

Overview of Washington's Growth Management Act

Why we have the Growth Management Act

- Rapid growth in the 1980s, faster than Washington had ever grown
- Cities and counties lacked tools to cope with rapid growth
- Washington lacked policy to effectively manage growth
- A failure to effectively deal with that growth
- Combined with strong leadership
 - Speaker of the House Joe King
 - Steel Magnolias
 - Governor Gardner

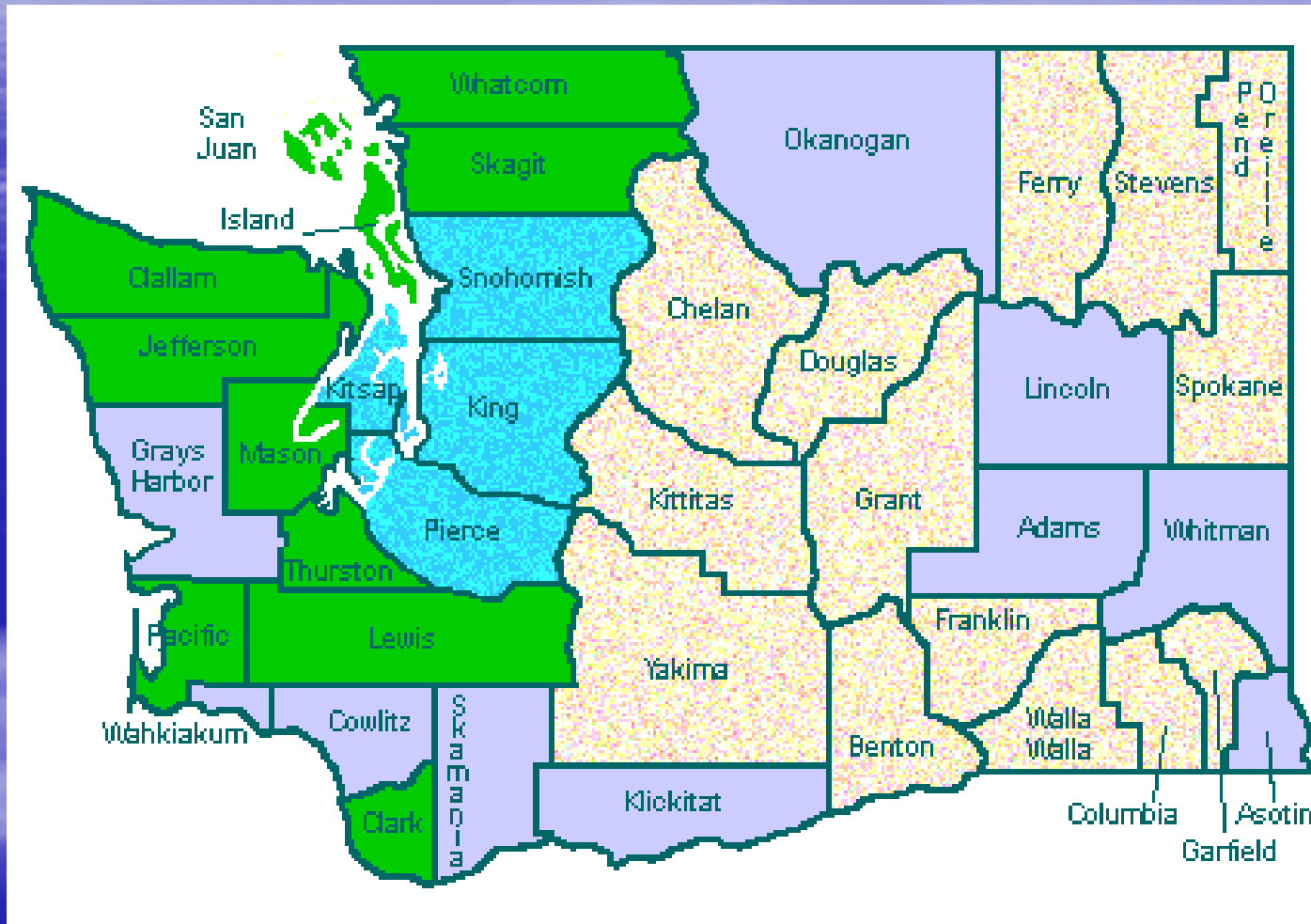
The 1990s see even faster growth

- Washington grew by over a million people for the first time in the 1990s
- 7th fastest growing state in absolute terms
- 10th fastest in percentage terms
- All counties grew, unlike the 1980s
- All but five counties grew faster than the United States as a whole
- Employment growth exceeded that of the 1980s

Required for All Counties & Cities

- Designate critical areas
- Protect critical areas
- Designate natural resource lands of long-term commercial significance: Forests, agricultural land, and mineral
 - Soils or minerals
 - Not used for urban growth
 - Long-term significance factors
- Ten counties are CARL (Critical Area and Resource Lands) only counties
- 29 counties and the cities in those counties fully plan under the GMA

GMA Counties



Gray:
CARL
counties

Dark:
Western
Board
Counties

Middle:
Central
Board
Counties

Light
(Buff):
Eastern
Board
Counties

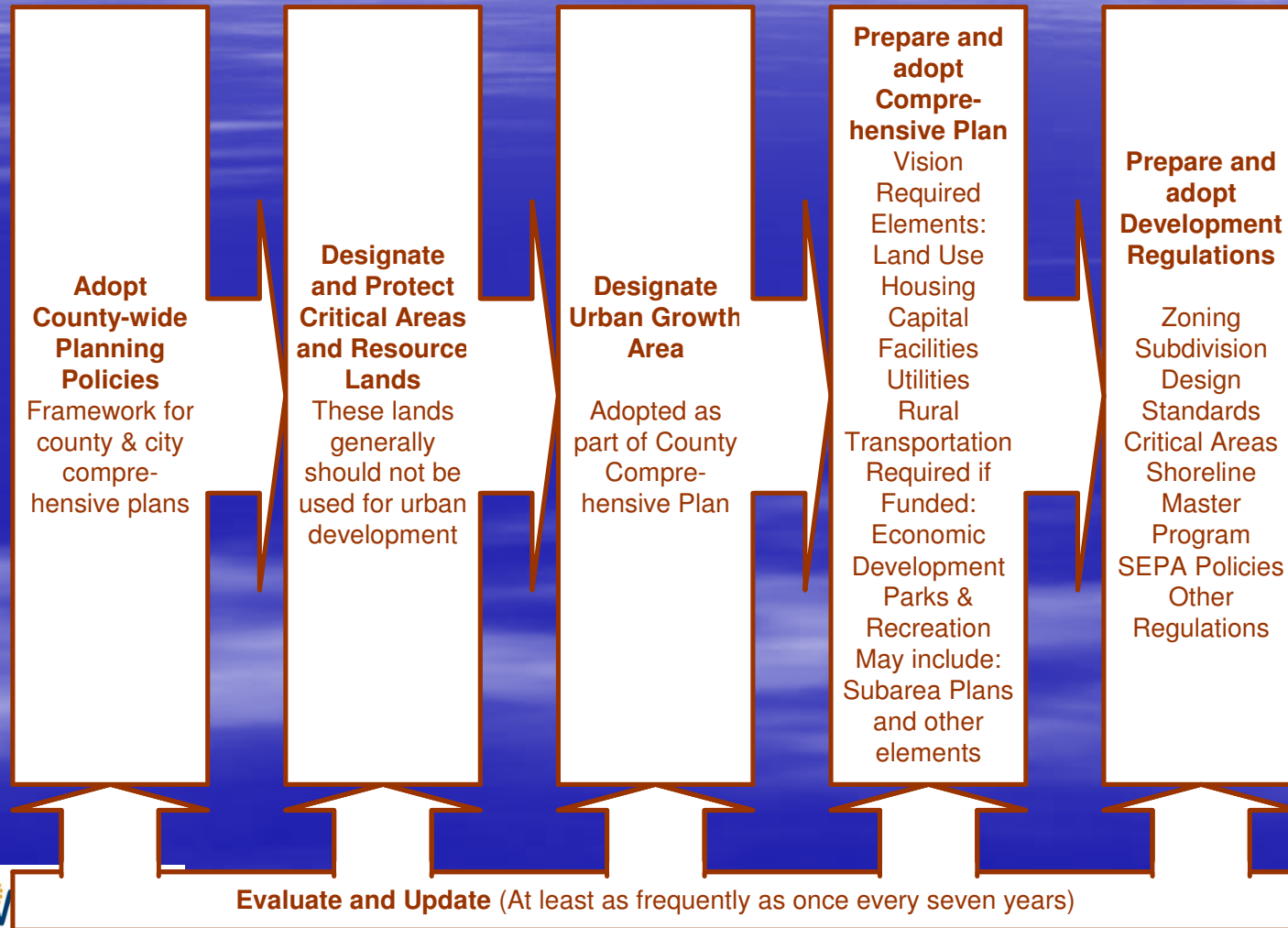
Growth Management Act Goals

1. Encourage development in urban areas
2. Reduce sprawl
3. Encourage efficient multi-modal transportation systems
4. Encourage availability of affordable housing
5. Encourage economic development throughout the state consistent with comprehensive plans
6. Do not take property rights without just compensation
7. Should timely and predictably process permits
8. Maintain and enhance natural resources industries
9. Retain open space, enhance recreation, conserve fish and wildlife habitat, and develop parks and recreation facilities
10. Protect environment and enhance quality of life
11. Encourage citizen participation and coordination between jurisdictions
12. Ensure public facilities and services necessary to support development are adequate at the time of occupancy
13. Identify and encourage preservation of archaeological and historic sites
14. Shoreline Management Act policy

Growth Management Act Goals & Requirements

- Goals guide preparation of comprehensive plans and development regulations
- Requirements must be met by plans and development regulations
- May need to balance goals and requirements
 - Can balance goals but when they conflict look to the language of the goals
 - Some goals, such as the environmental protection goal, are more directive than others. The “require” and “enhance” goals

Growth Management Act Planning Process & Requirements

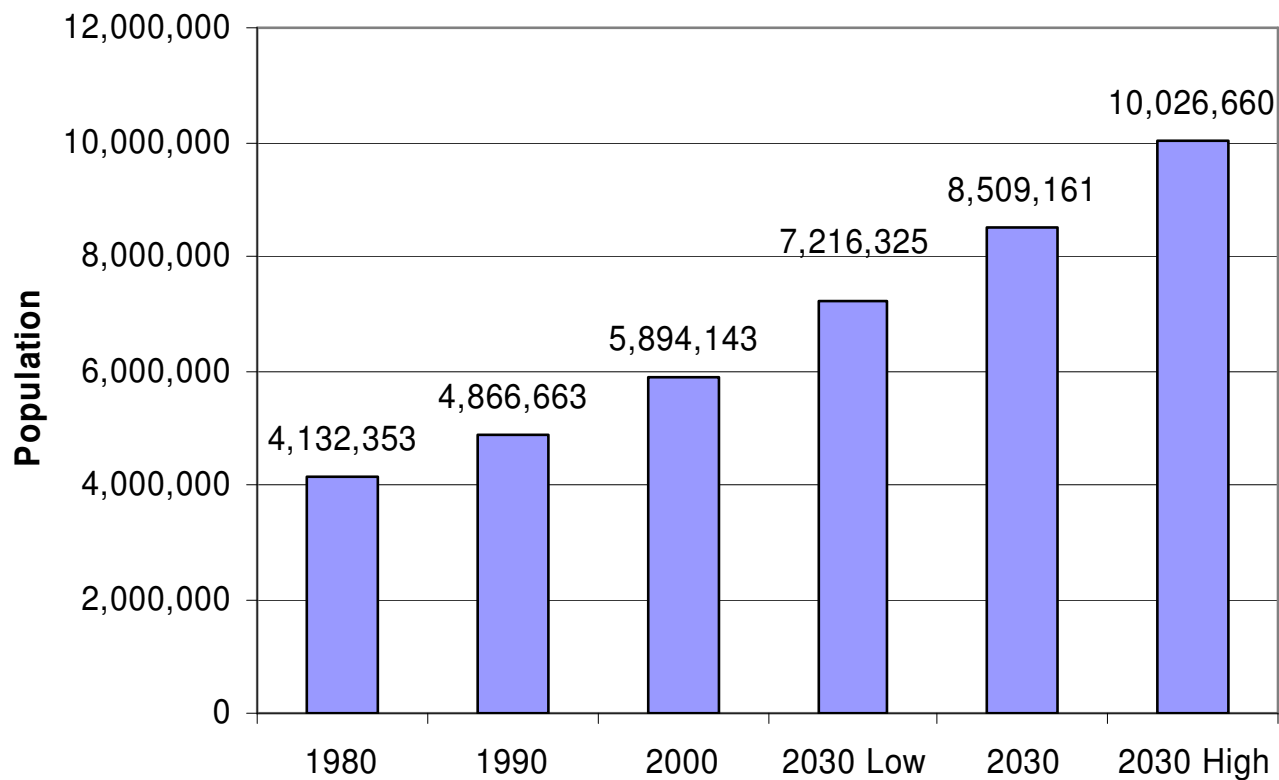


Growth Management Hearings Boards

- Three person state boards: One member local government elected official & one member a lawyer
- Decide appeals of:
 - GMA Comprehensive plans & development regulations
 - Shoreline Master Programs for cities and counties fully planning under the GMA
 - Whether OFM's 20-year population projection must be adjusted
- The Board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]. To find an action "clearly erroneous," the board must be left with the firm and definite conviction that a mistake has been committed. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 552 (2000)

Urban Growth Areas are based on the OFM Population Projections

Actual & Projected Population Growth Washington State: 1980 to 2030



Source: State of Washington Office of Financial Management

OVERSIZED UGAs

- “OVERSIZED UGAs ARE PERHAPS THE MOST EGREGIOUS AFFRONT TO THE FUNDAMENTAL GMA POLICY AGAINST URBAN SPRAWL”
- *THURSTON COUNTY v. WWGMHB 164 Wn. 2d 329 (2008)*

GAMING UGAs

The Land Capacity Analysis

- ASSUMPTIONS RE DENSITY, HOUSEHOLD SIZE, DEVELOPABLE LAND
- MARKET SUPPLY FACTOR: THE BIG FUDGE
 - AUTHORIZED BY LEGISLATURE
 - AUTHORIZED BY SUPREME COURT
- SAFETY FACTOR:
 - NOT AUTHORIZED?
 - USE MONITORING INSTEAD?

RURAL LANDS

- The original GMA devoted scarce attention to rural lands.
- 1997 amendments: Rural lands now have more detailed guidance than any other land category. RCW 36.70A.030(15), (16), (17); RCW 36.70A.070(5).
- General GMHB rule: maximum density is no more than one unit per five acres.
- BUT NO MORE “BRIGHT LINES”

LAMIRDs

- LIMITED AREAS OF MORE INTENSE RURAL DEVELOPMENT
- AN EXCEPTION TO THE PROHIBITION ON URBAN GROWTH IN RURAL AREAS
- BUT ONLY IF PRE-DATING 1990
- AND ONLY IF ONE OF SEVERAL CATEGORIES
 - cottages around a lake,
 - “cross-roads” commercial development, and
 - small scale villages and hamlets.
- NO LATERAL EXPANSION; INFILL ONLY

CONCURRENCY

- **Transportation:** Adopt ordinance that prohibits development approval
- If the development would cause the level of service
- On locally owned transportation facilities and ferries and highways of regional significance
- To decline below the LOS in the transportation element
- Unless improvements or strategies will be in place at the time of development or six years
- **Other Public Facilities & Services:** Must include regulations to ensure available when development occurs.

CRITICAL AREAS

- All cities and counties in Washington State
- **Designate** critical areas
 - Performance standards
 - Maps, especially flood plains
- **Adopt regulations to protect** critical areas.
 - Protect functions and values
 - Substantively include best available science
 - Give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries
- Identify open space corridors within and between urban growth areas (UGAs) to connect habitats and critical areas

Critical Areas

- **Wetlands**
- Areas with a critical recharging effect on **aquifers** used for potable water
- Fish and wildlife **habitat** conservation areas
- Frequently **flooded areas**
- **Geologically hazardous** areas. RCW 36.70A.030(5)

Best Available Science

- Best: Really means valid science
- Available: Included in the record and practically and economically feasible
- Science: A process involving methods used to understand the workings of natural world

What is “Included”

- *Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Bd.*
- GMA only requires that BAS be “included” in the record
- Local government may depart from BAS if it provides a reasoned justification
- But must protect the existing conditions of critical areas
- Restoration allowed, but not required

When can you depart from BAS?

- Consider these factors:
 1. The scientific evidence contained in the record;
 2. Whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reasoned process; and
 3. Whether the decision made by the local government was within the parameters of the Act as directed by the provisions of RCW 36.70A.172(1).

Ferry County v. Concerned Friends of Ferry County,
155 Wn.2d 824, 834, 123 P.3d 102, 107 (2005)

Can You Balance Science with Other Considerations

- The GMA does not expressly authorize balancing; rather, must “protect the functions and values of critical areas.”
- But Court of Appeals in *HEAL* and *WEAN* say balancing okay
- **But** must be evidence in the record showing it is necessary to achieve a GMA goal or requirement

Progress on Periodic Updates

- 88 percent of the 2005 deadline jurisdictions have complete their updates
- 60 percent of the 2006/2007 deadline jurisdictions have complete their updates
- 25 percent of the 2007/2008 deadline jurisdictions have complete their updates
- 37 percent of the 2008/2009 deadline jurisdictions have complete their updates

WHAT CAN BE CHALLENGED IN AN UPDATE?

- New language
- Unaltered language that is directly affected by GMA sections that were amended or adopted after the previous update.
- A failure to revise UGA if population forecasts have changed.

Thurston County v. WWGMHB, 190 P 3d 38 (2008).

Links

- Department of Community, Trade, and Economic Development Growth Management Webpage:
<http://www.cted.wa.gov/site/375/default.aspx>
- Growth Management Hearings Board website:
<http://www.gmhb.wa.gov/>
- The RCWs, WACs, and other materials are available at the website: <http://slc.leg.wa.gov>
- Judicial Opinions are available at:
<http://www.legalwa.org/>
- Futurewise: www.futurewise.org