partnership with local governments such as King County, the City of Seattle, the City of Tacoma, and the City of Spokane.⁵⁴

¹ *Bremerton v. Kitsap Cy*, CPSGMHB No. 95-3-0039c (Final decision and order, Oct. 6, 1995), cited in Washington State Department of Ecology, *Wetlands in Washington State*, Vol. 2: Guidance for Protecting and Managing Wetlands (April 2005) at 2-3.

² 24 West's Washington Practice Series [hereinafter WAPRAC] § 18.3, n. 1, (West 2007), citing *City of Snoqualmie v. King County*, CPSGMHB No. 92-3-004 (March 1, 2003) and *Aagaard, et al., v. City of Bothell*, CPSGMHB No. 94-3-0011 (February 21, 1995).

³ U.S. Geological Survey, "Washington State Facts," at <http://www.usgs.gov/state/state.asp?State=WA> (web page last modified July 30, 2007).

⁴ U.S. Census Bureau, *U.S. Census of Governments 2002*, p. 295 (2005).

⁵ See Municipal Research and Services Center of Washington [hereinafter MRSC], at <http://www.mrsc.org/Subjects/Governance/locgov2.aspx>.

⁶ MRSC, *Special Purpose Districts in Washington State*, Report No. 58 (August 2003) p. 38.

⁷ *Id.*, p. 4.

⁸ Washington State Constitution art. XI, § 11.

⁹ *Chemical Bank v. Washington Public Power Supply System*, 666 P.2d 329 (1983), cited in 1A WAPRAC § 60.3.

¹⁰ *Chemical Bank v. Washington Public Power Supply System*, 666 P.2d 329, 340 (1983), cited in 1A WAPRAC § 60.4.

¹¹ See *Nelson v. City of Seattle*, 395 P.2d 82 (1964), discussed in 17 WAPRAC s. 4.1.

¹² See citations at 17 WAPRAC s. 4.1.

¹³ Washington State Initiative No. 1, November 4, 1930. RCW Title 54.

¹⁴ Washington Public Utility Districts Association, at <http://www.wpuda.org/pudhistory.htm>.

¹⁵ MRSC, *Special Purpose Districts in Washington State*, *supra* n. 6, pp. 19-21.

¹⁶ See Environmental Law Institute, *State Wildlife Action Plans and Utilities* (2007) p. 37.

¹⁷ Washington State Department of Ecology 2003 Municipal Water Law Interpretive and Policy Statement, p. 5 (POL-2030) (eff. February 5, 2007).

¹⁸ *Bremerton v. Kitsap Cy*, CPSGMHB No. 95-3-0039c (Final decision and order, Oct. 6, 1995), cited in Washington State Department of Ecology, *Wetlands in Washington State*, Vol. 2: Guidance for Protecting and Managing Wetlands (April 2005) at 2-3.

¹⁹ See Washington State Department of Ecology, *Wetlands Guidance*, *supra* n.18 at 2-4.

²⁰ *Id.*, at 2-7.

²¹ State of Washington Water Research Center, at <http://www.swwrc.wsu.edu>.

²² See 24 WAPRAC § 20.2.

²³ See RCW 90.58.030(3)(d) and 24 WAPRAC § 20.11, notes 2 and 3.

²⁴ See 24 WAPRAC § 20.11, n. 5.

²⁵ See *id.*, n. 3.

²⁶ See Washington State Department of Community, Trade, and Economic Development (CTED), *A Short Course Manual on Local Planning* (March 2006), at 6-1.

²⁷ *Id.* at 6-6.

²⁸ 24 WAPRAC §17.1.

²⁹ 24 WAPRAC § 18.3 n. 1.

³⁰ See 24 WAPRAC §18.3.

³¹ See 24 WAPRAC §18.17 n. 6, citing Assn of Rural Residents v. Kitsap CPSGMHB No. 93-3-0010. See also CTED, Short Course Manual, *supra* n. 26, at 3-7.

³² CTED, Short Course Manual, *supra* n. 26, at 3-8

³³ 24 WAPRAC § 18.11, *citing King County v. Central Puget Sound Growth Management Hearings Board*, 979 P.2d 374 (1999).

³⁴ See 24 WAPRAC § 18.11.

³⁵ See *id.*, *citing* City of Snoqualmie v. King County, CPSGMHB Case No. 92-3-0004 (March 1, 1993).

³⁶ See 24 WAPRAC s. 17.32, *citing Diehl v. Mason County*, 972 P.2d 543 (1999).

³⁷ Washington State Department of Ecology, *Nonpoint Pollution Toolbox*, at <http://www.ecy.wa.gov/programs/wq/nonpoint/toolbox.html> (page last revised February 2006).

³⁸ See 23 WAPRAC § 8.71: "There are three general areas of regulation that have the potential to affect water resource management," *citing* critical areas designation and development regulations; building permits; and subdivision approvals.

³⁹ CTED, Short Course Manual, *supra* n. 26, at 6-10.

⁴⁰ Washington State Department of Health (DOH), *Municipal Water Law: Interim Planning Guidance for Water System Plan/Small Water System Management Program Approvals* DOH Publication No. 331-256 (March 2004), Attachment 8, p.2.

⁴¹ DOH, *Wellhead Protection Guidance Document*, p. 12.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 13.

⁴⁵ DOH, *Municipal Water Law*, *supra* n. 40, Attachment 1.

⁴⁶ See DOH, *Water Use Efficiency Guidebook*, at 1.3.

⁴⁷ *Id.* at 1.4.

⁴⁸ *Id.* at 1.5.

⁴⁹ See 17 WAPRAC s. 4.19.

⁵⁰ See MRSC, at <http://www.mrsc.org/subjects/planning/majorregulatory.aspx> (page published 01/07).

⁵¹ See MRSC, at <http://www.mrsc.org/subjects/planning/FlexEnviron.aspx> (Page published 09/06).

⁵² *Id.*

⁵³ See MRSC, *supra* n. 50.

⁵⁴ See Washington State Department of Ecology, at http://www.ecy.wa.gov/programs/tcp/brownfields/brownfields_hp.html.