Walking the Tightrope: Balancing Conservation, Local Growth, and the Uncertainty of Rural Development

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ABSTRACT

Economic development is a complex issue, and placing it in a rural context complicates it further, primarily due to issues with local governance and the difficulty in defining the term “rural.” The result is that economic development policies often ignore development in rural areas, and development in those areas becomes uncoordinated and unproductive. One exception is the Growth Management Act (GMA) enacted by the State of Washington, which established a rural development regime that decentralized planning but retained regional and statewide oversight. This paper uses a lawsuit filed against one of the GMA’s regional boards as a case study to examine the complicated issues inherent in rural economic development. The most salient issues are the difficulty in defining the term “rural” and the innate complexities of local governance. Addressing these issues is best accomplished by an ad hoc approach to rural development that allows a case-by-case balancing act between efficiency and specificity, as well as some consideration of the myriad interests affected by rural economies.

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I. INTRODUCTION

Economic development law requires walking a tightrope between state goals and local concerns while juggling the wide spectrum of circumstances that define rural America. Affording too much local discretion can skew the balance one way, undermining the effectiveness of enforcing state goals. However, excessive control at the state level skews it the other way, creating policies that are ill suited to the specifics of local situations. A step too far in either direction can send the entire economic growth endeavor plummeting to failure.

Washington’s Growth Management Act (hereinafter, “GMA”) exemplifies an effort to give structure to the complex set of processes innate to economic development, and is particularly notable for its focus on rural areas, which are almost universally neglected by economic development policies. Washington sought to promote orderly growth, consistent with statewide goals such as conservation and social development, and protect the character of rural areas from threats such as sprawl, while allowing counties to retain significant discretion to develop according to their own needs and circumstances.

In order to examine the complexity of rural economic development policy, this article will use the recent litigation between the GMA’s regional board and Kittitas County in Washington as a case study. Doing so highlights two main issues. First, the nebulous definition of rural economies requires that economic development policies for rural areas be much more flexible. Second, a decentralized approach to economic development is a double-edged sword, requiring a careful balancing act between the unique expertise endemic to local governance and the accompanying externalities that decentralized development planning creates. The GMA’s *ad

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hoc approach to dealing with the variability inherent in any action pertaining to rural economies is well constructed; however, the Act largely ignores the problems generated by almost unavoidable imbalances between local knowledge and dilemmas presented to the state when local interests differ from or even conflict with one another.

II. LEGAL BACKGROUND

A. The Growth Management Act

The Washington state legislature enacted the GMA in 1990 to address concerns “that uncoordinated and unplanned growth, together with a lack of common goals expressing the public’s interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of [Washington].” The GMA requires local governments to adopt two types of development regulations (hereinafter, “DRs”): interim DRs that address issues requiring action before the passage of the DRs and implementing DRs that establish the county’s comprehensive plan. These plans and regulations must be developed in accordance with the GMA’s goals and provisions. Under the GMA, local plans are subject to evaluation by one of

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4 These include, for example, the conservation of natural resource areas, the protection of critical areas, and the prevention of urban growth in non-urban areas. 24 Wash. Prac., Environmental Law And Practice § 18.21 (2d ed. 2011).
5 Id.
6 King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wash.2d 543, at 546 (Wash. 2000) (citing Wash. Rev. Code § 36.70A.040 (2000)). The planning goals set by the GMA are: to encourage urban growth, reduce sprawl, encourage efficient multimodal transportation, increase the availability of affordable housing, and promote economic development. The GMA also seeks to protect private property rights, ensure the timely processing of state and local permits, maintain and enhance natural resource-based industries, encourage the conservation of productive forest and agricultural lands, preserve open spaces, and protect the environment. Finally, the GMA requires plans to encourage citizen involvement, ensure that public facilities and services exist to support
three regional boards created by the statute, one each for the Puget Sound region, Eastern Washington, and Western Washington.\(^7\) Where more than one appropriate planning choice exists, the applicable board must defer to the county’s discretion.\(^8\) A board may only find a plan to be noncompliant with the GMA if it finds that the county’s actions are “clearly erroneous,”\(^9\) and only if the board has a “firm and definite conviction that a mistake has been committed.”\(^10\)

Each board’s decisions under the GMA are subject to judicial review. Courts are required to give “substantial weight” to the board’s interpretation of the GMA,\(^11\) but if a court concludes that a board did not give sufficient deference to a county’s planning processes, that board is not entitled to the deference of the court.\(^12\) The GMA sets the standards for judicial review of record,\(^13\) legal,\(^14\) evidentiary,\(^15\) and fairness issues\(^16\) according to the Administrative Procedure Act.\(^17\)

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\(^11\) Id. at 498.
\(^12\) Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 154 Wash.2d 224, at 238 (Wash. 2005).
\(^13\) Under the Administrative Procedure Act courts look directly to the record before the board. Lewis Cnty., 157 Wash.2d at 497.
\(^14\) Challenges concerning jurisdiction and authority, unlawful procedure, and erroneous interpretation and application of the law are reviewed under a de novo standard. Lewis Cnty., 157 Wash.2d at 497.
\(^15\) Challenges concerning the adequacy of evidentiary support require “a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.” Id. (applying Wash. Rev. Code § 34.05.570(3)(e) (2004).
\(^16\) Claimants alleging that a board’s findings were arbitrary or capricious bear the burden of establishing that the board’s order represents “willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.” City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 959 P.2d 1091, at 1094 (Wash. 1998) (applying Wash. Rev. Code § 34.05.570(3)(i) (2004)).
\(^17\) Wash. Rev. Code § 34.05.570 (2004).
The GMA additionally requires that local governments include a written record explaining how the rural element of the plan meshes with the statutory goals.\(^1\) The record must provide an actual explanation of the plan, although that record need not be a discrete document.\(^2\)

The rural element of a comprehensive plan must include rural development, forestry, and agriculture, and provide for a variety of rural densities and uses, as well as facilities and services to serve those uses.\(^3\) Boards are not allowed to use bright line rules to distinguish rural from urban densities; rather, they must make a factual analysis of each situation.\(^4\) Development in rural areas must protect rural character, being contained or controlled and visually compatible with surrounding areas, and must also protect areas critical to surface and groundwater and protect against conflicts with common rural land use purposes such as agriculture, forestry, and mineral resource use.\(^5\) Innovative planning techniques such as clustering may be utilized to accomplish these ends,\(^6\) and similar protections and allowances are made for land use in required designated agricultural areas.\(^7\) While the agricultural areas may be adapted according to local industrial needs, non-farm uses within designated agricultural lands are not valid.\(^8\) Notably, however, for all the detail comprising the rural development requirements of the GMA, it declines to define what “rural” really is.

\(^2\) Kittitas County, 256 P.3d at 1199.
\(^8\) Lewis County, 157 Wash.2d at 493-94.
B. **Defining "Rural"**

The likely reason for such an omission is the simple fact that “rural” is difficult to define affirmatively. This presents perhaps the greatest difficulty in facilitating rural planning and development. Essentially, the term seems to encompass any land that is not urban. The Census Bureau identifies areas that are either “urbanized” or “urban clusters” as areas that exceed a specific population density threshold, and all other areas are categorized as rural. The Office of Management and Budget designates “Metropolitan Statistical Areas” as a central urban county with a surrounding area based on commuting patterns. Areas not meeting that definition are “non-metro,” or, effectively, rural.

The GMA does not define “rural” itself but rather identifies rural development as development outside an urban growth area. Additionally, the GMA describes areas of rural character as those:

(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

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28 Id.
29 “Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.” Wash. Rev. Code Ann. § 36.70A.030(16) (West 1990).
(g) that are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.\textsuperscript{30}

The GMA allows for a “pattern of more intensive rural development” that does not constitute urban growth.\textsuperscript{31} It distinguishes intensive rural development from urban growth with the clarification that urban growth “typically requires government services.”\textsuperscript{32}

The GMA is not the first instance of difficulty in defining “rural.” In 1979, the Supreme Court of Appeals of West Virginia defined rural communities as communities “inhabited, in the main, by country people, who live a country life, and who engage in country pursuits.”\textsuperscript{33} More recently, some applications have utilized a circumstance-specific approach similar to Washington’s approach to the term, evaluating factors such as taxation, the utilization of urban amenities, and the nature of surrounding property to determine that a homestead was rural in nature.\textsuperscript{34} Others have simply applied the census definition based on Metropolitan Statistical Areas.\textsuperscript{35} Yet others have simply established bright line population density standards.\textsuperscript{36} Still more have utilized a standard based on the makeup of adjoining acreage.\textsuperscript{37} The only consistent factor in the usage of the word “rural” is its inconsistency. While the GMA simplifies the equation somewhat by separating rural land from agricultural, forest, and mineral resource lands,\textsuperscript{38} its definition of the term is nevertheless as circular and unclear\textsuperscript{39} as that of the West Virginia Supreme Court of Appeals.

\textsuperscript{32} Id.
\textsuperscript{33} Stephens v. Raleigh County Bd. of Ed., 257 S.E.2d 175, at 180 (Sup. Ct. of App. W.V. 1979).
\textsuperscript{34} In re Kelley, 455 B.R. 710, at 716-717 (U.S. Bankr. E.D. 2011).
\textsuperscript{35} Heartland Regional Medical Center v. Leavitt, 511 F. Supp. 2d 46, at 54-55 (D. D.C. 2007).
\textsuperscript{39} In defining rural development, the GMA uses the word “rural” nine times. Wash. Rev. Code Ann. § 36.70A.070(5)(b) (West 1990).
C. Local Governance

The GMA is an interesting example of a decentralization of economic development policy. Although counties are endowed with the power to develop their own plans for economic development, the approval process ensures that the regional boards and, by extension, the state government, retain some control over the process. Typically, decentralization for the purpose of economic development is predicated on the Tiebout’s theory of inter-jurisdictional competition.\textsuperscript{40} Tiebout’s theory is that, given competitive adjacent jurisdictions offering different packages of amenities, citizens will “vote with their feet,” moving to the jurisdiction that best reflects their preferences, which will most efficiently distribute the various expenditures to provide those amenities.\textsuperscript{41} However, the absence of underlying assumptions of mobility and information in reality, as well as institutional flexibility and fiscal independence, can undermine the implications of the theory.\textsuperscript{42}

Application of Tiebout’s theory to economic development identifies three ways in which decentralization can lead to economic growth.\textsuperscript{43} First, local officials will be incentivized to avoid predatory behavior by the prospect of capital loss through resident departure.\textsuperscript{44} Second, inter-jurisdictional competition will foster efficiency through more effective targeting of development policies to the local package of amenities.\textsuperscript{45} Third, localized benefits can encourage entrepreneurs to engage in policy experimentation, encouraging innovation.\textsuperscript{46}

\begin{itemize}
\item[\textsuperscript{40}] Richard C. Schragger, Decentralization and Development, 96 Va. L. Rev. 1837, at 1852 (2010).
\item[\textsuperscript{41}] Charles Tiebout, A Pure Theory of Local Expenditures, 64 Journal of Political Economy 416, at 424 (1956).
\item[\textsuperscript{42}] Id.
\item[\textsuperscript{43}] Schragger, supra note 40, at 1853.
\item[\textsuperscript{44}] Id. at 1855.
\item[\textsuperscript{45}] Id. at 1858.
\item[\textsuperscript{46}] Id. at 1859-60.
\end{itemize}
Drawbacks to Tiebout’s approach, however, are real and potentially significant. Intercity competition fuels construction of infrastructure, but infrastructure and growth’s presumably causal relationship is complex and mutually reinforcing; in one case, the addition of an infrastructural feature, such as a subway stop, might attract new residents, but in another, a new subway stop might be necessary to meet the needs of a growing population already in an area.\(^{47}\) In addition, many of the assumptions underlying Tiebout’s hypothesis are not borne out by practical realities. For example, how frequently is perfect mobility among jurisdictions observed?\(^{48}\) Some scholars even suggest that inter-city competition actually results in detrimental economic policies as a consequence of a race to the bottom among cost-competing municipalities.\(^{49}\) The effects of these type of failures are often most acute at the local level.\(^{50}\)

Perhaps more relevant to the rural sphere, decentralized development policy can lead to uneven economic development.\(^{51}\) In particular, path dependence can be an issue.\(^{52}\) Path dependence refers to the phenomenon in which new economic activity follows existing economic activity.\(^{53}\) As a result, decentralization may actually damage the prospects of lagging local economies when their residents move to better areas.\(^{54}\) The fact that economic development is typically a zero-sum game means that one area’s success may well come at another’s expense.\(^{55}\)

Installing such market-based approaches becomes even more complex in a rural context. Disadvantaged rural areas are likely to be among the most damaged by path dependence.\(^{56}\) Rural

\(^{47}\) Id. at 1872.
\(^{48}\) Id. at 1857-58.
\(^{49}\) Id. at 1872.
\(^{51}\) Schragger, supra note 40 at 1888.
\(^{52}\) Id. at 1892.

\(^{54}\) Schragger, supra note 40 at 1891-92.
\(^{55}\) Id. at 1983-94.
areas also are likely to be overlooked when developing market access to new amenities such as high-speed internet, which will almost certainly retard an area’s ability to compete on an ongoing basis. Coupled with privatization, too much decentralization can cause considerable damage to rural areas. On a regional scale, exclusively localized decision-making can ignore the concerns of surrounding areas and create external problems. In a rural context, these externalities can flow both ways. An urban area may externalize costs like air pollution to a less populous rural area, while a rural area might conversely deprive the surrounding region of needed benefits by overdeveloping a region with amenities, such as open space, that are enhanced by lower population densities.

That said, local governance is by no means anathema to rural jurisdictions. Enforcement of excessively stringent development regulations could undermine the ability of local entities to govern development, which is problematic, as such local governments are typically the best equipped to make planning decisions affecting local areas. Higher levels of government create bureaucracies to deal with situations exacerbated by larger areas or populations, whereas local governments have the advantage of smaller scales. Additionally, the smaller size of local electoral districts means that local officials are typically more directly responsible to their constituents, which encourages sound decision-making.

58 Warner and Hefetz, supra note 56 at 11-12.
61 Id.
62 Id.
Ultimately, however, the balancing act between local and centralized governance is fluid, and prone to shifting according in response to pressures dictated by current circumstances. The distribution of power and the resulting effect is thus difficult to predict in any given situation.

III. Kittitas County Case Study

Kittitas County (hereinafter, “County”) is a largely rural county centrally located in the State of Washington. The County passed an ordinance updating its comprehensive plan and development code in December 2006 that included, for example, provisions allowing three-acre density designations. Subsequently, several nonprofit conservation organizations, including Kittitas County Conservation, RIDGE, and Futurewise (collectively, “RIDGE”), as well as the Washington Department of Community (hereinafter, “WDC”), filed petitions for review of the County’s ordinance with the Board under the GMA. The petitions alleged that the new ordinance was not in compliance with the requirements of the GMA.

The Board agreed with the petitioners’ allegations, issuing a final decision and order in August 2007 that required the County to further revise its plan and development regulations to bring them in line with GMA requirements. Specifically, the Board determined that the County failed to develop the requisite written record explaining the rural element of its development

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63 Schragger, supra note 40 at 1874-75.
65 Id. at 1197.
66 Id.
67 Id.
69 Id.
plan and to provide for varying rural densities. Furthermore, the Board indicated that the plan also lacked adequate provisions to protect agricultural land and the character of rural areas.

The County challenged the Board’s ruling by filing a claim in the Kittitas County Superior Court claiming that the Board improperly disregarded evidence, elevated some GMA goals over others, and improperly relied on a bright line rule regarding rural densities.

In the interim, the County revised its development code, only to have the revised provisions again challenged by RIDGE in front of the Board. On essentially the same grounds, the Board again found that the County’s new plan and regulations failed to comply with the GMA and issued a final decision and order accordingly in March 2008. The County yet again appealed the decision to the superior court, which consolidated the two cases and certified them for review. RIDGE then filed successful motions for discretionary review of both cases by Division Three of the Washington Court of Appeals, and the Court of Appeals consolidated the cases again and certified the consolidated case for review by the Supreme Court of Washington.

With regard to Kittitas County, the Supreme Court of Washington determined that the Board acted largely according to its mandate. The Court found first that the Board conducted itself appropriately and according to the requirements of the law in determining that Kittitas County’s development plan failed to fulfill a number of the GMA’s requirements.

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70 That is, the portion of the regulations dealing with rural development. *Kittitas County* at 1199.
71 *Id.* at 1204.
72 *Id.* at 1205.
73 *Id.* at 1201.
74 *Id.* at 1197.
75 *Id.* at 1198.
76 *Id.* at 1200.
77 *Id.* at 1197.
79 *Kittitas County*, 256 P.3d at 1197.
80 *Id.* (applying Wash. Rev. Code Ann. § 2.06.030 (West 1990)).
Additionally, the Court determined that the Board did not err in its evaluation of the County’s plan by disregarding evidence improperly or by elevating some GMA goals over others. The evidence cited by the County dealt specifically with the nonagricultural economic needs of farmers and rural landowners, rather than whether a three-acre density designation is consistent with the rural character of the area, which was the actual issue being discussed. As this evidence was not dispositive of the issues raised, the Court held that the Board did not improperly disregard evidence. Additionally, the Court held that the Board did not improperly elevate some GMA goals over others, finding that the Board rejected the plan due to its failure to include a number of components required by the GMA, notably a written account of how the plan conserves rural character, rather than because of any affirmative goals set by the legislation.

The Court also noted that the County failed to adequately detail how its plan met GMA requirements, agreeing with the Board that the County had failed to provide any written explanation of the rural element of its plan, as explicitly required by the GMA. While the County pointed to a record of community testimony regarding rural density, and to goals, policies, and objectives (hereinafter, “GPOs”) included in their comprehensive plan, the Court found that these documents failed to address the plan’s consideration of rural elements in the context of the requirements and goals of the GMA.

Because the County failed to provide sufficient information in its written record concerning local circumstances, the Court declined to rule as to whether the Board had improperly used a bright line standard in its ruling, although the Court did reaffirm the necessity

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81 Id.
82 Kittitas County, 256 P.3d at 1199.
83 Id.
84 Id. at 1200.
85 Id.
of specificity to local circumstances in evaluating rural density.\textsuperscript{86} As previously noted, all evidence cited by the County regarding rural density requirements dealt with the economic needs of farm owners, rather than whether a three-acre density preserves the rural character of the county.\textsuperscript{87} The County also failed to explain how its plan otherwise preserved the county’s rural character.\textsuperscript{88} As a consequence, although the Board appeared to have relied on a bright line rule, the Court remanded the issue to the Board for further consideration pending the introduction of additional evidence and explanation from the County.\textsuperscript{89}

The County opted to designate portions of its land as rural, and the measures in the County’s plan are almost exclusively aspirational rather than imperative. The County argued that several GPOs served to protect rural character, such as GPO 8.9, which stated that “projects or developments which result in the significant conservation of rural lands or rural character will be encouraged,”\textsuperscript{90} or GPO 8.13, which stated that “methods other than large lot zoning to reduce densities and prevent sprawl should be investigated.”\textsuperscript{91} However, the Court found that this language was conditional, rather than directive, and consequently fell short of GMA requirements.\textsuperscript{92} The Court did explicitly note that its findings should not be interpreted to imply that Kittitas County is insufficiently rural.\textsuperscript{93}

Because the GMA allows for some higher densities than the underlying designations, the Court held that the Board was incorrect in determining that the zoning proposals were

\textsuperscript{86}Id. at 1201.
\textsuperscript{87}Id.
\textsuperscript{88}Id.
\textsuperscript{89}Id.
\textsuperscript{90}Id. at 1202 (quoting Kittitas County Ordinance 2006–63 (Dec. 11, 2006) (Administrative Record, Kittitas County Conservation v. Kittitas County, No. 07–1–0004c (E. Wash. Growth Mgmt. Hr'gs Bd.) (1 AR) at 1–242)).
\textsuperscript{91}Id.
\textsuperscript{92}Id.
\textsuperscript{93}Id. at 1202-1203.
inappropriate under the GMA.\textsuperscript{94} The GMA allows for the use of zoning measures like clustering that result in higher densities, provided that they “are not characterized by urban growth.”\textsuperscript{95} Because this issue could change as the County changed its plan to comply with the GMA, the Court remanded judgment regarding the zoning measures to the Board.\textsuperscript{96}

However, because the County’s plan did not directly address the preservation of rural densities, instead deferring to the zoning code, the Court agreed with the Board in finding that this approach failed to provide for varying densities.\textsuperscript{97} As zoning codes are not subject to the approval of regional boards when they are independent of development plans, allowing such a provision would prevent the boards from evaluating their compliance with the GMA.\textsuperscript{98} To be brought into compliance with the rural preservation goals of the GMA, the plan should have included specific zoning ordinances.\textsuperscript{99}

Because the County’s plan included conditional uses that allowed for activities that would permanently end agricultural production in Designated Agricultural Areas, the County’s plan violated the GMA’s ban on impermissible uses in Designated Agricultural Areas.\textsuperscript{100} The County’s plan allowed landowners to split one agricultural lot into two lots, which could then be used for activities like non-livestock auctions and quarrying with approval by the County’s Board of Adjustment.\textsuperscript{101} These uses permanently removed land from agricultural use, which violated the tenets of the GMA for preserving agricultural areas.\textsuperscript{102}

\textsuperscript{94} Id. at 1203.
\textsuperscript{96} Kittitas County, 256 P.3d at 1203.
\textsuperscript{97} Id. at 1204-1205.
\textsuperscript{98} Id.
\textsuperscript{99} Id.
\textsuperscript{100} Id. at 1205-1206.
\textsuperscript{101} Id.
\textsuperscript{102} Id.
The Supreme Court of Washington held that, although the Board acted incorrectly with regard to GMA requirements unrelated to the rural issue, the Board did not improperly disregard evidence and was correct in finding that the County’s plan violated the GMA. The plan did lack the required written record and failed to adequately protect rural areas, agricultural land, and water resources or to provide for a variety of rural densities.\(^{103}\) Accordingly, the Court remanded the case to the Board for further proceedings consistent with its ruling.\(^ {104}\)

IV. COMMENT

The Washington Supreme Court worked hard in *Kittitas County* to balance the state’s interest in promoting the GMA’s goals against its requirement to preserve the discretion of counties in planning their own economic development. The County clearly would have preferred that the state not intervene at all in their economic development plans, while RIDGE and the WDC would likely have preferred more direct action. All involved parties would probably have ultimately been happier with more clearly delineated boundaries. However, the decision refrained from swaying the balance too far in either direction. This restraint from simplification is extremely important given that the GMA generally deals with rural areas, which largely defy simplification.

The lack of an operable definition for the term “rural” in this context undermines the general goal of preserving rural areas. Protecting rural areas is an essential means for mitigating the consequences of urban development. Such spaces, which counteract the effects of highly concentrated populations and protect amenities, particularly those that occur naturally, cannot

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\(^{103}\) *Id.* at 1196-1197.

\(^{104}\) *Id.* at 1211.
effectively exist in urban areas. Indeed, the advancement of telecommunications technology might allow the development of industries in rural areas that were previously bound to urban surroundings. Evidence clearly demonstrates that entrepreneurship can find a unique foothold in rural areas. The presence of natural amenities in rural areas not only drives population growth but also promotes migration from urban to rural areas. Rural areas can also be vital to the function of local economies, which function without any considerable regard for legal or political boundaries. Effective management of rural areas consequently requires an understanding of the complex nature of their interdependencies with their surroundings, whether rural or urban. In developing the GMA, the State of Washington made a strong statement of intent to preserve the character of its rural areas.

However, one must remember that rural preservation in and of itself is not the only concern in this situation. In addition to the benefits conferred on a grander geographic scale, local counties appropriately govern their own development and the subsequent benefits to both their populations and their tax bases. Conversely, while local governments have the benefits of specialized local knowledge and a small scale, purely local decisions can easily downplay or ignore externalities. Perhaps even more significantly, the goal of preserving local rural character

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110 Brian Dabson, Rural-Urban Interdependence: Why Metropolitan and Rural America Need Each Other (Brookings Institution 2007).
111 Id.
may exacerbate the problem of path dependence by hamstringing rural governments’ ability to move in new directions to address issues like rural poverty and the provision of essential services. For example, a sparsely populated district with essentially no industry is likely to be handicapped from an economic perspective. Consequently, given the requirement that new rural development efforts are in keeping with the surrounding areas, attempts to improve the prospects of such areas through an infusion of agriculture or industry could easily be blocked. Such preservation requirements, while admirable in a nondestructive context, must be treated as the double-edged sword that they are.

An additional piece of the balancing act is sprawl. Sprawl refers to the phenomenon in which growth, left to its own devices, moves outward from an urban core.\textsuperscript{112} Sprawl can create problems in infrastructure, such as inadequate roads and water and sewer lines, drive up the cost of public service, and substantively increase travel costs.\textsuperscript{113} Sprawl also impacts the environment by means of an increased footprint and additional resource consumption to meet transportation needs.\textsuperscript{114} Additionally, it can create serious inequities by allowing the more mobile upper economic strata access to better-quality schools and lower-crime neighborhoods in outlying areas, while the tax base remaining in the core areas erodes as the average income of its population declines, effectively creating economic ghettos.\textsuperscript{115} Despite use as a functional obscenity in some development discussions, sprawl cuts both ways: its benefits include larger average lot sizes, better accommodation of land-user preferences, and a wider variety of tax levels and social services from which to choose.\textsuperscript{116} In one uncontrolled growth scenario,

\textsuperscript{113} Id.
\textsuperscript{115} Burchell, at 9-17.
\textsuperscript{116} Id.
however, the United States was predicted to convert 18.8 million acres of land from rural to urban use, fully a quarter of which could be avoided through simple growth control measures.\textsuperscript{117} Thus, such growth’s costs outweigh its benefits.\textsuperscript{118} The goal, then, should be minimizing the costs to a degree that the benefits can be effectively exploited.\textsuperscript{119}

More localized approaches exist for dealing with sprawl than the GMA’s state-level governance regime. Local areas can, for example, pass moratoria on growth,\textsuperscript{120} set limits on rates of growth,\textsuperscript{121} establish quotas for housing types,\textsuperscript{122} and allow growth only in planned phases.\textsuperscript{123} However, all of these approaches have drawbacks. Excessive growth controls by local governmental entities can create effective monopolies on property ownership, dramatically driving up prices.\textsuperscript{124} Such approaches might actually reinforce sprawl by encouraging expansion to move even farther from core areas in search of unregulated communities.\textsuperscript{125} The GMA’s requirement for regional boards can help avoid these pitfalls by including non-local parties in the decision-making process, although its only mention of regionalism is in its justification for the preservation of rural areas.\textsuperscript{126}

Additionally, GMA efforts could contribute to urban sprawl as a consequence of population migration. The GMA’s character preservation requirements essentially incentivize homogeneity within the context of each county. That is, by requiring that new developments be in keeping with the county’s extant character, the GMA encourages counties that feature

\begin{flushleft}
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{121} Constr. Indus. Assoc. v. City of Petaluma, 522 F.2d 897, 909 (9th Cir. 1975).
\textsuperscript{122} Id. at 908.
\textsuperscript{126} Wash. Rev. Code § 36.70A.010 (2010).
\end{flushleft}
agriculture to foster more agriculture, or counties based around rural amenities to reallocate their land uses to better accommodate those amenities. Individual residents are bound to be displaced by these efforts, and while some might migrate to other rural areas, evidence indicates that most will move to urban or suburban areas in search of better opportunities. If urban areas are unprepared to handle the resultant influx, uncontrolled sprawl is a likely result.

The drafters of the GMA and the courts interpreting and applying it have attempted to construct a policy that accounts for this admixture of concerns without creating excessive administrative burdens when evaluating county development plans. Most aspects of the GMA and the decision in *Kittitas County* attempt to strike a balance on those points. Requiring that the plan protects rural character through specific, imperative measures maintains a board’s capability to enforce the goals of the GMA in opposition to a county’s incentive to develop in ways that jeopardize the conservation of its rural nature. Similarly, clarifying the ban on bright line rules regarding rural density and requiring boards to consider local, anecdotal evidence in evaluating county plans prevents a board from ignoring the diversity of rural areas in pursuit of an easily applied and overly simplistic rule. The high level of discretion in oversight also helps minimize the kind of strategic behavior in which counties like Kittitas would engage under a more black-and-white system, as the boards and courts are required to evaluate the plans with regard to the general goals of the GMA, rather than simply checking off a list of requirements.

Somewhat perversely, the Kittitas County case also highlights the potential for high administrative costs under the GMA. The County’s litigation against the Board involved two separate suits filed at different stages in the process—first when the Board rejected the County’s initial plan, and again when the Board rejected the revised plan.\(^\text{127}\) Although the two cases were

\(^{127}\) *Kittitas County* at 1197.
ultimately combined and decided concurrently,\textsuperscript{128} the second case represents a considerable expenditure of effort and resources that was almost certainly duplicative of much of the first. Additionally, the simple requirement of a growth plan may represent a considerable hardship for rural counties that do not possess the resources to engage in economic planning. Those counties are likely to cut corners, as Kittitas County did here, resulting in additional litigation and further raising the cost of planning. Establishing some tighter limitations on the appeals process could offset some of these costs, although some are likely intrinsic to a system of oversight such as that established by the GMA.

However, creating tighter definitions in the policy would help cut administrative costs, as counties could more easily tailor their planning efforts to fulfill state requirements. Perhaps more significantly, both states and counties could expend considerably less time evaluating and adjudicating each plan. Also, because both rural areas and the desires of their populations regarding development vary considerably, oversimplification creates a potential for serious problems. For example, the creation of a rural density bright line could allow a county to develop beyond the point at which it retains its rural character if the line is set too low. Conversely, a rigid line might completely prevent growth if set too high. Allowing discretion for counties while requiring that they justify their decisions in a written record gives boards the capability to accommodate the varying nature of rural areas without having to impose categorical exclusions.

Finally, growth management can be conducted through incentivization, rather than regulation. By incentivizing urban renewal with tools like tax-increment financing, states can encourage developers to redevelop blighted neighborhoods for more productive uses.\textsuperscript{129} The

\textsuperscript{128} Id.
state also can eliminate some of the costs of development through the use of tools like eminent
domain, although that tool is highly controversial and may only be used for public benefit.\textsuperscript{130} The GMA does not incorporate any such benefits or cost reductions, which might have served to reduce the conflict between the Counties, the Boards, and, by extension, the State. Notably, however, both examples of incentives are framed in an urban context. Consequently, attempts to implement similar devices in rural areas would have to be employed carefully, as they could add additional administrative costs if too vague, or create perverse incentives that undermine policy goals if not carefully delineated. If the requirements for the receipt of incentives are not carefully constructed, strategic behavioral problems, where counties attempt to collect the incentives without paying the costs of the incentivized activity, are likely to undermine their effectiveness in accomplishing policy goals.

\textit{Kittitas County} is a case involving a classic conflict created by a top-down development policy. Because the GMA is essentially coercive—establishing requirements enforced with punishments and with no positive incentives for compliance—counties that must now meet its requirements engage in strategic behaviors, attempting to meet the technicalities of the GMA’s requirements without bearing the costs of doing so. These behaviors are reinforced by perceptions that county policies are being dictated by the state, whereas an incentive structure could more effectively foster agreement.\textsuperscript{131} Incorporating the carrot as well as the stick in the GMA might alleviate cases like \textit{Kittitas County} by encouraging willing participation, rather than simply enforcing it.

Overall, perhaps the greatest oversight in the GMA’s handling of rural economic development is that it relies exclusively on political boundaries that might not reflect economic

\textsuperscript{131} \textsc{Don Munton}, \textsc{Hazardous Waste Siting and Democratic Choice} 10-23 (Don Munton, ed., Georgetown University Press 1996).
realities. While its commitment to local governance is admirable, the GMA is not without the risk of negative externalities, to say nothing of unintended consequences like exacerbating sprawl and path dependence. Many of these problems might best be approached by greater intervention on the part of the state government, which is certainly possible, but is not provided under the GMA. What the GMA does do, however, is create a framework that allows regional and statewide cooperation through the development of a review process. While the addition of such responsibilities to the boards as they now exist might generate excessive administrative costs, at the very least the districts established under each regional board provide a convenient delineation that could potentially be used in the development of better regional collaboration.

Such collaborations might already be occurring, as no apparent dispensation prevents counties from involving the development bodies of adjoining counties in what could become a regional planning process. Such does not appear to be the case in Kittitas County, which might exemplify widespread cultural limitations that disincentivize collaboration between counties, particularly in situations when counties have historically competed for limited resources—but finding ways of shifting to a collaborative structure is likely to benefit all parties, as externalities could be more effectively addressed and resources more efficiently allocated. Collaborative county plans also provide the potential for a reduction in the administrative costs of review, as a unified plan across multiple counties would then require only a single review, rather than individual attention.

Additionally, regional collaboration might well be the most efficient means of providing a mechanism for addressing perhaps the most significant danger of the GMA’s decentralization and preservation agenda. If regional counties collaborate, they can provide themselves with the economies of scale necessary to address many of the issues arising from path dependence.
However, like essentially every other issue here, regionalism is a balancing act. Movement too far toward regional collaboration could result in consolidation, either in reality or in effect, and undermine the value derived from localized efforts.

V. Conclusion

Although the creation of well-defined, easily implemented rules to achieve policy goals is often tempting, some issues are simply too complex for such an approach. The State of Washington Supreme Court’s decision in Kittitas County restrains both itself and the regional boards it oversees from attempting to install simple but inflexible guidelines on the complex world of rural Washington. Creating a precedent that allowed the establishment of bright line rules could streamline the process, but might allow or even encourage counties to engage in strategic behaviors that could undermine rural preservation. While the GMA in practice is by no means a perfect approach to economic development policy in rural areas, its insistence on requiring that both the county and the board give careful, specific consideration to each situation is a unique and potentially effective approach. In so doing, the GMA avoids the pitfall of oversimplification in rural policy and maximizes the possibility that local development plans will walk the tightrope between development goals and the preservation of the benefits they provide to themselves and the rest of the state. However, the combination of decentralized structure and character preservation requirements might exacerbate problems, such as sprawl, that afflict rural areas, and the effectiveness of the GMA might be limited by its reliance on counties as units of measure. Identifying and implementing new ways to walk the tightrope between the many
conflicting concerns that affect efforts at rural economic development will determine the success of the Growth Management Act in years to come.

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