



# Planning Commission Training

April 18, 2023

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# Topics

- Role of Planning Commission
- Procedural Laws to be aware of
- Growth Management Act and land use



# Role of Planning Commission

- History
    - Resolution 60-1961 and Ordinance 458-2010, KCC 2.56.035
    - RCW 36.70.040
      - DCD is the “planning department”
      - Planning commission is to “assist the planning department in carrying out its duties”
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# Role of Planning Commission

- Duties
  - Assist DCD in preparing DR and CP, including hearings and recommendations (KCC 2.56.035)
  - Review DR and CP amendments (KCC 21.08.050), including SMP Amendments (KCC 22.500.105(I))
  - Adopt FOF on DR and CP (KCC 2.56.035)
  - Follow DCD rules of procedure and work plans (KCC 2.56.040)



KITSAP COUNTY

## CRITICAL AREAS ORDINANCE

2024 PERIODIC UPDATE



## Comprehensive Plan Update

*Growing for a better tomorrow*



# Role of Planning Commission

- Potential Duties
    - Delegation of Development Agreement hearing (KCC 21.04.220)
    - Authority to propose rezone (KCC 21.04.230(A))
    - Authority to hear Hearing Examiner matters if all examiners are disqualified (KCC 21.10.090)
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# Role of Planning Commission

- General actions
    - Work studies – hear and discuss
    - Public hearing – receive testimony and deliberate
    - Adopt Findings of Fact by majority vote, may have minority report if desired
      - DCD forwards PC FOF and recommendation to Board as is
      - DCD may make differing recommendations
      - Board will have own hearing and can make changes
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# Role of Planning Commission

- Findings of Fact
    - Based on facts that are in the record (e.g., presented) or reasonable inferences. No opinions. No conclusions.
    - If facts are in dispute, weigh them and make a finding based on preponderance of the evidence (more likely than not)
  - Conclusions of law
    - Provides the reasoning for the recommendation. Must be based on the findings of fact. Must follow the law.
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# Laws to be aware of:

- Code of Ethics for Municipal Officers, RCW 42.23
- Open Public Meetings Act, RCW 42.30
- Public Records, RCW 42.56 and RCW 40.14
- Appearance of Fairness Doctrine, RCW 42.36





# Laws to be aware of:

- Code of Ethics for Municipal Officers, RCW 42.23
  - Use his/her position to secure special privileges or exemptions for him/herself or others
  - Give or receive (or agree to) any compensation, gift, reward, gratuity from any source outside the county if it is connected or related to your duties on PC
  - Disclose any confidential information gained as a PC member or engage in any business/activity where disclosure might be “reasonably expected”

**No person may**



# Laws to be aware of:

- Open Public Meeting Act, RCW 42.30
  - All meetings are to be open to the public
    - Meeting
    - Open
    - Quorum
    - Public
    - Business



# Laws to be aware of:

- Public Records Act, RCW 42.56
  - All public records must be available for public inspection and copying
    - Public Records – writing prepared, owned, used, or retained
    - Inspection and copying
    - Exemptions – narrowly construed
- Public Records Retention, RCW 40.14
  - All public records must be retained for set period of time



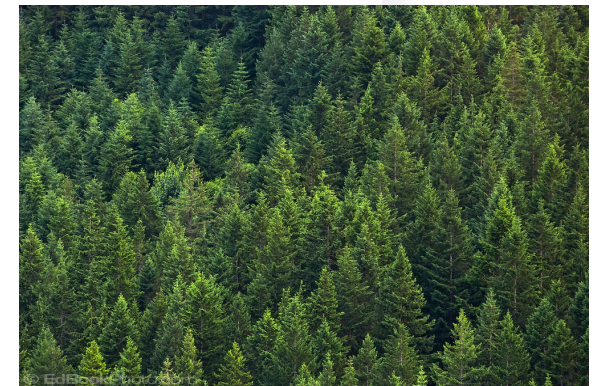
# Laws to be aware of:

- Appearance of Fairness Doctrine, RCW 42.36
  - Applies in quasi-judicial settings
  - Means the proceeding must be actually procedurally fair
  - Means the proceeding must appear to be procedurally fair
  - Cure: Put it on the record and invite objection. Objection = disqualification unless defeats quorum. No objection = no disqualification



# Growth Management Act

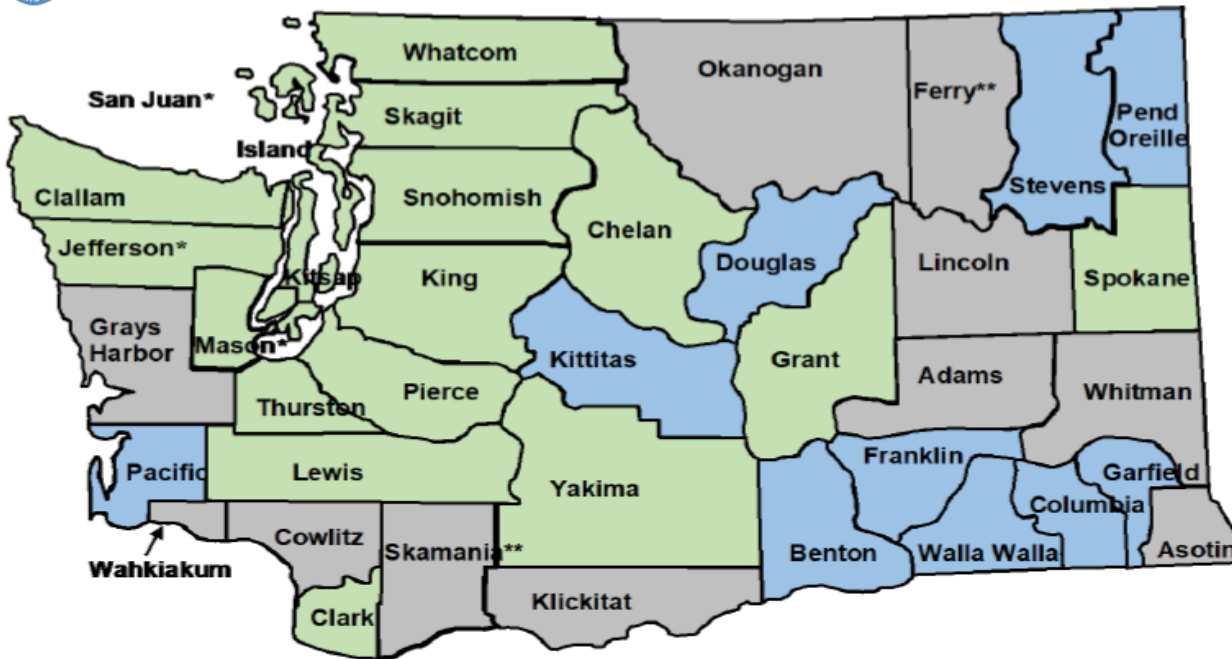
- Started in 1990, primarily in chapter 36.70A RCW
- Ground up framework
- Land speaks first — critical areas and natural resources



# Growth Management Act



Department of Commerce



18 Counties Required to Plan Fully

\* Did not exercise ability to Opt-Out of full GMA Planning

10 Counties "Opted-In" To Plan Fully

11 Counties Subject to Critical Areas and Natural Resource Lands Requirements Only

\*\* Exercised ability to Opt-Out of full GMA Planning

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**WHO PLANS?**

# Growth Management Act

Encourage urban growth in urban areas

Reduce sprawl into undeveloped land

Encourage efficient transportation

Plan for and accommodate affordable housing

Encourage economic development

Protect private property rights

Process permits timely and fairly

Maintain and enhance natural resource based industries

Retain open space and recreational opportunities

Protect the environment

Encourage citizen participation

Ensure adequate public facilities

Identify and encourage historic preservation

All SMA goals

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**14 GOALS**



# Growth Management Act

Enabling Law

State Growth Management Act

Regional  
Coordination

Multi-County Planning Policies (Vision 2050)  
Kitsap Countywide Planning Policies

Local Planning

Kitsap County Comprehensive Plan

Implementation

Development Regulations & Programs

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**GMA HIERARCHY**



# Growth Management Act

## Housing

2019 – HB 1377: Requires the allowance of a density bonus “consistent with local needs” for any affordable housing development on property owned by a religious organization that meets certain criteria.

2020 – HB 2343: Adjusts parking requirements that jurisdictions can impose for housing units constructed after 1/1/2019 that have certain transit access.

2021 – HB 1220: Significant bill that instructs local governments to “plan for and accommodate” housing affordable to all income levels and makes significant updates on how to plan in the housing element

2021 – SB 5235: Except for occupant loading (health and safety), jurisdictions cannot regulate or limit how many persons can live in a dwelling unit.

2022 – SB 2001: allows “tiny house communities” to be a part of the affordable housing incentive program started in 2006.

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## RECENT LEGISLATION



# Growth Management Act

## Essential Public Facilities

2020 – HB 2640: Specifically excludes from being considered an EFP those facilities are privately operated for detaining individuals in custody during the pendency of a criminal proceeding. Does not include SVP housing or mental health housing. Applies retroactively. Intent is to give jurisdictions control over identifying something like this as an EPF and not dictating it at the state level.

2021 – HB 5118: Adds “community facility” as defined in RCW 72.05.020 to the enumerated list. These facilities are those operated by the state for juveniles who have committed a crime and are serving a sentence.



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## RECENT LEGISLATION



# Growth Management Act

## Urban Growth Areas and LAMIRDs

2022 – HB 5275: Modifies LAMIRD regulations to, in theory, provide additional flexibility in Type I infill LAMIRDS. Infill development may be permitted if services providers have capacity to serve and it is consistent with local character (previously needed to be consistent with character of existing area). Also, the requirement to minimize and contain applies to the existing areas but not necessarily existing uses.

2022 – SB 5593: Modifies the UGA regulations to require us to review “patterns of development” as well as just development and, in theory, allows adjustment of a UGA to address areas where these “patterns of development” have created a development pressure in areas that exceed the available developable lands so long as certain criteria are met, such as total area of UGA is not increased, the new area has less than 15% critical areas, the area is otherwise suitable for urban growth, adequate facilities are available, etc.

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### RECENT LEGISLATION



# Growth Management Act

## Dates

2020 – HB 2342: Changed the update schedule to every 8 years with new periodic updates starting in June 2024 (for Kitsap).

2022 – HB 1241: Changed the update schedule to every 10 years and adjusted the June 30, 2024 to December 2024 for Kitsap, King, Snohomish, and Pierce.

2022 – HB 5042: Delayed the effective date of any UGA expansion, any de-designation of a natural resource land, any creation or expansion of a LAMIRD, and any new Fully Contained Community or Master Planned Resort to the later of: 1) 60 days after the publication of the Notice of Adoption or 2) a GMHB's Final Decision.

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## RECENT LEGISLATION



# Growth Management Act

## Other

2022 – HB 1717: Requires jurisdictions to invite federally recognized tribes to participate in the County process and if a tribe agrees, an MOA should be negotiated and include the topic of protecting tribal cultural resources.

2022 – HB 1799: Requires DRs updated after January 1, 2025 to allow for the siting of organic material management facilities in certain areas. This is part of a larger push by the state to reduce the amount of organic material that goes in the a landfill. State goal is by 2030 to reduce organic material 75% from 2015 numbers.

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**RECENT LEGISLATION**

# Growth Management Act

## Critical Areas

Protection of critical areas requires protection of ALL functions and values. *WEAN v. GMHB*

Protection of critical areas requires protection of plant species as well as animal species. *WEAN v. GMHB, Ness v. City of Richland*

Designation of critical areas requires maps OR performance standards/definitions so that they can be adequately identified during development process. *WEAN v. GMHB*

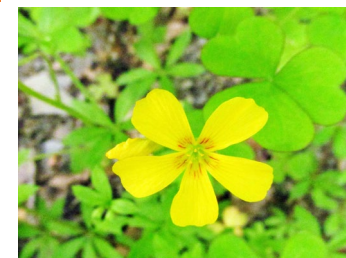
Its important to update these maps when new information arises, if performance standards are not used. *WEAN v. GMHB.*

Updating CAO maps does not require a public participation process. *Munce v. City of Anacortes*



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### CASE LAW



# Growth Management Act

## Critical Areas (cont'd)

When using “precautionary approach” must give sufficient guidelines for any potential impacts. *WEAN v. GMHB*

When designating and regulating Geologically Hazardous Areas, no requirement to consider or provide protection for public health and safety. *Futurewise v. Snohomish County; Futurewise v. Spokane County*

Evaluating development impacts within a buffer is just as important as impacts within the critical area itself. *Ness v. City of Richland*

BAS must be “included” both substantively and procedurally. If a jurisdiction chooses to depart from BAS, it has to have a sufficiently reasoned justification. Doesn't have to be science based, but also cannot be just for economic development. Nuances have not been settled in case law. *Munce v. City of Anacortes*



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**CASE LAW**

# Growth Management Act

## Resource Lands

De-designation are allowed in the right circumstances. *Buchanan Farms v. Walla Walla County*

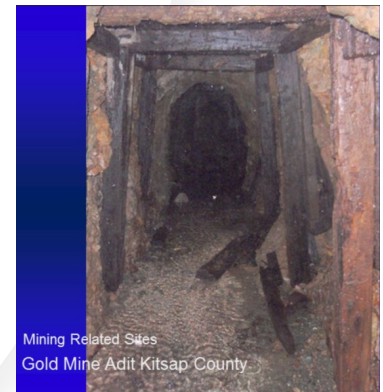


Right circumstances are essentially that the de-designation does not have an impact on the resource land.  
*Buchanan Farms v. Walla Walla County*

WAC 365-190-040 was recently amended by Commerce to provide additional guidance when considering the de-designation of natural resource lands. One task includes a comprehensive county-wide analysis of the applicable resource lands.

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## CASE LAW





# Growth Management Act

## Urban Growth Areas

All UGAs must be supported by a land capacity analysis but nothing says a county has to do its own LCA for a city. The county can rely on the city's land capacity but burden is still on the county to ensure the UGA is sufficiently sized. *City of Kennewick v. Futurewise*, *City of College Place v. Walla Walla County*

If the county disagrees with the city analysis, it can designate the UGA as it deems appropriate and justify its actions with support in the record. *City of College Place v. Walla Walla County*. No written justification is needed if the city and county agree.

A new land capacity analysis is not needed every time there is a comp plan designation change. *Futurewise v. City of Ridgefield*.

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**CASE LAW**

# Growth Management Act

## Capital Facilities

Capital facilities are fixed, physical assets that are built, constructed, installed or established to perform a particular service for GMA purposes. *Futurewise v. Spokane County*

Capital facilities include the provision of public services (e.g., fire protection, law enforcement, etc.)

All public facilities are capital facilities but not all capital facilities need to be public facilities. Only public facilities need LOS standards.

Capital facilities are not only those “needed for development” under concurrency Goal 12.

Transportation facilities are capital facilities but they can be in the Transportation Element only and not duplicated in the CFE. Not so with Parks and Re facilities. They need to be in both.

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**CASE LAW**

# Growth Management Act

## Essential Public Facilities

When a facility is not specifically listed in RCW 36.70A.200, a jurisdiction has discretion to consider it an EPF or not consistent with its identified process. *The Geo Group v. City of Tacoma, Homeward Bound v. CPSGMHB*

Boards have determined whether a use qualifies as a listed use. E.g., a light rail station is a regional transportation facility; a work release center is a correctional facility. *Homeward Bound v. CPSGMHB*

RCW 36.70A.200 prevents jurisdictions from prohibiting the siting of an EPF but they can still regulate it. *Homeward Bound v. CPSGMHB*

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**CASE LAW**

# Growth Management Act

## Consistency

Consistency between a CP and DR is not measured by whether an action promotes or does not promote each policy in the CP but whether an action “thwarts” the achievement of a policy. *Asbjornsen v. City of Puyallup*

The terms “roadblock”, “preclusion”, “frustration” and “actual conflict” have also been used in evaluating consistency. *Olympians for Smart Development v. City of Olympia*, *SCALE v. City of Seattle*, *BRSE v. Shoreline*

It is easier to find conflict when there are mathematical calculations (such as densities) but harder when comparing to a nebulous term (such as character). Often a DR can promote one policy but not another, but that’s not an inconsistency. *Olympians for Smart Development v. City of Olympia*

When a CP is amended, there is no technical requirement that implementing development regulations be adopted concurrently. That said, there is a consistency requirement between the CP and DRs so if the delay creates an inconsistency, then there is a violation. *Coen v. City of Mercer Island*

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**CASE LAW**

# Growth Management Act

## Rural

The evaluation of whether a jurisdiction provides “a variety of rural densities” should consider the densities in LAMIRDs because they are “rural.” *Futurewise v. Thurston County*

But the variety evaluation is not to include “natural resource lands” *Futurewise v. Thurston County*

There can be no “bright line” as to rural densities – the “question is what is appropriate for the rural densities in light of local circumstances.” *Futurewise v. Thurston County*

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**CASE LAW**

# Growth Management Act

## Property rights

To prevail on a challenge to Goal 6, the petitioner must prove that the action is both arbitrary and discriminatory. *Kitsap County Association of Realtors v. City of Bainbridge Island, Canyon Park Business Center v. City of Bothell*

Arbitrary means “completely baseless” and “in disregard to the facts and circumstances involved.” Mere disagreement is not sufficient if there is a reasoned explanation. *Kitsap County Association of Realtors v. City of Bainbridge Island*. Where there is room for two opinions, an action is not baseless. *Central Washington Growers Association v. Chelan County*

Action is discriminatory if it singles out a particular person or class of persons without a rational basis to do so. *Canyon Park Business Center v. City of Bothell*

In addition to arbitrary and discriminatory, a petitioner must show that the action impacted a legally recognized right. If there is no right impacted, there is no violation. *Community Lodging Operators v. Chelan County*

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**CASE LAW**

# Growth Management Act

## SEPA

SEPA is often called the “environmental disclosure law” and does not require any particular outcome. Whether an EIS is “sufficient” is based on the Rule of Reason. *Olympians for Smart Development v. City of Olympia*, *SCALE v. City of Seattle*

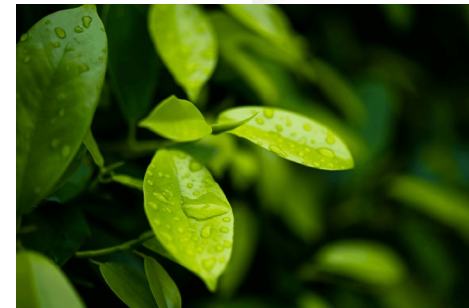
Rule of Reason requires a reasonably thorough discussion of the probable significant environmental impacts. *Heritage Baptist Church v. City of Monroe* Measure of significance can be elusive.

Nonproject action review is granted more flexibility and can be more general; however it cannot defer known or reasonably expected future impacts from development. It must contemplate them to the extent likely. *SCALE v. City of Seattle*, *Providence Point Umbrella Association v. City of Issaquah*

In non-project SEPA review, jurisdiction cannot rely on “existing environmental regulations” like you can for project actions. *Heritage Baptist Church v. City of Monroe*

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## CASE LAW



ENVIRONMENTAL REVIEW

# Growth Management Act

## Public Participation

GMA requires that jurisdictions adopt and generally follow a Public Participation Plan to provide for enhanced public participation. *Lane v. Clallam County, Clark County v. GMHB*

Inexact compliance with a jurisdiction's PPP is not a GMA violation. *Lane v. Clallam County*

Enhanced participation does not require an "interactive public discussion" of any public comment. *Lane v. Clallam County*. A face-to-face exchange and dialogue is not required. *Asbjornsen v. City of Puyallup*

It is not a public participation violation to make changes after the comment period closes if: it is to correct a typo, corrects cross references, makes name/address changes, or clarifies language without changing the effect. Further, changes in response to public comment is okay if it is within the scope of the alternatives available for comment. *Black Diamond Trees v. City of Black Diamond, Community Lodging Operators v. Chelan County*

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## CASE LAW





# Growth Management Act

## Public Participation (cont'd)

Comments are to be reviewed. The fact that no changes result does not mean the comment was not considered. *Black Diamond Trees v. City of Black Diamond*

Responses to comments only mean that the comments must be considered and “where appropriate” action taken on them. A “response may, but not need to, take the form of an action, either a modification to the proposal or an oral or written response.” *Asbjornsen v. City of Puyallup (citing Bremerton v. Kitsap County (1999))*. The WAC recommendation to provide a written summary of comments are guidelines and is not a procedural mandate.

It is not a public participation violation for staff to provide to the decision makers their opinions and information in response to public comments. *Lane v. Clallam County*

**PUBLIC PARTICIPATION**



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**CASE LAW**

# Growth Management Act

## Other

Unless there is a “failure to act” challenge, which means there is a statutory deadline to act, the failure to docket or adopt any requested comp plan amendment is not a GMA violation. *Wright’s Crossing v. Island County*, *Porembski v. Snohomish County*, *Fullard-Leo v. City of Kennewick*.

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**CASE LAW**

# QUESTIONS?

