Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning Under the Washington State Growth Management Act

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The character of a region is defined in large part by the number of people that live there. Densely populated urban areas like Manhattan, and to a lesser extent, Seattle, are conducive to different lifestyles than rural areas like Western Washington’s Skagit Valley, famous for its annual Tulip Festival, or the small Central Washington community of Roslyn, where the TV show *Northern Exposure* was set and where the state’s oldest neighborhood tavern, The Brick, still pours microbrew. Perhaps more so than any other state, Washington contains ideal settings for both urban and rural lifestyles. One need only drive for half an hour from Seattle, birthplace of Starbucks, “grunge rock,” and some of the worst traffic conditions anywhere, to reach Snoqualmie—a Central Washington town of less than 4,000 people located near the foot of the Cascade Mountain Range, on the banks of a river bearing its name.
Along with a booming economy\(^1\) and a natural environment of renowned splendor,\(^2\) this wide range in lifestyle options is no doubt one of the reasons that Washington State was among the top three fastest growing regions in the country during the 1980s and 1990s.\(^3\) While the record growth of the last decade has slowed a bit, the new century is sure to witness dramatic increases in Washington’s population.\(^4\) The attendant demands of a rapidly expanding population on growth management are great, requiring new ways of using a fixed (or shrinking) supply of resources to serve a constantly increasing number of residents. Providing more and more people with sufficient utility service—power, water, gas, and sewage—in addition to adequate transportation and housing infrastructures is among the most significant challenges facing Washington’s planners and elected officials.\(^5\)

The practical difficulties of accommodation are not the only problems resulting from sustained population growth. Environmental concerns such as deforestation, air and water pollution, and loss of wildlife are clearly implicated, as are aesthetic ones like the loss of breathtaking vistas and valued open spaces.\(^6\) Both affect quality of life for urban and rural residents alike. Indeed, poorly managed population growth can result in patterns of expansive low-density development that make it difficult to distinguish the rural from the

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5. See Evans, *supra* note 1 (observing that “[m]anaging growth is hard,” and discussing many of the growth-related challenges confronted by local governments in the Puget sound area). Cf. David Harrison & David Messerschmidt, Beyond the Doom and Gloom—A Look at The Region’s Response to Growth Challenges After 10 Years, SEATTLE TIMES, May 2, 1999, at B7, available at 1999 WL 6270020 (discussing several challenges related to growth accommodation and favorably evaluating King County’s strategies for meeting those challenges).

urban, one of the many growth-related problems motivating the national fight against urban sprawl. In a region like Washington State, where a rich tapestry of distinct rural and urban communities has long provided for a wide range of diverse lifestyles, maintaining the fundamental distinction between town and country is widely viewed as an essential function of growth management law.

In order to successfully confront these and other growth-related challenges, planners need to know with some degree of certainty how much population

7. See generally RANDALL ARENDT, RURAL BY DESIGN (1994). Mr. Arendt argues that market-driven land use policies invariably result in sprawling development patterns that blur traditional distinctions between urban and rural areas:

Although people generally do not yearn to live in a seamless web of sprawling subdivisions, shopping centers, and office parks, that is the ultimate future being provided for them and their children by the current planning system in almost every jurisdiction in the country (with assistance from engineers, developers, land-use lawyers, and realtors, most whom uncritically accept the standard suburban approach to community growth).

Id. at 4-5.


As used throughout this Article, the term "sprawl" means "[s]cattered, poorly planned urban development that occurs particularly in urban fringe and rural areas and frequently invades land important for environmental and natural resource protection." See DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT [hereinafter DCTED], THE ART AND SCIENCE OF DESIGNATING URBAN GROWTH AREAS—PART II 35 (1992).


The value of preserving the distinctions between urban and rural landscapes has been described as a fundamental cultural premise of the GMA:

What we pay for limiting growth—in the price of housing, congestion of streets and highways and the density of the new urban neighborhoods—is worth a high price to protect an idealized communion with nature. Growth management allows us to believe in something, that we are different than other places, unique in our appreciation of the virtues of rural lands and nature. GMA is fundamental—even narcissistic—to the idea that Seattle and the region are different than wherever you came from.

growth will occur, and when.\textsuperscript{10} Population growth is a fundamental consideration in making long-range land use planning decisions, equal in importance to such key factors as the availability of land, water, and other natural resources, or the presence of environmentally sensitive areas. Indeed, all key planning decisions—including those involving public facilities and services, residential and commercial zoning, road and highway design, and landfill placement, to name only a few—are contingent on the number of people that must be accommodated during the planning cycle.

Accurately predicting long-term population growth trends is therefore an essential step in effectively managing growth, though it is by no means an easy one.\textsuperscript{11} Unlike other planning constraints, future growth cannot be observed or even extrapolated. Instead, it must be "projected" over a period of years, a process that must account for numerous uncertainties in order to yield a reasonably accurate result.\textsuperscript{12} Key variables that can dramatically influence population growth include fertility and mortality rates, availability of jobs, economic and industrial stability, as well as even more uncertain events, such as changes in federal law that affect military outposts like Washington's Fort Lewis or the McChord Air Force Base. For each of these variables, the past may or may not be a harbinger of the future. Therefore, growth projections must assess how the conditions responsible for past growth will likely change and what those changes will mean for future growth rates.\textsuperscript{13} Once a projection of future growth is arrived at, the question then becomes how to use that projection in making long-term growth management decisions.\textsuperscript{14}

Aside from the technical challenges that growth presents, it is also the most socially and politically controversial obstacle confronting Washington's land use planners. This is so because growth is inherently controversial: witness the bumper sticker declaring, "If you ♥ New York, go home" or the newspaper

\textsuperscript{10} See Benaroya v. Redmond, No. 95-3-0072, 1996 WL 650317, at *13 (CENT. PUGET SOUND GROWTH MGMT. HR'GS. BD., Mar. 1996) (observing that "there can be no effective growth management without" population growth forecasting). Washington Growth Management Board decisions are also available at http://www.gmaboards.wa.gov. Because there is no longer an officially sanctioned publisher of Board decisions, this Article cites to the versions available on Westlaw. Unless otherwise noted, a cited decision is the Board's "Final Decision and Order" for that case.

\textsuperscript{11} For discussion of the difficulties inherent in population projection, see generally Jeff Tayman, \textit{The Accuracy of Small-Area Population Forecasts Based on a Spatial Interaction Land-Use Modeling System}, 62 J. AM. PLAN. ASS'N 1, 85-87 (1996).

\textsuperscript{12} See OFFICE OF FINANCIAL MANAGEMENT, WASHINGTON STATE COUNTY POPULATION PROJECTIONS BY AGE AND SEX: 1990-2020 9-12 (1995) [hereinafter PROJECTIONS].

\textsuperscript{13} See id.

\textsuperscript{14} For Washington's answer to this question, see discussion infra parts III, IV, and V.
editorial that looks back fondly on days when the state's population was sparse by current standards.\textsuperscript{15} Displays of anti-growth sentiment abound not just in Washington, but in nearly all of the nation's high-growth regions.\textsuperscript{16} It is not unusual for new comers in fast-growing areas, pejoratively "transplants," to experience anti-growth prejudice on the part of natives and longtime residents who fear the transformative influence of \textit{en masse} migration on distinctive regional cultures.

But the growth controversy has a more practical side as well. Public policy decisions on a wide range of issues, from zoning and environmental protection to education and social services, have been impacted by dramatic increases in Washington's population.\textsuperscript{17} Growth-related concerns are a staple ingredient in debates about these issues. Accommodating growth while "keep[ing] Washington beautiful" has proven to be a difficult balancing act, with inevitable compromise on all sides. Natives and long-time residents legitimately fear that their children and grandchildren will be robbed of the high quality of life that they have enjoyed for so long. At the same time, the economic benefits of increased population are substantial and undeniable, so political decisions to court growth often prevail over the dissenting voices of those who would take steps to halt or slow the rapid growth of the past decade.\textsuperscript{18}

The extent to which planners should rely on population growth projections in making fundamental policy choices is another dimension of the controversy, one that highlights larger ideological rifts between the arguably socialistic aims of growth management law and the \textit{laissez faire} economic model underlying


\textsuperscript{17} \textit{See} Evans, \textit{supra} note 1.

\textsuperscript{18} \textit{See} Herrington, \textit{supra} note 15, at C6 (generally acknowledging that economically-motivated, pro-growth policies have prevailed over movements to slow or halt growth in Washington and Oregon). \textit{See also} Jeff Mize, \textit{Environmentalists: Growth Out of Control}, COLUMBIAN, May 28, 1998, at A1, \textit{available at} 1998 WL 11741723 (reviewing different sides to an ongoing debate in Clark County on whether to impose a moratorium on growth).
traditional real property law. Those who are apt to view land use restrictions as an unjustifiable infringement on basic rights are particularly hostile to regulations that are based not on existing conditions, but rather state-sanctioned conclusions about the future and how best to control it. This is especially so in Washington’s rural communities, which have just recently begun to experience significant population growth and concomitant increases in personal income and public revenue.

These and other growth-related controversies are revisited throughout this Article in the context of analyzing how projections of future population growth are used under the comprehensive planning process mandated by the Washington State Growth Management Act (“GMA” or “Act”). Part II provides a brief history of the GMA, as well as a discussion of its key provisions and policies. Part III examines the role of the Office of Financial Management (“OFM”) in making population growth projections and analyzes how counties are required to use these projections in planning for future urban growth. The discussion here and in subsequent sections is informed by an analysis of key decisions by the Growth Management Hearings Boards (“Growth Boards”), the administrative tribunals charged with adjudicating challenges to the legal sufficiency of local comprehensive plans. Illuminating the substance and style of this important body of precedent, to date largely ignored by commentators, is the secondary purpose of this Article.

Turning to a more volatile area of growth management law, Part IV analyzes the growth board precedents concerning the role of OFM growth projections in rural comprehensive planning and takes a critical look at two appellate court decisions that narrowly interpret the GMA’s use of population

19. The controversy over the use of state-imposed growth projections has been particularly heated in rural areas, so much so that the Western Board prefaced one of its decisions by stating: “We tread reluctantly into the minefield of the projections [issue.]” See Port Townsend v. Jefferson County, No. 94-2-0006, 1994 WL 907895, at *7 (W. WASH. GROWTH MGMT. HR'GS. BD., Aug. 1994).

20. See Dean Baker, Appeals Court Sides With Rural Landowners, COLUMBIAN, Mar. 16, 1999, available at 1999 WL 6510262 (recounting Clark County’s successful efforts to overturn a board decision requiring it to downzone its rural lands in response to state-generated population projections). One Clark County property rights activist described the legal battle against the use of state-mandated population projections as “one that we have to fight because otherwise we lose all our rights out here.” Id.


projections. Part V defends the growth board precedents requiring counties to use OFM projections in rural comprehensive planning by demonstrating that the Act’s plain language and policy goals are inconsistent with the narrower construction advanced by the Court of Appeals. Part VI proposes the adoption of a consistent legislative and judicial approach to these issues that is supported by some general observations concerning the significance of population growth projections to effective growth management and the widespread confusion surrounding their role under the GMA.

II. OVERVIEW OF THE WASHINGTON STATE GROWTH MANAGEMENT ACT

Washington’s GMA is the product of a national growth management revolution that followed on the heels of the environmental movement of the late 1970s and continues to this day. In contrast to environmentalism, which set its sights on deforestation, air and water pollution, species extinction, and a whole host of other global problems, the growth management movement is more narrowly focused on combating sprawling urban and suburban development in high-growth regions of the United States. This agenda is informed by an increasing body of empirical evidence indicating that the pattern of sprawling, low-density growth that has characterized post-World War II urban expansion is responsible for a variety of environmental, social, and aesthetic ills, as well as massive public expenditures on the inefficient extension of sewer, water, and

23. The beginnings of the revolution can be traced to Hawaii’s 1961 land use statute, the first to require comprehensive planning on the part of local governments. See James Lawlor, State of The Statutes, 58 AM. PLANNING ASS’N 10-14 (Dec. 1992). After gaining momentum alongside the environmental movement of the late 1960s, the growth management revolution lost steam during the late 1970s and early 1980s, only to be reborn in 1984 with Florida’s adoption of strict land use planning requirements. See John M. DeGrove & Nancy E. Stroud, New Developments and Future Trends in Local Government Comprehensive Planning, 17 STETSON L. REV. 573 (1988). Washington’s adoption of the GMA in 1990 was an early installment in the third wave, which has since witnessed increased national interest in growth management under the moniker “Smart Growth.” See Jerry Weitz, From Quiet Revolution to Smart Growth: State Growth Management Programs, 1960 to 1999, 14 J. PLAN. LITERATURE 267 (1999).

24. For an example of how the agendas of these two movements differ, compare Wim Wiewel, Growth Management: A Primer for Journalists, THE QUILL, May 1999, available at 1998 WL 12879611 (defining growth management as “an explicit, ongoing program to shape or control growth through some combination of intervention techniques and policies” that are designed in part to limit the areas where urban-level development can occur) with Eastlake Cmty. Council v. Roanoke Assocs., Inc., 513 P.2d 36, 46 (Wash. 1973) (holding that the goal of the State Environmental Policy Act is to restore “ecological health to our lives” by making it the “policy and responsibility of the state not only to maintain and enhance our environment, but to also ‘prevent or eliminate damage to the environment’”).
electrical services, and resultant conflicts between local governments over the responsibility for providing those services.\textsuperscript{25} Also implicit in this agenda is a more subjective national discontent with suburbia's perceived homogeneity and lack of cultural vitality.\textsuperscript{26}

Recognizing that unregulated, market-driven development helped to create the modern sprawl paradigm,\textsuperscript{27} several states have enacted more comprehensive

\textsuperscript{25} See generally Bremerton v. Kitsap County, No. 95-3-0039, 1995 WL 903165, at *19 (CENT. PUGET SOUND GROWTH MGMT. HR'GS. BD., Oct. 6, 1995) (reviewing the professional literature on sprawl and its negative consequences). In this seminal decision, the Central Board concluded "that there are at least eight major negative consequences of sprawl:

1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences.

\textit{Id.}

\textsuperscript{26} See ANDRES DUANY ET AL., SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM xiii (2000) (describing sprawling suburbia as "an architectural version of Invasion of the Body Snatchers [that lacks] a physical framework conducive to public discourse[,]" and thus threatens cherished "family and communal institutions[.]"); See also LEWIS MUMFORD, THE CULTURE OF CITIES 255 (New York: Harcourt, Brace & Co., 1938) (arguing that unbound urban development results in "[a] rootless world removed from the sources of life: a plutonian world, in which living forms become frozen into metal: cities . . . defiling their own nest, reaching into the sky after the moon: more paper profits, more vicarious substitutes for life").

In addition to the scholarly literature in this vein, popular culture is replete with many unflattering characterizations of suburban mores. In the aptly titled song "Subdivisions," for example, Canadian lyricist Neil Peart laments the social ravages of urban sprawl:

\begin{verbatim}
Sprawling on the fringes of the city
In geometric order
An insulated border
In between the bright lights and the far unlit unknown
*
Nowhere is the dreamer
Or the misfit so alone
*
Any escape might help to smooth
The unattractive truth
But the suburbs have no charms to soothe
The restless dreams of youth.
\end{verbatim}

\textit{RUSH, Subdivisions, on SIGNALS} (Polygram 1982).

\textsuperscript{27} Professor Wim Wiewel has boiled this line of thought down to the following:
land use laws over the last fifteen years in an effort to control the nature and scope of growth within their borders. Against this background, Washington took its place on the front lines of the growth management revolution with the enactment of the GMA in 1990. The following overview provides a brief history of the GMA and a summary of its procedural and substantive requirements. Many of the provisions touched on here are subsequently discussed at greater length in connection with analyzing how the GMA uses population growth projections.

A. A Brief History of the GMA

The GMA contains a blend of procedural and substantive requirements that were adopted by the Legislature in response to increasing frustration on the part of Washington voters with the practical effects of sprawl in their daily lives.\(^{28}\) Washington’s pre-GMA land use laws, largely unchanged since the 1920s, consisted primarily of enabling statutes delegating state zoning powers to local authorities.\(^{29}\) Land use planning under this hodgepodge system was entirely optional, so compliance with these scattered provisions entailed little more than the observance of a few procedural requirements.\(^{30}\) At the close of the 1980s, however, the need for a more comprehensive system of growth management was plain to see. Conditions resulting from sky-rocketing population growth—record-level traffic congestion, seemingly endless sprawl, and the loss of salmon streams and forests—posed unprecedented challenges for local planning authorities and lowered the quality of life for large portions of the

Without [growth management] controls, there are inevitably inefficient land development patterns because the preconditions necessary for an efficient market do not exist in urban land markets. In this view, uncontrolled growth itself is inefficient and costly to residents, local government, and the environment. Consequently, the argument goes, government intervention is needed to address market failure in urban and regional land development.

Wiewel, supra note 24.


30. See Settle & Gavigan, supra note 9, at 875-880 (summarizing Washington’s pre-GMA planning statutes). See also Larson, supra note 29, at 371.
The laws of a more tranquil time were deemed insufficient to meet these challenges, and the Legislature adopted an embryonic form of the GMA on April Fools Day, 1990.

While public opinion favored a much more aggressive approach to managing growth, the movement toward state-level control of land use decisions was seen by many elected officials and citizens, particularly those living in rural areas, as an unwarranted abridgement of traditionally autonomous local authority in land use matters. Developers and their advocates sounded similar alarms, arguing that the imposition of yet another statutory constraint on land development would endanger the economic expansion then in full swing. Proponents of stricter growth management laws therefore had to overcome both corporate and grassroots opposition, a challenge that required major compromises on some issues and all out surrender on others. The GMA that emerged from this give-and-take process borrowed its basic structure from Oregon's growth management statute, but reserved to local governments far more implementing authority than the Oregon law.

B. Comprehensive Planning: A Procedural Means To Substantive Ends

The world envisioned by the GMA is one in which orderly, compact, and cost-efficient growth occurs as the result of thorough, coordinated planning on the part of local governments and their constituencies. In the original preamble to the Act, the Washington State Legislature rejected a long history of haphazard zoning practices, declaring that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development,

31. See Settle & Gavigan, supra note 9, at 880-81.
34. See Settle & Gavigan, supra note 9, at 881-896 (recounting "The Tortuous Legislative History of The GMA").
and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.\(^{36}\)

In keeping with this pronouncement, the Act requires all counties with high populations or population growth rates, as well as all cities within their boundaries, to prepare detailed comprehensive growth management plans\(^{37}\) establishing clear policies with respect to several important growth-related topics, or "elements" in GMA parlance.\(^{38}\) The comprehensive plan, once called the "constitution" of local land use law,\(^{39}\) is the "coordinated land use policy statement" of the local governing body.\(^{40}\) As such, comprehensive plans must contain written text describing foundational "objectives, principles, and standards," as well as maps that illustrate sub-area population densities, development intensities, and future land uses.\(^{41}\) One of the Act's most important mandates is that comprehensive plans must be "internally consistent,"\(^{42}\)

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37. Id. at § 36.70A.040(1). A county is subject to the Act's planning requirements if it has (1) a population of 50,000 or more and has experienced growth of ten-percent or more in the decade ending May 16, 1995; or (2) a population of 50,000 and has experienced growth of seventeen percent or more during any ten-year period ending on or after May 16, 1995; or (3) a population growth rate of more than twenty percent during the "past ten years[.]" Id. Counties not required to plan may nonetheless "opt in" by adopting a binding resolution committing to GMA compliance. Id. at § 36.70A.040(2). A county that falls within the purview of the Act is forever subject to GMA planning requirements, even if the conditions initially necessitating compliance have changed. Id.

38. WASH. REV. CODE § 36.70A.070(1)-(6) (1990). A comprehensive plan must contain discrete elements addressing future land use, housing, capital facilities, existing and proposed utilities, rural lands, and transportation. Id. The land use element is the most comprehensive, requiring counties to designate "the proposed general distribution and general location and extent of the uses of land . . . for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other uses," and in doing so, to specify "population densities, building intensities, and estimates of future population growth." See id. at § 36.70A.070(1).

39. See Larry J. Smith, Planning for Growth, Washington Style, in STATE & REGIONAL COMPREHENSIVE PLANNING: IMPLEMENTING NEW METHODS FOR GROWTH MANAGEMENT 139 (Peter A. Buchsbaum & Larry J. Smith eds., 1993). The comprehensive planning requirement has also been described as the GMA's "central nervous system." Settle & Gavigan, supra note 9, at 915.

40. WASH. REV. CODE § 36.70A.030(4) (1997). See also Donald G. Hagman & Julian Conrad Juergensmeyer, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW § 2.10, at 24-25 (2d ed. 1986) (defining comprehensive plans in general as policy guides to local decisions regarding the physical development of a community).


42. See W. Seattle Def. Fund v. Seattle, No. 96-3-0033, 1997 WL 176356, at *8, *10 (WASH. CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Mar. 24, 1997) (describing the
meaning that all provisions within a comprehensive plan must be consistent with the future land use map and capable of concurrent implementation.\textsuperscript{43}

The Act’s comprehensive planning requirements, while essentially procedural, are intended to further the most fundamental aim of the growth management revolution: ending a fifty-year epoch of uncontrolled and unbound growth by forcing local governments to make hard decisions about the long-term course of growth within their borders. To this end, county governments are required to designate Urban Growth Areas ("UGAs") into which future urban growth will be directed.\textsuperscript{44} The final designation of UGAs, which must be included in the comprehensive plan, is preceded by the designation of Interim Urban Growth Areas ("IUGAs") during the period leading up to adoption of the comprehensive plan.\textsuperscript{45} Local governments must also designate final and interim "critical areas and natural resource lands," as well as regulations protecting those areas from harmful development.\textsuperscript{46} A "rural land use element" is also required and must include all lands not designated as UGAs, critical areas, or natural resource lands.\textsuperscript{47}

The Act strives to ensure that all local and regional perspectives are considered during the planning process. Accordingly, the comprehensive plan of a city or county must be "coordinated . . . and consistent with" the plans of all bordering counties or cities,\textsuperscript{48} a requirement intended to foster intergovernmental cooperation and encourage regionally-focused planning decisions.\textsuperscript{49} Similarly, counties and cities must work together in drafting countywide planning policies ("CPPs") that serve to both guide and constrain their individual planning efforts.\textsuperscript{50}


\textsuperscript{44} See WASH. REV. CODE § 36.70A.110 (1999).

\textsuperscript{45} See Assoc. of Rural Residents v. Kitsap County, No. 93-3-0010, 1994 WL 907885, at *10 (CENT. PUGET SOUND GROWTH MGMT. HR'GS. BD., June 3, 1994).

\textsuperscript{46} See WASH. REV. CODE § 36.70A.030, .060, .170 (1998).

\textsuperscript{47} See id. at § 36.70A.070(5).

\textsuperscript{48} Id. at § 36.70A.100. See also WASH. REV. CODE § 36.70A.210 (1998).

\textsuperscript{49} See Settle & Gavigan, supra note 9, at 904-05.

\textsuperscript{50} See WASH. REV. CODE § 36.70A.210(1) (1999). A CPP is “a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted[.]” Id. at § 36.70A.210(1). A county’s comprehensive plan must be consistent with the CPPs, as must the comprehensive plans of all cities within the county. Id. The CPP process plays a vital role in helping to realize a key component of the GMA’s overall vision:

[A] long term purpose of county-wide planning policies is to facilitate the transformation of local governance in the urban growth area so that urban governmental services are provided by cities and rural and regional services are
in regional comprehensive planning and have final say in the adoption of CPPs, city governments have to independently plan for urban growth within their boundaries and are afforded a voice, albeit not a very loud one, in determining where future urban growth should occur on a countywide scale.

Much of the conceptual vagary inherent in the Act’s language can and should be clarified by locally promulgated development regulations, against which GMA rules and policies serve as minimum standards. This approach, frequently described as “bottoms up,” requires county and city governments to enact regulations implementing their comprehensive plans. These regulations afford local governments vast discretion in effectuating the Act’s goals, but they must also be consistent with the comprehensive plan, which in turn must be consistent with the countywide planning polices, and ultimately, with substantive GMA requirements and policies. By requiring consistency between all levels of the planning process while at the same time affording local governments complete regulatory independence, the Act attempts to strike an appropriate balance between mandatory compliance with the Act’s goals and local autonomy in land use decision-making.

provided by counties. Within the span of GMA plans, urban growth is to occur primarily within the boundaries of incorporated cities, while counties are to become divested of urban local government service delivery responsibilities and invested with responsibilities for regional policy making and service delivery.

Snoqualmie v. King County, No. 92-3-0004, 1993 WL 839711, at *7 (WASH. CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Mar. 1, 1993) (discerning legislative policy regarding the appropriate roles of county and city governments from the language of WASH. REV. CODE §§ 36.70A.030(16), .110(3), .210(3)).

52. See WASH. REV. CODE § 36.70A.040(2)-(4) (2000). See also Tacoma v. Pierce County, No. 94-3-0001, 1994 WL 907887, at *7 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., July 5, 1994) (holding that cities have discretion in deciding specifically how to accommodate the population growth that is allocated to them by the county, subject only to the Act’s policies and mandates).
53. See WASH. REV. CODE § 36.70A.110(2) (1999) (requiring that counties consult with cities in designating “the location of an urban growth area within which the city is located” and justify in writing decisions not agreed to by the city).
54. See id. at § 36.70A.120.
55. See Settle & Gavigan, supra note 9, at 897-98, and Settle & Wolfe, supra note 28, at 9. See also Dearborn & Gygi, supra note 35, at 986. See also Snoqualmie v. King County, No. 92-3-0004, 1993 WL 839711, at *17 (CENT. PUGET SOUND GROWTH PLAN. HR’GS. BD., Mar. 1, 1993).
57. See id.
58. See id. at § 36.70A.210(1).
60. The Central Board described the distinct but interrelated role of DRs, comprehensive plans, and CPPs as a cascading “hierarchy of substantive and directive policy
C. Substantive Policies and Mandates

The substantive core of the GMA consists of thirteen broadly stated objectives. These "planning goals"—the heart and soul of the GMA—are intended to collectively guide "the development and adoption of comprehensive plans and development regulations." Chief among them are the twin goals of "[e]ncourag[ing] development in urban areas where adequate public facilities and services exist[.]

Other planning goals seek to encourage the implementation of a wide range of fair and sensible land use policies, while also protecting the rights of property owners.

Ostensibly all planning goals are on equal footing. In reality, however, the Act's anti-sprawl policies have occupied a special place in GMA jurisprudence and often prevail over competing goals in cases where local authorities are resistant to substantial changes in pre-GMA land use policies.

All components of a comprehensive plan—including the capital facilities, land use, and utilities elements, as well as the rural element and UGA designations—must be "substantively guided" by the Act's policy goals,
though as a practical matter the relationship between the sometimes vague GMA objectives and the "nuts-and-bolts" provisions of most comprehensive plans is seldom entirely clear. Several of the Act's more specific mandates, however, are designed to directly further the GMA's overall vision of compact, densely populated urban centers separated by vast expanses of sparsely inhabited rural lands. To encourage contained urban development, for example, counties cannot include, within a UGA, land outside of existing city limits except under certain specified conditions intended to prevent runaway urban development. Toward similar ends, the Act expressly forbids counties from allowing "urban growth" within rural areas, a prohibition clearly intended to preserve the distinct ruralism of these communities and prevent the emergence or perpetuation of sprawling development patterns in rural areas. Other substantive GMA mandates further the policy goals of providing adequate public facilities and transportation infrastructure, as well as the goals of ensuring the availability of affordable housing and protecting the environment. The Act's "concurrency requirement," for example, forbids

(requiring that plans reflect "a considered application of appropriate goals and requirements of the Act["]").

69. See WASH. REV. CODE § 36.70A.110(1) (1999) (providing that land outside of existing city limits may be included within a UGA only if it is "already characterized by urban growth . . . or is adjacent to territory that is already characterized by urban growth"). See C.U.S.T.E.R. v. Whatcom County, No. 96-2-0008, 1996 WL 671531, at *1 (W. WASH. GROWTH MGMT. HR'GS. BD., Sept. 12, 1996) (holding that counties must exhaustively consider locating UGAs within areas characterized by urban growth before expanding UGAs to include other lands). See also Rural Residents, 1994 WL 907885, at *11, *34-35 (articulating specific requirements for the inclusion of unincorporated lands within UGAs).
70. The GMA defines urban growth as "growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands[.""] See WASH. REV. CODE § 36.70A.030(17) (1999).
71. See id. at § 36.70A.110(1) (prohibiting urban growth outside of UGAs). See Rural Residents, 1994 WL 907885, at *33 (holding that "as an absolute rule, the only place urban growth is permitted is within a UGA"). For discussion of the Act's treatment of rural areas, see infra notes 279-302 and accompanying text.
72. See WASH. REV. CODE § 36.70A.200 (1999). The Act requires comprehensive plans to provide an impartial mechanism for locating essential but unpopular public facilities, such as airports, state educational facilities, prisons, solid waste facilities, and mental health facilities. See WASH. ADMIN. CODE § 365-195-340(1)(a) (2000).
74. See id. at § 36.70A.070(2)(d) (requiring the local governments to "make adequate provisions for the existing and projected [housing] needs of all economic segments of the community").
75. See id. at §§ 36.70A.030, .060, .170.
counties from expanding UGAs beyond existing city limits without first ensuring that adequate facilities are or will be provided. While the Act’s economic goals are not as widely touted as its anti-sprawl provisions, these goals can be considered in determining the size of a UGA and in a variety of other planning contexts as well.

D. The Role of the Growth Management Hearings Boards

In lieu of the heavy-handed authority assigned to government agencies under the growth management statutes of several other states, Washington’s GMA affords local governments extensive discretion in implementing the Act’s goals and policies. Government oversight of the GMA process occurs only in the context of adjudicating challenges to the comprehensive plans of counties and cities, a task which the GMA assigns to three independent administrative bodies: the Eastern Washington, Western Washington, and Central Puget Sound Growth Management Hearings Boards. The creation of three distinct boards reflects the Legislature’s recognition of regional diversity, as well as a desire to utilize the jurisdictional boundaries established for the three courts of appeal.

While the boards do not promulgate administrative regulations, the extensive body of precedent that has emerged from their decisions plays a critical role in filling legislative gaps in the language of the GMA and helping to ensure local compliance with core GMA policies and mandates. The Act effectively limits the subject matter jurisdiction of the growth boards to land use planning issues.

76. See id. at § 36.70A.070(6)(E). The concurrency requirement makes regulatory approval of proposed development contingent upon the availability of transportation facilities, and possibly other public services as well, at specified “levels of service” included in the comprehensive plan. See id. See also Settle & Wolfe, supra note 28, at 5 (describing concurrency as “[o]ne of the Act’s most significant substantive requirements”).

77. The Act’s economic goals include encouraging affordable housing and economic development, and protecting property rights. These goals can inform UGA designations via the use of a “reasonable land supply market factor.” See infra notes 231-68 and accompanying text.

78. See Jeffrey M. Eustis, Between Scylla and Charybdis: Growth Management Act Implementation That Avoids Takings and Substantive Due Process Limitations, 16 U. PUGET SOUND L. REV. 1181, 1185 (1993) (contrasting the GMA to similar statutes in Oregon and Florida that delegate considerable oversight and implementing powers to state agencies).


81. See Settle & Wolfe, supra note 28, at 5. As of this writing, the three growth boards have together issued decisions and orders totaling more than 4,000 pages since their creation in 1991.
issues that are destined to arise under the GMA. As a practical matter, these issues fall into two categories: (1) allegations that the comprehensive plans or development regulations of local governments do not comply with the GMA, and (2) challenges to the accuracy of the twenty-year population growth projection issued by OFM. The standing requirements for challenging a comprehensive plan or development regulation are easy to satisfy, as evidenced by the plethora of public interest suits that have been filed with the Boards since their creation in 1991. Challenges to OFM’s population projections are even easier to initiate procedurally, but nearly impossible to win.

In deciding cases, growth boards have the discretion to either invalidate or remand a comprehensive plan or development regulation if the challenged provision is found to be clearly erroneous in light of the Act’s policy goals and requirements. Invalidation is clearly the more severe remedy, as it has the effect of preventing development permit applications from vesting until the order of invalidity is lifted. A remand order, which requires local governments to take specified corrective actions, is a far less onerous remedy, but can be followed by an invalidity order if noncompliant provisions are not repaired.
within 180-days from the date the remand is issued.89 The growth boards are subject to the requirements of the Administrative Procedures Act, which means that board orders are subject to judicial review beginning at the superior court level.90

Growth board decisions seek constantly to strike a balance between second-guessing the motives and likely results of local planning decisions on the one hand, and non-enforcement of the Act's core policy directives on the other.91 Given the often incompatible agendas of participants in the planning process, however, it is not surprising that the balance achieved in particular cases is seldom acceptable to all. Local governments have voiced resentment at having to "downzone" rural areas to avoid running afoul of the requirement that urban growth occur only in UGAs.92 On the other side of the GMA continuum, activists sometimes express frustration with the deferential posture of growth board decisions toward actions of local governments that they believe will perpetuate historic patterns of urban and rural sprawl.93

III. THE OFFICE OF FINANCIAL MANAGEMENT'S COUNTYWIDE POPULATION GROWTH PROJECTIONS

"There can be no effective growth management without [the use of population growth projections]."94 Making informed planning decisions for the long-term growth of a community or a region requires knowing with a high degree of certainty the number of people that will be affected by those decisions. Significant land use issues ranging from transportation infrastructure, housing, and capital facilities to specific zoning questions such as allowable density levels and the location of residential and commercial development, cannot be meaningfully addressed without a reasonably accurate estimate of how much the population of an area will increase or decline.

Early in the deliberative process that preceded final adoption of the GMA, it was recognized that population growth projections would necessarily be a key determinant in long-term comprehensive planning.95 It was also recognized that

89. See id. at § 36.70A.300(1) (1999).
90. WASH. REV. CODE § 36.70A.300(2) (1999).
92. See Baker, supra note 20 ("[board-ordered] downzoning caused rural property owners to have fewer options for developing land").
95. The Washington State House of Representatives adopted the State Land Use

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municipalities intent on continuing the sprawling growth patterns of the last fifty-years could do so by incorporating over-inflated population projections into their comprehensive plans. Unrealistically high growth projections would justify high-density zoning for large areas of undeveloped land, and the inevitable failure of growth to occur at the projected level would result in much of this land becoming low-density, sprawling development—the cardinal GMA sin.

Recognizing the perils of allowing local governments to forecast their own population growth, the Legislature entrusted the Office of Financial Management with the all-important function of preparing countywide population growth projections for use in comprehensive planning. Being no stranger to the projection business, OFM was the logical choice for this job. Long before the GMA was enacted, OFM was charged with projecting Planning Act—a crude precursor to the GMA—on the recommendation of the Washington State Land Planning Commission in 1973, only to have the measure rejected by the Senate. See Settle, supra note 9, at 876 (discussing H.B. 791, 43d Leg. Reg. Sess. (1973)). This early stab at growth management legislation would have required local governments to project their own future population trends, using data made available to them by the state. H.B. 791, 43d Leg. Reg. Sess. (1973).

Commentators calling for reform of Washington’s pre-GMA land use laws also recognized that long-range planning decisions should be based to some degree on projected population growth. See Jerome Hillis & Richard R. Wilson, Land Use Planning in Washington Overdue for Improvement, 10 WILLAMETTE L.J. 320, 320 (1974) (using growth projections generated by the Washington State Census Board to argue for a system of land use planning that requires local governments to consider the “extra-municipal repercussions of their land use decision”). See also G. Bruce Clement & Egil Krogh, Jr., Comment, Regional Planning and Local Autonomy in Washington Zoning Law, 45 WASH. L. REV. 593, 593 (1970) (arguing that projected increases in population will increase the “extra-municipal effects” of local land use decisions). See also Neal Peirce et al., The Pierce Report—1. Congestion and Sprawl—A Thousand and One Delayed Decisions Are Taking Their Toll, and Environmental Time Is Running Out Fast in Puget Paradise, SEATTLE TIMES, Oct. 1, 1989, available at 1989 WL 2947539 (short article by three leading land use policy scholars in which population growth projections generated by the Puget Sound Council of Governments are used to illustrate the need for reform of pre-GMA land use laws).

96. See Rural Residents, 1994 WL 907885, at *26. The Board’s decision in this case contains the most focused published discussion of the legislative history surrounding OFM projections. In divining the legislative intent with respect to the GMA’s initial treatment of urban growth areas, the Board observed that “[i]f counties were free to alter OFM’s projections or derive their own projections, local biases could enter into the formula . . . and enable counties to skew the forecasts to justify any size UGA.” Id. The Board concluded that placing responsibility for population forecasts in the hands of OFM, “a state agency independent of local political considerations[,]” signaled the Legislature’s intent to avoid such a result. Id. See also Andrew Richardson, How to Choose Local Projections, AM. DEMOGRAPHICS, Oct. 1994, at 43-44, available at http://www.demographics.com/publications/ad/94_ad94410_ad/ad689.htm (arguing that vested local interests can influence the results of locally-conducted population projections, which tend to paint unrealistically “rosy picture[s]”).
statewide population growth to help guide legislative budgetary decisions. These statewide projections are unrelated to the GMA’s comprehensive planning requirements, however, and the term “OFM projections” is used throughout this Article in reference to OFM’s countywide population projections.

The enabling statute that specifies OFM’s role under the GMA is RCW 43.62.035. It provides in pertinent part that:

At least once every five years or upon the availability of decennial census data, whichever is later, [OFM] shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan...and shall review these projections with such counties and the cities in those counties before final adoption. The county and its cities may provide to the office such information as they deem relevant to the office’s projection, and the office shall consider and comment on such information before adoption. Each projection shall be expressed as a reasonable range developed within the standard state high and low projection. The middle range shall represent the office’s estimate of the most likely population projection for the county. If any city or county believes that a projection will not accurately reflect actual population growth in a county, it may petition the office to revise the projection accordingly.98

The cited provision—RCW 36.70A.110—requires counties to use OFM projections as the basis for designating UGAs.99 Subpart B analyzes the language, interpretation, and practical application of this provision, while subpart A, below, provides a factual summary of the most recent countywide projections and the methodology used in making these projections, as well as a brief review of the criticism surrounding OFM projections.

A. Results, Methodology, and Criticism:
A Growth Projection Primer

The Act’s use of population projections signals as clearly as any part of the GMA the Legislature’s intention to require Washington’s counties and cities to engage in meaningful long term planning.100 But while requiring projection-
based planning was a policy choice intended to further core GMA goals, OFM's growth projections themselves serve functional rather than normative ends. In *Kitsap County v. Office of Financial Management*, the Central Board observed that "[i]t is not the purpose of planning population projections to either stimulate or depress the rate of growth[,]" but rather to tell counties how many people to plan for when designating UGAs. Consistent with this observation, it is often stressed that OFM's population projections represent objective measurements, not political judgments regarding the ideal size of a community or region.


The most recent county-wide population projections, prepared by OFM for the 1995-2020 planning cycle, are set forth in a 145-page volume entitled "Washington State County Population Projections by Age and Sex: 1990-2020." These projections were prepared pursuant to RCW 43.62.03 for use in GMA comprehensive planning, although the Legislature has put OFM's forecasting work to a few other uses since the adoption of the GMA in 1990. The projections issued in 1995 extend five years beyond the twenty-year cycle mandated by the GMA so that counties have the option of preparing longer range comprehensive plans.

In 1992, the year that OFM released its first GMA population forecasts, a single number was used to indicate the most likely population growth for each county. Between 1992 and 1995, however, numerous county and city governments complained about the accuracy of OFM projections, and the growth projections "established three fundamental premises that did not exist before the GMA, i.e., that there will be growth, that growth must be managed, and that a long term view is required in order to manage that growth").

101. *Id.* The board further characterized growth forecasts as "an externally derived and imposed requirement rather than a locally derived policy choice." *See id.* at *10.

102. *See id.* at *6 (describing the OFM projections as "being neither policy nor political in nature[,]" but rather "numeric, objective, technical and finite[,]" *See also Rural Residents*, 1994 WL 907885, at *26 (emphasizing OFM's independence from the political process).

103. PROJECTIONS, supra note 12. This volume is available upon written request to the Office of Financial Management, Forecasting Division, P.O. Box 43113, Olympia, WA 98504-3113. The projections can also be viewed online at http://www.ofm.wa.gov/demographics.

104. *See id.* at iii.

105. *Id.* See former WASH. REV. CODE § 43.62.035 (amended 1995).

Legislature amended the GMA in 1995 to require that OFM make its projections using a threefold projected range. Pursuant to this amendment, the middle range is used to indicate the most likely population for a given period, while high and low alternatives are provided to account for possible projection inaccuracies. Local governments must locate their "GMA population planning targets" between the endpoints of the OFM continuum.

The low, medium, and high projections for each of Washington's thirty-nine counties, as well as the overall statewide projection, are presented in three tables. These tables depict projected populations at five-year intervals from 1990 to 2010, and to facilitate local compliance with GMA planning targets, at single-year intervals from 2010 through 2020. Although these charts are alone sufficient to satisfy OFM's responsibilities under RCW 43.62.03, state and county projections are also presented in the form of three-page "population profiles" designed to capture and depict all aspects of an area's projected growth, including unique local circumstances.

Even a cursory review of 1995-2000 county population projections is enough to see that the OFM outlook is for more growth, and soon! In terms of sheer numbers, nowhere is this trend more apparent than in the state's densely populated urban areas. The prime example is King County, Washington's most populous county, which is projected to grow from 1,679,066 in 2000 to 2,030,674 in 2020, an increase of about 21%, reaching the midpoint between 2010 and 2011. This projected trend resumes the population expansion that.

109. PROJECTIONS, supra note 12, at iii. See infra notes 166-68 and cited authorities.
110. PROJECTIONS, supra note 12, at iii.
111. Id. at 11. The population profiles are based on the medium-range projections and utilize three distinct textual and pictorial devices: population change graphs, projection tables, and population pyramids. First, "population change graphs" are used to illustrate projected (1) overall population changes; (2) net migration, considered the most significant factor in population change; and (3) natural population change (i.e., births minus deaths). The graphs are plotted at five-year intervals beginning in 1960 and project each of these three growth rates through the year 2020. Second, age and gender projections from 1990 through 2020 are presented in the form of tables, which are also used to show Washington's projected share of the national population. Finally, each profile includes a "population pyramid" designed to more viscerally "illustrate the shape of an area's population" by interpolating two horizontal bar graphs depicting age and gender projections. See id. at 11-12.
112. King, Pierce, and Snohomish Counties, each of which experienced historic growth rates in the last decade, were among the top fifty fastest growing counties nationwide during the 1990s. See Blumenthal, supra note 3.
113. See PROJECTIONS, supra note 12, at 7 (medium series). The alternative projections are, on the high end, a population increase of 475,901 from 2000 to 2020, an increase of approximately 28%, and on the low end, a population increase of 201,653, an increase of around 12%. See id. at 6, 8.
began in 1985 and petered out in 1990, though this time at a much less frenetic pace. Other predominantly urban counties in the Puget Sound area will witness similarly high-levels of growth, particularly Pierce County, which is expected to grow by 195,240 from 2000 to 2020, and Snohomish County, which is expected to grow by 254,473 over the same period, increases of nearly 27% and 44%, respectively. Significant growth is also expected in traditionally slow-growing urban centers east of the Cascade Mountain Range, notably Spokane and Franklin Counties.

Although population increases in rural areas will invariably account for less of the state’s numeric population growth than increases in city populations, the overall rate of growth in rural counties is projected to be much brisker than in urban areas. A case in point is Clark County, which was by far the fastest growing county in Washington state during the 1990s and one of the top fifty fastest growing counties in the nation. With a Y2K population of 322,755, Clark County’s population is projected to be 425,502 by 2020, an increase of 102,747, or 31%. Still more dramatic growth rates are forecast for San Juan County, which is projected to grow from 13,877 in 2000 to 21,110 in 2020—an astounding increase of 52%—and Kitsap County, which is projected to grow from 244,049 in 2000 to 337,602 in 2020, an approximate increase of 38%. Even Columbia and Garfield Counties, both of which have experienced declining population for several decades, are projected to grow at modest rates throughout the remaining projection cycle.

The separate statewide projections forecast a total population increase of 1,760,199 during the next twenty-years, up from 5,849,891 in 2000 to

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114. See id. at 11. King County’s population grew nearly 10% during this period, from 1,356,600 in 1985 to 1,507,300 in 1990. Id. at 67. In contrast, the county’s population increased only about 7% from 1990 to 1995. PROJECTIONS, supra note 12, at 67.

115. See id. at 7 (medium series).

116. Spokane County’s population is expected to grow from 423,347 in 2000 to 547,959 in 2020, an increase of 124,502, or about 30%, while Franklin County is projected to grow from 48,831 in 2000 to 65,152 in 2020, a more than one-third increase of 16,321. Id. at 67.

117. See Evans, supra note 1, at B9. One of the statistical assumptions underlying the 1995-2020 projections is the “impact of a ‘rural rebound’ growth trend experienced by most of the western states since the early 1990s.” PROJECTIONS, supra note 12, at 9.

118. See PROJECTIONS, supra note 12, at 7. See also Jeff Mize, supra note 18, at A1 (discussing the county’s record-growth—expected to continue with an average annual increase 7,929 through 2015).

119. See Blumenthal, supra note 3, at B1 (recounting U.S. Census Bureau estimates that rank Clark County as the 91st fastest-growing county in the nation during 1990-1998 period).

120. See PROJECTIONS, supra note 12, at 7 (medium series).

121. See id. at 7 (medium series).

122. See id. at 10.
While this 30% increase in population is modest compared to the growth rates experienced during the boom years of 1985-1995, it is expected to occur evenly over the course of the remaining projection cycle. Gone, the OFM charts tell us, are the dramatic peaks and valleys characteristic of Washington's growth spurts over the last thirty years.

2. OFM’s Cohort-Component Methodology

Projecting population growth is a complex blend of statistics, demography, sociology, and, some would say, prophecy. OFM projects county and state population growth by using a standard “cohort component” approach, generally regarded as the gold standard among professional demographers and statisticians. The end product of OFM’s cohort projection is a series of charts and graphs illustrating the number of people, by age and sex, that are projected to be living in each of Washington’s thirty-nine counties during each year of the twenty-year projection cycle. To accomplish this task, cohort projections disaggregate populations into age-sex “cells” and propel each cell forward through the projection cycle using fertility, mortality, and migration rates that correspond to age and sex. Assumptions regarding these critical rates, or

123. See id. at 15.
125. See PROJECTIONS, supra note 12, at 16.
126. For a thorough overview of accepted population projection techniques, see generally Michael R. Greenberg, et al., Local Population and Employment Projection Techniques, 5-23 (1978).
127. See PROJECTIONS, supra note 12, at 3, 9.
128. See Kitsap County, 1995 WL 903132, at *15.
129. See PROJECTIONS, supra note 12, at 3, 9. In dismissing the first statutory challenge of OFM’s population projections, the Central Board offered the following description of the cohort method:

The cohort-component method begins with base data, such as an estimate of current population, and then attempts to identify what is likely to occur to the various sub-populations over the forecast period. As used by OFM, it makes separate analysis and conclusions about housing unit occupancy, fertility, mortality, and migration for these sub-populations, and also factors in the scheduled, as opposed to speculative, increases in the military related population.

“components of change” in OFM parlance, differ slightly between the countywide projections prepared for use in comprehensive planning and the separate statewide growth projections.\(^{130}\)

Despite using sometimes differing assumptions, however, countywide growth forecasts are developed within the framework of state medium range projections,\(^{131}\) meaning that countywide projections are “compared and reconciled with the state population projection” so that the sum of all countywide projections will add up to the total statewide population projection.\(^{132}\) This process of “comparison and reconciliation,” known to demographers as “raking,” is necessary because slight discrepancies invariably exist between independently developed county projections, which utilize area-specific figures for births, deaths, and migration, and the statewide population projection, which is based on overall statewide rates for the same events.\(^{133}\) Raking ensures that the local flavor of individual county growth trends is reflected in the forecast data, while also ensuring that the total projected population growth for all counties equals the total projected growth for the state.\(^{134}\)

Of all the components of change, migration is the most significant yet erratic determinant of population growth.\(^{135}\) Because net migration is largely a function of economic conditions,\(^{136}\) OFM developed its assumptions for

\(^{130}\) See PROJECTIONS, supra note 12, at iii. For example, fertility rates (i.e., the average number of births per female) are greater in several Washington counties due to higher birth rates among immigrant populations than the state-level assumption for fertility, which parallels the national forecasts of the U.S. Bureau. Id. at 11.

\(^{131}\) See id. at iii, 3, 9.

\(^{132}\) See id. According to OFM, “independently developed county projections[, which use] the same methods and assumptions [as the statewide projections,] might not match the present projected data due to the effects of the reconciliation process.” Id. at 9.

\(^{133}\) See id. at iii. For example, the birth rate for Yakima in 1999 was 24 children per every 1,000 women of child bearing age, a figure significantly greater than the 9/1000 statewide birth rate for the same year. By adjusting the projected number of births for all counties to account for statistical outliers, the sum total of births projected in all counties is made to equal the total number of births projected for the entire state. In this case, the required adjustment would equal the number of forecasted births throughout the state, divided by the sum total of all projected births in the thirty-nine counties, and then multiplied by Yakima’s birthrate of 9/1000. Telephone Interview with Theresa Lowe, Senior Demographer, Washington State Office of Financial Management (Mar. 24, 2000).

\(^{134}\) PROJECTIONS, supra note 12, at iii.

\(^{135}\) See id. at 9.

\(^{136}\) See id. at 3. In developing the 1995-2020 projections, OFM revised the assumptions regarding migration that were used in its 1991 projections to account for a rosier economic outlook. See id. at 9-10. According to OFM, [i]ncreases in “basic” or “traded” sector employment are the major catalysts for attracting additional population. The key employment sectors that affect migration the most are manufacturing, federal civilian government, and producer services
migration rates in both county and state projections using an “econometric model” that “integrate[s] expectations for long term economic performance with population outcomes by relating specific aspects of the economy to net migration.”

For the county projections, several assumptions were made regarding the kinds of areas that are likely to witness significant growth. These assumptions were not strictly applied, but rather served as guiding principles in projecting population growth trends.

3. Challenges to the Accuracy of OFM Projections

For all their methodological sophistication, OFM population projections have drawn intense criticism, particularly from rural communities. In City of Port Townsend v. Jefferson County, a case decided before the mandatory nature of OFM projections was established, the Western Board was persuaded that OFM’s projections were so faulty that Jefferson County should be allowed to use its own independently-developed growth projections. The Board did not mince words:

Population projection is not an accurate science. We take official notice of the fact that OFM projections have proven to be quite accurate in the central Puget Sound counties but have been totally inaccurate in some, if not many, of the counties within our jurisdiction. There are counties in this state outside the central Puget Sound area that have already exceeded the population projected for the Year 2012 by the OFM document.

(services purchased by businesses). Employment growth in Washington’s traded sectors are expected to out perform traded sector employment growth in both the U.S. and California over the forecast period. This makes Washington an attractive place, economically speaking, for migrants. The relative attractiveness of the state’s economy in the long run will keep net immigration above the historical average during the forecast.

Id. at 4.

137. PROJECTIONS, supra note 12, at 3-4.

138. See id. at 10. Specifically, OFM assumed that (1) major growth will result from the accretion of existing population centers, primarily along key transportation corridors; (2) growth in other areas, which results primarily from the immigration of retirees and possibly telecommuters, will continue in counties that have experienced sustained periods of growth; and (3) remote counties that have historically inconsistent growth rates will have less substantial growth despite the growth spurts of the early 1990s. Id.

139. See id.

140. Port Townsend, 1994 WL 907895, at *8 (holding that “the Legislature [n]ever intended OFM projections which are known to be incorrect, to nonetheless be used to develop comprehensive plans that would then either be incorrect or gerrymandered to the point of being meaningless at or shortly after adoption”).

141. Id.
These inaccuracies, the Board opined, were due to unusual migration patterns experienced by many Western Washington counties and OFM's failure to anticipate these patterns in making assumptions about net migration.  

Significant discrepancies have also been observed in Clark County, where actual growth rates exceeded projected growth by 50% between 1993 and 1998, and Kitsap County, which grew at an unprecedented 20.9% from 1990 to 1997. By one estimate, the disparity between actual and projected growth in Clark County will be 71,000 by the year 2012. Jefferson County's population increase of 30%, the second highest in the state between 1990 and 1998, also exceeded the OFM projection by a considerable margin.

Evaluating the empirical accuracy of OFM projections is beyond the scope of this Article. It is important to realize, however, that the goal of OFM projections is to provide reliable long-term forecasts of population growth to assist local planners in effectuating the Act's planning goals. Short-term discrepancies between actual and projected growth, however flagrant they may be, are often the result of blending projected long-term growth rates in order to make projections over a twenty-year period as opposed to analytical shortcomings in the cohort-component method or even factual errors on the part of OFM. Given the number of variables that influence growth, achieving perfect accuracy throughout the planning cycle is obviously impossible. The policy question confronted by the framers of the GMA was simply whether the use of fallible projections as the basis for comprehensive planning is better than using no projections at all.

While the Act clearly answers this question in the affirmative, it also provides a modicum of flexibility by granting local governments the right to petition growth boards for adjustment of OFM projections. Recognizing that OFM's projections are in general more scientifically grounded than locally developed ones, however, the Central Board has made it extremely difficult for local governments to successfully challenge OFM's projections. In *Kitsap County v. Office of Financial Management*, the only reported decision in which
a county has formally sought adjustment of OFM's population forecasts, the Board adopted a strict two-part test for use in deciding adjustment petitions. The Board found that this test, which requires local growth forecasts to surpass OFM projections in analytical sophistication, was not satisfied by the county's use of a crude, "straight line" methodology that assumed a constant rate of growth based on the recent population boom and projected that rate in a straight line over the twenty-year planning cycle. In affirming the OFM projection, the Board observed that this linear method was based on the dubious notion that the county's unusually high growth rates would continue unabated to the end of the projection cycle, as though by demographic inertia.

B. The Use of OFM Growth Projections in Designating Urban Growth Areas

Of all the important planning decisions required by the Act, designating UGAs is generally regarded as the one most clearly designed to prevent the conversion of undeveloped land into sprawling, low-density development. By encouraging growth within UGAs and allowing only non-urban growth outside of UGAs, the Act seeks to promote geographically concentrated, resource efficient, high-density growth patterns and to minimize the urbanizing influence of growth in rural areas. And it is in the designation of UGAs, perhaps also the most controversial component of the GMA, that OFM population forecasts most conspicuously constrain the exercise of local discretion in comprehensive planning.

149. Specifically, the Board requires counties to show that (1) the proposed adjustment is supported by more objective, credible assumptions, and analytical methods than OFM's; and (2) the proposed adjustment will not thwart the goals or other requirements of the Act. See Kitsap County, 1995 WL 903132, at *9.

In deciding adjustment petitions, the Act requires growth boards to "consider the implications of any such adjustment to the population forecast for the entire state" and to document the "rationale for what is adopted[]." See WASH. REV. CODE § 36.70A.280(4) (2000). Although this provisions does not specify a standard of review, the Board held that the same standard used in challenges to comprehensive plans and development regulations—then "preponderance of the evidence," now "clearly erroneous"—applies to adjustment petitions. See Kitsap County, 1995 WL 903132, at *9. Curiously, however, the Board also held that the presumption of validity afforded to comprehensive plans and development regulations does not attach to OFM projections. Id. Yet by requiring local government forecasts to satisfy its two-part test, the Board is clearly presuming that the OFM forecasts are valid and the local ones are not.

150. See Kitsap County, 1995 WL 903132, at *15 (holding that "the County's proposed adjustment fails in its assumptions and its methodology").

151. See id.

152. See Settle & Gavigan, supra note 9, at 111.

153. The GMA puts OFM projections to two less prominent uses. First, the Act allows
1. The Plain Language and Interpretive History of RCW 36.70A.110(2)

The Act requires counties to designate UGAs "outside of which growth can occur only if it is not urban in nature[,]" and to use OFM's growth forecasts as the basis for making these designations. Specifically, RCW 36.70A.110(2) provides:

Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include [in its UGAs] areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Although this provision does not on its face afford counties greater authority than cities in UGA planning, other portions of the Act make clear that designating UGAs is a regional policy exercise in which cities play an essentially advisory role.

At first blush, then, the meaning of RCW 36.70A.110(2) seems clear. The GMA charges OFM with the responsibility of preparing twenty-year population projections for the counties at least once every ten years and counties with the
responsibility of designating UGAs on the basis of those projections, subject to
the required "range of urban densities" and the optional use of a reasonable
market factor. While the Act's delegation of responsibilities is clear, the
vague directive that UGAs must be "based on" OFM projections provides no
clear instructions for determining the amount of land to be included within the
UGA or the density at which that land should be developed. The extent to which
these two critical features of a UGA must be determined solely on the basis
OFM's countywide growth projection, as opposed to a combination of other
factors as well, is simply not clear from the language of RCW 36.70A.110(2).

Given the apparent flexibility of this language, it is not surprising that the
question of how closely UGA designations must be tied to OFM projections has
always been a disputed issue in GMA litigation. This debate was especially
volatile, however, prior to adoption of the 1995 amendments requiring OFM to
make its projections using a three-fold range instead of a single number. Local
governments, convinced that OFM projections were too conservative, argued
that the countywide growth projected by OFM represented the minimum
amount of population that could be used in designating UGAs, but not the
maximum. The Western Board effectively adopted this interpretation in its
1994 decision in Port Townsend v. Jefferson County, which allowed counties
and cities within its jurisdiction to base UGA designations on independently-
developed population projections. In reaching this decision, the Board took
"official notice" of what it described as the historic inaccuracy of OFM
projections for Western Washington and stressed that its role was not to
legalistically interpret the Act's provisions, but to pragmatically effectuate its
goals.

projections "every five years or upon the availability of decennial census data, whichever is
later").

158. See id. at § 36.70A.110(2).

159. See Save Our Butte Save Our Basin Society v. Chelan County, No. 94-1-0001,
1994 WL 907900, at *7-8 (E. WASH. GROWTH MGMT. HR'GS. BD., July 6, 1994). In
defending Chelan County's expansion of its IUGA to include the proposed Snowcreek
Development, Intervenor Snowcreek argued that "the designated area within an [IUGA] may
contain more land than the 'bare minimum' necessary to accommodate the OFM population
projections[]."

160. See Port Townsend, 1994 WL 907895, at *7 (holding that counties can use
independently generated projections if OFM projections are shown to be inaccurate or if a
CPP so requires). In 1992, the Growth Management Division of the State Department of
Community Development (since renamed DCTED) issued a memorandum interpreting OFM
forecasts as "bare minimums" or "a foundation upon which to build." Id.

907900, at *8 and Rural Residents, 1994 WL 907885, at *27 (both holding that OFM
projections imposed mandatory maximum as well as minimum constraints on UGA planning).
Commenting on what it perceived as the formalistic nature of these holdings, the Port
Townsend board stated that "the flash of legal interpretation should not blind us to the impact
Semantically, this debate focused on the ambiguities inherent in the language of RCW 36.70A.110(2). By merely stating that UGA planning decisions must be somehow “based upon” OFM projections, the Act seemed to invite the interpretation that OFM projections were merely a starting point for determining the size and density of a UGA. In responding to this argument, however, the Central Board distinguished the noun “base” from the transitive verb “based upon,” holding that the Legislature’s use of the latter term constituted a clear instruction for counties to use OFM projections not merely as a starting point, but rather as a definitive parameter. Similarly, when opponents of OFM projections sought support for their position in the requirement that UGAs include “areas and densities sufficient” to accommodate projected growth, the Board held that in this context, the word “sufficient” was synonymous with “appropriate.” The Eastern Board reached the same conclusion, pointing out that the right to petition the growth boards for adjustment of OFM projections would have little practical value if those projections were not a mandatory planning constraint.

This position gained universal acceptance following adoption of the 1995 amendment requiring OFM to state its population forecasts as a range, which was seen as a sure signal that the Legislature intended local governments to plan their UGAs within the minimum and maximum endpoints of that range. At the same time, however, the 1995 amendments added the current language allowing counties to use a “market factor” in designating UGAs, thereby indicating that growth forecasts were not to be the sole determinant of final

and realities of good planning decisions.” Port Townsend, 1994 WL 907895, at *8.

162. See Rural Residents, 1994 WL 907897, at *2 (Order Denying Kitsap County’s Petition for Reconsideration, Jun. 1994) (reciting Kitsap County’s argument that the phrase “based upon [OFM projections]” means that OFM projections are simply a point of departure).

163. Citing Webster’s Dictionary, the Board held that for GMA purposes “based upon” implied “a fundamental principle or underlying concept: basis.” Id. at *26 (dictionary citation omitted).


165. See Save Our Butte, 1994 WL 907900, at *8 (observing that “if Counties were free to use population forecasts in excess of OFM’s forecast, there would be little need for the specific appeal right granted to dispute [OFM’s] forecast.”).

166. In response to this amendment, the Western Board overruled its Port Townsend decision, holding that, “because the Legislature directed a range in population projections rather than a single number, there is no authority for a county to adopt a projection that exceeds the range limits.” Dawes v. Mason County, No. 96-2-0023, 1996 WL 716194, at *5 (W. WASH. GROWTH MGMT. HR’GS. BD., Dec. 5, 1996).

167. See H.B. 1305, 54th Leg., Reg. Sess. (Wash. 1995). For a thorough discussion of how market factors are used in designating UGAs, see infra notes 236-76 and accompanying text.
UGA boundaries. Thus, while it is now well settled that OFM population forecasts are a mandatory element in UGA planning decisions,¹⁶⁸ their precise role in determining the size and density of UGAs remains unanswered by the language of the Act. Accordingly, citizen challenges to UGA designations are a central feature of GMA litigation, and a considerable body of instructive precedent has emerged concerning the required connection between UGA designations and OFM growth forecasts.

2. Sizing UGAs to Accommodate Projected Urban Growth: An Analysis of Growth Board Case Law

The physical dimensions of a UGA in large part determine whether it will advance or undermine the Act's policy goals. Accurately assessing what "areas and densities [are] sufficient to permit" projected growth,¹⁶⁹ as RCW 36.70A.110(2) requires, is therefore critical to designating UGAs that strike an appropriate balance between the GMA policies of containing urban development and reducing sprawl on the one hand, and encouraging economic development and affordable housing on the other.¹⁷⁰ Oversized UGAs are perhaps the most egregious affront to the fundamental GMA policy against urban sprawl, and it is this policy that the UGA requirements, more than any other substantive GMA mandate, are intended to further. Mistakes in either direction, however, can result in UGAs that do more harm than good.

Shortages in the supply of land available for urban development—the defining feature of an undersized UGA—quickly jack-up rents and land prices to levels that prohibit or discourage commercial and residential development within the UGA.¹⁷¹ These significantly over-inflated markets contravene the goals of reducing sprawling development patterns and containing urban growth, as people are forced by economic necessity to live in outlying suburban or rural areas. The impossibility of urban residency for large numbers of people in turn results in traffic congestion, already an unacceptable social and economic cost to Puget Sound residents, becoming even more gridlocked as working people commute from increasingly distant environs. By the same logic of supply and demand, exceedingly high land prices reduce the number of businesses that can

¹⁶⁸ See Diehl v. Mason County, 972 P.2d 543 (Wash. 1999) (holding that counties must adhere to OFM population projections in designating UGAs).
¹⁶⁹ See WASH. REV. CODE § 36.70A.110(2) (2000).
¹⁷⁰ See Dearborn & Gygi, supra note 35, at 987.
¹⁷¹ See id. at 977-978. See also Justin Phillips & Eban Goodstein, Growth Management and Housing Prices: The Case of Portland, Oregon, CONTEMP. ECON. POL’Y, July 2000, available at 2000 WL 12922273 (arguing that UGAs can theoretically inflate urban real estate markets, but that Portland's UGA has been only marginally responsible for increased real estate prices).
afford to locate within the UGA, thereby undermining the GMA policy of promoting economic development.  

And the litany of size-related ills continues. Each of these scenarios demonstrates that the world envisioned by the GMA can be realized only if meaningful compliance with RCW 36.70A.110(2) is also achieved. For it is only by ensuring that a sufficient but not excessive supply of land is available for urban development that the GMA planning process can successfully avert the continued push of dominant economic forces toward the patterns of sprawling development that have prevailed in Washington over the last fifty years.

While the Act requires UGAs to be appropriately sized, local governments have considerable discretion in designating UGAs that reflect the "look and feel" of their communities. Indeed, recognizing that the GMA expressly encourages innovation, the growth boards and the Department of Community Trade and Economic Development ("DCTED") have both applauded local governments for using creative techniques in designating UGAs. Local discretion is limited, however, both by the Act's policy objectives and by more specific statutory constraints, such as the general prohibition against including an unincorporated area within a UGA unless it or adjacent lands already contain urban growth. The initial designation of critical areas and natural

172. See Dearborn & Gygi, supra note 35, at 987.

173. See id. (arguing that "if inadequate capacity within a UGA drives up prices, it undercuts one of the implicit assumptions supporting the use of [UGAs]; that is, by making investments in urban facilities and services more predictable, thereby streamlining the overall development process, [UGAs] theoretically reduce development costs").

174. The connection between market forces and sprawl has been widely observed. See, e.g., Bremerton, 1995 WL 903165, at *16-17 (observing a direct link between sprawl and "powerful market forces"); DUANY ET AL., supra note 26, at 7-12 (attributing modern sprawl in part to the Veterans Administration's post-World War II subsidization of suburban housing for large numbers of veterans and the momentum this policy created toward continued suburban development); and Wiewel, supra note 24.

175. See WASH. REV. CODE § 36.70A.110(2) (2000) (providing that local governments "have discretion in their comprehensive plans to make many choices about accommodating growth").

176. See Achen v. Clark County, No. 95-2-0067, 1995 WL 903178, at *18-19 (W. WASH. GROWTH MGMT. HR'GS. BD., Sept. 20, 1995) (commending county for its innovative use of "urban reserves"). Cf. Larry Phillips, A Smart Way To Channel Region's Growth, SEATTLE TIMES, Apr. 17, 2000, at B5, available at 2000 WL 5531320 (favorably reviewing the recently developed King County Transfer of Development Credits Program, an innovative system in which rights to develop urban areas are purchased from rural landowners, who in turn accept a conservation easement intended to preserve the rural land in its natural state).

resource lands, two of the Act’s most important substantive requirements, also limit the location and design of urban growth areas. By far the most significant constraint on size and density, however, is RCW 36.70A.110(2)’s mandate that UGAs “include areas and densities sufficient to permit the urban growth” that, on the basis of OFM projections, is projected to occur during the ensuing twenty-year period. Construing this provision in light of the Act’s policy goals, the growth boards have held that counties must conduct a “land capacity analysis” to determine how much land is necessary to accommodate projected urban growth and include in its UGAs only those excess lands (i.e., lands unnecessary to accommodate projected growth) that are justified by the use of “a reasonable land supply market factor.” These requirements, discussed in Subparts b and c, below, greatly influence both the procedures that counties must follow in designating UGAs, as well as the range of sizes and densities that can be utilized without violating the GMA.

Before the physical dimensions of a UGA can be determined, however, a more fundamental decision must be made, namely: how much of the countywide growth projected by OFM will be urban growth? Answering this question is necessary because, while OFM forecasts project the total countywide population growth, RCW 36.70A.110(2) requires counties to include in their UGAs “areas and densities sufficient to permit the urban growth that is projected to occur [over] the succeeding twenty-year period.” Although the requirements for conducting a land capacity analysis and using a market factor are specific to the UGA designation process, this threshold determination, often referred to as allocation, also plays a role in rural comprehensive planning.

a. Allocation

By distinguishing the overall countywide growth projected by OFM from the projected urban growth that counties must plan for, the Act implicitly requires counties to determine what subset of OFM’s projection will be urban

179. *See* Bremerton v. Kitsap County, No. 95-3-0039c/No. 97-3-0024c, 1997 WL 597031, at *31 (Cent. Puget Sound Growth Mgmt. Hr’gs. Bd., Sept. 8, 1997) (Finding of Noncompliance and Determination of Invalidity in Bremerton and Order Dismissing Port Gamble, May 1997) (holding that “[o]ne of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban area portion of the projected twenty years of countywide population growth”).
180. *See infra* notes 202-35 and accompanying text.
181. *See infra* notes 236-76 and accompanying text.
183. *See infra* notes 303-47 and accompanying text.
in nature and to utilize that projection in designating UGAs. 184 “Urban growth,” which can occur only within UGAs, 185 is statutorily limited to growth that “makes intensive use of land for the location of buildings, structures, and impermeable surfaces.” 186 The Act clearly contemplates that not all of the countywide growth projected by OFM will be urban in nature, however, as counties are specifically required to plan for rural growth by including in their comprehensive plans a “rural land use element” that is subject to several statutory requirements intended to prevent sprawl and ensure that urban growth remains confined to UGAs. 187

The allocation requirement is consistent with the language in RCW 36.70A.110(2), requiring UGA designations be “based on” OFM growth projections, 188 a directive that both distinguishes and connects overall countywide projections and the specific urban growth projections that UGAs are required to accommodate. Allocation was first discussed in Edmonds v. Snohomish County, where the Central Board held that “[c]ounties are required to take OFM’s county-wide population forecasts and to allocate them among both the incorporated and unincorporated portions of urban growth areas and the non-urban growth areas within the county.” 189

In Edmonds, the cities of Everett and Lynnwood had sought to use OFM projections as the basis for independently establishing population growth targets to use in their comprehensive plans. 190 These growth targets significantly exceeded the population increases that Snohomish County had allocated to them pursuant to its countywide planning policies. 191 Rejecting the argument that

184. See City of Edmonds v. Snohomish County, No. 93-3-0005, 1993 WL 839712, at *24 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Oct. 4, 1995). While the Edmonds decision requires counties to sub-allocate OFM’s countywide growth projections among all populous areas within their borders, it does not identify a textual basis for this requirement or provide much by way of substantive policy analysis. For a more detailed analysis of the allocation requirement and its basis in the language of the GMA. See infra pp. 147-48.

185. See WASH. REV. CODE § 36.70A.110 (2000). In determining UGA allocations, DCTED’s advisory regulations suggest that counties utilize OFM projections “in conjunction with data on current community population, recent trends in population, and employment in and near the community and assumptions about the likelihood of continuation of such trends.” See WASH. ADMIN. CODE § 365-195-335 (3)(d)(i) (1999).


188. See WASH. REV. CODE § 36.70A.110(2) (2000).


190. See generally Edmonds, 1993 WL 839712.

191. See id. at *14. The cities argued, unsuccessfully, that the county’s authority to
county-mandated allocations encroached on the cities’ constitutionally protected zoning powers, the Board held that the regional planning authority vested in county governments by the Act,

when viewed together with the explicit authority given to counties for designation of the urban growth areas and the adoption of CPPs, leads to the conclusion that population allocation is a regional legislative policy exercise that, for the sake of consistency and reducing sprawl, must be made at the regional level by the Act’s designated regional government—the county. Subsequent decisions of the Central Board have held that cities can plan for population increases that exceed county allocations unless specifically prohibited from doing so by CPPs, a position which does not conflict with the Edmonds decision.

Allocation is universally characterized as a policy decision, and the growth boards have therefore afforded county governments great discretion in allocating OFM projections within their borders. In Association of Rural Residents v. Kitsap County, for example, the Central Board held that allocate population to the UGAs was limited to unincorporated areas.

192. Relying on City of Snoqualmie v. King County, No. 92-3-0004, 1993 WL 839711 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Mar. 1, 1993) and Article 11, § 11 of the Wash. State Constitution, Lynnwood argued that its authority to determine citywide densities, which it characterized as a preeminent "local land use power," would be violated if the county were allowed to allocate population to individual cities. See Edmonds, 1993 WL 839712, at *14. In Snoqualmie, the Board had held that CPPS can provide substantive direction to a city’s comprehensive plan only if the CPP (1) addresses a legitimate regional objective; (2) does not directly affecting the city’s land use powers, such as implementing regulations, or other incidents of local police power; and (3) is consistent with other relevant provisions of the GMA. Snoqualmie, 1993 WL 839711, at *13-14. See also King County v. Cent. Puget Sound Growth Mgmt. Hr’gs. Bd., 951 P.2d 1151, 1158 (Wash. 1998), aff’d in part, rev’d in part, 979 P.2d 374 (Wash. 1999) (adopting the three-part test articulated in Snoqualmie). The Edmonds board held that Snohomish County’s CPP allocating population to the cities satisfied the Snoqualmie test because it served legitimate regional policies. Edmonds, 1993 WL 839712, at *21.

193. Id. at *22.

194. See W. Seattle Def. Fund v. City of Seattle, No. 94-3-0016, 1995 WL 903147, at *39-40 (CENT. PUGET SOUND GROWTH MGMT. Hr’gs. Bd., Apr. 4, 1995) (holding that “a city does have the discretion to have population capacity in its plan greater than the county’s allocation for that city... absent a policy in the CPPs that specifically prohibits it). See also Aagaard v. City of Bothell, No. 94-3-0011, 1995 WL 903130, at *5-6 (WASH. CENT. PUGET SOUND GROWTH MGMT. Hr’gs. Bd., Feb. 21, 1995).

195. See West Seattle, 1995 WL 903147, at *39. In West Seattle, the Board observed that, ‘‘unlike OFM’s projections, which are ‘numeric, objective, technical and finite’ and ‘value neutral, being neither policy nor political in nature,’ a county’s disaggregation of OFM’s projections may be less objective and value neutral.’’ Id.
Precisely how this distributive process, called "disaggregation," is carried out is discretionary—a matter for a county to determine. However, the Board fully expects local considerations to play a role in determining these final allocations. For instance, a county could utilize methods such as the procedures outlined in its CPPs or refer to subarea population projections such as those from the US Census Bureau, a regional agency, or estimates from individual cities, in determining how to allocate OFM's forecast. As long as the sum of the individual population allocations equals the OFM twenty-year population projection for the entire county, the county will be in compliance with the GMA.

Arguably, the GMA policy of encouraging growth in UGAs precludes counties from allocating too much of their countywide projection to rural areas. While no such requirement has been announced, the Western and Central Boards have each evidenced some concern for excessive rural allocations, and as a practical matter, counties generally do allocate most of their projected population increases to the incorporated and unincorporated portions of UGAs.

To date, the three boards have each adopted some form of the allocation requirement announced in Edmonds, although the decisions of the Central Board have gone both ways on the question of whether allocation is mandatory. Despite its solid foundation in growth board precedent, however, none of the boards have articulated a clear statutory basis for the allocation requirement. Pointing to this lack of textual support, a recent decision by the court of appeals has cast some doubt on the future of allocation as a comprehensive planning requirement, particularly as it applies to rural areas.

196. 1994 WL 907885, at *27. See also Vashon-Maury v. King County, No. 95-3-0008, 1995 WL 903209, at *21 (CENT. PUGET SOUND GROWTH MGMT. HR'GS. BD., Oct. 23, 1995). In Vashon, the petitioner alleged that King County had violated the GMA's anti-sprawl policy by allocating disproportionately more growth to UGAs located in rural areas than to UGAs located in metropolitan areas. See id. The Board rejected this argument, holding that the "distribution of projected population growth among existing cities falls within the ultimate discretion of counties[]." Id.

197. See infra notes 316-47 and accompanying text.

198. See id.

199. The Western Board's position concerning allocation, which is discussed below in connection with the role of OFM projections in rural planning, has been the most clearly articulated and consistently applied. See infra notes 316-31 and accompanying text.


201. See Clark County Citizens v. Resource Council, 972 P.2d 941 (Wash. 1999). See also Diehl v. Mason County, 972 P.2d 543 (Wash. 1999). For analysis of these decisions, see infra notes 348-70 and accompanying text.
b. Land Capacity

Allocation is a conceptually necessary first step in designating UGAs, but it does not provide an independent basis for determining the appropriate size or density of a UGA. Once a county has determined what share of its projected growth will be allocated to the UGAs, the more difficult task of determining what "areas and densities [are] sufficient to permit" the projected level of growth remains.\footnote{202} Conducting a thorough land capacity analysis is the first step in making this determination.\footnote{203}

In analyzing land capacity, counties must ascertain whether an existing or proposed UGA has the capacity to absorb the portion of OFM’s twenty-year projection that has been allocated to the UGAs over the twenty-year planning cycle. The Central Board has made the following observation regarding the essential nature of land capacity analysis:

Distinct from the population allocation exercise is the process of ascertaining theoretical land capacity—an attempt to quantify how many persons are actually capable of living on the land if totally "built-out" during the 20-year GMA planning period. In conducting such analysis, counties must review existing land use patterns, including already developed parcels, vested but not developed parcels, and vacant land, to determine how many people could theoretically reside in a given area.\footnote{204}

Consistent with this observation, land capacity analysis is frequently described as "a countywide accounting exercise which must show that the net land available for urban development will be sufficient to accommodate the forecasted growth."\footnote{205}

By emphasizing its objective-mathematical nature, growth board decisions correctly imply that a proper land capacity analysis is less policy-driven than

\footnotesize{202. See WASH. REV. CODE § 26.70A.110(2) (2000).}
\footnotesize{203. See generally Dearborn & Gygi, supra note 35, at 987-1001 (advocating a four-step process for conducting a land capacity analysis). See also Whatcom Env'tl. Council v. Whatcom County, No. 94-2-0009, 1994 WL 907906, at *1 (W. WASH. GROWTH MGMT. HR'GS. BD., Nov. 6, 1994) (holding that a land capacity analysis is a necessary prerequisite to establishing IUGAs).
205. See Tacoma v. Pierce County, No. 94-3-0001, 1994 WL 907887, at *10 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., July 5, 1994). See also Bremerton v. Kitsap County, No. 95-3-0039, 1995 WL 903165, at *29 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Oct. 6, 1995) (holding that the “sizing of UGAs remains dependent upon an accounting exercise requiring a reasonable relationship between its selected size and the likely future population for each county”).}
other phases of the GMA process. It is also true, however, that the quality of a county’s land capacity analysis in large part determines the degree to which the resulting UGA designation will further the Act’s policy objectives. This is so because the results of the land capacity analysis provide the factual foundation upon which UGA designations are based.\textsuperscript{206} Determining whether it is necessary to include within the UGAs land that is outside of existing city limits, for example, depends on what a county’s land capacity analysis reveals about the capacity of the incorporated areas to absorb projected growth.\textsuperscript{207} Because cities are automatically designated UGAs, it may be that infill-development of areas within existing city limits will be sufficient to accommodate a county’s twenty-year urban growth projection.\textsuperscript{208} If these areas, together with any unincorporated areas previously included in the UGA, are determined to be inadequate, a land capacity analysis can then be used to calculate how much additional land is needed to accommodate projected growth.

A county seeking to hide the fact that its UGAs are significantly oversized clearly has considerable incentive to ensure that the results of its land capacity analysis justify decisions to include large amounts of land within the UGA. For this reason, each of the growth boards require counties to “show their work” by clearly documenting the steps and assumptions used in conducting a land capacity analysis.\textsuperscript{209} Following adoption of a comprehensive plan, the land capacity analysis enables review of a county’s UGA designations by making it easy to identify areas that exceed the minimum amount of land necessary to

\begin{itemize}
\item \textsuperscript{206} See Dearborn & Gygi, \textit{supra} note 35, at 986-87.
\item \textsuperscript{209} See \textit{Knapp}, 1997 WL 1877192, at *13. \textit{See also} Rural Residents, 1994 WL 907885, at *27 (holding that counties must “show their work” so that both the general public and the Board (if a UGA is appealed) know how the county derived its UGAs and established the appropriate densities”).
\end{itemize}
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accommodate projected urban growth.\(^{210}\) Growth boards are then able to evaluate whether the excess lands, if any, are justified by a "reasonable market factor" or other legitimate policy considerations.\(^{211}\)

The first step in conducting a land capacity analysis is to determine the "net . . . acreage" available for development within an existing or proposed UGA.\(^{212}\) Net acreage is calculated by reducing the total gross acres located within a specific area by the number of acres that are, for whatever reasons, not likely to be made available for urban development during the twenty-year planning cycle. In its seminal Association of Rural Residents v. Kitsap County decision, the Central Board held that a land capacity analysis must

specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed "sufficient." In undertaking this requirement, counties must distinguish between gross acres and net (or buildable) acres. For instance, undevelopable critical areas, open spaces, rights of way, etc. should be deducted from the gross acreage. Counties have great deal of discretion in how they achieve this requirement.\(^{213}\)

Unlike market factor calculations, which can reflect both economic policy considerations and more subjective factors, the goal of calculating net acreage is simply to arrive at the approximate amount of land that will be available for urban development.\(^{214}\) Accordingly, deductions from gross acreage should be based on a discrete assessment of development potential and not lumped together with reductions that are based on other considerations.\(^{215}\)

In evaluating the calculations that counties have used to arrive at net acreage, the growth boards do not question reductions for lands, such as roads


\(^{211}\) See WASH. REV. CODE § 36.70A.110(2) (1999).

\(^{212}\) See Rural Residents, 1994 WL 907885, at *27. See also Dearborn & Gygi, supra note 35, at 990 (arguing that this step should be preceded by a determination of theoretical capacity).


\(^{214}\) See Tacoma v. Pierce County, No. 94-3-0001, 1994 WL 907887, at *10 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., July 5, 1994). See also Benton County Fire Protection District No. 1 v. Benton County, No. 94-1-0023, 1995 WL 903194, at *9 (E. WASH. GROWTH MGMT. HR’GS. BD., Apr. 25, 1995) (distinguishing buildable land analysis in sizing UGAs from reliance on a market factor or other considerations related to unique local visions of urban growth).

\(^{215}\) See Gig Harbor v. Pierce County, No. 95-3-0016, 1995 WL 903183, at *31-33 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Oct. 31, 1995) (requiring the county to segregate its market factor from gross acreage reductions made in conducting its land capacity analysis).
or non-residential areas, which are obviously unsuited for growth. Board decisions have also approved reductions from gross acreage for land that is "built and fully utilized," as well as land that is to be preserved for open spaces or green belts and, similarly, land that qualifies as a critical area under RCW 36.70A.060. Reductions for lands that are less clearly non-developable, such as areas ostensibly reserved for "vacation homes," have also been approved, as have "reduction factors" intended to reflect the difficulty inherent in developing certain parcels that are not classified as fully developed and are thus theoretically developable.

Although counties are afforded considerable discretion in making these reductions, the goal in reducing gross acreage must be to arrive at a reasonably accurate estimate of the net acreage available for urban development. Attempts by counties to justify expansive UGAs by artificially deflating the number of developable acres within existing UGA boundaries can prompt growth boards to closely scrutinize a county's land capacity analysis, particularly when poorly defined or unrealistic reductions are used, as well as its use of a market factor. In Bremerton v. Kitsap County, for example, the county used an "efficiency factor" to provide a gross acreage reduction for every residential parcel that already contained a house, in addition to a more general "reduction factor" to account for non-residential development, critical lands and street rights-of-way. While the Board recognized that such reductions can serve valid planning goals, it found that the county's comprehensive plan failed to justify the extent of its reductions, which equaled forty-percent of total acreage, or to clearly explain their underlying assumptions.

216. See id. at *30.
221. See Benton County Fire Protection District No. 1, 1995 WL 903194, at *9 (observing that the use of justifiable land use factors affords counties great discretion while also providing a yardstick that ties and constrains the designation to OFM projections).
222. See Bremerton, 1995 WL 903165, at *43-44. The efficiency factor was inversely related to lot size, such that 1 to 2.5 acre lots received a 50% reduction, 2.5 to 5 acre lots received a 25% reduction, 5 to 10-acre lots received a 20% reduction, and lots of more than 10 acres received no reduction. Id. Ostensibly, the efficiency reduction was intended to reflect the low-development potential of small parcels occupied by single-family homes. See id.
223. Id. at *45 (noting, inter alia, that "the Plan is silent as to how many parcels fall
When calculations used to determine net acreage are unclear or inconsistent, the concern is often raised that some parcels are being deducted from gross acreage more than once, a practice referred to colloquially as "double dipping." In Bremerton, the Board found potential for double dipping in the county’s failure to either define “vacant” or “underutilized” land, terms the county used to describe its net developable acreage, or to specify the number of acres included in its generalized forty-percent “reduction factor” for non-residential, plots critical areas, and street rights-of-way. The combined effect of these reductions was the inclusion of 10,322 unincorporated acres within the UGA, an amount of land that vastly exceeded the area necessary to accommodate projected growth. Similar concerns were raised in Achen v. Clark County, where the Western Board found that the county’s deductions for certain outlying areas ambiguously designated as “urban reserve” lands constituted double dipping. The Central Board has articulated useful guidelines for counties to follow in order to avoid raising the specter of double dipping.

Intertwined with the determination of what size UGA is sufficient to accommodate projected urban growth is the equally important determination of what constitutes a sufficient density level. In order to prove that UGA designations comply with RCW 36.70A.110(2), counties must be able to show that multiplying the density-levels used in the land capacity analysis by the net

within the four categories described in the efficiency factor”).

224. Id. at *44-45. See also Bremerton v. Kitsap County, No. 95-3-0039c/97-3-0024c, 1997 WL 597031, at *14 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Sept. 8, 1997) (Finding of Noncompliance and Determination of Invalidity in Bremerton and Order Dismissing Port Gamble, Sept. 1997) (holding that the county’s use of a 15% discount factor constituted “double counting” because it included land that had already been deducted from gross acreage as undevelopable).

225. See Bremerton, 1995 WL 903165, at *43. The county’s land capacity analysis also failed to include Bainbridge Island, which had been incorporated and was thus automatically a part of the county’s UGA. Id.

226. See Achen, 1995 WL 903178, at *22. The urban reserve lands at issue in Achen were held not part of the UGA or the rural land use element, but rather held in reserve by the county ostensibly to “protect the area from premature land division and development that would preclude efficient transition to urban development.” Id. at *18. Although the board approved of this technique conceptually, it was concerned by the absence of standards for future use in conjunction with the suspicious use of high market factor deductions in setting initial UGA boundaries. See id.

227. See Bremerton, 1999 WL 68675, at *31-32. Specifically, counties should segregate different types of deductions by first cumulatively deducting for redevelopment and unavailable lands, and then sequentially deducting for roads, public facilities, and critical areas from the same gross total. Id. Only after these deductions have been used to determine net developable acreage should counties consider the use of a market factor, which, as discussed below, involves considerations that are not germane to land capacity analysis. Id.
acreage contained within the UGA yields an overall growth capacity that equals or exceeds the portion of the OFM projection that has been allocated to the UGA.\textsuperscript{228} Ten acres of undeveloped land that is zoned at 10 dwelling units per acre ("du/acre") can accommodate a significantly greater share of projected urban growth than the same sized parcel of land zoned at 4 du/acre, so a density level used in one UGA may not be sufficient in another.

Whatever density assumptions are utilized in the land capacity analysis must be "urban densities,"\textsuperscript{229} and should be consistent with the densities anticipated by the comprehensive plan. Counties cannot justify UGAs that are larger than necessary to accommodate projected growth by basing a land capacity analysis on historic, pre-GMA patterns of low-density development.\textsuperscript{230} Although the Act does not numerically define "urban densities," the growth boards have developed guidelines regarding what density levels are necessary for a UGA to comport with the Act's vision of compact, densely populated urban centers.\textsuperscript{231}

\begin{itemize}
\item \textsuperscript{228} See DTCED, \textit{ISSUES IN DESIGNATING URBAN GROWTH AREAS,} PART I 3 (Mar. 1992). This requirement follows naturally from the language of WASH. REV. CODE § 36.70a.110(2), which requires that UGAs contain "areas and densities sufficient to permit" projected urban growth. (Emphasis added).
\item \textsuperscript{229} WASH. REV. CODE § 36.70A.110(2) (1999) (requiring UGAs to include "urban densities").
\item \textsuperscript{230} Bremerton, 1997 WL 597031, at *13. In finding that the county's UGA designations did not comply with the Act, the Board observed that the county's land capacity analysis purported to use an average density level of 4 du/acre, while the UGA designations contained in the comprehensive plan provided for density levels ranging from 6-9 du/acre to 20-43 du/acre. See id. at *12. Closer scrutiny of the county's analysis revealed that even lower density levels of 1-to-2 du/acre were used in determining capacity for approximately 44% of the UGA. See id. at *13. Although 4 du/acre has been recognized in certain contexts as an acceptable density, the Board held that "the County must utilize a population density assumption that reflects development densities anticipated by the County's plan." See id.
\item \textsuperscript{231} Owing to the greater demand for residential land in the Puget Sound, the Central Board has adopted the most specific rule for determining what constitutes an urban density: residential densities of 4 du/acre or more generally constitute the compact urban development required by the Act, while lesser densities are subject to greater scrutiny. See Bremerton, 1995 WL 903165, at *35. In establishing the "bright line" rule of 4 du/acre, the Board held that:

Any residential pattern at that density, or higher, is clearly compact urban development and satisfies the low end of the range required by the Act. Any larger urban lots will be subject to increased scrutiny by the Board to determine if the number, locations, configurations and rationale for such lot sizes complies with the goals and requirements of the Act, and the jurisdiction's ability to meet its obligations to accept any allocated share of county-wide population. \textit{Id.}
\item \textsuperscript{230} Litowitz v. Federal Way, No. 96-3-0005, 1996 WL 678415, at *9 (CENT. PUGET SOUND GROWTH MGMT. HR'GS. BD., July 22, 1996) (holding that the use of densities below 4 du/acre to protect large-scale environmentally sensitive areas is acceptable if the UGA designation is supported by an adequate justification).
While the growth boards have been primarily responsible for expounding GMA truths, administrative guidance in the form of DCTED administrative regulations and formal publications is also available, and board decisions frequently encourage counties to follow these guidelines in conducting land capacity analyses. Washington Administrative Code Sections 365-195-310(d) and (e) are particularly instructive, as these regulations provide very specific guidance for counties in determining the amount of land necessary to accommodate projected growth, as well as instructions on what other factors should be considered in determining the size and density of UGAs.


233. See DCTED, supra note 8. DCTED recommends calculating total land capacity by multiplying the number of acres in the parcels remaining after applying various reduction factors by the number of units per acre allowed by the zoning in the area where the parcel is located. Id.


235. WAC §§ 365-195-335(3)(d) and (e) provide:
(d) Determination of the amount of land necessary to accommodate likely growth. This process should involve at least: (i) A forecast of the likely future growth of employment and population in the community, utilizing the twenty-year population projection for the county in conjunction with data on current community population, recent trends in population, and employment in and near the community and assumptions about the likelihood of continuation of such trends. Where available, regional population and employment forecasts should be used. (ii) Selection of community growth goals with respect to population, commercial and industrial development and residential development. (iii) Selection of the densities the community seeks to achieve in relation to its growth goals. (iv) Estimation of the amount of land needed to accommodate the likely level of development at the densities selected. (v) Identification of the amount of land needed for the public facilities, public services, and utilities necessary to support the likely level of development. (vi) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern.
(e) Determination of the geographic area to be encompassed to provide the necessary land. This process should involve at least: (i) An inventory of lands within existing municipal boundaries which is available for development, including vacant land, partially used land, and land where redevelopment is likely. (ii) An estimate of lands within existing municipal boundaries which are potentially available for public capital facilities and utilities necessary to support anticipated growth. (iii) An estimate of lands which should be allocated to greenbelts and open space and lands which should be protected as critical areas. (iv) If the lands within the existing municipal boundaries are not sufficient to provide the land area necessary to accommodate likely growth, similar inventories and estimates should be made of lands in adjacent unincorporated territory already characterized by urban growth, if any such territory exists. (v) The community's proposed urban growth area should encompass a geographic area which matches the amount of land necessary to accommodate likely growth. If there is physically no territory available
c. Market Factor

A thorough land capacity analysis provides the factual basis for designating UGAs, but the results of the analysis are by no means the sole determinant of final UGA boundaries.\textsuperscript{236} Counties are free to designate UGAs that exceed the minimum "areas and densities sufficient" to accommodate projected growth, so long as the additional land is justified by "a reasonable land supply market factor."\textsuperscript{237} The use of a market factor dilutes the influence of OFM projections in sizing UGAs and furthers policies that are sometimes in conflict with the core GMA policies underlying the required use of growth projections in UGA planning—namely, reducing sprawl and encouraging compact urban growth. To meaningfully evaluate the role of OFM growth projections in determining final UGA boundaries, therefore, it is necessary to look at how the competing considerations represented by the use of market factors also influence UGA designations.

Ostensibly, a market factor represents the estimated percentage of net developable acres contained within a UGA that, due to idiosyncratic market forces, is likely to remain undeveloped over the course of the twenty-year planning cycle.\textsuperscript{238} The use of a market factor in sizing UGAs anticipates several common but unpredictable circumstances in which developable land may ultimately be put to far less than its maximum use. As often happens,

\begin{quote}
[p]roperty may be held out from development or redevelopment because of property owner preference, cost, stability, or quality of the existing neighborhood, etc. Other properties are marginal for residential development because of their location adjacent to a rail line, power substation, industrial area, or the like. In some instances, properties will be inappropriate for development or redevelopment because of their cultural resource significance (e.g., archaeological or historical sites). Finally, some properties will be developed at less than maximum zoned density because of neighborhood opposition, permit requirements, market demand, or financing difficulties.\textsuperscript{239}
\end{quote}

Each of these scenarios occurs frequently enough that the net developable

\begin{footnotesize}
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\bibitem{WASH. ADMIN. CODE § 365-195-335(d)(e) (1999).}
\bibitem{See Save Our Butte, 1994 WL 907900, at *11.}
\bibitem{See WASH. REV. CODE § 36.70A. 110(2) (1999) (providing that a UGA designation "may include a reasonable land supply market factor[,]")}.
\bibitem{See Dearborn & Gygi, supra note 35, at 994-95.}
\bibitem{Id.}
\end{thebibliography}
\end{footnotesize}
accreage determined by a county’s land capacity analysis is not necessarily an 
accurate indicator of how much land will be necessary to accommodate 
projected growth.\(^ {240}\)

To ensure an adequate supply of land for urban development, therefore, the 
Act allows counties to include within their UGAs not only the area necessary 
to accommodate projected growth, but also a buffer zone expressed as a 
“market factor percentage” of total net acreage.\(^ {241}\) By applying a market factor, 
in theory counties can ensure that there will be enough land to accommodate 
projected urban growth despite the uncertainties of future development, while 
at the same time furthering the GMA goals of promoting compact urban growth 
and reducing sprawl.\(^ {242}\) Appropriately, market factors are sometimes referred 
to as “safety factors” or “cushions.”\(^ {243}\)

To the extent a market factor is tied to a realistic assessment of how market 
forces are likely to influence future development patterns, its use helps to ensure 
that a UGA does in fact contain “areas and densities” sufficient to 
accommodate projected growth by accounting for real world considerations that 
are not reflected in the results of a land capacity analysis. As a practical matter, 
however, the growth boards do not closely scrutinize whether a market factor 
is based on this type of an assessment, as opposed to other considerations that 
are not necessarily intended to further the Act’s vision of compact, high-density 
urban growth.\(^ {244}\) Board precedents do impose substantial limitations on local 
discretion in using market factors, but these limitations are based more on size 
of the market factor used and the clarity with which is applied than on its 
underlying rationale.

Not surprisingly, local governments see the use of a market factor as a “no 
questions asked” justification for designating UGAs that exceed, sometimes 
dramatically, the area necessary to accommodate projected growth. The narrow 
question of how best to accommodate government-mandated population 
forecasts is seldom high on the lists of citizens, planners, and elected officials 
faced with making hard decisions about the future of regional urban growth.\(^ {245}\) 
Public hearings on proposed UGA designations are often major civic debates 
focused on “big picture” questions, like what “look and feel” towns and cities

\(^{240}\) See id. at 995.

\(^{241}\) See id.

\(^{242}\) See Benton County Fire Protection District No. 1, 1995 WL 903194, at *9.

\(^{243}\) See Gig Harbor, 1995 WL 903183, at *32.

\(^{244}\) See Benton County Fire Protection District No. 1, 1995 WL 903194, at *9 
(holding that “the size of a [UGA] should equal the area required under the OFM projection 
plus the area required to realize a jurisdiction’s ‘vision of urban development[.]’”).

\(^{245}\) Cf. Settle & Wolfe, supra note 28, at 3 (observing that the impetus behind growth 
management laws are not abstract conceptions of how best to accommodate growth, but rather 
the unpleasant and costly results of unmanaged growth in daily life).
should have, as well as more practical considerations such as the need for affordable housing and adequate capital facilities. Indeed, the rationales counties put forward in support of UGA designations sometimes contain only the most tenuous connections between the physical dimensions of a UGA and projected population growth.

Affording counties greater flexibility in sizing UGAs was undoubtedly the Legislature’s intent in adopting the 1995 amendments allowing the use of market factors. The Act does not define the term “market factor” nor, aside from the reasonableness requirement, provide any guidance as to how market factors should be used in determining the size of UGAs. This presumably deliberate ambiguity arguably signals the intent to weaken the role of OFM projections by freeing counties to consider a broader range of factors in determining the size and density of UGAs. Indeed, RCW 36.70A.110(2) expressly provides that local governments “may consider local circumstances” in using market factors. Promoting economic development and affordable housing is as much a GMA policy objective as containing urban development and reducing sprawl, and the use of a market factor arguably ensures that the planning process reflects this goal in much the same way that the mandatory use of OFM projections reflects competing goals. At the same time, however, the economic connotations of the word “market” suggest that the Legislature did


247. See Save Our Butte, 1994 WL 907900, at *8-12 (county included discussion of anti-sprawl goals in its comprehensive plan, but sized its UGA more than nine times larger than necessary to accommodate projected growth).

248. The current language allowing the use of market factors was added by EHB 1305 § 2. This amendment in effect codified the Central Board’s holding in Tacoma v. Pierce County, which held that market factors and other “policy choices could be used in designating UGAs so long as they are documented. See Tacoma, 1994 WL 907887, at *8.

249. DCTED’s advisory regulations are somewhat conflicted on the question of what factors counties should consider in sizing UGAs. Compare WASH. ADMIN. CODE § 365-195-335(3)(b) (stating that UGAs “should represent the physical area within which [a] jurisdiction’s vision of urban development can be realized) with WASH. ADMIN. CODE § 365-195-335(3)(e)(v) (stating that UGAs should “encompass a geographic area which matches the amount of land necessary to accommodate likely growth”).


251. See id. at § 36.70A.020.

252. See Dearborn & Gygi, supra note 35, at 987, 995 (discussing the several benefits of a large UGA land supply, including the reduction of inflationary pressures on land prices). See also Achen, 1995 WL 903178, at *22 (noting that the county used a market factor to “ensure a viable continuing market that would not be artificially inflated by an overly restrictive land base”).
not intend for local governments to base market factors on purely aesthetic or social considerations.

The growth boards vary widely in their treatment of market factors. On one end of the spectrum is the Central Board, which has articulated very specific guidelines for counties to follow in using market factors. In Bremerton v. Kitsap County, the Board held that a market factor of twenty-five percent or less—the brightline threshold recommended by DCTED—was presumptively valid. For evaluating market factors in excess of twenty-five percent, the Board adopted the following threefold inquiry:

(1) What is the magnitude of the "land supply market factor" beyond the 25% bright line? (2) Is there other evidence to suggest that the land supply market factor is not reasonable? (3) Has the county also availed itself of other approaches, such as continuously monitoring land supply and making necessary adjustments over the life of the plans for the county and its cities?

In discussing these requirements, the Board stressed that the use of a market factor is not the only means available for counties to ensure that UGAs contain an adequate land supply.

At issue in Bremerton was Kitsap County's use of a seventy-five percent market factor and the resultant overcapacity of its UGAs. To accommodate a projected urban population of 60,075 in 2014, the end of the county's twenty-year planning cycle, the land capacity analysis indicated that a total of 4,145 acres of land was required in addition to the land already contained within the designated UGAs. Add to this the additional 3,115 acres required by the...
seventy-five percent market factor, and the total additional acreage necessary under the county’s comprehensive plan was 7,260.257

In evaluating the validity of the county’s market factor, the Board focused on step two of its three part test (i.e., whether other evidence suggested that seventy-five percent was too high). This step of the analysis, the Board found, implicated several important questions concerning the integrity of the county’s UGA planning process:

For example, was the UGA sized using the criteria listed in RCW 36.70A.110? Did the County “show its work?” Were a variety of rural densities included? Has there been a showing that the cities within the county, as evidenced in their adopted comprehensive plans, cannot accommodate more population and employment than was allocated by the county? Does the county capital facilities element indicate that adequate services will be available for the type and density of uses designated both for the UGA and the rural area? Were the types and densities of land uses allocated to the rural areas violative of the Act’s prohibition against urban growth in a rural area.258

Earlier in its decision, the Board had held that the county failed to show its work in conducting a land capacity analysis.259 Because this defect by itself required a finding of noncompliance with the GMA, the Board acknowledged that its discussion of the county’s market factor was unnecessary, but nonetheless observed that Kitsap County had not provided a legitimate justification for using a market factor that was three times the twenty-five percent maximum recommended by DCTED.260

The Bremerton decision affirmed the continuing importance of OFM population projections in sizing UGAs. Responding to the (then recent) legislative amendment allowing the use of market factors, the Board emphasized that “[t]he sizing of UGAs remains dependent upon an accounting exercise requiring a reasonable relationship between its selected size and the likely future population for each county.”261 The reference to “an accounting exercise” echoes the language used by the Board to describe land capacity analysis and is used in this context to stress that, even with the use of a market range. Bremerton v. Kitsap County, No. 95-3-0039, 1995 WL 903165, at *45 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Oct. 6, 1995).

257. See id. at *47.
258. Id.
259. Id. at *47.
260. Id. The Board had earlier held that the county failed to adequately “show its work” in conducting its land capacity analysis. Bremerton v. Kitsap County, No. 95-3-0039, 1995 WL 903165, at *47 (CENT. PUGET SOUND GROWTH MGMT. HR’GS. BD., Oct. 6, 1995).
261. Id. at *29.
factor, the GMA requires that OFM growth projections play a significant role in determining the physical dimensions of a UGA. Although there is some indication that the Legislature’s adoption of the deferential “clearly erroneous” standard of review will ultimately result in a less involved analysis of UGA planning decisions than was undertaken in Bremerton, the decision remains a frequent citation in Central Board decisions concerning the issue of UGA size.

The Central Board has made two other important pronouncements regarding the use of market factors. First, the Board held in Gig Harbor v. Pierce County that “counties must specify [as a percentage of net developable acreage] the market factor they utilize either directly in an adopted comprehensive plan or in the supporting documentation[].” This extension of the “show your work” requirement, which has been adopted by the other boards and approved by the Court of Appeals, prevents counties from using market factors to mystify the UGA planning process. Second, the Board held in Vashon-Maury v. King County that the reasonableness of a market factor is determined not on the basis of total household capacity, but rather by evaluating the degree to which the land supply exceeds the minimum area necessary to accommodate projected growth.

In Vashon-Maury, the citizen group Friends of the Law argued that the capacity of existing households within the UGA so far exceeded the actual growth projection that it constituted an impermissible market factor of roughly eighty-two percent.

Neither of the other two boards has had as much opportunity to address the use of market factors as the Central Board has, undoubtedly because both jurisdictions contain vast expanses of undeveloped rural lands that result in far less competitive markets than the urbanized areas of Central Washington where developable land is scarce. Probably for these same reasons, both boards have shied away from brightline rules and mandatory analytic frameworks. In Achen
v. Clark County, for example, the county used a market factor of twenty-five percent for the residential areas and fifty percent for the commercial areas of its UGA, and while the Western Board noted that the commercial market factor exceeded the twenty-five percent maximum recommended by DCTED, it did not find this departure objectionable by itself. The problem, the Board held, was the county's use of a high market factor in conjunction with a large amount of land vaguely designated as "urban reserve" and set aside by the county for eventual assimilation into the UGA. Ultimately, the Board concluded that the county had designated a "fluid UGA . . . that does not achieve the anti-sprawl cornerstone of the Act."  

Market factor analysis in the decisions of the Eastern and Western boards is often subsumed under a generalized analysis of the policy-based rationales used to justify UGA designations that, based on a county's land capacity analysis, exceed the area necessary to accommodate projected growth. In Save Our Butte Save Our Basin v. Chelan County, for example, the Eastern Board concluded that the anticipated inclusion of a housing development project within the Chelan UGA did not justify adding nearly 2,700 acres to the IUGA, an amount three times that necessary to accommodate the additional projected growth. While the Save Our Butte decision reaffirmed the Board's position that a community's "vision of urban development" is a valid consideration in designating UGAs, the Board found that the county's vague rationales were insufficient to justify such excess even under this deferential standard. Similarly, in Dawes v. Mason County, the county's UGA was sized to accommodate population growth of 39,247, while the projected increase was only 26,866. The Western Board, which has also recognized subjective local vision as a legitimate criteria for sizing UGAs held—simply and tersely—that this was unacceptable under the GMA.

The use of market factors in drawing UGA boundaries often seems to reflect policy choices that are at odds with the Act's anti-sprawl provisions. By allowing counties to include significantly more land than is warranted by even high-range OFM projections, market factors dilute the influence of growth forecasts in UGA planning. Properly used, however, a conservative market

269. See id. at *22.
270. See id.
272. See id., at *11.
274. See C.U.S.T.E.R., 1996 WL 671531, at *1 (holding that a UGA, "and the densities within it, may look entirely differently [sic] in Vancouver than in Friday Harbor or Sumas").
275. See id.
factor accounts for inefficiencies in land use patterns that can make net acreage a poor gauge of how much land is actually needed to accommodate projected growth. Because an undersized UGA encourages sprawling development in much the same way as an oversized one, ensuring that sufficient land is available for urban development is essential to the prevention of sprawl. When used toward this end, therefore, a market factor is a valuable GMA tool.

Just as a deceptive land capacity analysis can provide false justification for oversizing a UGA, however, so to can the use of a large market factor. It is therefore imperative that the growth boards rigorously apply the “show your work” requirement and critically evaluate rationales for sizing UGAs for consistency with the Act’s overall vision. In evaluating the use of a large market factor, the growth boards should require counties to demonstrate a clear connection between the size of the market factor used and regional market-based development trends. Contrary to the decisions of the Eastern Board, purely aesthetic or social considerations should not be accepted as a legitimate basis for using a market factor because they are unrelated to the economic considerations contemplated by the Act’s use of the term “market factor.”

The discussion in Part IIIB has analyzed how the Boards require counties to use population growth projections in designating UGAs. To summarize this discussion, counties must first suballocate OFM’s countywide growth projection throughout all incorporated and unincorporated subparts of the county. Second, a land capacity analysis must be conducted to determine what “areas and densities” are sufficient to accommodate the portion of the OFM projection that has been allocated to UGAs. This determination should inform the subsequent decision of whether unincorporated areas outside of existing city limits will be included within the UGA. Third, counties must determine what, if any, “reasonable market factor” will be used to ensure that inefficient development trends do not result in a land supply that is insufficient to accommodate projected urban growth.

IV. THE ROLE OF OFM POPULATION PROJECTIONS IN RURAL COMPREHENSIVE PLANNING: AN OPEN QUESTION

Although there are no universal rules concerning how closely the size and density of UGAs must be tied to OFM growth projections, the case law articulates clear guidelines that counties must adhere to in designating UGAs.

276. That the legislature intended for counties to base market factors solely on economic concerns is strongly suggested by the common meanings of the word “market.” In Webster’s Dictionary, for example, “market” is defined as “a gathering place for buying and selling things[,]” “a region in which goods can be bought and sold[,]” and “an opportunity to sell[].” See WEBSTER’S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE (2nd Ed., 1974).
These guidelines, discussed in Part IIIIB, above, include several steps that help to ensure a clear connection between OFM population projections and the physical dimensions of UGAs. The role of growth projections in rural comprehensive planning, however, is far less clear. While a substantial body of growth board precedent suggests that countywide OFM projections must inform rural as well as urban planning decisions,²⁷⁷ the Act explicitly requires their use only in designating UGAs, fully contained communities, and master resorts.

Part IV analyzes the confusing body of statutory and decisional law relating to the use of OFM projections in rural comprehensive planning. By way of brief background, Subpart A discusses the requirements concerning the rural land use element and its function in comprehensive planning. Subpart B then analyzes the growth board decisions addressing the use of growth forecasts in rural planning. Finally, Subpart C takes a critical look at two court of appeals decisions that conflict with the board precedents on this important GMA issue, and more fundamentally cast doubt on the continued role of the allocation requirement in both urban and rural comprehensive planning.²⁷⁸

A. Defined by Default: Rural Lands as “The GMA’s Leftover Meatloaf”

That which is not designated otherwise is rural. Prior to the Legislature’s 1997 amendments to the GMA, this simple truism was essentially all the Act said about the mandatory designation of rural areas, other than the vague directive that “permitted land uses” be “compatible with the rural character of such lands and provide for a variety of rural densities.”²⁷⁹ In failing to either define the term “rural” or provide criteria for including land within a rural area, the Act offered counties no explicit guidance in designating the rural element of their comprehensive plans. To fill this conceptual void, the growth boards turned to one of the Act’s first principles: “[U]rban areas are to be characterized by urban growth and rural areas are not.”²⁸⁰ So long as the areas included within a county’s rural land use element did not include “urban

²⁷⁷. See infra subpart B, pgs. 130-38.
²⁷⁸. See infra subpart C, pgs. 138-41.
²⁷⁹. See former WASH. REV. CODE § 36.70A.070(5) (1990) (emphasis added). See also WASHINGTON STATE LAND USE STUDY COMMISSION REPORT 1996 17 (Jan. 1997). The Commission, in making recommendations that would become a core part of the 1997 amendments, faulted the GMA for describing rural lands not by what they are, but rather “by what they are not: they are not urban and they are not natural resource lands. Little further guidance is offered.” Id.
growth," which the Act clearly defines, growth boards found the rural designation in compliance with the GMA.

The ambiguous place that rural areas occupied in the pre-1997 GMA landscape inspired the Western Board’s metaphoric observation in Port Townsend v. Jefferson County that “[r]ural lands are the leftover meatloaf in the GMA refrigerator.”281 In 1997, the Legislature passed a series of amendments to the GMA that, among other changes both substantive and decorative, clarified the Act’s treatment of rural areas in a number of important ways.282 First and foremost, the amendments expanded RCW 36.70A.070(5), the GMA provision requiring that comprehensive plans include a “rural land use element,” by enumerating for the first time the specific types of land uses that are acceptable in rural areas.283 This new language, passed at the behest of rural communities intent on rapid development,284 allows for “limited areas of more intensive rural development[,]” including infill of existing residential and commercial lots,286 small-scale recreational development,287 intensified development of non-residential lots,288 and new development of cottage industries within isolated areas,289 as well as more traditional rural land uses such as forestry and agriculture.290

281. No. 94-2-0006, 1994 WL 907895, at *10 (W. WASH. GROWTH MGMT. HR’GS. BD., Aug. 6, 1994). At issue in Port Townsend was the provision of Jefferson County’s comprehensive plan allowing 1 du/acre densities in its rural areas. The Board opined that such densities could conceivably be included as part of the “variety of rural densities” required by the Act, but found that the county had failed to include lower densities elsewhere in its rural areas and therefore violated the Act’s policies against sprawling development. See id.


283. See id. at § 7(5)(c) and 7(5)(d)(i)-(ii).

284. See Black, supra note 82, at 590.


286. WASH. REV. CODE § 36.70A.070(5)(d)(i) (1999). Existing commercial and residential areas developed pursuant to this subsection are specifically exempted from the requirement, also added by the 1997 amendments, that rural development be regulated by measures designed to “assur[e] visual compatibility...with the surrounding rural area” and reduce the “conversion of undeveloped land into sprawling, low density development[.]” See id. (referencing WASH. REV. CODE § 36.70A.070(5)(g)(ii) and (iii)).

287. WASH. REV. CODE § 36.70A.070(5)(d)(ii) (1999). Small-scale recreational development need not be geared toward the existing or projected rural population. Id.

288. Id.

289. Id. Cottage industries and “isolated small-scale business” need not be aimed at existing or projected rural populations. Id.

Prior to the 1997 amendments, development in rural areas had generally been limited to low-density residential development and the minimal commercial development that was necessary to serve projected rural populations.291 By allowing for more intensive rural development, the 1997 amendments appeared to significantly expand the universe of rural land uses permissible under the GMA.292 To emphasize the continuing importance of the Act’s policy goals, however, the amendments also added several provisions reaffirming the GMA’s fundamental policy against the conversion of rural lands into sprawling, low-density development.

The most significant of these reaffirmations was the mandate for counties to adopt measures requiring that intensive rural development be contained, controlled, and generally consistent with both the “rural character” of such areas and the GMA policy against urban growth occurring in rural areas.293 Additionally, the amendments provided a multi-faceted definition of “rural character” that encompasses both physical and cultural characteristics of ruralism.294 This definition, which contrasts sharply with the Act’s definition of urban growth,295 is consistent with the well-settled position that “rural areas

291. See Black, supra note 82, at 590.
292. See Black, supra note 82, at 590.
293. See E.S.B. 6094 § 3. This provision of the 1997 amendments enacted WASH. REV. CODE §§ 36.70A.070(5)(c) and 36.70A.070(5)(c)(i)-(iv), which require that rural elements include measures designed to protect rural character by containing rural development and assuring its visual compatibility with the environment, reducing sprawl, protecting critical areas, and ensuring against conflicts between different land uses. Similarly, WASH. REV. CODE § 36.70A.070(5)(d)(iv), enacted pursuant to E.S.B. 6094 § 7, requires counties to establish a “logical outer boundary” for rural development areas that are appropriate for the physical environment and character of the rural area and prevent new patterns of low density sprawl.
294. See WASH. REV. CODE §§ 36.70A.030(14)(a)-(g) (2000). “Rural character” is defined as land use and development patterns
(a) In which open space, the natural landscape, and vegetation predominate over the built environment;
(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
(c) That provide visual landscapes that are traditionally found in rural areas and communities;
(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
(f) That generally do not require the extension of urban governmental services; and
(g) That are consistent with the protection natural surface water flows and ground water discharge areas.
Id.
are to be very different from urban areas[]."

In attempting to harmonize the 1997 amendments with its established precedents, the Central Board emphasized its prior holding that compact urban development would not violate the Act so long as it was sufficiently contained to avoid the perpetuation of low density sprawl.

For all the 1997 amendments did to clarify the Act's treatment of rural lands, the requirement that rural areas include a "variety of rural densities" remains undefined. Growth boards have therefore continued to use general guidelines, just as they have in the UGA context, in determining whether the range of densities provided for in a county's rural land use element satisfies the Act's policy objectives. In Smith v. Lewis County, for example, the Western Board held that extensive use of one du/five-acre and higher density levels in rural areas failed to satisfy the GMA, especially in light of the county's failure to include a balance of one du/ten- and twenty-acre lots. Similarly, in Sky Valley v. Snohomish County, the Central Board announced the general rule that "a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use," provided the other requirements of the Act are also met. The Eastern Board, in a manner consistent with its approach to market factors and UGA densities, evaluates rural densities using general principles as opposed to brightline rules or guidelines.

By defining "rural character" and specifying the types of land uses that are acceptable in rural areas, the 1997 amendments significantly clarified the GMA's overall vision for growth in rural communities. This vision is one of a vast undeveloped Washington landscape interrupted occasionally by large residential lots and isolated pockets of higher-density compact development that, despite its obvious contrast with the countryside, does not threaten the essential ruralism of its surroundings. The Act conveys its vision of ruralism through provisions that focus on the permissible uses of lands that counties

"growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with [agrarian, rural, resource-based land uses]"

298. No. 98-2-0011c, 1999 WL 187571, at *3 (W. WASH. GROWTH MGMT. HR'GS. BD., Apr. 5, 1999) (holding that the county's minimum density of one du/five acre did not comply with the Act where the record indicated that lower densities were necessary to reduce sprawl).
300. See Wenatchee Valley Mall P'ship v. Douglas County, No. 96-1-0009, 1996 WL 731191, at *11 (E. WASH. GROWTH MGMT. HR'GS. BD., Dec. 10, 1996) (holding that simply that residential development in rural centers must be limited to rural densities and non-residential growth must be limited to uses dependent by their very nature on a rural location and functionally and visually compatible with the surrounding rural/resource land character).
have already included within their rural land use element. The initial designation of those lands, however, still awaits the higher priority designation of UGAs, as well as natural resource and critical areas. Thus, while the meatloaf metaphor was directed at a far less thorough approach to rural areas than the one contained in the 1997 amendments, it captures well the leftover quality that rural lands continue to have under the GMA.

**B. An Analysis of Growth Board Precedent Requiring Counties to Use OFM Projections as a Basis for Designating Rural Areas**

Quite unlike the requirements for UGAs, which make size and density dependent on OFM growth forecasts, the Act on its face provides no such direction to counties in determining how much land should be included in rural areas or what range of rural densities is acceptable. Indeed, specific mention of OFM projections within the GMA itself is confined to the provisions concerning UGAs, planned master communities, and resorts. Despite the absence of an explicit statutory link between rural comprehensive planning and population projections, however, several board decisions have held that counties must allocate OFM’s countywide projection among both the urban and rural areas within their borders. This requirement was first announced in *Edmonds v. Snohomish County*, a 1993 case in which the Central Board held that counties must allocate the OFM projection among all “incorporated and unincorporated UGAs and non-UGAs.” Allocation is necessary, the Board observed, “in order to achieve the consistency and coordination of comprehensive plans . . . and to give force and effect to the [UGA] designations as required by RCW 36.70A.110.”

301. The opening sentence of the Act’s provision concerning rural areas—i.e., “[c]ounties shall include [in their comprehensive plans] a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources”—was unchanged by the 1997 amendments. WASH. REV. CODE § 36.70A.070(5) (1999) (emphasis added).


As with many other GMA requirements, however, the articulation of this rule has always been much clearer than its application. The Board's holding in *Edmonds* is contradicted by an earlier passage in the decision which, in emphasizing that counties have complete discretion in allocating population growth, implies that allocation is an optional exercise that is authorized by the language of RCW 36.70A.110(2), rather than an actual requirement of the GMA. Moreover, since the narrow question before the Board was whether Snohomish County had exceeded its authority in allocating population to the cities, the language indicating that counties are required to allocate population to all areas within their borders is arguably dicta. Regardless of precisely what the *Edmonds* board meant, however, the decision clearly did not require that rural designations be "based on" OFM projections as UGAs are required to be under RCW 36.70A.110(2). Indeed, the decision says nothing about the actual use of population allocations in designating rural areas, only that such allocations must be made.

The role of population projections in rural comprehensive planning was explored at greater length in two subsequent cases, *Association of Rural Residents v. Kitsap County* and *Achen v. Clark County*, both involving citizen challenges to the comprehensive plans of predominantly rural counties. These landmark decisions were the first in a long line of opinions by the Western and Central boards addressing the failure of Clark and Kitsap Counties, respectively, to comply with several core requirements of the GMA. Both predominantly rural counties have experienced growth rates that are among the highest in Washington State, and in the case of Clark County, the forty-third highest nationally. This record growth has fueled an economic expansion of unmatched size and speed, which in turn has resulted in a strong momentum toward continued development of each county's rural lands at urban, or in the words of the Western Board, "ruruban" levels.

307. The cities argued, unsuccessfully, that Snohomish County could only allocate population to the unincorporated portions of the UGAs because incorporated areas were subject to the exclusive land use powers of the city governments. See id. at *44, 46-47.
308. 1994 WL 907885, at *1-3.
310. See supra note 117 and accompanying text. See also PROJECTIONS, supra note 12, at 1.
311. See Blumenthal, supra note 3 (discussing the impacts of growth on the economy).
312. See *Achen*, 1995 WL 903178, at *16 (observing that "[u]ncoordinated development of rural areas often involves greater economic burdens than in urban areas").
backdrop, an unprecedented number of citizen suits have been brought against Clark and Kitsap counties alleging, among other things, violation of the Act's prohibition against locating urban growth in rural areas.\textsuperscript{313}

The first of these citizen suits was \textit{Association of Rural Residents v. Kitsap County}, the seminal 1994 case in which the county had sought unsuccessfully to use its own growth forecasts in lieu of OFM's.\textsuperscript{314} Although the issue before the Board was whether the size of the county's UGAs satisfied the requirements of RCW 36.70A.110(2), the decision includes a background discussion which states that the GMA requires counties to allocate OFM projections to both rural areas and UGAs such that the total of all allocations equals the twenty-year projection for the entire county.\textsuperscript{315} By stressing the mandatory nature of allocation, the Board clarified its holding \textit{Edmonds}. Still, as in \textit{Edmonds}, the Board did not address whether rural allocations in any way constrain a county's discretion in designating the size and densities of rural areas.

The Western Board's decision in \textit{Achen} goes a long way toward filling this hole. At issue in \textit{Achen} was Clark County's allocation of 15,000 of its projected twenty-year population increase of 416,071 to the rural areas designated by its comprehensive plan.\textsuperscript{316} The Board observed that the rural designation, which covered approximately 83,500 or 17\% of the county's 500,000 acres, already contained in excess of 13,500 undeveloped lots.\textsuperscript{317} Based on the assumption of 2.33 persons-per-household used in the comprehensive plan, the Board calculated that the rural areas were able to accommodate significantly more than twice the population allocated to them.\textsuperscript{318} Over the course of the twenty-year planning cycle, the Board observed, this excess capacity would become even greater as a result of the additional division of undeveloped land into residential lots.\textsuperscript{319} The fact that large numbers of Clark County residents have

\textsuperscript{313} Referring to the deadline for filing challenges to the county's comprehensive plan, the Board observed that, "Not unlike the Missoula floods, an unprecedented volume of petitions began arriving at our office on February 28, 1995." \textit{Id.} at *1.

\textsuperscript{314} \textit{Rural Residents}, 1994 WL 907885, at *37. For discussion of the OFM issue, \textit{see supra} notes 159-60 and accompanying text.

\textsuperscript{315} \textit{See Rural Residents}, 1994 WL 907885, at *27.

\textsuperscript{316} \textit{See Achen}, 1995 WL 903178, at *20. Among the many other challenges to the comprehensive plan was Clark County's use of a countywide population projection that was slightly higher than OFM's. \textit{See id.} at *21. On remand, the Board ordered the county to use OFM projections. \textit{Id.}

\textsuperscript{317} \textit{Id.} at *16.

\textsuperscript{318} \textit{Id.}

\textsuperscript{319} \textit{Achen v. Clark County}, No. 95-2-0067, 1995 WL 903178, at *16 (W. WASH. GROWTH MGMT. HR'GS. BD., Sept. 20, 1995).
historically resided outside of incorporated city limits further suggested that actual rural population growth, as opposed to just theoretical capacity, would dwarf the 15,000 allocated by the county to the rural areas.\textsuperscript{320}

Because Clark County's rural capacity and historic rural growth rates both greatly exceeded the rural allocation provided for in the comprehensive plan, the Board held that the County's rural land use element violated the GMA. In so holding, the Board observed that

\begin{quote}[
\textit{t}he usefulness of population projections is destroyed if an arbitrary allocation number is picked that has no basis in reality and which is not considered in relationship to the total picture. Contrary to the assertion of [Clark County Citizens United, a pro-development citizen group supporting the county's rural designation], the population allocations for urban areas plus the population allocations for non-urban areas must total [OFM's countywide] population projection. Population projections and allocations are interdependent and are not solely for use in urban areas. There are available lots which were presumably made for residential purposes that far exceed the rural population allocation. A failure to recognize those conditions necessarily skews the appropriate allocations for urban areas.\textsuperscript{321}\end{quote}

On remand, the county was ordered to amend its comprehensive plan by making "an allocation of projected rural growth that is reasoned and reasonable considering existing conditions."\textsuperscript{322}

The problems resulting from the county's unrealistic rural allocation were exacerbated, the Board found, by its use of a uniform five-acre minimum lot size for all rural lots that had not been "segregated" (i.e., subdivided into smaller parcels) prior to adoption of the comprehensive plan at the tail end of 1994.\textsuperscript{323} Although the decision does not elaborate on this point, the Board presumably reasoned that a prevalence of five-acre lots would undermine the goal of channeling growth into UGAs by making a large number of rural lots available for residential development, a result which in turn would make the county's large allocation of projected growth to the UGAs as much a facade as its low allocation to the rural areas. Accordingly, the Board held that the county's use of a five-acre minimum lot size was in violation of the GMA.\textsuperscript{324}
In Achen, the Western Board did the Central Board one better. While Edmonds and Rural Residents established that counties must allocate OFM’s countywide projection to both UGAs and rural areas, the Achen board actually overturned a county’s rural designation based on the large disparity between likely future growth in the rural areas, as determined by capacity and past residency patterns, and the amount of population growth allocated to those areas. In doing so, the Western Board made rural allocation more than a mandatory pro forma exercise over which county governments have unfettered discretion. The result in Achen is therefore inconsistent with the Central Board’s prior holding that counties have complete discretion in how to allocate population.

The Achen decision is also significant for grounding its analysis on essential features of the Act itself; namely, the interdependence of population projections and allocations, a step that was noticeably absent from the Central Board’s discussion in Edmonds and Rural Residents. In its decision, the Western Board observed that rural allocation helps to ensure that UGAs are not oversized by preventing counties from using the entire countywide population projection as the basis for designating UGAs. The Board reiterated this position in a subsequently issued compliance order and again in C.U.S.T.E.R. v. Whatcom County, a 1996 case in which the Board found that one of the county’s UGAs was oversized in part because the county had failed to consider the growth capacity of its rural areas when designating the UGA:

One of the primary purposes of the Act is to direct new growth into IUGAs or UGAs. The legislature has determined by adoption of the GMA that directing growth to urban areas provides for better use of resource lands and more efficient use of taxpayer dollars. A county must size an IUGA large enough to accommodate the growth that will be directed into it. A recognition of growth that has already taken place will prevent undue oversizing of the IUGAs. Likewise a recognition of the growth that will occur outside IUGAs (due to preexisting lots in rural areas) should not encourage growth in those areas but merely recognize its existence.

rested solely on the combined affects of the county’s high density rural zoning with its unrealistic rural allocation. The Board found no violation of the requirement that rural areas include a “variety of rural densities” because Clark County had used a range of 10-20 du/acre densities in the northern part of its rural area prior to adoption of its comprehensive plan. Id. at *15-17.

325. Id. at *17.
326. Id. at *3 (observing that “[t]he purpose of recognizing this growth is not to encourage growth in rural areas, but rather to decide an appropriate and correct foundation for determining the proper size of the UGAs”).
This passage illustrates the Board’s recognition that urban and rural comprehensive planning decisions are inextricably tied, such that an unrealistic allocation to one area will affect the other as well.

While *Achen* and *C.U.S.T.E.R.* clearly strengthened the role of OFM projections in rural comprehensive, the Board did not articulate a rule, or even a guiding principle, for determining when a county’s allocation of population growth to rural areas violates the Act. The Board’s holding in *Achen* that a land capacity analysis is not required for rural areas\(^3\)\(^2\)\(^8\) clearly indicates that OFM projections need not play the same starring role in designating rural areas that RCW 36.70A.110(2) requires them to play in designating UGAs. At the same time, however, the decision suggests that a county’s discretion in allocating population growth to rural areas is limited both by the Act’s policy goals and by the degree to which the rural allocation represents an unrealistic assessment of future growth.\(^3\)\(^2\)\(^9\)

In a similar vein, the Western Board’s decision in *Dawes v. Mason County* held that the county’s several “Rural Activity Centers” (“RACs”) were significantly oversized in light of the amount of population allocated to them, thereby undermining the Act’s policy against urban development occurring in rural areas.\(^3\)\(^3\)\(^0\) In reaching this conclusion, the decision implies that significant overcapacity is acceptable only within UGAs, which unlike rural areas should be sized to accommodate a majority of the countywide growth projected by OFM. The decision in *Dawes*, while significant for its extension of the *Achen* approach, does not speak as directly to the role of population projections in rural planning as *Achen* or *C.U.S.T.E.R* does because the RACs were treated essentially as FCCs, a designation which links them directly to the Act’s UGA requirements.\(^3\)\(^3\)\(^1\) Nonetheless, the decision demonstrates the Western Board’s continuing conviction that the mere formality of making a rural allocation is not sufficient to satisfy the Act unless that allocation is also consistent with the size of the rural area to which it applies.

The Central Board’s opinions in *Sky Valley v. Snohomish County*\(^3\)\(^3\)\(^2\) and *Gig Harbor v. Pierce County*\(^3\)\(^3\)\(^3\) represent a move towards the Western Board’s approach, albeit a slight one. In *Gig Harbor*, a 1995 case challenging Pierce

\(^3\)\(^2\)\(^8\). *Achen*, 1995 WL 903178, at *16.

\(^3\)\(^2\)\(^9\). *But see Cotton Corp. v. Jefferson County*, No. 98-2-0017, 1999 WL 200666, at *2-6 (W. WASH. GROWTH MGMT. HR’GS. BD., Apr. 5, 1999) (upholding the county’s allocation of 60% of the OFM projection to rural areas on the grounds that petitioner had failed to show that the allocation was clearly erroneous).

\(^3\)\(^3\)\(^0\). *See Dawes*, 1996 WL 716194, at *3. Specifically, the RACs were allocated population growth of 542 but were sized to accommodate 38,000. *Id.*

\(^3\)\(^3\)\(^1\). *Id.* at *2-3.

\(^3\)\(^3\)\(^2\). 1996 WL 734917, at *9. *See also WASH. REV. CODE § 36.70A.350.*

\(^3\)\(^3\)\(^3\). 1995 WL 903183, at *40-41.
County’s comprehensive plan, the Board considered the argument that the county’s seventeen-percent rural allocation violated the Act’s policy of reducing sprawl by channeling to much growth away from the UGAs. Although the Board found that the petitioners had failed to carry their burden of proof on this issue, its willingness to evaluate the county’s rural allocation is inconsistent with the position, stated in Edmonds and Rural Residents, that counties have complete discretion in allocating population growth. Similarly, the Board considered and rejected the argument that Pierce County had violated the GMA by designating rural areas that contained far greater capacity for growth than was allocated under the comprehensive plan. Considering this argument on its own terms, as the Board did, indicates that OFM projections were seen as a potential constraint on a county’s discretion in designating rural areas.

The Sky Valley decision represents an even greater shift in the Board’s thinking on these issues. In Sky Valley, the petitioners challenged the rural land use element of Snohomish County’s comprehensive plan on the grounds that it included far more small residential lots than allowed by previous board decisions and, consequently, much greater overall growth capacity than the county’s rural allocation warranted. The use of urban-level densities of 1 to 2.3 du/acre, the Board found, resulted in “almost a 300 percent excess capacity in the rural area[,]” a result that contravened the comprehensive plan’s mandate to reduce the rate of rural growth:

| It is difficult to fathom how such an excess in the rural area is consistent with the policy directive of [reducing growth in rural and resource areas]. Fundamental laws of supply and demand would suggest that the rate of growth is more likely to be higher in an area with a 300 percent excess capacity (the rural area) than in an area [like the UGAs at issue in this case] with only a 14.5 percent excess capacity. |

The petitioners also pointed out that the density levels resulting in this over-capacity were based on planning decisions made prior to adoption of the GMA.

Like the Western Board in Achen v. Clark County, the Central Board’s decision in Sky Valley recognizes the consequences of excess rural capacity to the GMA objective of channeling growth into UGAs. The relevance of the Sky Valley analysis to the statutory role of OFM projections in designating rural

334. Id. at *28-29.
335. Id. at *25-26, 29.
337. Id. at *40.
338. Id.
339. Id. at *29.
areas is limited, however, because the Board evaluated the excess rural capacity against the mandates of the county’s own comprehensive plan, as opposed to the requirements of the Act itself. Thus, the Board’s holding with respect to this issue is really just an application of the Act’s requirement that comprehensive plans be internally consistent, as opposed to a legal conclusion regarding the required use of growth forecasts in designating rural areas. The significance of Sky Valley is further limited by the Board’s separate holding that Snohomish County’s use of high rural densities violated the prohibition against urban growth occurring in rural areas, a conclusion that arguably makes the above-quoted passage mere dicta.

Notwithstanding these limitations, however, the Sky Valley decision attaches far more importance to OFM projections in the context of rural planning than any prior decisions of the Central Board. Comparing rural allocation with rural capacity was not a necessary step in the Board’s consistency analysis because the county’s policy of reducing rural growth was not directly tied the rural allocation. Therefore, the Board’s willingness to make this comparison suggests that it may well have found the excess rural capacity in violation of the GMA even if the comprehensive plan had not contained such a policy. The Sky Valley decision also reaffirms the Board’s willingness, first evidenced in Gig Harbor, to question a county’s discretion with respect to specific rural allocations. Based on the county’s allocation of a mere fifteen percent of the OFM total to the rural areas at issue, however, the Board found “no fault with the County’s allocation[].”

Although the case law in this important area of growth management law is far from clear, it suggests three ways in which OFM projections are a potential constraint on rural comprehensive planning. First, designating a rural area that is capable of absorbing a significantly larger share of the total OFM projection than the county has allocated to it may violate the Act’s policies of channeling growth into urban areas and discouraging the conversion of undeveloped land into sprawling low-density development. Second, a rural allocation that bears little relation to the actual capacity of the rural area to absorb population growth distorts the UGA allocation, which can in turn result in oversized UGAs that undermine these same core GMA policies. Third, allocating a large

340. Id. at *40.
343. The provision at issue, LU 6.A, simply required the county to reduce the rate of rural growth. Id. at *40.
344. Id.
345. See supra notes 316-30, 336-38 and accompanying text.
346. See supra notes 321-27 and accompanying text.
percentage of OFM's countywide projection to rural areas can result in undersized UGAs that force growth into surrounding rural areas in clear contravention of the Act's prohibition against urban growth occurring in rural areas.\(^\text{347}\)

C. Confusion in the Court of Appeals: The Allocation Requirement in Comprehensive Planning

Since the growth boards began hearing cases in 1993, the courts have only occasionally entered the GMA fray.\(^\text{348}\) Of the cases that have been decided, most have focused on procedural issues related to the comprehensive planning process or balance-of-power questions concerning the extent to which the GMA trumps local land use authority. To date, the only appellate decisions addressing the use of OFM projections in comprehensive planning have come from the Division II Court of Appeals, first in Diehl v. Mason County,\(^\text{349}\) and about a week later in Clark County Citizens United v. Clark County Natural Resources Council.\(^\text{350}\) The state supreme court has denied review in both cases, so barring legislative intervention, it is unlikely that a final pronouncement on this important area of growth management law will be forthcoming anytime soon.

This lack of judicial guidance makes it is especially unfortunate that the Diehl and Clark County Citizens decisions are inconsistent with one another, and to varying degrees, mistaken about interpretive issues of great significance to the comprehensive planning process and the ability of that process to further substantive GMA policies. Omitting the essential, the court in both cases failed to recognize what all three growth boards have long held: a county must allocate OFM's countywide projections among all populous subparts of the county.\(^\text{351}\) As shown in Part V, below, this mistake undermines the intended role of OFM projections in both rural and urban comprehensive planning.

The first of these decisions, Diehl v. Mason County, was an appeal of a Mason County superior court order affirming the Western Board's decision in Dawes v. Mason County. In Diehl, Mason County challenged the Board's conclusion that it had violated the GMA by failing to use OFM population projections in designating UGAs and by providing for urban-level development

\(^{347}\) See supra notes 321-27 and accompanying text.
\(^{349}\) 972 P.2d 543 (Wash. 1999).
\(^{350}\) 972 P.2d 941 (Wash. 1999).
\(^{351}\) See supra notes 295-338 and accompanying text.
in rural areas, which as discussed above, the Board found were oversized in light of the population allocated to them by the county. Echoing its argument before the Board, the county asserted that its use of independently-generated population projections was justified because the OFM projection was far too low.

The court’s opinion in Diehl validates the long line of board precedent holding that counties must abide by OFM projections in designating UGAs. Applying a de novo standard of review to the legal question of whether OFM projections are a mandatory planning constraint, the court held that RCW 36.70A.110(2) precludes counties from using their own projections in lieu of OFM’s. Similarly, the court affirmed the Western Board’s holding in Dawes, which the superior court had also adopted, that the rural element of Mason County’s comprehensive plan violated the GMA because its rural areas were oversized and allowed for urban densities in contravention of the Act’s prohibition against locating urban development outside of UGAs.

The court’s holding with respect to the county’s rural area designations rests on two distinct grounds. First, the court refers approvingly to “Board decisions that have specifically stated that 1-acre to 2.5-acre lot sizes[, both which were allowed by the Mason County plan,] are per se urban densities.” Second, the court recites the Board’s conclusion that the combined capacity of Mason County’s UGAs and rural areas to absorb growth “would allow a population growth that far exceeds the projected growth,” a position which would seem to support the view that OFM’s countywide projection must be allocated to all subparts of the county such that the sum of all allocations equals the OFM population projection.

At first blush, the court’s decision in Diehl appears to be a victory for proponents of projection-based comprehensive planning. In reaching the correct general conclusions, however, the decision fails to explicitly acknowledge the allocation requirement. Indeed, by observing that “a UGA must not be larger than needed to support the OFM maximum population projection[,]” the court seems to imply that counties can size their UGAs to accommodate the high end of OFM’s total countywide projection, as opposed to the subset of the
OFM projection that reflects "the urban growth that is projected to occur[.]."\textsuperscript{360} The court's discussion of the county's rural element, however, implicitly acknowledges the allocation requirement by incorporating the Board's conclusion that Mason County's rural areas are oversized in light of projected rural growth.\textsuperscript{361}

The confusion hinted at by the court's decision in \textit{Diehl} takes center stage in \textit{Clark County Citizens United v. Clark County Natural Resources Council},\textsuperscript{362} a companion case decided one week later. At issue in \textit{Clark County Citizens} was the Western Board's holding in \textit{Achen v. Clark County} that OFM population projections "are not solely for use in urban areas."\textsuperscript{363} In affirming the superior court's reversal of this holding, the Court of Appeals retreated from the contrary position implied by its decision in \textit{Diehl}. Specifically, the court held that

\begin{quote}
[t]he GMA requires a county to consider OFM population projections when sizing urban growth areas. [Quotation of RCW 36.70A.110(1) and (2) omitted]. Nothing in the GMA provides that a county must use OFM's population projections for any other purpose. More particularly, nothing in the GMA provides that a county must use OFM's population projections as a cap or ceiling when planning for non-urban growth. Construed according to its plain meaning, then, the GMA does not require counties to use OFM's population projections as a cap or ceiling on non-urban growth.\textsuperscript{364}
\end{quote}

In reaching this conclusion, the court reasoned that lack of any reference to OFM projections in the Act's rural planning requirements signaled the Legislature's intent to confine the role of OFM projections to UGA planning.\textsuperscript{365}

The decision in \textit{Clark County Citizens} contradicts the language in \textit{Diehl} approving of the Western Board's position that OFM projections constrain local discretion in rural comprehensive planning.\textsuperscript{366} Moreover, in holding that OFM projections are not "a cap on non-urban growth,"\textsuperscript{367} the court mischaracterizes the Board's opinion in \textit{Achen}. Read carefully, the Board's position was simply that population allocations to rural areas that are worlds

\begin{footnotesize}
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\item \textsuperscript{360} \textit{Wash. Rev. Code} § 36.70A.110(2) (1999).
\item \textsuperscript{361} \textit{Diehl}, 972 P.2d at 547-48.
\item \textsuperscript{362} 972 P.2d 941 (Wash. 1999).
\item \textsuperscript{363} \textit{Id.} at 942.
\item \textsuperscript{364} \textit{Id.} at 943-44 (citations omitted).
\item \textsuperscript{365} \textit{Id.}
\item \textsuperscript{366} \textit{See Diehl}, 972 P.2d at 548. \textit{See also} \textit{Settle}, supra note 348, at 19 (arguing that the language in \textit{Diehl} reciting the Western Board's position was not a basis of the court's decision).
\item \textsuperscript{367} \textit{See Clark County Citizens}, 972 P.2d at 943.
\end{itemize}
\end{footnotesize}
apart from likely future growth violate the GMA by distorting the population growth assumptions on which a county’s UGA designations are based.\textsuperscript{368} The Board reiterated this point in \textit{C. U.S.T.E.R} v. \textit{Whatcom County Environmental}, where it observed that failure to consider the growth potential of rural areas can result in UGAs that are far larger than necessary to accommodate projected urban growth.\textsuperscript{369}

The inconsistency between \textit{Clark County} and \textit{Diehl} results in part from the court’s failure to recognize, in both cases, that RCW 36.70A.110(2) requires counties to size UGAs not on the basis of OFM’s total countywide projection, but rather that portion of the OFM projection which represents “the urban growth that is projected” by the county to occur over the twenty-year planning cycle.\textsuperscript{370} By drawing a distinction between projected urban growth and projected countywide growth, the plain language of the Act makes allocating a portion of OFM’s population projection to UGAs an integral step in comprehensive planning, and as shown below, the board precedent requiring the use of OFM projections in designating rural areas follows from this core UGA requirement.

\section*{V. IN DEFENSE OF THE BOARDS: WHY THE GMA’S LANGUAGE & POLICIES REQUIRE THAT OFM PROJECTIONS SERVE AS A BASIS FOR RURAL COMPREHENSIVE PLANNING}

Allocating OFM’s countywide population projection to both rural and urban areas is, contrary to the holding of the Court of Appeals in \textit{Clark County Citizens United} v. \textit{Clark County Natural Resources Council}, \textsuperscript{371} required by the Act’s language and express policy goals. How to allocate population growth is a threshold policy decision that reflects what portion of the projected countywide growth will be directed into each area of the county. Like all other GMA-related decisions, a county’s allocations to both UGAs and rural areas must be substantially guided by the Act’s policy goals in order to be in compliance with the GMA. A finding of noncompliance or invalidity could be warranted if a county’s allocations fail to: (1) channel growth into UGAs and discourage sprawling development patterns; or (2) account for realistic indicators of future development, such as the presence of undeveloped residential lots in rural areas, that will invariably effect the distribution of population growth throughout the county. Once the allocations are made, a county should ensure that the size and density levels of its UGAs and rural

\textsuperscript{368} See supra notes 307-20 and accompanying text.
\textsuperscript{370} See \textit{WASH. REV. CODE} § 36.70A.110(2) (2000).
\textsuperscript{371} 972 P.2d 941 (Wash. 1999).
areas are commensurate with the allocations and consistent with the requirements for urban and rural densities.

This interpretation of the Act is expressed with varying levels of clarity and conviction in the growth board precedents analyzed in Part IVB, above. Unfortunately, however, the growth board decisions requiring the use of population projections in rural comprehensive planning have failed to persuasively articulate a basis for this position in the language or policies of the GMA. To fill this conceptual void, Subpart A connects the precedents of the Western Board on this issue with the core GMA policies of discouraging sprawl and preserving traditional distinctions between urban and rural environments. Subpart B then defends the Western Board approach by offering an interpretation of the Act's language that is inconsistent with the narrow reading advanced by the Court of Appeals.

A. Fundamental GMA Policies

It is well settled that the spirit and purpose of an enactment must prevail over express but clearly inept wording. The following discussion will show that the GMA's core vision—compact, densely populated, resource-efficient urban centers separated by vast expanses of sparsely inhabited rural lands—can never be fully realized if the role of population growth projections is artificially confined to urban land use decisions on the basis of an innocuous legislative omission. In the context of both rural and urban comprehensive planning, OFM growth forecasts play a vital role in implementing the Act's policy objectives.

1. Discouraging Sprawl in Favor of Compact Urban Growth

Key provisions of the GMA reflect the Legislature's conclusion that the use of objective population projections in land use planning is a prerequisite to successful growth management aimed at averting the sprawling growth patterns of the last fifty-years. The reasoning behind this conclusion is worth reiterating, as it provides powerful support for requiring the use of OFM projections in both rural and urban comprehensive planning.

When an area lacks sufficient capacity to absorb projected growth, additional land must be made available to accommodate the excess growth. For purposes of comprehensive planning under the GMA, this axiom has an equally significant corollary: the greater a county’s projected population growth, the

more land that can justifiably be zoned at higher densities. Hence, counties intent on allowing sprawling growth patterns to continue are best able to achieve this objective by developing unrealistically high growth forecasts that legitimize decisions to zone large areas of land at high-density levels. Significant disparities between actual growth rates and over-inflated projections mean that, at some point during the planning cycle, sprawling growth patterns will emerge as overall development occurs at lower densities than anticipated by the zoning ordinances.

This is so because, while the electorate may favor the elimination of sprawl as an abstract policy choice, the preference for wide-open spaces is deeply ingrained in the American psyche, particularly in the western part of the country where aesthetic preferences are still informed by a deeply-rooted frontier mindset. Given the opportunity, commercial and residential developers will invariably opt for spacious low-density development over the type of compact urban development envisioned by the GMA. Ensuring that far more land is zoned for urban development than is warranted by realistic growth forecasts allows local governments to appease their land-loving constituencies, while at the same time clandestinely enabling the sprawling growth patterns proscribed by the GMA.

Recognizing these realities, the Legislature placed the essential population forecasting function not at the mercy of the local political process, but in the hands of OFM, an independent state agency with substantial expertise in projecting population growth. By severing rural planning decisions from OFM projections, however, the decision of the Court of Appeals in Clark County Citizens United v. Clark County Natural Resources Council invites a return to past practices. Freed from the moderating effect of restrained growth forecasts, counties in Western Washington can now plan for virtually unlimited rural growth, a result that contravenes the Act’s anti-sprawl objectives in two significant ways.

The first relates to the size of a county’s rural areas. It is paradoxical to require that the physical dimensions of a UGA be determined on the basis of OFM’s countywide growth projections, while at the same time allowing rural planning decisions to incorporate whatever projections are best suited to the goals of local planning authorities. The reason for requiring projection-based planning in the context of designating UGAs—i.e., ensuring that a UGA will

374. 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) (summarizing Gallup opinion poll results that indicate widespread preference among American families for “single family homes on good sized lots[,]” usually in suburban areas, small towns, or in the country)).

375. The Act requires that a county’s future land use map include population densities and estimates of future growth for all areas. See WASH. REV. CODE § 36.70A.070(1) (2000).
not be oversized and thus conducive to sprawl—is equally applicable to rural planning decisions: significantly oversized rural areas have the effect of channeling population growth away from UGAs and into rural areas where larger, cheaper lots are available, often at easily commutable distances from cities. This concern has been expressed in decisions of both the Central and Western boards.

Second, by making OFM projections irrelevant to rural comprehensive planning decisions, the Court’s holding in *Clark County Citizens* does great damage to the Act’s UGA planning process and the goal of encouraging compact urban development. If allocating the total OFM growth projection among all subparts of a county is no longer required, as the opinions in *Diehl* and *Clark County Citizens* both imply, then counties are free to treat the entire countywide projection as urban growth and size their UGAs accordingly. Eliminating the allocation requirement encourages sprawl by effectively granting local governments the permission to designate UGAs that are far larger than necessary to accommodate the number of future residents who will realistically choose to live within the UGA. The Act clearly recognizes that not all projected countywide growth will be urban growth, but under *Diehl* and *Clark County Citizens*, counties need not.

Allocation is the primary means by which comprehensive planning decisions are informed by OFM projections. Simply requiring counties to allocate OFM projections, however, is insufficient to ensure that rural areas and UGAs will be appropriately sized if counties are allowed to make unrealistically high or low allocations. This was essentially the situation confronted by the Western Board in *Achen v. Clark County*, where the county’s allocations—high UGA allocations, low rural area allocations—were inconsistent with the large number of existing rural lots available for development and the county’s historically high rate of rural growth. While allocating a large portion of the countywide projection to UGAs resonates with the goal of encouraging urban growth, a UGA that is sized to accommodate the entire countywide population projection will invariably result in sprawling low-density development.

Of course counties must, even under *Clark County Citizens*, continue to ensure that their rural land use elements prohibit urban growth and provide for “a variety of rural densities.” While this last line of protection against the urbanization of rural areas is substantial, the lack of state-imposed

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379. *Id.* at §§ 36.70A.070(5)(b).
380. Numerous comprehensive plans have been found to be in noncompliance with the
population planning parameters mean that counties in the Western Board's jurisdiction are able to base rural area designations on unrealistically high-growth assumptions that make truly rural densities impossible to achieve. Unable to rely on OFM projections to constrain rural planning decisions, the Western Board will be faced with either finding some other grounds for limiting local discretion, or just calling it a day. Should the Board steer the latter course, which is a distinct possibility given the deferential standard of review now in place, the ability of the GMA to protect Washington's rural communities from the urbanizing influence of sprawl will be greatly undermined.

2. Ruralism vs. Urbanism: Preserving the Distinctions

The GMA is every bit as concerned with rural as it is urban growth management. Although the Act clearly encourages counties to direct the greater part of their population growth into UGAs, its policies and provisions also reflect the strong desire of Washington citizens to maintain the continued viability of rural lifestyles. This unstated goal, recognized explicitly in several board decisions, is evident from the numerous provisions in the GMA that seek to distinguish the urban from the rural, and to keep those distinctions from getting too blurred. For example, the Act's definition of "urban growth," which emphasizes functional, utilitarian land uses, contrasts sharply with its definition of "rural character," which stresses the aesthetic and cultural dimensions of ruralism. That urban growth cannot occur in rural areas is one of the Act's few explicit prohibitions.

Although as a practical matter the Act defines the rural/urban dichotomy on the basis of easily observable characteristics, the distinction has far deeper roots. Preserving vestiges of an older, smaller, and less market-driven society

GMA because the densities provided for in their rural land use elements were too high to qualify as rural. See supra notes 298-300 and accompanying text.

381. See Cotton Corp., 1999 WL 200666, at *2 (holding that the county's decision to allocate 60% of its population to rural areas was not clearly erroneous).

382. See WASH. REV. CODE § 36.70A.070(5)(c) (2000) (requiring that rural elements include measures to "protect the rural character" by restricting and regulating rural development).

383. See id. at § 36.70A.030(17) (defining urban growth as "growth that makes intensive use of the land for the location of buildings, structures, and impermeable surfaces.

384. See id. at §§ 36.70A.030(14)(b-c) (defining rural character as "patterns of land use and development" that, "foster traditional rural lifestyles" and "provide visual landscapes that are traditionally found in rural areas and communities").


386. See, e.g., Kieran Bonner, Reflexivity, Sociology, & The Rural-Urban Distinction in Marx, Tonnies and Webber, 35 CANADIAN J. SOC. & ANTHROPOLOGY 165 (May 1998)
is one of the tacit goals of a national growth management revolution that associates the sprawling growth patterns of the last fifty years with social, moral, and spiritual decline, as well as the more tangible environmental and economic problems associated with sprawl. American pop culture over the past fifteen years is replete with numerous high-profile romanticizations of rural life and other clear evidence of the country’s increasing dissatisfaction with suburbia and the shallow, consumer-oriented culture so often attributed to it.

Maintaining the fundamental distinctions between rural and urban environments helps to preserve the rural lifestyle as a viable option for Washington citizens, and population density is a key element of this distinction. In contrast to densely populated urban centers, the traditional rural community has a smaller population spread-out diffusely over relatively large areas. The Act’s overall treatment of rural areas comports with this traditional conception and recognizes that the decision to live in a rural area often reflects an overall lifestyle choice, as opposed to mere geographical preference. Under Clark County Citizens v. Clark County Natural Resources Council, local governments in Western Washington can now designate rural areas that are capable of accommodating however many people they choose, regardless of whether the resulting communities are rural in any traditional sense. By undermining the GMA’s ability to safeguard the time-honored indicia of ruralism from the efforts of local governments intent on transforming vast expanses of rural land into sprawling, “rururban” development, the decision in Clark County Citizens represents another threat to the long-term viability of rural values and lifestyles.

(remaining text remains unchanged, including footnotes)
B. In the GMA's Own Words

In its Clark County Citizens decision, the Court of Appeals reasons that, because the Act never mentions OFM projections in connection with rural comprehensive planning, the Legislature clearly intended to confine the role of OFM projections to UGAs. While this appeal to plain language is initially compelling, the state supreme court has held that rules of statutory construction like the one relied on by the court of appeals—"Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the Legislature"—should not be applied when doing so leads to inconsistency or renders parts of the statute meaningless. As the following discussion will show, the court's holding in Clark County Citizens does both of these things: it renders portions of RCW 36.70A.110(2) meaningless and creates inconsistency between RCW 36.70A.100 and the Act's requirements concerning rural comprehensive planning.

1. The Allocation Requirement

A careful reading of RCW 36.70A.110(2), the Act's primary UGA provision, is the first step in locating a sound textual basis for the board precedents requiring counties to use OFM projections in rural comprehensive planning. As discussed in Part IIIIB above, this provision requires counties to base their UGA designations not on OFM's total countywide projection, but rather on that portion of the OFM projection that represents "the urban growth that is projected to occur . . . for the succeeding twenty year period." The Act thus distinguishes urban growth as a subset of countywide growth, and by doing so, requires counties to allocate a portion of their total projected growth to UGAs. Had the Legislature intended for counties to designate UGAs capable of accommodating the entire OFM projection, it would not have distinguished countywide growth from urban growth; nor, moreover, would it have drafted RCW 36.70A.110(2) to require that UGAs include "areas and densities sufficient" to accommodate projected urban growth, instead of projected countywide growth. That the two types of growth were distinguished,
however, necessarily implies that the Legislature intended the distinction to have meaning.396

But the language of RCW 36.70A.110(2) begs an important question: what, if anything, should be done with the portion of OFM's countywide growth projection remaining after allocations have been made to UGAs, or in other words, the amount of growth that the county has determined will not constitute "the urban growth that is anticipated to occur" during the twenty-year planning cycle? Without first recognizing that allocation is a necessary step in designating UGAs, answering this question is unnecessary. Once allocation is recognized as a fundamental GMA requirement, however, it becomes clear that the Act's additional requirement of internal consistency, discussed below, makes the remainder of the OFM projection a necessary basis for a county's rural land use element.

2. The Consistency Requirement

The Act requires counties to include several distinct sections within the four-corners of their comprehensive plans, including a future land use map and descriptive text outlining principles and objectives.397 Other documentary requirements include a land use element depicting population densities and growth estimates for the entire county, a section specifically designating UGAs, and several "mandatory elements" that address such fundamental issues as housing, capital facilities, and transportation infrastructure.398 As discussed in Part IVA above, comprehensive plans must also include a rural land use element that includes lands "not designated for urban growth, agriculture, forest, or mineral resources."399

In what has been described as its most prominent requirement, RCW 36.70A.070 declares that all these disparate planning elements must form an "internally consistent" comprehensive plan and that "all elements shall be consistent with the future land use map."400 Dubbed the "consistency requirement," this provision is intended to ensure that all components of a

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396. See Hama Hama, 536 P.2d at 166.
398. Id. at § 36.70A.070(1)-(6).
399. Id. at § 36.70A.070(5).
400. Id. at § 36.70A.070. See also id. at § 36.70A.100. See also W. Seattle Def. Fund v. City of Seattle, No. 94-3-0016, 1995 WL 903147, at *9 (Cent. Puget Sound Growth Mgmt. Hrg's Bd., Apr. 4, 1995).
comprehensive plan are integrated and capable of being implemented concurrently. The consistency requirement extends to a county's development regulations and countywide planning policies, both of which must be consistent with each other and with the county's comprehensive plan. In Snoqualmie v. King County, one of the earliest reported growth board decisions, the Central Board observed that the GMA's most profound impact was to require local governments to plan, and to plan consistently.

By requiring consistency between all elements of a comprehensive plan, RCW 36.70A.070 clearly precludes a county from designating UGAs that are inconsistent with its rural land use element, or vice versa. The growth assumptions used in the rural element and the future land use map, therefore, must be consistent with the growth projections used in designating UGAs. Inconsistency with the UGA growth assumptions would be impossible if the Act afforded counties the discretion to base UGA designations on the entire OFM projection, as there would then be nothing left of the OFM projection following designation of UGAs. However, this is not the case. Instead, RCW 36.70A.110(2) recognizes that not all growth will be urban and requires counties to allocate a portion of the countywide growth forecast to the UGAs, an exercise which effectively earmarks the remaining portion of the OFM projection for non-urban growth.

Internal consistency therefore requires that a county base its rural land use element on the amount of population growth remaining after allocating a portion of OFM's countywide projection to the UGAs. The population growth that has not been allocated to the UGAs represents a fundamental assumption on the part of the county concerning the amount of non-urban growth that will occur, and all portions of the comprehensive plan must be consistent with this assumption. Deviations create inconsistency between a county's rural element and its UGA designations by utilizing, within the same comprehensive plan, different assumptions about the amount of non-urban growth that will occur.

Were a county free to use one assumption about non-urban growth in designating UGAs and another in designating rural areas, the combined total of the urban and rural allocations would not be equal to OFM's countywide population projection. This disparity is itself a violation of the consistency

405. Anticipating that counties will allocate only a portion of the total OFM projections to the UGAs, the DCTED advisory regulations suggest a general methodology for counties to follow in determining what portion of the countywide projection will be urban growth. See Wash. Admin. Code § 365-195-335(3)(d)(i) (1999).
requirement, because the Act requires counties to base their UGA designations on a specific countywide growth projection, namely OFM’s, and operation of the consistency requirement makes this projection a basic premise with which all components of the comprehensive plan must be consistent.

VI. CONCLUSION

In Washington State, the new century is sure to witness the same rapid population growth that began toward the end of the last one. Add to this brisk growth a booming economy of record size, and the result is clear: the same sprawl-conducive conditions that have prevailed during the last twenty-five years are likely to continue for the foreseeable future. That a majority of Washington residents want to avoid repeating these trends was made clear by the enactment of the GMA in 1990. This Article has shown how the consistent use of population growth projections as a basis for comprehensive planning is necessary in order to achieve a compact, resource-efficient, and environmentally-friendly form of growth that is at once sustainable and worth sustaining.

Without a baseline assumption concerning the amount of long-term growth that a county will experience, discussions about how best to avoid sprawl and other GMA-ills are purely conjectural. Once an objective measure of future growth is accepted, however, it becomes possible to meaningfully address a number of crucial land use planning issues, including the best location for urban growth, the appropriate density levels for urban and rural areas, and the siting of essential public facilities. How these and other growth-related decisions are made determines whether the GMA’s vision for Washington State will be realized, or alternatively, whether sprawling low-density development and the resulting urbanization of undeveloped rural areas will continue unabated. Population growth projections play a crucial role in discouraging the latter scenario by providing public citizens and elected officials, as well as judges and administrative officers, a basis for determining the likely effects of specific land use planning decisions over an extended period of time.

Indeed, by simply requiring that key planning decisions be tied to objective estimates of future population growth, the Act signaled a major departure from the pre-GMA planning paradigm, under which economic justifications for land use planning decisions were usually sufficient. Whether by sloppy drafting or lack of political consensus, however, the Act’s use of population growth projections has engendered a great deal of confusion, both for local governments attempting to comply with the GMA, and for courts and hearings boards charged with enforcing its mandates.

This confusion stems in large part from the Act’s failure to specifically address how local governments are to make fundamental urban planning
decisions on the basis of population growth projections that are countywide in scope. The board precedents and statutory language analyzed in this Article show that the GMA requires local governments to allocate growth projections among the populous areas within their borders and to use these sub-area projections, not the countywide total, as the basis for specific comprehensive planning decisions. While some form of the allocation requirement is observed by nearly all the jurisdictions subject to the GMA’s comprehensive planning provisions, counties intent on returning to past patterns of sprawling growth have simply made demographically unrealistic allocations that justify decisions to urbanize large areas of undeveloped land. Probably because the Act is so lacking in clarity regarding the allocation requirement, local discretion in allocating population growth has been subject to much less scrutiny by growth boards than other important planning decisions. This is an unfortunate reality, as allocation relates more directly than any other GMA requirement to the goal of channeling growth into urban areas and away from undeveloped rural areas.

The Act’s statutory language leaves open an even wider conceptual hole: By mentioning population growth projections only in connection with its urban planning requirements, does the Act mean to exclude population growth projections from any mandatory role in rural planning decisions? This Article has explained why the letter and spirit of the GMA require a negative answer to that question. How it is ultimately answered elsewhere will speak volumes about the depth and sincerity of Washington State’s commitment to the goals of the growth management revolution.