

How the Growth Management Act Changed Annexation & Current Issues in Annexation

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The mission of 1000 Friends of Washington is to promote healthy communities and cities while protecting farmland and forests for this and future generations.

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Introduction

This paper consists of two sections. In the first section, it describes the changes to the annexation process brought about by the Growth Management Act when it was adopted almost 14 years ago. These changes include urban growth areas outside of which land cannot be annexed to cities, the transference of governance over urban areas from counties to cities, and the capital facilities planning required for urban growth areas. The second section identifies some current issues in annexation and gives some recommendations for their resolution.

Reference is made in this report to many Growth Management Hearings Board decisions.

Copies of the boards' decisions are available at their website:

<http://www.gmhb.wa.gov/index.html> The boards' also have excellent digests that summarize their decisions. The digests are also available at their website.

How the Growth Management Act Changed Annexation

The Growth Management Act (GMA) has changed annexation in three key ways. First, the GMA requires that all counties planning under RCW § 36.70A.040, the “fully planning counties,” must designate urban growth areas (UGAs) and prohibits annexation outside UGAs. Second, the GMA established the policy that UGAs would ultimately become parts of cities,

putting a premium on annexation. The policy is sometimes referred to as the “transformation of governance.” Third, cities and counties are to prepare capital facility plans for UGAs. Each topic will be examined in turn.

UGAs and Ten-Year Review Requirements

Counties fully planning under GMA are required to designate urban growth areas (UGAs), sometimes referred to as urban growth boundaries, in their comprehensive plans.¹ UGAs are the lands designated in the county comprehensive plans to accommodate urban growth.² Urban growth shall be encouraged within UGAs and is prohibited outside of UGAs.³

UGAs are relevant to now for two reasons. First, annexations outside UGAs are prohibited.⁴ Second, UGAs are nearly ten years old and so the ten year reviews required by the GMA are approaching.

Sizing UGAs

There are three key requirements for sizing UGAs and amendments to UGAs:

1. The size of the UGA, or amendment, shall be based on the Office of Financial Management’s (OFM) 20-year growth management population forecast for a county. The county with the cities in the county chooses a population target within the OFM range. This target cannot be lower than the low end of the OFM range or higher than the high end. The UGA is then sized to accommodate that population projection and the employment, retail, public, and semi-public uses needed to accommodate the selected population target.⁵ UGAs are also required to include open space corridors to link up critical areas, open spaces, and parks.⁶
2. The market factor, the percentage of land added beyond that needed to accommodate the OFM projection chosen by the county and cities, cannot exceed 25 percent unless several factors are met, including local circumstances. The Growth Boards closely review market factors above 25 percent. A market factor is not required.⁷

¹ RCW § 36.70A.110(1) & (6).

² RCW § 36.70A.030(18) & RCW § 36.70A.110.

³ RCW § 36.70A.110(1).

⁴ RCW § 35.13.005 & RCW § 35A.14.005.

⁵ RCW § 36.70A.110(2), *Diehl v. Mason County*, 94 Wash. App. 645, 654, 972 P.2d 543, 547 (1999) (“Accordingly, the OFM projection places a cap on the amount of land a county may allocate to UGAs.”), *Bremerton, et al. v. Kitsap County*, Central Puget Sound Growth Management Hearings Board (CPSGMHB) Consolidated Case No.: 95-3-0039 Final Decision and Order pp. *44 – 45 (October 6, 1995), *Save Our Butte Save Our Basin Society, v. Chelan County, et al.*, Eastern Washington Growth Management Hearings Board (EWGMHB) Case No. 94-1-0001 Final Decision and Order p. *9 1994 WL 907892 (June 6, 1994), & *Achen, et al. v. Clark County, et al.*, Western Washington Growth Management Hearings Board (WWGMHB) Case No. 95-2-0067 p. *21, 1995 WL 903178 (September 20, 1995).

⁶ RCW 36.70A.160.

⁷ *Bremerton* at pp. *45 – 47.

3. In sizing a UGA or amending a UGA, a county must explicitly “show its work.” and make the work available to the public so the public can review and comment on the work and policy choices.⁸

OFM Growth Management Forecasts

The State of Washington Office of Financial Management (OFM) is required to prepare a set of 20-year population projections for counties every five years or when the data from the decennial U.S. Census is available, whichever is later.⁹ OFM must review draft projections with cities and counties before OFM adopts the projections.¹⁰ In addition to cities and counties, OFM also asked regional planning and transportation organizations to review the projections. Cities and counties can provide OFM with data the city or county thinks is relevant. OFM must consider and comment on the information before it finalizes and adopts the projections. If a 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.”¹¹ No deadline is set for filing these petitions.

OFM is required to include “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.”¹²

In 2002, the State of Washington Office of Financial Management (OFM) published a new range of 20-year population forecasts for Washington State counties. Each county in cooperation with the cities in the county must choose a 20-year population projection from within that range and provide the areas and densities necessary to accommodate that projection.¹³ The allocation process is often coupled with a ten-year urban growth area review, although it can be a separate process. The population projections, methodology, and additional information can be found at OFM’s website: <http://www.ofm.wa.gov/pop/gma/index.htm> Table 1 includes these projections.

OFM uses a cohort-component model to make these projections. OFM divides the county population into groups by age and sex; these groups are referred to as cohorts. The model then determines the births, deaths, and net migration for the cohorts and ages them.¹⁴ The middle projection is reconciled to the statewide projection.¹⁵ Births and deaths are based on historical trends and projections by the U.S. Census Bureau adapted to Washington State.¹⁶

⁸ *Bremerton* at p. *35, *Knapp, et al. v. Spokane County*, EWGMHB Case No. 97-1-0015c Final Decision and Order pp. *11 – 13, 1997 WL 1877192 (December 24, 1997) & *Townsend v. Jefferson County* WWGMHB Case No. 94-2-0006 Final Decision and Order pp. *14 – 15 of 17 (August 10, 1994).

⁹ RCW § 43.62.035.

¹⁰ *Id.*

¹¹ *Id.*

¹² RCW § 43.62.035.

¹³ RCW § 43.62.035 & RCW § 36.70A.110.

¹⁴ State of Washington Office of Financial Management. Washington State County Population Projections for Growth Management: By Age and Sex: 2000-2025 p. 9 (January 2002 Projections). Available at:

<http://www.ofm.wa.gov/pop/gma/countypop.pdf>

¹⁵ *Id.*

¹⁶ *Id.* at p. 10.

OFM correctly recognizes that migration is the most variable element of this model and also the main driver of growth.¹⁷ For the middle projections, OFM used the county's growth rates from 1960 to 2000 and a set of assumptions based on these past trends. These assumptions are that migration will continue to existing population centers, along major transportation corridors, and to retirement areas.¹⁸

OFM's 1995 Washington State total growth management projection for the year 2000 was 5,960,530.¹⁹ The 2000 census counted 5,894,121 people in Washington State. This is a variance of -66,409 or -1.13 percent. However, this comparison does not take into account that the 2000 census was more accurate than the 1990 census on which the previous projections were based.²⁰

In early 2004, OFM took a look at how well its projections are tracking actual growth. OFM found that:

- One-third of the counties are tracking closely, within one percent, of their intermediate projection. This includes large counties like Clark, King, Snohomish, and Spokane—and small counties like Garfield, Lincoln, and Pacific.
- All but two counties, Franklin and Pend Oreille Counties, are tracking within the high and low projection range. Franklin County's 2003 population estimate is 310 persons above their high projection series. Pend Oreille County's 2003 population estimate is 14 persons less than their low projection.
- About 70 percent of the counties are tracking below their intermediate projection series. This largely reflects lower migration gains due to Washington's flat economy. More counties may drop below their low growth expectations before there is an upturn in the state's economy.²¹

In addition to petitioning OFM to modify the projections, a petition for review can be filed with one of three regional Growth Management Hearings Board requesting that the projections be adjusted.²² No appeals have been filed over the 2002 projections, perhaps because the population projection range gives counties a significant amount of discretion in selecting the population to plan for. As long as the choice is within the range and adequate opportunities for public comment are provided, this choice cannot be effectively challenged. OFM's record in projecting populations may also play a role. Unlike appeals of comprehensive plans and development regulations which have a jurisdictional time limit of 60-days after a notice of adoption is published, requests for population projection adjustment can be filed at anytime.²³

¹⁷ *Id.* at pp. 10 - 11.

¹⁸ *Id.*

¹⁹ Office of Financial Management. Total Population Projections for Washington Counties, High Series: 1990 – 2020. Available at: <http://www.ofm.wa.gov/pop/gma/index.htm>

²⁰ Dr. Theresa Lowe. Coming Soon: A Growth Management Population Forecast Update. *About Growth* p. 5 (State of Washington Department of Community Trade, and Economic Development, Olympia WA: Summer 2001). Available at: <http://www.ocd.wa.gov/info/lgd/growth/newsletter/index.tpl>

²¹ Office of Financial Management, Forecasting Division. *Growth Management Population Projection Tracking Report* p. 1 (January 2004). Available at: <http://www.ofm.wa.gov/pop/gma/gmatracking040109.pdf>

²² RCW 36.70A.280(1)(b).

²³ *Kitsap County v. Office of Financial Management*, Central Puget Sound Growth Management Hearings Board (CPSGMHB) Case No.: 94-3-0014 Final Decision and Order p. *9, 1995 WL 903132 (March 27, 1995).

A request for an adjustment was filed for OFM’s first population projections. At that time the GMA directed OFM to make only one projection for each county rather than the range it now projects. Kitsap County requested that the projection be adjusted so that it was higher. After concluding the presumption of validity did not apply to OFM’s projections, the Central Puget Sound Growth Management Hearings Board held that Kitsap County had not shown that its “proposed adjustment is supported by more credible assumptions and a more analytical methodology than the documented rationale that supports OFM’s projection.” Consequently, the adjustment was denied.²⁴

Locational Criteria for UGAs

The Growth Management Act also sets out locational requirements for including land within an UGA and these apply to additions or amendments to UGAs as well. They are:

- All cities and towns must be included in a UGA.²⁵ An urban growth area may include more than a single city.²⁶
- If additional land is needed to accommodate the growth target, “[a]n urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth.”²⁷

“However, this does not give counties the *carte blanche* permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development*. See *Tacoma, [et al., v. Pierce County]*, CPSGMHB Consolidated Case No. 94-3-0001, Final Decision and Order (1994)] at 12.”²⁸

In a recent case, the Central Board held that land connected to a city by a highway and county road, but no private land for approximately 700 feet was not “adjacent to land characterized by urban growth,” and did not comply with RCW § 36.70A.110(1).²⁹

- UGAs can also be located outside existing city limits if the detailed requirements for a new fully contained community are met.³⁰ This includes reserving part of the OFM population projection for the fully contained community and offsetting the urban growth area accordingly.³¹

²⁴ *Id.* at p. *15.

²⁵ RCW § 36.70A.110(1) & *Bremerton* at p. *35.

²⁶ RCW § 36.70A.110(1).

²⁷ *Id.*

²⁸ *Vashon-Maury, et al. v. King County*, CPSGMHB Consolidated Case No. 95-3-0008c Final Decision and Order p. *26 (October 23, 1995).

²⁹ *1000 Friends of Washington, et al. v. Snohomish County*, CPSGMHB Case No. 03-3-0019c Corrected Final Decision & Order p. *36 (March 22, 2004).

³⁰ RCW § 36.70A.110(3), RCW § 36.70A.350, & *Bremerton* at p. 35.

³¹ RCW § 36.70A.350(2).

- Lands with extensive critical areas and resource lands should be excluded from the urban growth area. “[T]he land speaks first.’ Only after a county’s agricultural, forestry and mineral resource lands have been identified and actions taken to conserve them, and its critical areas, including aquifers, are identified and protected, is it then possible and appropriate to determine where, on the remaining land, urban growth should be directed pursuant to RCW § 36.70A.110.”³²

“Critical areas’ include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.”³³ Resource lands include agricultural lands of long-term commercial significance, forest lands of long-term commercial significance, and mineral lands of long-term commercial significance.³⁴

There are other locational rules as well. For example, merely being adjacent “to urban services, such as utilities, or city limits ‘does not impose requirement that this territory be included within a UGA, unless existing cities cannot accommodate the additional projected growth and it is otherwise an appropriate location for such growth.”³⁵

Counties and Cities Must Consult on UGAs

Another requirement of the Growth Management Act is that counties must consult with cities on the UGAs. The county is to try to get the agreement of the city on the UGA and if an agreement cannot be reached, the county must justify the UGA in writing. Cities can object to the State of Washington Department of Community Trade and Economic Development. In appropriate circumstances, the department shall attempt to resolve the conflict and including the use of mediation.³⁶

If a city requests more discussion with a county over a UGA and a county does not respond, that is reversible error. “While agreement is not mandatory, an attempt to agree is necessary. The Board finds the County's failure to enter into discussions with the City on the elimination of the City's UGA outside the City is clearly erroneous.”³⁷ While dates in RCW § 36.70A.110(2) show that these consultation requirements apply the initial adoption of a UGA, I also think that the

³² *Bremerton* at pp. 33 – 34 (footnote omitted), *Friends of Skagit County v. Skagit County*, WWGMHB No. 95-2-0075 Final Decision and Order p. *8, 1996 WL 650300 p. *6 (January 22, 1996) (quoting *Bremerton*), & *Confederated Tribes and Bands of the Yakima Indian Nation v. Yakima County*, EWGMHB 94-1-0021, Final Decision and Order, 1995 WL 903191 p. *5 (Mar. 10, 1995). “It may be noted that critical area designations as well as resource land designations are an important first step in the planning process. They provide the sideboards for further comprehensive plan development by pointing out either where development should not occur or where, at the least, there are significant developmental concerns.” Also see the planning sequence required by RCW §§ 36.70A.040 (3), (4), and (5).

³³ RCW § 36.70A.030(5).

³⁴ RCW § 36.70A.170(1)(a), (b), & (c).

³⁵ *1000 Friends of Washington, et al. v. Snohomish County*, CPSGMHB Case No. 03-3-0019c Corrected Final Decision & Order p. *29 footnote 9 (March 22, 2004).

³⁶ RCW § 36.70A.110(2).

³⁷ *City of Spokane v. Spokane County*, EWGMHB Case No. 02-1-0001 Final Decision and Order p. * 12, 2002 WL 32065590 (July 3, 2002).

Growth Boards will apply these principles to the ten-year UGA review. After all RCW § 36.70A.130(3) requires the participation of cities and counties in the ten-year UGA review.

Ten-Year UGA Reviews

The Growth Management Act, in RCW § 36.70A.130(3), sets out the requirements for the ten-year UGA review. They are:

- “Each county that designates urban growth areas under RCW § 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area.
- “In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.
- “The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period.
- “The review required by this subsection may be combined with the review and evaluation required by RCW § 36.70A.215 [the Buildable Lands analysis and reports].”³⁸ Since UGA updates are on an at least ten-year update cycle and comprehensive plan and development regulation updates are on an at least seven-year update cycle, counties may choose whether to review their UGAs as part of their comprehensive plan and development regulation periodic updates.

If a city or county does not carryout its ten-year UGA review by the deadline, it can be enforced through a failure to adopt appeal.³⁹ Since the first ten-year updates are just starting to come due, there are no reported cases before the Growth Boards or the courts, except a couple finding that the ten-year review was not yet due.

While UGAs must comply with these requirements for establishing UGAs, cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth within UGAs.⁴⁰

The Transformation of Governance within UGAs

One of the purposes of UGAs is “to achieve a transformation of local governance”⁴¹ In the Growth Management Act “[t]he legislature recognizes that counties are regional governments

³⁸ RCW § 36.70A.130(3).

³⁹ *Aaron Litowitz, et al. v. City of Federal Way*, CPSGMHB Case No. 96-3-0005 Final Decision and Order p. 12, 1996 WL 678415 (July 22, 1996).

⁴⁰ RCW § 36.70A.110(2).

⁴¹ *Association of Rural Residents v. Kitsap County (Rural Residents I)*, CPSGMHB Case No. 93-3-0010 Final Decision and Order p. *14 (June 3, 1994).

within their boundaries, and cities are primary providers of urban governmental services within urban growth areas.”⁴² Consequently, “... that which is urban should be municipal.”⁴³

For this transformation to take place “... a clear implication of this legislative direction is that incorporations and annexations must occur.”⁴⁴ “Transformance of governance should occur prior to urban development. ... Efficient phasing of infrastructure is the key and annexation should occur before urban infrastructure is extended.”⁴⁵

County-wide planning policies and comprehensive plans are also to bring this transformation about.⁴⁶ Countywide Planning Policies are adopted by counties in consultation with cities and guide planning in countywide. Countywide planning policies, comprehensive plans, and development regulations cannot place limitations on annexations within UGAs.⁴⁷ The Growth Board’s have held that UGA configurations that discourage annexation or the incorporation of cities violate the GMA.

The Western Washington Growth Management Hearings Board (WWGMHB), Case No. 97-2-0060, *Abenroth, et al. v. Skagit Co.*, held it is inappropriate to establish a non-municipal UGA in close proximity to a municipality with no plan for the transformance of governance. Annexation and incorporation of urban areas within UGAs are the means to achieve this transformation of local governance.⁴⁸

In addition to encouraging the annexation of UGAs, the Growth Management Act also provides that “[i]n general, cities are the units of local government most appropriate to provide urban governmental services.”⁴⁹ This does not mean that there is not a role for counties and special districts even in urban growth areas. As the Central Board wrote:

The transformation of local governance purpose will require the County and the cities to ultimately resolve the matter of which services will be provided by cities, which by the County and which by special districts, so that the cumulative effect is that cities are the primary providers of urban governmental services within the UGA. This can take many

⁴² RCW § 36.70A.210(1).

⁴³ *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001 Final Decision and Order, 1994 WL 907887 p. *29 (July 5, 1994) & *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060 Final Decision and Order for Short-Term Stipulated Issues, 1998 WL 655467 p. *8 (September 23, 1998).

⁴⁴ *City of Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004 Final Decision and Order Footnote 7, 1993 WL 839711 p. *34 Footnote 7 (March 1, 1993) & *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060 Final Decision and Order for Short-Term Stipulated Issues, 1998 WL 655467 p. *8 (September 23, 1998).

⁴⁵ *Friends of Skagit County, et al. v. Skagit County*, WWGMHB Case No. 00-2-0050c Final Decision and Order (City Regulations Issues), 2001 WL 169262 p. *3 (February 6, 2001).

⁴⁶ *Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004 Final Decision and Order p. *9 (March 1, 1993), *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001 Final Decision and Order p. *12, 1994 WL 907887 (July 5, 1994), & *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060 Final Decision and Order for Short-Term Stipulated Issues, 1998 WL 655467 p. *8 (September 23, 1998).

⁴⁷ *City of Poulsbo v. Kitsap County*, CPSGPHB Case No. 92-3-0009 Final Decision and Order p. 19 & pp. 21 - 23 (1993) & *Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c Final Decision and Order pp. *2 – 3 (February 6, 2001).

⁴⁸ *City of Spokane v. Spokane County and City of Airway Heights*, EWGMHB, 02-1-0001 Final Decision and Order pp. *19 - 20 (July 3, 2002).

⁴⁹ RCW § 36.70A.110(4).

forms, and there is much discretion available to the County and cities collectively to craft a solution that is appropriate and unique to Pierce County. See *Poulsbo, et al. v. Kitsap County*, CPSGPHB Case No. 92-3-0009 (1993), Order Granting Kitsap's Request for Reconsideration, at 12-13.⁵⁰

One important tool for the transference of governance is interlocal agreements. Washington's Interlocal Cooperation Act authorizes public agencies enter into to interlocal agreements to jointly exercise and enjoy any authority which they are otherwise granted.⁵¹ The Western Board has required interlocal agreements to "ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs."⁵² Skagit County interlocal agreements have also included the sharing of sales tax revenues from annexed land between cities and the counties. The county reports that while there have been some problems, overall these agreements have been successful.⁵³

Capital Facility Planning for UGAs

The Growth Management, in RCW § 36.70A.070(3), requires comprehensive plans to include a capital facility plan. There are seven key requirements:

- "An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;⁵⁴
- "[A] forecast of the future needs for such capital facilities;⁵⁵
- "[T]he proposed locations and capacities of expanded or new capital facilities;⁵⁶
- "[A]t least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes;⁵⁷
- "... [A] requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.⁵⁸
- "Park and recreation facilities shall be included in the capital facilities plan element."⁵⁹

The purpose for these planning requirements is to achieve the GMA public facilities and services goal: "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and

⁵⁰ *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001 Final Decision and Order, 1994 WL 907887 p. *10 (July 5, 1994).

⁵¹ RCW § 39.34.030(1).

⁵² *Friends of Skagit County, et al. v. Skagit County*, WWGMHB Case No. 00-2-0050c Final Decision and Order (City Regulations Issues), 2001 WL 169262 p. *3 (February 6, 2001).

⁵³ Tim Trohimovich, Danielle Hursh, & Rich Thorsten. *Pricing Growth* p. 21 (1000 Friends of Washington November 2001). Available at: http://www.1000friends.org/current_work/publications/pricing_growth.pdf

⁵⁴ RCW § 36.70A.070(3)(a).

⁵⁵ RCW § 36.70A.070(3)(b).

⁵⁶ RCW § 36.70A.070(3)(c).

⁵⁷ RCW § 36.70A.070(3)(d).

⁵⁸ RCW § 36.70A.070(3)(e).

⁵⁹ RCW § 36.70A.070(3).

use without decreasing current service levels below locally established minimum standards.”⁶⁰ All three of the Growth Boards have read this goal to require that public facilities and services must be available to serve development as that development occurs or within a reason time.⁶¹

There have been many Growth Board cases addressing capital facility plans, this section will focus on those directly related to UGAs and annexation. The boards have noted that land in an urban growth areas “... will ultimately be provided with adequate urban facilities and services within the planning horizon; ...”⁶² Therefore in designating an urban growth area, the capital facility plan must show how the UGA will be served by public facilities to support “the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period.”⁶³ If “... a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available.”⁶⁴

Annexation Issues

What Annexation Methods are Available?

The first Washington Supreme Court decision in Grant County Fire Protection Dist. No. 5 held that the most common method of annexation, the “property-owner-petition” method, unconstitutional because it gave an “... impermissible privilege to owners of highly valued land, and therefore violates article I, section 12 of the Washington State Constitution.”⁶⁵ This

⁶⁰ RCW § 36.70A.020(12).

⁶¹ *Cascade Columbia Alliance v. Kittitas County*, EWGMHB 98-1-0004, Final Decision and Order p. *5 (Dec. 21, 1998) The GMA does not require water, sewer, and other services to be in place until development occurs. (RCW § 36.70A.020(12)) We require the cities to provide these facilities and services at least concurrently with the projected growth. *Taxpayers for Responsible Government v. Oak Harbor*, WWGMHB Case Number 96-2-002 Final Decision and Order p. *11 (July 16, 1996) Compliance with Goal 12 requires local governments to adopt either policies or regulations or a combination that provide reasonable assurances, but not absolute guarantees that the locally defined (within the perimeters of the Act) public facilities and services necessary for future growth are adequate within previously established LOS levels to serve that new growth either at the time of occupancy and use, or within an appropriately timed phasing of growth connected to a clear and specific funding strategy. *Gig Harbor v. Pierce County*, CPSGMHB Case Number 95-3-0016 Final Decision and Order p. *13 (October 13, 1995) Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place “at the time development is available for occupancy and use” and second, adequacy is measured by “locally established minimum standards.”

⁶² *Bremerton, et al. v. Kitsap County & Port Gamble, et al. v. Kitsap County*, Case No. 95-3-0039c 39c coordinated with Case No. 97-3-0024c Finding of Noncompliance and Determination of Invalidity In *Bremerton* and Order Dismissing *Port Gamble* p. 42 (September 8, 1997) (emphasis in original omitted).

⁶³ *Id.* at 41 & *Fred R. Klein v. San Juan County, Michael Durland, et al. v. San Juan County, & Town of Friday Harbor, et al. v. San Juan County, et al.*, WWGMHB Case Nos. 02-2-0008, 00-2-0062c, & 99-2-0010c Final Decision and Order & Compliance Orders p. *6 -- 8 (October 15, 2002) accord *City of Spokane v. Spokane County and City of Airway Heights*, EWGMHB, 02-1-0001 Final Decision and Order p. * 31 (July 3, 2002).

⁶⁴ *Bremerton, et al. v. Kitsap County & Port Gamble, et al. v. Kitsap County*, Case No. 95-3-0039c coordinated with Case No. 97-3-0024c Finding of Noncompliance and Determination of Invalidity In *Bremerton* and Order Dismissing *Port Gamble* p. 42 (September 8, 1997).

⁶⁵ *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 708, 42 P.3d 394, 397 (2002) vacated in part by *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 83 P.3d 419 (2004).

generated much excitement in the tiny world of annexation practitioners. It also generated two new methods of annexation:

- A direct petition method that must be signed by both a majority of the property owners by value and a majority of the voters in the area to be annexed.⁶⁶
- A method that provides for interlocal agreements between counties and cities to annex land. The city can then adopt an ordinance to annexation lands authorized by the interlocal agreement. The voters in the area can require a referendum on the annexation. This method is limited to the Buildable Lands counties and cities: Clark, King, Kitsap, Pierce, Snohomish, and Thurston counties and the cities in those counties.⁶⁷

1000 Friends was one of the coalitions that worked on these bills because of the central role of annexation to the Growth Management Act discussed above. Now that the first decision on reconsideration has held the original property owner petition method of annexation did not violate privileges and immunities clause of state constitution,⁶⁸ I suspect the property owner petition method will again become the most common method of annexation. This assumes, of course, that the second decision survives the most recent motion for reconsideration.

How to Encourage Cities to Annex Lands that Cost More Than They Raise in Taxes

One of the hot issues now is how to encourage cities to annex areas that costs more to serve than the areas generate in taxes. King County has been in forefront of this concluding the county can no longer afford to provide services to unincorporated UGAs.⁶⁹ King County is proposing to pay cities to annex these areas. This is a solution that is probably not available to many other counties.

I certainly agree that cities and counties are facing significant fiscal distress. For example, I-747, passed by the voters in 2002, limits taxing districts with a population over 10,000 to annual regular property tax increases to the lesser of inflation or 101% of the highest levy in the three previous years (adjusted to account for new construction, improvements, and State-assessed property).⁷⁰ Since inflation generally exceeds one percent a year, in real terms the value of the property taxes that cities and counties will be able to collect will decline each year.

However, cities need to realize that sales taxes do not generate themselves. They are generated by residents and cities need to be responsible for both the businesses that remit sales taxes and the residents that actually pay them. Perhaps the national move to shift sale taxes from the location of the businesses that remit them to the residents that pay them to make taxation of internet transactions easier will encourage more city annexations. Other solutions will be needed as well.

⁶⁶ RCW §§ 35A.14.430 through 450 & RCW §§ 35.13.410 through 460.

⁶⁷ RCW § 35A.14.460 and RCW § 35A.14.470 & RCW § 35.13.470 and RCW § 35.13.480.

⁶⁸ *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 83 P.3d 419 (2004).

⁶⁹ Report of the King County General Government Budget Advisory Task Force to County Executive Ron Sims pp. 13 – 15 (June 25, 2003). Available at: http://www.metrokc.gov/exec/batf/rpt_0603_Full.pdf

⁷⁰ Municipal Research & Services Center of Washington. Budget Suggestions for 2003 p. 34 (Information Bulletin No. 513, August 2002). Available at: <http://www.mrsc.org/Subjects/Finance/Budgets/budget.aspx>

Races between Annexations and Growth Board Decisions on UGA Expansions

In several recent cases, the Central Puget Sound Growth Management Hearings Board was faced with the situation where a county expanded an urban growth area (UGA) and then argued that the appeal of the UGA expansion was moot because the land had already been annexed by a city. In the first case, *Kitsap Citizens for Rural Preservation and Suquamish Tribe v. Kitsap County* the board wrote:

[T]he Board and the parties recognize the interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. RCW § 36.70A.110(1). The Growth Boards have jurisdiction to determine compliance with the GMA, including GMA designations. RCW § 36.70A.280(1). UGA designation enables city annexation, since cities are prohibited from annexing areas beyond designated UGAs. RCW § 35.13.005 and § 35A.14.005. BRB [Boundary Review Board] decisions must be consistent with provisions of the GMA, including the UGA provisions. RCW § 36.93.157. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed.⁷¹

In *Kitsap Citizens*, the board concluded the UGA was properly designated. In *McVittie V*, the board held that the UGA designation process violated the Growth Management Act (GMA).

As the Central Board wrote, the legislature needs to address this uncertainty. Several alternatives have been suggested. One is to prohibit approval of an annexation until the appeal period for an urban growth area has ended. If an appeal is filed, the annexation cannot be approved until the Growth Board decides the appeal or the appeal is settled. If a judicial appeal of the board decision is filed, the annexation can proceed during that appeal if the Growth Board upheld the urban growth area. Another alternative is to clarify that if the UGA expansion is found to be invalid, then any annexation of that area is also invalid. This is also consistent with the Growth Board decisions. This should be coupled with a provision that also clarifies that development applications cannot vest, that is acquire a right to proceed under city development regulations, within an invalid UGA expansion.

UGA and Ten-Year Review Issues

As you probably gathered from the citations in the section on UGAs, there have been many appeals to the Growth Boards over UGAs. The law is now pretty clear. Will the affected interests follow the law or will we see repeats of the first round of UGA appeals where repeated visits to the board's were necessary before jurisdictions properly sized their UGAs? I think it is in everyone's best interest to follow the rules. No one benefits from multiple appeals.

⁷¹ *Jody L. McVittie v. Snohomish County (McVittie V)*, CPSGMHB Case No. 00-3-0016 Final Decision and Order pp. 10-11 of 37 (April 12, 2001) citing *Kitsap Citizens for Rural Preservation and Suquamish Tribe v. Kitsap County, (Kitsap Citizens)*, CPSGMHB Case No. 00-3-0019c, Order on Dispositive Motions and Motions to Supplement the Record pp. 10-11 (February 16, 2001).

The Role of Density in Accommodating the New OFM Population Projections

RCW § 36.70A.130(3) specifically calls for amending densities as part of the ten-year update. If a ten-year UGA analysis shows that additional capacity is needed in the UGA, densities shall be revised. “The county comprehensive plan designating UGAs, and the densities permitted in the UGAs by the comprehensive plans of the county and each city located within the UGAs, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period.” [Emphasis added.] So local governments that need additional capacity to accommodate the new OFM projections should look to increasing densities as one solution.

Will UGAs be Big Enough?

When UGAs were first adopted the primary issue is whether they were too large. In many cases the court or boards held the UGAs were too big, despite claims to the contrary.⁷² The *Knapp* case was different. There the allegation was that the UGA was too small. After holding that Spokane County did not show its work, the Eastern Board held the Spokane County interim UGA complied with the GMA after the county readopted the UGA.⁷³ Some have raised concerns that some of the new UGAs being considered are too small. While I have not seen evidence for this so far and have seen evidence to the contrary, RCW § 36.70A.110(2) clearly requires that the UGA be large enough to accommodate the new 20-year population forecasts. Those UGAs that fail to do so will be at risk if they are appealed with the right record.

Rapid Growth is Projected, How Much Growth Will Counties and Cities Choose?

Like the 1980s and 1990s, OFM population projections show Washington is likely to experience rapid population growth in the next several decades. The following graph shows the actual populations for 1980, 1990, and 2000. It also shows OFM’s low, medium, and high projections for 2025, the horizon year for OFM’s latest projections.

These are projections of rapid growth. The medium projection would add 796,540 net new residents a decade, higher than the 734,316 net new residents added between 1980 and 1990. Remember, the adverse impacts of this level of growth led to the adoption of the Growth Management Act in 1990. The high projection would add 1,292,389 net new residents per decade, higher than the 1,117,452 net new residents added between 1990 and 2000.

Counties, in consultation with their cities, can choose any population within the OFM projection range. Choosing the high end of the range implies a high level of growth and may require the expansion of the urban growth areas in the county. It also requires a high investment in the capital facilities and services needed to serve the population or the acceptance of a significant

⁷² See *Diehl v. Mason County*, 94 Wash. App. 645, 654, 972 P.2d 543, 547 (1999).

⁷³ *Knapp, et al. v. Spokane County*, EWGMHB Case No. 97-1-0015c Final Decision and Order pp. *11 -- 13, 1997 WL 1877192 (December 24, 1997) (county did not show its work) and *Knapp, et al. v. Spokane County*, EWGMHB Case No. 97-1-0015c Order On 4th Compliance Hearing p. *7, 1999 WL 700974 (county showed its work and interim UGA compiled with the GMA) (August 23, 1999).

reduction in the level of services provided to existing residents and businesses. A lower number implies less growth and less investment in public facilities and services.

So far, counties and cities are choosing growth targets towards the middle of the OFM range. In part due to the high costs of providing adequate public facilities to large UGAs.

