# Issue Brief

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## GMA and the Lack of Housing

### Key Points

- The GMA overregulates with cumulative, hard to identify impacts on the ability to build housing.
- Expanding the statute hasn't effectively improved the quantity of homes that are built.
- More planning requirements reduces the ability of counties to permit new homes efficiently.

*Hyperlinked words are in blue in the text below.*

## The debate

There is a lack of housing opportunities despite pouring billions of dollars into government housing and homelessness programs for years. Builders complain about slow processing times on permits, lack of buildable lots available for sale, complex government requirements, high fees, and high financing costs so building houses in some jurisdictions doesn't provide sufficient return on investment - so they don't build. This brief explains how the Growth Management Act impacts housing development. It's the cumulative impact that provides the results communities see today.

## How does the Growth Management Act (GMA) restrict development?

The provisions of RCW 36.70A, the GMA, required urban growth boundaries to be drawn back in the 1990s based on population projections made by the Office of Financial Management and the expected land needed for growth.[i] The boundaries haven't kept pace with reality because property owners still control what is *or is not built on a property*, so there are plenty of areas that are inconsistent with what planners envisioned. Urban levels of growth are only allowed within the designated boundaries, referenced as urban growth areas (UGAs). These boundaries may coincide with a city boundary or may extend into a county with the expectation they will eventually be annexed into the city. Sewer and water services are not to be extended outside of those boundaries, except in rare circumstances.[ii] Sprawling development is prohibited[iii] outside the boundaries. Development is also restricted on agricultural, forest, mineral resource lands, and critical areas.[iv] The boundaries are not easily adjusted so the de facto result is lack of buildable land supply. This year a republican bill, SB 5275, became law that allows for adjustment of the boundaries that may free up some land to development which may lead to small improvements in particular areas that have qualified land to swap.

**Republican Offered Solutions:**

- SB 5275 (2022) - Senator Short and Representative Barkis have offered bills for multiple years to allow already selected areas for development in rural areas to be able to be expanded. This bill in much reduced form was signed by the governor and will allow new development and redevelopment in those specific areas, called LAMIRDs.
- SB 5593 (2022) - This new law allows a county to shift an urban growth boundary to accommodate the identified patterns of development and likely future growth yet may not increase the total surface areas within the urban growth boundaries.
- HB 1627 (2022) - This bill would have allowed the extension of water, sewer, and storm drain facilities outside of urban growth boundaries where there is existing development already. It died in the House Rules Committee.

- HB 1774 (2017) - The Environmental Protection Land Exchange Act would have allowed cities and counties to "swap" undevelopable land in the cities for land that could be developed outside of the urban growth boundaries in equal amounts. This bill died in the House Environment & Energy Committee without a hearing.

## Why are so many rural counties Distressed Counties without jobs and growth?

Many people often indicate rural counties are distressed because of the GMA without being able to point to an exact location or provision. RCW defines "rural character"[v] in a manner that envisions wide open spaces of natural landscape where vegetation predominates over the built environment despite intent language[vi] that indicates rural areas are supposed to be able to have jobs and grow. The rural section of the mandatory elements, RCW 36.70A.070 (5), started[vii] as a two-sentence direction to include a rural element in the comprehensive plan where density is less than urban levels and there is protection of agriculture, forest, and mineral resources. That subsection has now morphed into the most lengthy of the all the mandatory provisions, upward of 70 lines, and the result is stringently restrained growth with little flexibility for improvements. Opportunities that used to exist in rural areas no longer fit within the regulatory structure.

A county cannot allow the conversion of undeveloped land into sprawling, low-density development in the rural area. It must contain and control rural development. It must assure "visual compatibility" with the surrounding rural area. Ironically, the way growth has been regulated by the GMA, and associated rules, guidance manuals, and cases actually leads to low density development spread out across the whole landscape instead of allowing some landscapes to remain undeveloped (aka sprawl).[viii]

- For example, if there is empty land, then one farm house, barn or shop might be deemed visually compatible. Yet, a common fixture of rural communities used to be mobile home parks. They would be built on the cheaper land on the edges of urban growth, then as the city grew around the mobile home park, the value of the land would increase to a point that the owner could make more money selling the property, and the park would be shut down. Unfortunately, new mobile home parks are no longer being built on the rural side of the urban growth boundary. By law,[ix] RVs can reside in mobile home parks. Cities are struggling to find places for RVs used as permanent housing. Making it easier to have mobile home parks on cheaper land in rural areas could help the housing situation, and having clear authorization in the GMA could alleviate counties fear of getting sued for allowing such growth.

Surface water and groundwater must be protected in the rural element. This simple statement was the basis of the *Hirst* case which shut down new development reliant on the use of permit-exempt wells for over a year because of the Washington Supreme Court's interpretation of the GMA. The constraint of legal access to water, not necessarily connected to actual in-the-ground water, is a barrier to development where special interests have competing viewpoints on what is sufficient water.

**Republican Offered Solutions:**

- Redefine rural character and the mandatory elements to be less restrictive and more reflective of the needs of rural communities.[x]
- Allow mobile home parks, transitional housing with services within the community, tiny home communities, and other forms of residential construction outside of the UGAs.[xi]
- Allow smaller local jurisdictions to opt out of the GMA or some of its regulations.[xii]
- Outright repeal of the GMA.[xiii]

## How does the GMA overregulate?

Layers of Laws. The GMA is the primary land use statute. It has 119 statutory sections (121 pages) now when the original chapter had about 20 sections.[xiv] There are 135 WAC sections (147 pages).[xv] It requires most cities and counties to create a comprehensive plan for development and development regulations that implement the statute, rules, and

guidance manuals mentioned in all of those pages. The local layers add hundreds of pages of additional requirements. There is a mandatory update on a 10-year cycle that can take three years for a local government to struggle through completing. The GMA started out as a local government planning tool where city and county councils were directed to make plans for development in their communities with a defined public process. After 30 years, it is now used as a state mechanism to control local activities and a way for advocacy groups to litigate for outcomes that the local government never envisioned. It is so complex and prone to litigation[xvi] that there is little flexibility for community choices that differ from established statutes, rules, guidance, and case determinations.

Every year there are bills[xvii] to add more requirements. There have been bills to add to the existing 13 goals as a way to impose policies upon all communities when those policies can already be adopted under the existing goals by communities that can afford and want to address them - examples include climate change[xviii] and salmon recovery.[xix] These topics can be addressed under the environmental goal or in the critical areas ordinance. For example, new requirements were passed in 2021 and 2022 that direct local governments:

- To identify local policies that result in racially disparate impacts and take action to prevent displacement in the future,[xx]
- To consult with tribal nations, and allows Commerce to negotiate language with tribes to be adopted by the local jurisdiction,[xxi] and
- To conduct a 5-year progress report that shows actions to implement the housing elements and greenhouse gas and vehicle miles travelled requirements under RCW 36.70A.070 (this statute does not currently have language on greenhouse gasses or vehicle miles travelled).[xxii]

This is not a commentary on the validity of those policies. It shows the layering of work load that a local government may not have chosen for itself or may not be able to afford.

Interlinkage of Plans. Planning coordination interlinks city, county, and state requirements in many statutes.[xxiii] The bill that created the GMA also included new transportation planning requirements outside of the GMA.[xxiv] An unfortunate result of all this "coordination" is that a small jurisdiction may need something for its community, but the state, county, or surrounding jurisdictions can quash the ability for that local government to access government funding by not putting it in the countrywide or regional plans and in some state plans. There are multiple statutes that require projects to be identified or consistent with the comprehensive plan to access government funding.[xxv] A development project may have to be mentioned in a city, county, and more rarely, state plans. This increases the time and money to a project on top of the actual cost for the project site plan, building permits, and construction costs.

Advocacy Litigation. The GMA permits[xxvi] anyone that testifies during a public hearing, such as an interest group located in Seattle, to file petitions with the Growth Management Hearing Board that can overturn years of work in a community and impose an outcome desired by the interest group, not the people in the community. This access is atypical and goes beyond what the Administrative Procedure Act standing requirements are, thus the control of what happens in a community is taken out of the hands of local officials.

Creation of Additional Work By The Courts. The Growth Management Hearings Board and the courts have made determinations of what compliance with the GMA is that were never envisioned by the Legislature when the statute was enacted. These determinations have imposed new obligations on land development in ways that counties and cities were not doing prior to the rulings.

- The *Hirst* situation was an excellent example. The bill that created the GMA had a section on how building permits were to establish water for projects but that was not the pathway the court chose.[xxvii] Instead, the Washington State Supreme Court imposed on counties an obligation to determine county wide water availability before allowing permit-exempt wells to be used when developing a property. The availability of water is an obligation that the Legislature had given to the Department of Ecology in a different statute, and the use of water in those small capacities did not require a permit by statute. Special interest groups were able to

persuade the courts to interpret into the GMA an obligation for the counties to do something they were never intended to do nor funded to do. The court opinion stopped development because the county didn't have the money or technical expertise to comply with the newly imposed requirement. The counties, property owners, tribes, environmentalists, and building industry came to the legislature for a fix, which took over a year to negotiate. The legislative "solution" added new fees on wells (on top of existing fees), and envisioned the county making a list of water and habitat improvement projects to mitigate for water usage in particular watersheds. Yet, even this simple solution when it became a rule imposed by the Department of Ecology ended up putting more constraints on property rather than less.[xxviii]

**Republican Offered Solutions:**

- Same as for the above section.
- Limit the standing requirements to file a petition contesting violation of GMA provisions to that of the Administrative Procedure Act.[xxix]
- Discuss in public the statutory prohibition of unfunded mandates under RCW 43.135.060 that requires the state to fully reimburse local governments for newly imposed statutory costs. [xxx]
- Vote no and explain the comprehensive impact of the 30 years of actions take by the legislature, executive branch, courts, and local governments every year.

## How are development fees linked to the GMA?

Impact Fees. The bill that created the GMA also authorized the cities and counties to impose fees on new development at time of permitting to pay a proportionate share of the cost of public facilities to serve the new developments.[xxxi] These are called impact fees under RCW 82.02, and are available for schools, transportation, parks, and, more rarely, fire districts. Some jurisdictions do not impose them at all. Jurisdictions are supposed to offer a way to defer payment of these fees on single-family and residential construction until time of sale or occupancy.[xxxii] The facilities being paid for with the fees are to be identified in the planning documents required in the GMA. Impact fees can add thousands of dollars to the cost of housing. In 2022, the Issaquah School District's impact fee on a single family home is $20,291, the highest in King County.[xxxiii] Sammamish has a transportation impact fee of $14,064.[xxxiv] In comparison, Spokane's transportation impact fee ranges from $103 to $1,309 for a single family home.[xxxv] Impact fees may be waived for low-income housing or early learning facilities.[xxxvi]

The building industry is opposed to impact fees because they increase the cost to build new homes. The builders dislike financing the fee as part of the project and cannot recover the financing charges. Their position is that the increased property taxes paid on the developed property should be covering the added government expense for facilities.

Real Estate Excise Tax. The bill that created the GMA also authorized cities and counties to collect an additional one quarter of one percent tax on the selling price of property to pay for projects listed in the capital facilities plan. This is known as the real estate excise tax under RCW 82.46.035.[xxxvii]

The Realtors do not like the real estate excise tax because the tax is applied at the point of sale. The tax is taken out of the seller's profits. There is a perception that the tax can drive up the cost of housing. A counter point is that the market rate of housing is what it is regardless of the tax. The seller has to be able to pay for the outstanding mortgage amount, the taxes, and the sellers' and some of the buyers' transaction expenses to come out ahead on the sale of a home, so the thousands of dollars in taxes could tip a sale from profitable to not profitable.

Realtors also tend to point out when the tax revenues are not used in the manner they are supposed to be used - to pay for capital facilities.

## Additional information

- MRSC webpage on impact fees.
- WA Department of Commerce's website on growth management.
- Growth Management Hearings Board website, and a digest of decisions.

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[i] RCW 36.70A.110.
[ii] RCW 36.70A.110 (3).
[iii] RCW 36.70A.020 (2) and RCW 36.70A.070 (5).
[iv] RCW 36.70A.060, RCW 36.70A.131.
[v] RCW 36.70A.030 states: "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan: (a) In which open space, the natural landscape, and vegetation predominate over the built environment; (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas; (c) That provide visual landscapes that are traditionally found in rural areas and communities; (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat; (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development; (f) That generally do not require the extension of urban governmental services; and (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas."
[vi] RCW 36.70A.011.
[vii] HB 2929 (1990) Section 7.
[viii] Sprawl is not defined in the statute. The dictionary definition of sprawl is "to spread or develop irregularly or without restraint." Every comprehensive plan puts restraints on growth yet the development is always going to be irregular because property rights mean that people get to use their property. Some people want all the rural areas to have large pieces of land with one house on it, so people are going farther into undeveloped lands to build houses, instead of having much smaller lots built out around urban growth boundaries. Growth Management Hearings Board cases related to lot sizes in rural areas have attempted to address the issue. HB 1609 (2017-2018) attempted to clarify that there are no minimum acreage requirements in designated agricultural areas, but it did not make it out of the House.
[ix] RVs are included in the definition of "park model" in RCW 59.20.
[x] HB 2536 (2020), a bipartisan bill; HB 1748 (2017).
[xi] HB 2001 (2022)(Allowing tiny home communities to be built outside of the UGA. This bill was signed by the governor without this provision in it.), HB 2021 (2021)(Providing housing and associated services to homeless individuals and families), HB 1600 (2019)(Authorizing tenant-owned mobile-home parks for senior citizens outside of the UGA), HB 1298 (2021) (Ensuring the ability to build accessory dwelling units outside of the UGA).
[xii] HB 1051 (2019), HB 1101 (2017), HB 1525 (2017), HB 1094 (2011).
[xiii] HB 1167 (2013), HB 1373 (2015), HB 1749 (2017).
[xiv] This counts the sections that became RCW 36.70A while the original bill added new sections in more chapters.
[xv] There are 119 Sections, 169 pages (WAC 365-185 – 6 sections (3 pages), WAC 356-190 – 13 sections (23 pages), WAC 365-191 – 12 sections (6 pages), WAC 365-195 – 6 sections (4 pages), WAC 365-196 – 77 sections (130 pages), WAC 365-199 – 5 sections (3 pages) 15 sections). There are 15 pages connected to GMA but not direct implementation (WAC 365-197 – 8 sections (8 pages), WAC 365-198 - 7 sections (7 pages), 1 section, 2 pages Shoreline Management Act WACS with GMA references: WAC 173-27-215 (2 pages)).
[xvi] There were 103 petitions filed with the Growth Management Hearings Board in the last five years, nine of those from Futurewise, a Seattle nonprofit.
[xvii] In 2021-2022, there were over 100 bills that referenced RCW 36.70A.
[xviii] HB 1099 (2021)
[xix] HB 1117 (2021)
[xx] ESSHB 1220, Section 2(d) & (h).
[xxi] SHB 1717 (2022).
[xxii] ESSHB 1241 (2021). The five-year progress report applies to cities with a population of 6,000 or more and counties with a population density of at least 100 people per square mile and population of 200,000 or a population density of at least 75 people per square mile and an annual growth rate of at least 1.75 percent.
[xxiii] RCW 36.70A.040, RCW 36.70A.045, RCW 36.70A.070(6), RCW 36.70A.100, RCW 36.70A.500 (4)(c); RCW 35.58.2795 (cities' six year public transportation plans must be consistent with the comprehensive plans), RCW 35.77.010 (Cities nonmotorized transportation plan must be consistent with the comprehensive plan); RCW 35.81.060 (Community renewal projects must be part of a community renewal plan that is part of the comprehensive plan); RCW 35A.63.170, RCW 36.70.970 (City and county hearing

examiners can only approve projects that carry out or conform with the comprehensive plan and development regulations); RCW 36.81.121 (Funding for road and bridge construction work and other transportation facilities must be consistent with the county comprehensive plan); RCW 36.105.070 (Coordination process for island counties); RCW 39.104.030 (Local governments constrained to only use local revitalization financing if the improvement is consistent with the local government's comprehensive plan and development regulations); RCW 47.06.040 (Statewide multimodal transportation plan must be consistent with local comprehensive plans); RCW 70A.305.150 (Clean-up of brownfield properties must be consistent with the comprehensive land use plan for the zone).

[xxiv] HB 2929 (1990) Sections 53 through 60.

[xxv] RCW 39.102.070 (2) (Local infrastructure financing); RCW 39.104.030 (Local governments authorized to use local revitalization financing if the improvement is consistent with the local government's comprehensive plan and development regulation); RCW 39.112.020 (Cities use of state land improvement financing must be consistent with the countywide planning policy and the city's comprehensive plan); RCW 43.155.070 (Public works assistance funding linked to adoption of GMA comprehensive plans and development regulations); RCW 79A.15.120 (9)(g) (Preference for riparian protection account funding to be used in projects that implement the local comprehensive plans or shoreline master plans.).

[xxvi] RCW 36.70A.280(2)(b) provides standing for a person that participated at the local level, and subsection (d) provides standing under the Administrative Procedure Act, RCW 34.05.530. Futurewise is a company located in Seattle that has filed petitions against Franklin, Spokane, Benton, and Snohomish Counties during the last five years. In November 2017, Senate Committee Services staff reported during a Local Government Committee hearing on GMA appeals that Futurewise was the most frequent petitioner before the Growth Management Hearings Board. Futurewise has the financial backing and legal staff to take cases all the way to the Washington Supreme Court and has done so.

[xxvii] HB 2929 (1990) Section 63 codified in RCW 19.27.097.

[xxviii] WAC 173-501-065 implementing the Nooksack WRIA update as part of the "Hirst fix" puts additional restrictions on water usage that is not in RCW 90.94.020 such as claiming that Ecology can limit well withdrawals to less than the amounts authorized in statute, that any water connection cannot exceed 3,000 gallons per day for the entire group, and added a metering requirement.

[xxix] HB 1144 (2021).

[xxx] Initiative 62 from the people tells the legislature it may not impose responsibility for new programs or increased levels of service under existing programs on any political subdivision of the state unless the subdivision is fully reimbursed by the state for the costs of the new program or increases in service levels. See RCW 43.135.060. This requirement is frequently ignored and the courts have allowed underfunding without striking down new laws.

[xxxi] HB 2929 (1990), Section 36.

[xxxii] RCW 82.02.050 (3).

[xxxiii] Found on King County's website at https://kingcounty.gov/depts/local-services/permits/permits-inspections/~/media/depts/permitting-environmental-review/dper/documents/fee-schedules/2021-2022-fees/03-fee-2022-School-Impact-Mitigation.ashx.

[xxxiv] Chart entitled "Comparison of 2021-2022 TIF Base Rates in 73 Cities and 5 Counties in Western Washington" created by Chris Comeau, Bellingham Public Works Department found at http://mrsc.org/getmedia/7b937ea4-f666-4b86-b21d-fd21f43115e3/b45impactFeeCompare.pdf.aspx.

[xxxv] 2022 Downtown District Transportation Impact Fee Schedule from City of Spokane found at https://static.spokanecity.org/documents/business/commercial/permit-fees/appendix-a-2022-impact-fee-schedule.pdf.

[xxxvi] RCW 82.02.060 (2)-(4).

[xxxvii] HB 2929 (1990), Section 38.