V. A Growth Management Act

As the name indicates, the Growth Management Act, Chapter 36.70A RCW (hereinafter referred to as "GMA") represents the modern-day effort of Washington State to manage its growth. Washington State's tremendous population growth has often exceeded the capacity of public infrastructure and resulted in serious damage to sensitive environmental resources. The GMA addresses these growth problems and others by requiring local communities most affected by growth to engage in 20-year land use planning and to concentrate development in urbanized areas to use infrastructure efficiently. The GMA requires all cities and counties to adopt development regulations that protect environmental and natural resources. Most local communities have had these laws on their books now for more than a decade. People certainly have different opinions about the effectiveness of the GMA, but there's no question that it has had a profound impact on communities throughout the state. This chapter will give you a basic understanding of the GMA and what it requires of your community.

A. Origins of Growth Management

Before the mid-1980's, "growth management" had only generic meaning for Washington planners. But with passage of the GMA by the Washington Legislature in 1990, the term has acquired special significance. A landmark report, "A Growth Strategy for Washington State," issued by the Growth Strategies Commission in September 1990, captured much of the early thinking on the topic. Today, the GMA is codified in many chapters, but primarily in Chapter 36.70A RCW.

The GMA provides a new vocabulary for an old process. Terms such as classification, designation, conservation, protection, participation, consistency, conformance, and concurrency are now commonly used to describe progress in meeting growth management goals. Another term not to be forgotten is "opportunity." By opening the process to those who have not participated before, the GMA provides an opportunity to help balance the demands that shape our communities. Through this program, a community can mobilize its energy and address critical issues through the public process. Most importantly, and beyond the opportunity to create a community vision, the GMA provides the tools a community needs to bring that vision to reality.

The GMA: The Origins of Legislative Control of Substantive Planning in Washington

By the late 1980's, three factors in Washington State merged into a strong legislative force propelling growth management: 1) increased growth in the metropolitan areas of Puget Sound; 2) recognition statewide that resource and critical areas needed greater protection; and 3) the need for economic development and public services, especially in Washington's economically depressed areas. In the mid to late 1980's, a strong regional economy generated rapid growth in the central Puget Sound basin. Populations gradually moved farther from employment centers, straining infrastructure and the ability of local government to provide adequate public services. People also moved into rural areas, converting them to suburbia. One of the forces behind growth management was awareness that urban sprawl can be expensive (over-taxing limited public facilities), and destructive to rural and resource lands.

Municipalities and state agencies had wrestled for nearly 20 years (with mixed results) with wetland, wildlife and aquifer protection issues, and with conservation of agricultural, mineral, and timber lands. Communities experimented with resource and critical area management guidelines, often as overlays or additions to traditional zoning tools, but regional efforts, for the most part, were uncoordinated. In the end, they were largely viewed as too little, too late.

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By the late 1980's,"growth" in some areas seemed out of control. Urban sprawl appeared to threaten critical areas and resource lands, while local governments seemed unable or unwilling to deal directly with the resulting conflicts. In this climate, the state's Growth Strategies Commission was appointed.

Resource management and critical area protection was the second force that converged on the growth management movement, beginning with two state planning mandates of the 1970's: the State Environmental Policy Act (SEPA) and the Shoreline Management Act (SMA). These provided models for state regulation of local planning in matters where an overriding state interest was perceived.

While the Puget Sound regional economy was solid and growing, parts of western and eastern Washington were economically depressed or stagnant due to a decline in resource-based industries. The Growth Strategies Commission determined that land use planning and funding for infrastructure repairs and additions were needed to revitalize these areas. Its September 1990 report presented ten recommendations for action, highlighting a need to share and encourage economic growth in all regions of the state.

Growth Strategies Commission: Ten Recommendations For Action

1 All local governments must protect environmentally sensitive areas and address identified environmental problems. Immediate action should be taken to protect threatened resources and areas.

2 The state, regional, and all local governments should identify open space and link it in networks to permanently separate cities, protect and enhance the environment, provide for recreation, and secure a strong resource base for agriculture and forestry.

3 All local governments should prevent development from encroaching on commercially viable agricultural and forest lands.

4 The state should establish a process to identify and protect lands and resources of value to all citizens of the state.

5 The state should focus its spending to build a network of strong regional economies that seek to spread growth across the state.

6 Local governments should seek to concentrate employment centers and housing, using urban design to preserve community character and open space.

7 Urban growth should be contained to protect the environment and to make more efficient use of public facilities. Cities are the preferred places for urban growth.

8 Required housing and land use plans must include sufficient developable land for a range of housing types. Each community within a region should be required to accept its fair share of low-income housing. The state should increase funding for housing programs for low-income people, special needs populations, and moderate- and middle-income home buyers.

9 Funding for transit should favor communities with supportive land use plans. Comprehensive plans should link land use and all types of public facilities, parks, schools, sewers, storm water drainage, fire, and transportation.

10 A process must be developed by which all communities within a region fairly share the burden of public facilities.

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Public pressure to address growth management was intense during the 1990 legislative session. Using the preliminary findings of the Growth Strategies Commission, the Legislature enacted, and Governor Gardner signed into law ESHB 2929, the GM. The GMA emphasizes a "bottoms up" approach to planning, in which counties and cities use state guidelines to shape their own comprehensive plans to manage growth. Although deadlines for meeting the requirements were established, there was originally no penalty if local governments did not meet them.

At the end of the session, representatives of several environmental groups determined that the GMA lacked teeth, having few incentives to meet its requirements. These groups circulated an initiative to create a more centralized system with stricter, state-mandated guidelines for local governments. Sanctions would be imposed for not meeting deadlines or requirements.

The initiative was narrowly defeated, but the Governor and Legislature proceeded to implement the recommendations of the Growth Strategies Commission in the next legislative session. This legislation resulted in the 1991 amendments that provided for administration and enforcement of the GMA.

The Legislature left to the Washington State Department of Community, Trade and Economic Development (Department of Commerce) the task of defining the details and creating the explanatory resources for implementing the GMA.

Two principal sets of guidelines have been adopted as part of the Washington Administrative Code:

- Minimum guidelines for classifying and designating agricultural, forest, mineral lands, and critical areas.
- Procedural criteria for adopting comprehensive plans and development regulations, including a detailed section adopted in 2000 addressing the use of best available science in critical area regulation.

In addition, as of 2006, Department of Commerce has published more than 129 guidebooks and other publications on growth management. GMA amendments in 1993 set deadlines for adopting interim urban growth areas for counties initially required to plan fully under the GMA and those opting in. The Governor was given authority to impose sanctions for not meeting GMA deadlines.

In 1995, the Washington State Legislature enacted, and the Governor signed, a broad land use and environmental regulatory reform law recommended by the Governor's Task Force on Regulatory Reform (ESHB 1724). ESHB 1724 made significant changes to three of the state's core land use laws: the GMA; the State Environmental Policy Act (SEPA); and the Shoreline Management Act (SMA). The primary goal of this regulatory reform was to establish comprehensive plans and development regulations as the foundation from which subsequent land use decisions are made. ESHB 1724 also introduced new state requirements for more coordinated and streamlined project review and decisions. Most notably, it required all cities and counties to provide for not more than one open record hearing and one closed record appeal for project applications. Municipalities fully planning under the GMA were required to issue a final decision on a project application within 120 days of a complete application. At the project level, integration of environmental review and the permit process is required in all jurisdictions. Jurisdictions fully planning under the GMA have more specific requirements for integrated project review. Finally, ESHB 1724 created the Land Use Study Commission, whose primary goal was to make recommendations on the integration and consolidation of the state's land use and environmental laws into a single, manageable statute.

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In 1997, the Washington State Legislature enacted and the Governor signed a bill implementing a number of recommendations of the Land Use Study Commission. The Commission examined the consolidation of state land use and environmental laws, and completed a report and recommendations with respect to the GMA and related state laws. The Land Use Study Commission submitted a final report to the Legislature in December 1998.The state legislature adopted many of the Commission's recommendations in 1998 in ESB 6094.

In addition, as of 2006, Department of Commerce has published more than 129 guidebooks and other publications on growth management. (See Appendix 1 for an order form for these publications.) GMA amendments in 1993 set deadlines for adopting interim urban growth areas for counties initially required to plan fully under the GMA and those opting in. The Governor was given authority to impose sanctions for not meeting GMA deadlines.

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Although the basic structure and requirements of the GMA have remained intact over the years, the state legislature amends the GMA just about every year. A current version (October 2005) of the Growth Management Act (and related laws), as amended, is posted on the Department of Commerce Web site at http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=6413&MId=944&wversion=Staging.

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Some of the more significant amendments are summarized as follows:

- 1995, 1996, 2002 and 2003 amendments authorize intense development of some rural areas, such as in-fill development for areas already containing intense development and industrial development through mechanisms such as industrial land banks.
- 1995 and 2003 amendments provide that Shoreline Management Act (Chapter 90.58 RCW) policies and regulations are to be considered part of a community's complement of GMA policies and regulations. The shoreline regulations must be consistent with the community's GMA regulations and must provide a level of protection to environmentally sensitive areas (critical areas) at least equal to that provided by GMA regulations protecting the same type of areas.
- A 1995 amendment requires that GMA regulations that protect critical areas, which include wetlands, streams and steep slopes, must now be supported by best available science. "Best available science" (BAS) basically means credible scientific evidence.
- A 1997 amendment created what's commonly known as the "Buildable Lands Program." This program requires some of the state's largest counties and their cities to evaluate and monitor the effectiveness of local GMA regulations and to address shortcomings.
- 1996 and 1998 amendments require cities and counties to address general aviation airports and state-owned transportation facilities in their comprehensive plans.
- 2004 amendments included a provision allowing the state to expedite review of local GMA policies and regulations; new restrictions on industrial land banks; and an exemption from GMA urban density requirements for national historic reserves.

As you will find from the rest of this chapter, the amendments above relating to rural development are significant because the GMA changes how local governments address the development of rural areas. The other amendments are significant because they leave many communities with the task of incorporating new information and requirements into GMA plans and regulations. That task is currently a work in progress for many communities through GMA update requirements, identified below.

In 2002 the state legislature enacted a new timeline amendment to GMA by imposing deadlines on cities and counties to update their GMA policies and regulations. The deadlines vary depending upon the location of the city or county, starting with December 1, 2004 for some Puget Sound jurisdictions and ending on December 1, 2007 for some eastern Washington jurisdictions (see Appendix 2 for specific deadlines). City and county planning commissions and boards facing these
deadlines will spend the bulk of their time making recommendations on the updates. A large portion of this Chapter (starting at Section E (1)) identifies what communities must do to comply with this update requirement.

VI. B Planning and Environmental Legislation

A. STATE ENVIRONMENTAL POLICY ACT

1. Background

The State Environmental Policy Act of 1971 (SEPA) is Washington's fundamental environmental law. SEPA mandates environmental analyses of many actions and policies by all agencies of state and local government. SEPA was designed to make environmental consciousness a major component in all government decisions.

The State Environmental Policy Act of 1971 (SEPA) provided Washington state's basic environmental charter. Prior to its adoption, there were concerns that government decisions did not reflect environmental considerations. State and local agencies had responded that there was no authority for them to address environmental issues. SEPA, modeled after the National Environmental Policy Act (1969), was enacted to fill this need. It gives agencies the tools to both consider and mitigate for the environmental impacts of proposals. Provisions were also included to ensure the involvement of the public, tribes, and interested agencies in decisions with environmental impacts.

SEPA applies to all state and local government decisions, unless they are categorically exempt. This includes land use decisions made in the comprehensive plan, development regulations, and during project review.

The Land Use Regulatory Reform Act of 1995 required local governments to better integrate environmental analysis into their land use decision-making process. It recognized that the GMA is a fundamental building block for regulatory reform. By combining good environmental analysis with land use decisions in the comprehensive plan and regulations, projects consistent with those decisions should be more easily processed and approved. (See Chapter 3, Section F, for a discussion of integrated project review.)

Principles Of SEPA/GMA Integration

1. GMA is the building block for regulatory reform.
2. Use the same processes and often the same documents to make land use decisions and analyze the environmental impacts of those decisions.
3. Do not revisit or revise land use decisions made in the comprehensive plan and development regulations at the project level.
4. Determine consistency between a proposed project and applicable regulations or plan through a project review process that integrates land use and environmental impact analysis, so that governmental and public review under development regulations and the environmental process runs concurrently and not separately.
5. Do not duplicate requirements for environmental analysis and studies, and for mitigation of environmental impacts of a proposed project, that exist in different land use and environmental laws. Supplemental authority under SEPA should only be used to the extent existing requirements do not adequately address specific probable adverse environmental impacts.
6. Identify early in the project review process the existing environmental documents that evaluate the impacts of the proposed project. The primary role of project environmental review is to focus on gaps and overlaps that may exist in applicable laws and requirements related to a proposed action.

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While detailing all SEPA rules is beyond the scope of this chapter, the following guidelines should aid in understanding SEPA. (For a more detailed review, see Chapter 43.21C RCW, Chapter 197-11 WAC, and the SEPA Handbook)

2. The Environmental Review Process

The environmental review process involves a number of steps that are briefly described below.

a. Provide a pre-application conference for project proposals (optional)

Although not included in the SEPA rules for project review, the Department of Ecology recommends that agencies offer a process for the applicant to discuss a project proposal with staff prior to submitting a permit application or environmental checklist. The applicant and agency can discuss existing regulations that would affect the proposal, the steps and possible timeline for project review, and other information that may help the applicant submit a complete application.

b. Determine whether SEPA review is required

Once a proposal is made, the agency must determine whether environmental review is required for the proposal by: (1) defining the entire proposal; (2) identifying any agency actions (plans, permits, licenses, etc.), and (3) deciding if the proposal is categorically exempt. Certain types of proposals have been found to be categorically exempt from environmental review in the statute and SEPA Rules. If the proposal does not involve an agency action, or there is an action, but the proposal is categorically exempt, environmental review is not required.

c. Determine lead agency

If environmental review is required, the "lead agency" is identified.4 This is the agency responsible for the environmental analysis and procedural steps under SEPA. In land use decisions, both at the comprehensive plan and project level, the lead agency is usually the county or city with jurisdiction. However, the county or city will not be the lead agency when a local permit is not required, another agency is the proponent, or another agency is designated under the SEPA rules as lead for a specific type of proposal.

d. Evaluate the proposal

An environmental checklist must be filled out detailing the impacts of the proposal to the various elements of the built and natural environment. In the case of a permit for a project, the checklist would be submitted with the permit application. The lead agency must review the environmental checklist and other information available on the proposal and evaluate the proposal's likely environmental impacts. The lead agency and applicant may work together to reduce the probable impacts by either revising the proposal or identifying mitigation measures that will be included as conditions.

e. Assess significance and issue a threshold determination

After evaluating the proposal and identifying mitigation measures, the lead agency must determine whether a proposal would still have any likely significant adverse environmental impacts. The lead agency issues a threshold determination. This is either a

Determination of Nonsignificance (DNS), which may include mitigation conditions, or a Determination of Significance (DS) and scoping if the proposal is determined to have a likely significant impact.

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If the environmental review officer finds more than a moderate risk of significant environmental impact by the proposal, a DS will be issued. The issuance of a DS requires the preparation of an environmental impact statement (EIS). A scoping document is issued with the DS to determine the scope of the environmental impacts that will be analyzed in the EIS.

Until recently, direct judicial review of an agency's threshold determination was unavailable until final action was taken on the proposal. There is an express legislative prohibition against orphan SEPA appeals that has been upheld by the courts. In other words, SEPA does not create a cause of action unrelated to a specific governmental action. The intent was to avoid piecemeal adjudication of SEPA compliance. In 1998, the Washington Supreme Court granted a developer's request for a writ of certiorari based on a decision by Snohomish County requiring an EIS for a residential development. The court reasoned that application of the SEPA rules, which call for interlocutory review coupled only with review of a final action, might "improperly increase environmental analysis burdens and project delay."

f. The EIS

The EIS will analyze the probable environmental impacts of the proposal and reasonable alternatives to the proposal, including possible mitigation measures to reduce the environmental impacts of the proposal. A reasonable alternative is a feasible course of action that meets the proposal's objectives but at a lower environmental cost.

An EIS is processed in two phases. First, a draft EIS is prepared by the applicant or the reviewing government, as provided in the ordinance. The EIS describes the project, a no-action alternative, and reasonable alternatives that would permit the applicant to achieve the desired objective in ways that may have different impacts. Once the draft is complete, it is circulated to agencies, tribes, and the community at large for a 30-day comment period. A hearing on the issue may be held but is not mandatory.

Once comments on the draft EIS are received, corrections made, and questions answered, a "final EIS" is published.

The final EIS must be published for seven days before an agency may take final action on a project or proposal.

The final EIS may recommend conditions, based on written SEPA policies, which can be used to mitigate environmental impacts. Agencies have the authority under SEPA to condition or deny a land use action based on environmental impacts even where the proposal complies with local zoning and building codes. The courts have recently confirmed the authority of agencies to impose mitigation conditions as part of a mitigated determination of non-significance (MDNS) to bring a project below the threshold for preparation of an EIS. With an MDNS, promulgation of an EIS and intense public participation are rendered unnecessary because the mitigated project will no longer cause significant environmental impacts.

A supplemental EIS (SEIS) shall be prepared if there are substantial changes to a proposal, or if there is significant new information relating to adverse environmental impacts of the project.

To be adequate, an EIS must present decisionmakers with a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the agency's decision. That is, an EIS must provide sufficient information to allow officials to make a reasoned choice among alternatives.

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g. Use of SEPA in decision making

The agency decision-maker must consider the environmental information in deciding whether to approve a proposal. Decision-makers may use their authority under SEPA to condition or deny the proposal. However, they must have adopted substantive policies in their SEPA rule or ordinance to provide this authority and the decision must be based upon information in a SEPA document.

If a project is to be denied on environmental grounds, the grounds must be identified in environmental documents, and conditions identified in written SEPA policies. A project may be denied if reasonable alternatives do not exist to mitigate a substantial impact.

All decision-makers making a final recommendation or decision on a project must review the environmental documents for the project.

h. Appeals under SEPA

Appeals under SEPA may be procedural or substantive. Procedural appeals include the appeal of a threshold determination or the adequacy of an EIS.A substantive appeal is a challenge to an agency's use of or failure to use its SEPA substantive authority. A county or city may or may not choose to provide administrative appeals under SEPA. If appeals of project decisions under SEPA are provided, they must be combined with the permit decision appeal in not more than one open record hearing and one closed record appeal. If no administrative appeal is provided for projects, then appeals go directly to

superior court.

The growth management hearings boards have jurisdiction over SEPA appeals of growth management planning decisions such as comprehensive plan or development regulation adoptions and amendments.

The SEPA appeals process is confusing, even to those who practice daily in the field. SEPA need not be intimidating if the following guidelines are kept in mind:

SEPA GUIDELINES

All land use decisions by the community should be accompanied by SEPA documents (DNS, DS, or EIS), unless a specific exemption is spelled out in writing.

All SEPA-based mitigation must be based on written adopted policies, with written findings as to how the project creates the need for the condition (the nexus); and how the condition properly mitigates the impact (reasonableness).

Environmental policies should be specific and consistent with comprehensive plan policies. (Example: Since one effect of a desired increase in density is increased congestion in urban areas, there should not be a SEPA policy requiring mitigation or denial of a project that creates congestion. Defining acceptable levels of service for all public facilities and services in SEPA policies will do much to achieve this result.)

B. WATER QUALITY PROTECTION

1. Key Issues in Water Quality Protection

We live in an interdependent ecosystem in which water quality plays a vital role. Cutting across political boundaries, long term water quality protection depends on cooperation among local communities and jurisdictions.

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Effective water quality protection begins with watershed management. Reducing the volume of toxic pollutants that enters our watersheds—and responsible land uses—are key to improving water quality throughout our region. Many cities and counties in Washington State are working together to develop cooperative or comprehensive water quality programs. Structuring a successful water quality program at the local level is essential.

a. Water Quality Protection Must Begin at the Local Level

Just as water systems cross and extend beyond political boundaries, successful water quality protection must be cooperative, consistent, and coordinated at all levels. Pollution from one city or county, for example, will degrade water quality in neighboring jurisdictions. The problem is shared by all: "We are all living downstream."

b. Responsible Water Management, Not "Quick Fix" Solutions

Recognizing the interdependency of our actions and their cumulative effects on groundwater, wildlife habitats, fisheries, and other resources is the first step toward responsible water quality protection. Short term, "quick fix" solutions that merely shunt pollutants from one jurisdiction to another is not the answer. Effective water quality protection depends on comprehensive action plans, in which local jurisdictions work together and pool resources to reduce or eliminate adverse impacts on water quality.

c. Key Concepts in Water Quality Protection

1) **Systems approach:** Considers relationships and dependencies among components, as in food chains and ecosystems.

2) **Cumulative Effects:** A single activity may not cause a problem but adding more activities to an area over time may produce negative effects.

3) **Source:** Addressing negative impacts at their source, and preventing them before they occur (i.e., in place and time) is much less expensive than rehabilitation or dealing with effects on water quality "further down the pipe."

4) **Long Term Planning:** Water quality protection requires long term planning to cope with 10, 20, and 50-year impacts. Local governments need to consider the legacy they are leaving for future generations.

5) **Cooperation and Coordination:** Local decision makers, staff of local government departments, and citizens need to address water quality issues cooperatively. Neighboring cities and counties, local jurisdictions, regional, tribal, state and federal agency staff all have mutually dependent concerns.

2. A Brief Overview of Water Quality Legislation

Key pieces of federal and state legislation related to water quality are listed below. Rules and regulations adopted by state agencies generate advisory standards and minimum guidelines for local jurisdictions. These are incorporated into the Washington Administrative Code.

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WATER QUALITY LEGISLATION

General Water Quality

- National Environmental Policy Act (NEPA)
- State Environmental Policy Act (SEPA)
- Federal Clean Water Act (Water Pollution Control Act), 1972;
- Amended to Water Quality Act of 1987
  - Section 208 Plans
  - Section 301, National Pollution Discharge Elimination System Permits (NPDES)
  - Section 303, Stream Classification
  - Section 320, Estuary Management
  - Section 401, Certification
  - Section 404, Permits
  - Section 505, Legal Actions
- Federal River and Harbor Act (Section 10 Permit)
- Washington Centennial Clean Water Bill
- Puget Sound Water Quality Act
- Washington Water Pollution Control Act
- Washington Water Resources Act
- Washington Forest Practices Act
- Water Quality Standards – Chapter 173.201 WAC;
- Revised Standards, Chapter 173.203

Shorelines and Coastal Zones

- Federal Coastal Zone Management Act (CZMA) of 1972
- Washington Shoreline Management Act (SMA)

Habitat Protection

- Federal Endangered Species Act
- Federal Fish and Wildlife Coordination Act
- Washington State Hydraulic Code

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Groundwater

Federal Safe Drinking Water Act

Washington Groundwater Protection Act

Groundwater Management Guidelines – Chapter 173–100 WAC;

Groundwater Quality Standards – Chapter 173–200 WAC

Nonpoint Pollution

Washington State Nonpoint Rule – Chapter 400.12 WAC

Septic Systems – Chapter 248.96 WAC

3. Water Quality Protection Programs

1) Puget Sound Action Team (PSAT) programs include Watershed Ranking and Watershed Action Plans.

2) Ongoing programs initiated through the federal Clean Water Act, such as Section 208 plans and National Pollution Discharge Elimination System (NPDES) permits, administered by the Washington State Department of Ecology; and Section 404 permits administered by the U.S. Army Corps of Engineers.

3) Specific Stormwater Management and Wetlands Protection programs, which have evolved from implementing the PSAT Management Plan.

4) Programs stemming from specific legislation, such as the Washington Shoreline Management Act, which called for Shoreline Master Plans; the State Hydraulic Code, which requires a Hydraulic Project Approval permit administered by the Washington Department of Wildlife and Department of Fisheries; and the Washington Groundwater Protection Acts which provides guidelines for developing Groundwater Management Area.

5) Comprehensive plan elements required by the Washington State Growth Management Legislation, specifically, provisions:

   (a) To cleanse water before it enters Puget Sound;

   (b) To protect of critical aquifer recharge areas; and

   (c) To require protection of potable water supplies.

VI. C Shoreline Management Act

A. OVERVIEW

Public concern in the early 1970's focused on the future of Washington's shorelines in the face of increasing development. The Legislature responded with passage of the Shoreline Management Act (SMA) in 1971, finding "a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the State's shorelines." Intended to protect and restore the valuable natural resources of the shoreline, the SMA fosters all "reasonable and appropriate uses."

The SMA applies to over 230 cities and counties having "shorelines of the state" within their jurisdictional boundaries. "Shorelines of the state" comprise "shorelines" and "shorelines of statewide significance. "These include all waters of the state (including marine waters) and their underlying lands, except streams with a mean annual flow of less than 20 cubic feet per second and lakes less than 20 acres in area, together with their "shorelands "which are those areas landward for 200 feet from the ordinary high water mark (OHWM), floodways, and contiguous floodplains within 200 feet,and all associated wetlands.

"Shorelines of statewide significance" (SSWS) are specifically designated shorelines that are major resources benefiting all people in the state. In their management of SSWS, local governments and the state are required to provide for "optimum implementation "of the policies of the SMA, giving preference (in order) to shoreline uses which recognize and protect statewide interests over local, preserve the natural character of the shoreline, result in long term over short term benefit, protect the resources and ecology of the shoreline, and increase public access and recreational opportunities for the public in the shoreline.

The term "wetlands," as used in the SMA, has a specific meaning. It includes:

> *areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas…Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.*

The language "swamps, marshes, bogs, and similar areas" refers to true biological wetlands, considered a subcategory of the much broader SMA term "wetlands."

To determine the extent of an upland area covered by the SMA (shoreline jurisdiction), the OHWM often needs to be located. The Department of Ecology (DOE) has developed guidelines for making OHWM determinations in different situations and offers field assistance in identifying the mark. Specific criteria are to be used in determining shoreline jurisdiction, and will prevail over any other lists, maps, or inventories.

The SMA has three basic policy areas: 1) shoreline preferred uses, 2) environmental protection, and 3) public trust. The SMA places emphasis on providing a shoreline location for a defined set of shoreline preferred (i.e. water dependent) uses; on accommodating reasonable and appropriate uses; protecting shoreline ecology and natural resources; and, preserving the public's right of access to and use of the shorelines.

A fourth policy element of the SMA, though not explicitly stated, is public involvement. The SMA specifically requires public notice and opportunities to comment on state and local actions under the Act.

The SMA incorporates a planning and regulatory permit program to carry out its policies. This program is initiated locally under state guidance.

In the first 25 years of its existence the SMA stood largely independent of other local planning and regulatory systems. In 1995, the passage of ESHB 1724 changed that, initiating the merger of shorelands and growth management planning and regulatory functions. ESHB 1724 for example, added a new fourteenth goal to the GMA. The goals and policies of the SMA are now added to the existing 13 goals of the GMA.

The integration of the SMA and GMA involves melding of the GMA's emphasis on planning procedures

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with the SMA's specific policy mandates. While the GMA-based comprehensive plan is founded on a local communities' values and objectives, the SMA requires that local governments in managing shorelines address specific statewide goals, balancing statewide and local interests.

In 2003 the Department of Ecology adopted a new rule that provides a comprehensive update to state guidelines on how local governments manage shorelines. One of the chief goals of the new rule is to bring state guidelines up-to-date with current science. The proposed rule is also intended to make it easier for local governments to integrate shoreline plans with local Growth Management plans and regulations. Finally, the rule seeks to find a workable balance of responsibility between state and local governments by setting performance criteria that local governments should achieve and then allowing local governments to decide how to meet those goals.

B. SHORELINE MASTER PROGRAMS

As part of the state/local partnership which is the basis of the SMA, local governments must prepare a detailed shoreline inventory and a shoreline master program (SMP) for managing shoreline resources and development. Local SMPs must be prepared consistent with the policy of the SMA (RCW 90.58.020) and the applicable guidelines. Based on this inventory, a system of categorizing various shoreline segments is created by applying shoreline environment designations. Goals, policy statements, and regulations are developed to establish appropriate uses and activities within each shoreline environment designation.

For local governments fully planning under the GMA, **SMP goals and policies are now considered an element of the local comprehensive plan. SMP use regulations are now considered a part of the local development regulations** required by growth management.

The GMA requires that all local comprehensive plan policies be "internally consistent", which now include those policies contained in the local SMP. This also means that shoreline environment designations described and mapped in the local master program must be compatible with local comprehensive plan land use designations. Comprehensive plan land use designations should be reviewed to ensure they do not preclude reasonable and preferred (water-dependent) shoreline development and that allowed uses and densities are mutually compatible.

Local governments are responsible for maintaining and implementing local SMPs. The procedure for adopting or amending an SMP involves both a local and state review and approval process. Both processes emphasize pubic participation. Ecology is the lead agency in coordinating such actions, with 60-day notification required to Department of Commerce and other state agencies. A master program or amendment takes effect only when and in such form as it is ultimately approved by Ecology.

A new option available to jurisdictions fully planning under the GMA involves "pre-designating" shorelines within adopted urban growth areas but outside existing city boundaries. Environment pre-designation is allowed after the local government secures public input and completes the SMP amendment process, obtaining Ecology approval. Such pre-designations then take effect concurrent with annexation of the subject area.

Recent changes to the SMA now allow any interested citizen to appeal a locally prepared SMP either on the basis of inconsistency with SMA policy or the local comprehensive plan. For jurisdictions fully planning under the GMA, master program appeals will be decided by the growth management hearings board with jurisdiction, no longer the shorelines hearings board. For jurisdictions not fully planning under the GMA, master programs will continue to be appealed to the state shorelines hearings board.

VI. C Shoreline Management Act

C. PERMITS AND DECISIONS

All "developments" and uses within the shorelines of the state must be consistent with SMA policies and local SMP requirements. However, only "substantial developments" require a substantial development permit. Although a proposed development may be exempt from substantial development permit requirements, it may still require a variance or conditional use permit and must comply with the local SMP.

1. Substantial Development Permits

All developments with a fair market value in excess of $5,000 (unless specifically exempted), or any development that materially interferes with normal public use of the water or shorelines of the state, requires a substantial development permit.

2. Exemptions

Under the SMA, certain types of developments are exempt from substantial development permit requirements. The exemption, however, is only from the permit requirement; an exempt development must still comply with all development standards, i.e., setbacks and other regulations. Many jurisdictions require a written exemption prior to construction. The local government can then assess whether the project proposal is consistent with SMA policy and the local SMP.

3. Conditional Use Permits

The SMA allows local governments to authorize uses and developments that may be permitted (under special circumstances or conditions) by conditional use permits. Conditional use permits allow greater flexibility to vary how SMP use regulations are applied. Granting of a conditional use permit must conform with SMA policies and cannot authorize a use that the local SMP specifically prohibits. Criteria for SMA conditional uses have been established.

4. Variances

The SMA also authorizes deviation from specific bulk, dimensional, or performance standards in the SMP through the granting shoreline variances. Variances can only be granted when there are "extraordinary or unique circumstances relating to the property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies of the SMA…" A variance cannot be granted for a use prohibited by the SMA or SMP; and the cumulative effects over time of granting additional permits for like actions in a given shoreline area must be considered. Criteria for SMA variances have been established.

Shoreline substantial development permits, as well as conditional use permits and variance, are processed by local governments. All permit application are sent to Ecology for review, following the local government's decision. For conditional use permits and variances, Ecology must either approve, approve with conditions, or disapprove each permit. Permit decisions can be appealed at the local level, and subsequently before the Shoreline Hearings Board and/or Superior Court.

VI. C Shoreline Management Act

5. Appeals

A local government of Ecology decision on a shoreline permit may be appealed to the shorelines hearings board by any person aggrieved by the granting, denying or rescinding or a shoreline permit. This does not include decisions by local government to approve a permit exemption.

The shorelines hearings board conducts a "de novo" review of the permit and may uphold, reverse or modify the permit decision or remand the permit for further consideration at the local level.

VI. D Platting and Permits: The Development Process

1. The Platting Process

A plat is a map filed with the county auditor's office. It describes a particular parcel of property, typically small divisions or "subdivisions" within the larger parcel.

Washington state has always had a law that requires persons selling lots from within a plat to file the plat with the county auditor. A plat dedicates property within the plat, such as roads and parks, and provides a convenient way to describe individual lots for sale purposes. The filing requirement also assures that back taxes and assessments have been paid on the larger parcel prior to sale of the smaller lots.

Washington adopted its first modern subdivision statute in 1936. It required the local approving authority to approve the plats prior to filing, and to inquire into,

> *the public use and interest proposed to be served by the establishment of the plat, subdivision or dedication.*

The approving authority also was required to look into the streets, playgrounds, public ways, and all other relevant facts to determine (a) that the development made appropriate provision for physical improvements; and (b) "that the public use and interest... be served by the platting and subdivision." If these criteria were not met, the plat could be denied. In deciding whether to approve or deny plats when the public interest was not served, the approving authority was to consider the impact of the plats on the entire community, as well as physical improvements within the plat.

The present Subdivision Act, in force since 1969, presents the following definitions:

"Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in [the definition of "short subdivision" below].

"Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership: Provided, that the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.

"Binding site plan" means a drawing to a scale specified by local ordinance which: (a) identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

"Short Plat" is the map or representation of a short subdivision.

VI. D Platting and Permits: The Development Process

The statute contains seven exemptions from formal platting requirements:

Formal Platting Exemptions

1 Cemeteries;

2 Land divisions creating parcels over five acres in size (as measured to the center of the road);

3 Land divisions made by wills or the laws of descent;

4 Industrial parks when such parks are covered by a binding site plan review process;

5 Mobile home parks when such parks are covered by a binding site plan review process;

6 Boundary line adjustments creating no new lots; and

7 Condominiums if a binding site plan has been approved.

Many communities implement some form of control over "large lots," or parcels over five acres in size. These large lot ordinances remove the exemption from the Subdivision Act and may invoke the same rules that apply to other subdivisions.

Criteria for approving a subdivision include a determination by the approving body that the plat provides appropriately for public improvements and amenities and that it. serves the public interest. If the plat is deficient, or does not serve the public interest, it may be denied.

The platting statute specifically provides for plat disapproval in flood or swamp conditions. Permission of the Department of Ecology is required to approve a plat in any state-designated flood control zone. Limitations are also placed on plats in irrigation districts.

A plat is processed in two phases: preliminary plat and final plat.

VI. E City Plans & Regulations: Comprehensive Plan, Zoning Code, Subdivision Ordinance, Shoreline Master Plan & SEPA Review

A. Comprehensive Plan

The Comprehensive Plan is the plan for the growth and development of Kirkland over a twenty-year period. It is adopted in accordance with the requirements of the state Growth ManagementAct. The plan is a policy document which provides a vision for the future, sets forth a variety of goals for managing growth, and lists numerous policies describing ways to achieve the goals. Also included is a list of specific measures needed to implement the plan.

The Comprehensive Plan is composed of two parts. The first part contains a series of "elements," each of which addresses a specific topic, for example, land use, housing and transportation. The goals and policies in each element are applicable city-wide. The second part is composed of thirteen neighborhood plans, each of which discusses in detail the unique features and desired development characteristics of smaller geographic sections of the City.

By law, amendments to the plan may occur no more frequently than once a year. Consequently, all amendments proposed each year are considered together. The Planning Commission plays a central role in the annual review of Comprehensive Plan amendments. All proposed plan amendments are reviewed by the Commission, the Commission ensures public involvement and conducts public hearings, and the Commission presents recommendations to the City Council.

B. Zoning Code

The Zoning Code sets forth specific regulations governing the use and development of land in Kirkland. The Growth Management Act requires that the Zoning Code be consistent with the Comprehensive Plan.

About half of the Zoning Code is composed of a series of "use zone" charts which list permitted uses and development regulations for each of the zoning districts indicated on the official Zoning Map. The remainder of the code contains a series of chapters which set forth regulations of general applicability such as required public improvements, landscaping standards and sign regulations. Several chapters are devoted to the procedures the City uses to review and decide upon developments proposals. Provisions for enforcements of the Zoning Code are also included.

As with the Comprehensive Plan, it is the Planning Commission's responsibility to review, ensure public involvement and make recommendations regarding all proposed amendments to the Zoning Code.

C. Subdivision Ordinance

The subdivision ordinance contains the City's regulations for dividing parcels of land into two or more smaller lots. Nearly all subdivisions involve the creation of additional building sites for single family homes. Amendment of the subdivision ordinance is subject to Planning Commission review. The Commission must hold a public hearing on all proposed amendments and submit a recommendation to the City Council.

D. Shoreline Master Program

The Shoreline Master Program (SMP) contains policies and development regulations pertaining to shoreline areas of the City (lands within 200 feet of the high-water line of Lake Washington and wetlands abutting the lake which extend beyond 200 feet). The SMP is adopted pursuant to the requirements of the state Shoreline Management Act. It is adopted by both the City and state Department of Ecology.

Practically speaking most shoreline regulations closely mirror Zoning Code regulations and thus are somewhat redundant. However, because the SMP is adopted by the state under the authority of the Shoreline Management Act, shoreline regulations typically carry greater weight when it comes to enforcement.

The Planning Commission usually reviews proposed SMP amendments, although this is not legally required.

E. SEPA Review

The State Environmental Policy Act (SEPA) requires the review of most development actions, including proposed comprehensive plan and zoning code amendments, for potential environmental impacts. Some development actions are excluded from review, due to their type or size. SEPA review is an administrative task conducted by the Planning Department.

Every proposal subject to SEPA must be accompanied by an environmental checklist which summarizes potential impacts. Based on the information in the checklist, the Planning Department must issue one of three possible "threshold determinations": 1) a Determination of Nonsignificance (DNS) – meaning that the proposal has no significant impacts and no further studies are needed; 2) a Determination of Signification (DS) – in which case a more detailed Environmental Impact Statement (EIS) must be prepared; or 3) a Mitigated Determination of Nonsignificance (MDNS) – in which case specific development conditions are required in order for the proposal to be accepted without preparation of an EIS.

Most proposals reviewed by the Planning Commission are subjects to SEPA review. In such instances, the Commission is forwarded a copy of the environmental checklist and SEPA determination or EIS prior to making a recommendation on the proposal.