How Environmentalism Changed Urban Planning: English Green Belts to Washington Wetlands

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I. Introduction

Urban planning preserves green space to achieve three primary goals: to enhance quality of life, to encourage rural-based industries, and to protect the environment. The environmental goal is unique among those because it seeks to protect natural areas from human interference rather than shaping them to serve particular community purposes, such as to form a city boundary or build a farm or park. This paper examines how the addition of the environmental goal to urban planning conservation programs alters their structures. It compares an urban planning regime established before the environmental movement with a recent, environmentally oriented program and finds that the recent program’s environmental basis hindered the imposition of substantive state protections.

An environmental goal forces delegation to local planners for two reasons. First, restricting development for purely conservationist reasons garners less backing as well as more resistance from specific interest groups than protections intended to create more attractive cities, preserve recreational spaces, and promote rural industry. Central bodies therefore both lack the political mandate to insist upon specific implementation measures and prefer to pass the burden of refusing development requests to local authorities. Second, an environmental goal requires that plans be based on scientific data rather than economic or social considerations. Local ecosystems must be continually evaluated to determine which areas to protect and how to protect them, a task more efficiently performed by local bodies than state or national legislators. Because local authorities have fewer resources than larger bodies and are more susceptible to capture by
development-oriented interest groups, environmentally-based conservation efforts result in weaker environmental protections than those instituted for social or economic reasons.

Early twentieth century England and late twentieth century Washington State both experienced booming city populations which sprawled into the countryside, consuming it at a rapid rate. Part II of this paper analyzes the mid-century Green Belt conservation program that the English instituted, which conserved rings of green space around existing cities in order to enhance citizens’ quality of life and promote rural industry. It examines the historical circumstances prompting the Green Belt program, the legislation itself, its popularity, and the degree to which it furthers some but counteracts environmental sustainability. Part III compares this remarkably durable program to Washington State’s 1990-91 Growth Management Act (GMA) and in particular, the GMA’s environmentally-motivated wetlands protections, which prescribe procedures but leave substantive decision-making in the hands of local councils. This Part focuses on the GMA’s wetlands protections because unlike, for example, beaches or parks, wetlands provide no social or commercial amenities and are protected purely for their role in the ecosystem. Wetlands regulations therefore illustrate how the GMA has tried to fulfill the environmental goal that distinguishes it from the Green Belt regime.

Part IV of the paper discusses how protections based on economic and social purposes provide certain environmental advantages, in the form of forcefulness and durability, which explicitly environmentally based protections do not. A newly released English government commission report, the Barker Review of Land Use Planning, has recommended changes in the Green Belt regime that would move it toward the GMA model. It suggests greater flexibility to accommodate both sustainability and
development interests. Meanwhile, amendments in Washington’s wetlands protections have also increasingly tried to please both business and environmental interests by trading substantive protections for flexible but science-based procedural requirements. This paper seeks to remind environmentalists, before accepting such trade-offs, of the value of the substantive protections that ecosystem-based conservation has proven unable to provide.

II. England’s Green Belt

Urban sprawl in early nineteenth century England distanced residents from communities and city centers and consumed undeveloped green space. In an effort to preserve cities’ distinctiveness, to ensure attractive recreational space for city dwellers, and to protect rural industries, the English established Green Belts around existing cities as part of a comprehensive land use program. Development was prohibited on the Green Belts. Supported by a mandate from rural landowners eager to protect the distinctiveness of their properties and urban dwellers seeking smaller cities and recreational space, the national government was able to impose strong and substantive Green Belt policies. Green Belts remain in place today looking remarkably similar to their first manifestations, due to both their political popularity and the lack of complexity.

A. The Backdrop
The economic upheavals of the nineteenth and early twentieth centuries seemed to empty all England into London.\(^1\) Between 1801-1851, London doubled in population from one to two million but barely expanded its physical borders, remaining within a three-mile radius.\(^2\) By 1939, London’s labor market had reached over eight million, but technological advances in transportation allowed urban development to stretch to a radius of twelve to fifteen miles.\(^3\) The cramped city’s inability to support its newcomers caused a public health nightmare, prompting the growing middle classes to flee outward.\(^4\) With construction materials and land prices cheaper in relation to income than ever before or since, London’s refugees sprawled into suburbia.\(^5\) Urban development in the 1930s consumed 60,000 acres per year of England and Wales’ most fertile agricultural land.\(^6\)

The English desired both to surround themselves with the countryside and to preserve it from the sprawling metropolis. Urban dwellers developed nostalgia for the pastoral life and faith in the spiritual power of their nation’s countryside.\(^7\) Influenced by Social Darwinism, they believed that the cities impaired health and degenerated the English race.\(^8\) The idea of a weakening population, as well as the disappearance of agricultural land necessary to maintain English self-sufficiency, alarmed Imperialists concerned with maintaining British military might.\(^9\) English intellectuals and reformers considered how to rescue the poor masses from urban tenements and return them to the

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2 Id. at 21-24.
3 Id.
4 Id. at 24, 27.
5 Id. at 27. Home density in the new suburbs was as low as six homes per acre. Id.
6 Id.
8 Id. at 37.
9 Id.
countryside. The middle and working classes sought to rescue themselves. Though their new, more widely scattered homes provided a respite from the city’s filth, suburbanites grasping toward the pastoral found it elusive, as the closer they came, the more it filled with ever-multiplying petrol stations.

B. First Responses

In 1898, Ebenezer Howard prophetically declared the twentieth century the age of the “great exodus” from the “closely compacted, over-crowded city.” Howard developed the concept of Green Belts as a means of maintaining the distinctiveness of both urban areas and countryside. He proposed surrounding existing cities with green agricultural belts two to three miles wide. Samplings of their populations would be decentralized to new garden cities on undeveloped rural land outside of those belts, which would be built as densely as fifteen houses per acre and surrounded by their own Green Belts. Once one garden city reached a population of approximately 50,000, a second would be constructed on the other side of the first’s Green Belt.

Rural preserves were not designated for environmental purposes and ignored ecosystem boundaries. Rather, they were demarcated in the form that would best serve

12 *Id.* at 10.
13 Howard was not the first to suggest the idea of constraining cities with Green Belts, but he elaborated its financial, social, and physical implications and popularized the concept among English intellectuals. See Aalen, *supra* note 7, at 44-48.
particular social needs. They would maintain cities’ character by providing a buffer between neighboring cities or between a city and rural area. In addition, they would serve as healthy and clean recreational spaces. Finally, the belts would be agricultural land that would support the garden city residents. Howard’s thorough financial descriptions envisioned a collectively owned town and Green Belt which all residents would control and from which they would profit.

Howard and his peers envisioned physical designs as mere vehicles for social improvement. Garden cities would be socio-economically mixed communities, enabling urban slum dwellers to enjoy, farm, and profit from an accessible countryside. Yet though the physical means of carrying out his improvement mission has left a profound imprint English land policy, Howard’s humanitarian ends were forgotten by the government planners who took up his cause.

C. Formation of Government Policies

The land use policies implemented to combat sprawl reflect Howard’s physical designs even though his underlying humanitarian purposes were dropped as politically inexpedient. As in Howard’s plans, rural space was not protected for environmental purposes, but as a tool to enhance the city and the lives of its dwellers. Yet unlike in Howard’s vision, the Green Belts remained in the hands of existing landowners.

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16 Id. at 13.
17 Id. at 12.
18 MILLICHAP, supra note 10, at 11.
19 AALEN, supra note 7, at 40.
20 HALL, supra note 1, at 61.
21 Id. at 10-13; AALEN, supra note 7, at 45.
22 MILLICHAP, supra note 10, at 17.
Preserved green space was not collectively managed nor were its profits collectively divided so as to elevate the urban poor.23

Government committees convened to address urban growth problems throughout the interwar period and World War II. The Compensation and Betterment Commission’s Howardian suggestion that all British land be converted to state-owned leaseholds was jettisoned by rural landed interests.24 Instead, the government favored the approach of the Scott Committee on Land Utilization in Rural Areas, which recommended that agricultural land be preserved and only turned to urban uses in cases of demonstrated national need. Allaying rural landowners’ fears of state control, it emphasized that the farmer and forester were the natural “custodians and managers of Green Belts.”25 The Scott Committee implied that farmers’ and foresters’ business interests were synonymous with the public interest in both maintaining the distinctive character of the English countryside and fulfilling the nation’s economic needs.26

The detailed 1944 Abercrombie report laid the foundation for the Green Belt policy eventually implemented.27 It recommended a ten mile wide Green Belt around London, new local Green Belts around all urban areas, and a particularly protective Green Belt designation for designated national scenic areas.28 Like the Scott report, it rejected the idea of common ownership, nor did it provide for a cheap means of public access to the Green Belt.29 Moreover, it did not discuss the agricultural resources Green

23 Id.
24 Id. at 21. The Commission on Compensation and Betterment report suggested that all Great Britain’s land be converted into leasehold interests of the State, held at “peppercorn rent.” Id.
25 Id. at 21.
26 Id.
27 Id. at 24.
28 Id.
29 Id. at 22.
Belts might provide. Its rejection of humanitarian goals, its failure to mention its potential agricultural utility, and its emphasis on protecting scenic countryside from sprawl all reflect an effort to market the Abercrombie plan as providing an attractive amenity. It succeeded in garnering support among the upper and middle classes who could afford private transport to Green Belts or homes along its periphery.

Green Belt policies were passed because they appealed to the interests of politically powerful groups. In contrast to Howard’s plans, updated by the Compensation and Betterment committee, for state-owned green preserves to be shared by all, the ultimately successful 1940s land use proposals did not displace wealthy property owners. So long as they could maintain their land, the moneyed classes welcomed the Green Belt regime as a guardian of the traditional character of their countryside against urban encroachment. In addition, so long as the middle classes were able to access and enjoy the countryside, their urban nostalgia for the English pastoral life suggests that they were also content to retain its traditional structure. Finally, farmers and foresters were reassured that their existing land uses would be protected, and, as the policies were implemented about the same time as an agricultural subsidy program, compensated. The urban poor were forgotten.

D. The Legislation

30 Id.
31 MILICHAP, supra note 10, at 22-26.
32 Id.
33 Gareth Capner, Green Belt and Rural Economy, J.P.L. 1994, Dec, Occ Pap 22 76, 78.
34 Id.; MILICHAP, supra note 10, at 21.
35 When landowners refused them access, members of the middle classes became impatient with aristocratic control. See infra discussion of the National Parks and Access to the Countryside Act; see generally the history of the Freedom to Roam movement’s lobbying for footpaths and other recreational provisions through huge estates, www.ramblers.org.uk/news/media/ramblers-history.html.
36 MILICHAP, supra note 10, at 27.
The enthusiasm greeting the new land use policies was reflected in their structures. The national government retained extensive authority in almost all of the new programs. In 1946, the government enacted the New Towns Act, establishing its authority to construct small new garden cities which were sized similarly to the Howardian model but owned by the national government rather than by a socio-economically mixed population that would profit from its industries.\(^{37}\) The 1946 Act established a centralized process which, with remarkable efficiency, constructed fourteen new towns nationally, eight of them around London, in the first four years of the Act.\(^{38}\)

In 1947, the government laid the basis for rural preservation through the Town and Country Act, which nationalized the right to develop land (as opposed to nationalization of the land itself).\(^{39}\) First, it nationalized all development rights, compensating landowners for those rights with a fixed amount out of a national fund.\(^{40}\) Next, it reassigned planning power from local to regional bodies, reducing the number of planning authorities from 1,441 to 145 in England and Wales.\(^{41}\) They were required to develop, periodically revise, and administer local development advisory plans based on area surveys and analysis. The plans were subject to approval of the new national Ministry of Town and Country Planning (Ministry).\(^{42}\) Anyone who wanted to develop...

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\(^{37}\) See generally Hall, supra note 1, at 78 for a full description of the New Towns Act of 1946.

\(^{38}\) Id. at 81. The Ministry created a development corporation to manage and build each town until the construction period ended. At the end of the construction period, the towns reverted to statutory authority. Four-fifths of all new homes were built by the public sector during that period. Id.

\(^{39}\) See generally Hall, supra note 1, at 82 for a full description of the Town and Country Act of 1947.

\(^{40}\) Barry Cullingworth & Vincent Nadin, Town and Country Planning in the UK 21 (2002). In practice, the compensation plan was so complex and controversial that its resolution took decades. See generally Hall, supra note 1, at 84.

\(^{41}\) Hall, supra note 1, at 84.

\(^{42}\) Id. The Ministry of Communities and Local Government now oversees Town and Country Planning in the UK. http://www.communities.gov.uk/.
land, meaning to build structures that would change its use, was now required to apply to the local planning authority. 43

Green Belt policies were implemented through the Town and Country Act’s planning mechanisms. 44 In 1938 Parliament had passed the Green Belt Act, establishing a two mile wide Green Belt around London to limit the city’s expansion and preserve recreational and rural space. 45 In 1955, the Ministry expanded upon the Act through Town and Country mechanisms. It issued an executive regulation, a Circular, to local planning authorities which largely implemented the Abercrombie report. 46 It expanded London’s Green Belt to a width of ten miles, demarcated particularly scenic areas for additional protections, and established Green Belts around all other urban areas in the UK. 47 Though the Green Belt concept was politically popular, the government did not submit it to Parliament because post-World War II agricultural subsidies made the preservation of so much farmland an expensive proposition. 48 Yet because the executive was able to impose its Green Belt vision directly through the Town and Country Act’s efficient pipeline, its requirements were sweeping. 49

The Town and Country Act’s large grant of authority to both national and local planning authorities was accompanied by few procedural guidelines or safeguards. Planning shifted from a regulative function to one subject to permission. 50 Given broad discretion in their approval decisions, the local authority could refuse any development

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43 HALL, supra note 1, at 84.
44 Id.
45 Id. at 18-19.
46 Capner, supra note 33, at 78.
47 Id.
48 MILLICHAP, supra note 10, at 27.
49 Id.
50 CULLINGWORTH & NADIN, supra note 40, at 21.
application by declaring it would cause more harm than good.\textsuperscript{51} They were not required to conduct public hearings or provide public notice of an agreement’s contents before granting development permission, rendering challenges from area residents or the developers’ rivals difficult.\textsuperscript{52} The permit process is quick; over 80\% of permits are approved or rejected within two months.\textsuperscript{53} A rejected party could not seek judicial review, only appeal to the national Ministry.\textsuperscript{54} The enthusiasm for regional and national governmental prerogative reflected in the 1940s land use regime attained efficiency at the expense of consistency, transparency, and public participation.\textsuperscript{55}

E. The National Parks and Access to the Countryside Act of 1949

In contrast to the land use legislation, the National Parks and Access to the Countryside Act of 1949 demonstrates the lack of national prerogative accorded to green space regulation when it opposes the interests of the politically powerful. Like the Green Belt regime, the 1949 law was founded to ensure that the English “public’s open air enjoyment are amply provided [sic]” in a pristine countryside.\textsuperscript{56} Yet unlike the Green Belt policy, which preserved the existing uses of certain areas and did not provide for public access, the 1949 law aimed to loosen landowners’ control over their countryside

\textsuperscript{51} MILLICHAP, supra note 10, at 27.
\textsuperscript{53} Simon Jenkins, \textit{This is an Open Invitation to Developers to Try Their Luck}, The Guardian, Dec. 6, 2006. \textit{Available at} \url{http://www.guardian.co.uk/commentisfree/story/0,,1964979,00.html}.
\textsuperscript{54} Id.; MILLICHAP, supra note 10, at 28.
\textsuperscript{55} MILLICHAP, supra note 10, at 28. For example, in one case, the Minister approved on appeal a medical research facility on Green Belt land, justifying it as promoting the Green Belt’s goals of the public health and welfare. Id.
\textsuperscript{56} Id. at 26.
by setting aside areas for the broader public’s recreation.\textsuperscript{57} Landowners who supported Green Belts in order to protect their property opposed access rights, which they felt would undermine their control.\textsuperscript{58}

The original National Parks and Access to the Countryside proposal granted sweeping substantive authority to the national government over swaths of countryside possessed by large estates.\textsuperscript{59} It intended to develop long distance, clearly defined footpaths across the particularly scenic areas the Abercrombie report discussed.\textsuperscript{60} Pressure from landowners, however, reduced it to a mere direction for procedural action at the local level, along with certain development restrictions.\textsuperscript{61} Local councils were permitted to negotiate for access to open countryside in their areas, usually in exchange for compensation to the landowner.\textsuperscript{62} A weak national advisory Commission delegated almost all investment and planning to those councils.\textsuperscript{63}

Large landowners’ resistance to providing access has hindered the goals of the act.\textsuperscript{64} In the early 1950s, 30 councils considered no action necessary and another 7 concluded no open country existed in their jurisdictions.\textsuperscript{65} The slow rate of access provision has continued till today.\textsuperscript{66} The National Parks and Access to the Countryside Act’s replacement of substantive with procedural mandates and its foisting of implementation responsibilities on ineffective local authorities indicates the shape that

\textsuperscript{58} HALL, \textit{supra} note 1, at 87.
\textsuperscript{59} RYAN QC \& MEYRICK, \textit{supra} note 40, at 125-126; Hall, \textit{supra} note 1, at 87.
\textsuperscript{60} HALL, \textit{supra} note 1, at 87.
\textsuperscript{61} RYAN QC \& MEYRICK, \textit{supra} note 40, at 126.
\textsuperscript{62} \textit{Id.}; HALL, \textit{supra} note 1, at 87.
\textsuperscript{63} HALL, \textit{supra} note 1, at 87.
\textsuperscript{64} RYAN QC \& MEYRICK, \textit{supra} note 40, at 128-129.
\textsuperscript{65} \textit{Id.}
\textsuperscript{66} \textit{Id.}
Green Belt legislation could have taken if the Abercrombie and Scott reports had not rejected the Green Belt’s social reformist ancestry and recast them as an amenity for the middle and upper classes.

F. Green Belts’ Enduring Popularity

Planners agree that the Green Belt is one of the most popular planning programs in English history. The London Green Belt expanded continuously during the decades following the policy’s implementation. It is the largest of a Green Belt family that now encompasses almost 13% of English land, over 1.5 million hectares. When the conservative government tried to introduce greater flexibility into the Green Belt system in 1983, the outraged public response resulted in a new policy statement affirming the permanence of Green Belts and prohibiting alterations unless in “exceptional circumstances.” A 1989 study indicated that 4/5 of the public believe Green Belts should be protected at any cost.

Green Belts’ popularity is reflected in their success at achieving their aims. Studies have concluded that they achieve their goals of checking unrestricted sprawl and preventing towns from merging into one another. Moreover, despite the discretion exercised by local authorities in issuing development permits, Green Belt boundary alterations affected fewer than 0.3% of Green Belts in areas studied over an eight-year period.

67 CULLINGWORTH & NADIN, supra note 40, at 179; KATE BARKER, BARKER REVIEW OF LAND USE PLANNING: FINAL REPORT AND RECOMMENDATIONS 61 (December 5, 2006). Available at www.barkerreviewofplanning.org.uk.
68 BARKER REVIEW, supra note 67, at 9; HALL, supra note 1, at 83.
69 Capra, supra note 33, at 78.
70 Id. at 84.
71 CULLINGWORTH & NADIN, supra note 40, at 179; BARKER REVIEW, supra note 67, at 9.
period.\textsuperscript{72} Most planning alterations have been minor and lacked significant impact on the Green Belts’ character.\textsuperscript{73} Ministerial appeal decisions strongly upheld Green Belt policy.\textsuperscript{74}

Green Belts are popular and well protected because, first, they satisfy the interests of the chief stakeholders involved in land use issues. County councils and the national Ministry use them as a tool for coordinating or checking development-oriented local authorities. Chafing at their restrictions, builders nonetheless depend on Green Belts to provide investment certainty, indicating where towns will expand and where construction will never be permitted.\textsuperscript{75} Agriculturalists and rural landowners appreciate the barrier they pose against urban influences.\textsuperscript{76} Finally, those who can afford to live nearby appreciate the availability of this green amenity, “especially,” as the Minister noted in the Town and Country bill debates, “now that holidays with pay will enable more people to enjoy them.”\textsuperscript{77}

The Green Belts’ political popularity permitted a relatively top-down, uncomplicated Green Belt preservation system that has further enhanced the policy’s appeal.\textsuperscript{78} The system’s simplicity appeals to members of the public who may not attend to complex economic or scientific analyses of land use, but who intuitively comprehend the idea of a central authority setting aside a piece of green space on which nobody may

\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} Id. at 180; Barker Review, supra note 67, at 3.
\textsuperscript{76} Id. at 180.
\textsuperscript{77} Second reading debate on the Town and Country Planning Bill, HC Debs [432] 29 January 1947, col. 947-948 per Lewis Silkin, Minister for Town and Country Planning. The Minister’s comment reflects how the emergence of Green Belts coincided with the increasing availability of leisure time, and appreciation of leisure activities, among the middle classes in the mid-twentieth century.
\textsuperscript{78} The Barker Review has criticized the permit process as complicated, urging the implementation of “fast-track” procedures, but Barker’s critics argue that a quicker process will ignore local and environmental concerns. See generally Barker Review, supra note 67. Regardless, the current system is more efficient than Washington state’s processing system.
As a result, Green Belts formed a tangible focal point for what eventually became the environmental lobby. As the clearest, simplest, and most consistent planning policy in the United Kingdom, they are today one of the most durable and deeply established.

**G. Sustainability and Green Belts**

Support for Green Belts rests upon the desire to protect rural areas for their community and economic functions rather than to promote environmental sustainability. Local authorities pay little attention to land management within Green Belts and some are derelict wasteland. In addition, the fact that public support for Green Belt protection increases in an inverse relationship to the width of the belt, particularly if they surround historic towns, suggests that they are appreciated more for their roles in maintaining the distinctive character of urban areas than serving as environmental preserves, in which case larger areas would be more valued.

Green Belts also sometimes promote unsustainable growth patterns. When cities reach their capacity, rather than expanding along their peripheries, developers must “leap-frog” the Green Belts into untouched rural land. The character of an inner city is

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79 *Id.* at 179.
80 *Id.* at 180.
81 Capra, supra note 33, at 82.
82 MILLICHAP, supra note 10, at 13. In 1984, long after the original legislation was passed, an environmental purpose was added to the list of Green Belt objectives. The Green Belt’s list now includes the mission “to secure nature conservation interest.” Barker Review, supra note 67, at 64.
83 CULLINGWORTH & NADIN, supra note 40, at 183 and Barker Review, supra note 67.
84 Capra, supra note 33, at 82.
85 CULLINGWORTH & NADIN, supra note 40, at 180.
so different from a periphery that it will rarely provide a desirable substitute.\footnote{Id. See also id. at 180-182 for a discussion of the affordable housing problems caused by Green Belt containment.}

Therefore, some Green Belts promote development of undeveloped land instead of land along an urban fringe with less environmental value or proximity to existing public transportation nodes.\footnote{BARKER REVIEW, supra note 67, at 46.} No attention was paid to ecosystem boundaries when Green Belts were created, nor was the environmental value of a potential Green Belt site taken into account. Green Belt protections may expend resources to protect environmentally unimportant land while permitting development in critical areas.\footnote{Id.}

Because Green Belts often separate residential villages from downtowns, they can lengthen commutes, increasing air pollution from commuters’ tailpipes.\footnote{Capra, supra note 33, at 84.} For example, the Green Belt adds an additional fifteen km. to the commutes of those living in towns bordering London.\footnote{Id; BARKER REVIEW, supra note 67, at 59.} In Oxfordshire, while the development plan encourages growth in selected towns outside of the central town’s Green Belt, the residents of the new towns almost all commute by car into other towns, while those on the one periphery housing development permitted at the edge of the central town can and do use public transportation.\footnote{CULLINGWORTH & NADIN, supra note 40, at 182.} Public transportation systems are capable of stretching across Green Belts, but the additional expanse reduces efficiency and increases costs.

This paper cannot quantitatively measure the environmental effects of the mid-twentieth century Green Belt policies. Though the Green Belt has proved relatively sturdy during the past half-century, its policies have been continually updated since their
first incarnation. Current studies of Green Belts’ effectiveness would reflect the results of the updates as well as the original plan. Because this paper compares the pre-environmental form of land preservation with post-environmental awareness plans, studies reflecting recent modifications of the Green Belt are irrelevant. Therefore, this section is only able to consider the likely results of the fundamental Green Belt policy and individual cases demonstrating the effects of that fundamental policy.

III. Washington State

A. Wetlands

This Part discusses Washington State’s Growth Management Act, examining its approach to wetlands protection in particular detail to highlight how an environmentalist ethic alters green space preservation planning. Wetlands exemplify areas protected for their environmental role and not for recreational or economic values. Often unattractive, they do not support lucrative industries and one would sink if one tried to hike through them. Their greatest benefits, such as flood protection, are chiefly noticed when they are absent. Even those are realized by the general tax base rather than particular interest groups. The difficulties the state has encountered in regulating wetlands illuminate the political and scientific challenges of environment-based land use planning.

B. The Backdrop

92 See generally Capra, supra note 33, at 78, Barker Review, supra note 67, at 64 for a description of modifications, including the addition of an environmental preservationist goal in 1984.
1. Support for Growth Management

In late twentieth century Washington State, citizens experienced many of the same frustrations with rapidly expanding cities that Londoners experienced in the earlier part of the century, but their concerns were linked with additional anxiety over sprawl’s environmental destructiveness. After World War II, cities all over America expanded into low-density suburbs, as a growing middle class’ desire for houses with backyards was aided by government-subsidized insured house mortgages, tax breaks to industries leaving cities, highway spending, and the failure to maintain cities’ public transportation systems.93 As in England, those who could afford to do so stretched ever further from city centers into rural land, lengthening their commutes.94 Washington State experienced particularly rapid sprawl, as its booming economy doubled its population between 1950 and 1990.95

Middle class residents of the urban concentrations of Central Puget Sound grew angry with both the dense development and rising home prices inside their cities and the disappearing countryside awaiting those who tried to escape.96 Local governments became frustrated by the high cost of expanding urban infrastructure to sparsely scattered new houses arising ever deeper into rural areas.97 Moreover, those who had been

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94 See generally id. at 151-153.
97 Id. at 873; TIM TROHIMOVICH, 1000 FRIENDS OF WASHINGTON, “THE GROWTH MANAGEMENT ACT AFTER MORE THAN 10 YEARS: ANOTHER LOOK & A RESPONSE TO CRITICISMS. April 2002, at 16.
wealthy enough to buy one of the new houses in the sprawl’s periphery wanted protection for their investments.\textsuperscript{98} If a developer were to construct a new subdivision to replace their forest views, not only would the owners lose their rural amenity, but their property values would sink.\textsuperscript{99} In addition to the ill social effects of haphazard development, the environmental movement, which began in force in the 1970s, had awakened in citizens an awareness of the unsustainability of indefinite consumption of natural resources. Like Londoners a generation before, Washingtonians felt a spiritual loss from the disappearing green space and regretted the absence of a relaxing and recreational amenity,\textsuperscript{100} but such regrets were coupled with the understanding that increasingly polluted air and waterways are ultimately unsustainable.\textsuperscript{101} Disrupting ecosystems also wrought havoc on watershed systems, requiring expensive facilities to replace the functions that green space performs naturally. In the case of wetlands, they are natural water purifiers and flood reduction systems.\textsuperscript{102} Sprawl’s detrimental effect on quality of life coupled with its environmental destruction inspired Central Puget Sound voters to press for a statewide development regulation plan.\textsuperscript{103} Though Oregon had set an example for such plans with its 1973 legislation, few states had followed since.\textsuperscript{104}


\textsuperscript{99} Id.

\textsuperscript{100} Brent D. Lloyd, Accommodating Growth Or Enabling Sprawl? The Role Of Population Growth Projections In Comprehensive Planning Under The Washington State Growth Management Act, 36 Gonz. L. Rev. 73, 146 (2000-01); see generally Settle & Gavigan, supra note 96, at 869-880.

\textsuperscript{101} See Settle & Gavigan, supra note 96, at 873; 880.

\textsuperscript{102} WASHINGTON STATE DEPARTMENT OF ECOLOGY, supra note 97, at 3-2.

\textsuperscript{103} Settle & Gavigan, supra note 96, at 869.

B. Resistance to the GMA

One night in 1991, the Clark County planning council met to determine where to demarcate environmentally critical areas, as required by the GMA. Angry farmers placed a mother cow on one side of the meeting building, her calf on the other, and watched delightedly as the miserable mother drowned out the session with her bellows.\textsuperscript{105} The incident illustrates Washington’s rural dwellers’ resentment of what they perceive as the urban majority’s imposition of their romantic notions of rural character on rural land.\textsuperscript{106} In the United States, land ownership forms the basis of the self-sufficient rural lifestyle and rural dwellers tend to understand state growth management as an interference with the values of land ownership and self-sufficiency, imposed to serve urban purposes.\textsuperscript{107} In contrast, the most politically powerful English rural interest group is the moneyed landowning class, which was eager for assistance in maintaining the traditional character of the countryside.\textsuperscript{108} Whereas the upper classes perceived their countryside as an amenity worthy of protection, Washingtonian farmers view their property as serving functions with which environmental restrictions interfere.

The fact that Washington rural residents were not paid for environmental restrictions on their properties, whereas the English were compensated for nationalized development rights, likely widened the variation in rural responses to the two plans.\textsuperscript{109} In

\begin{footnotesize}
\begin{enumerate}
\item Telephone Interview with Rita Robison, Senior Planner, Washington State Department of Community, Trade and Development (Nov. 1, 2006).
\item \textit{see generally} Debra Lynn Bassett, \textit{The Rural Venue}, 57 Ala. L. Rev. 941, 962-63 (2006).
\item See generally id.
\item MILLICHAP, \textit{supra} note 10, at 21.
\item In Washington, the government is permitted to impose restrictions on property without compensating landowners so long as the restrictions pass the state’s “takings” test: First, the challenged regulation must
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\end{footnotesize}
addition, the English nationalization began at the same time as an agricultural subsidy program, which appeased potential resistance, whereas Washington farmers in the 1990s had become accustomed to subsidies.\textsuperscript{110} Nonetheless, rural Washingtonians did not ask for money, but rather voiced outrage over infringement of their property rights, which are necessary to the self-sufficient culture they sought to protect.

Developers initially protested both the English and Washington growth plans as restricting their freedom to build, but the incoherence of environmental restrictions rendered Washington limitations a greater threat.\textsuperscript{111} Once Green Belts were established, developers knew where urban growth would permanently be forbidden and where concentrated. In contrast, environmental science-based restrictions emerge unpredictably and authorities constantly reevaluate the forms of protection various areas require. A developer can easily determine whether the property he buys is within a Green Belt, but may be caught by surprise to learn that the muddy patches on his plot are protected wetlands, let alone knowing whether they require Class I or Class III buffer zones. Environmental restrictions not only limit investment, but do so unpredictably.

\textbf{C. The Legislation}

\textit{1. Environmental Mission}

- protect the public interest in health, safety, the environment, or an area’s fiscal integrity; second, the regulation may not destroy or derogate any fundamental attribute of ownership, including the rights to possess exclusively, to exclude others, and to dispose of property. State courts have tended to permit broad discretion to the governments. Jeffrey M. Eustis, \textit{Between Scylla And Charybdis: Growth Management Act Implementation That Avoids Takings And Substantive Due Process Limitations}, 16 U. Puget Sound L. Rev. 1181, 1192 (1993).
- \textsuperscript{110} MILLICHAP, supra note 10, at 21.
- \textsuperscript{111} CULLINGWORTH & NADIN, supra note 40, at 180, Lloyd, supra note 100, at 83.
The Washington State legislature passed the Growth Management Act in two parts between 1990-91. One of its thirteen goals is environmental preservation: to “protect the environment and enhance the state’s high quality of life, including air and water quality, and the availability of water.” Within and between designated urban areas, green corridors must be provided “for recreation, wildlife habitat, trails, and connection of critical areas.” The sprawl restrictions, allusion to “rural character,” and the “recreation” and “trails” allowances indicate that, like the English Green Belt regime, the GMA’s green space preservation is partly intended to provide community amenities, indulging recreational and nostalgic desires. However, the obligations to maintain “wildlife habitat” and “connection of critical areas” reflect the GMA’s additional concern with environmentalism, distinguishable from the “amenity” approach in that it urges that green areas be protected from human interference rather than being shaped to serve particular social or economic ends and accommodate our interaction with it.

The GMA largely consists of procedural directives, but one of its few substantive requirements forces counties to identify and form protection plans for natural resource and environmentally critical areas before developing comprehensive local plans.

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112 See generally Settle & Gavigan, supra note 96, at 900-906.
113 RCW § 36.70A.020(10). The other thirteen goals included encouraging development in urban areas and reducing rural sprawl; conserving lands with economically valuable natural resources, such as timber, as well as environmentally critical areas; preserving historical areas and structures; protecting private property rights; encouraging efficient public transportation systems; and encouraging the availability of affordable housing. See TROHMOVICH, supra note 97, at 2.
114 LEAGUE OF WOMEN VOTERS, supra note 95, at 32; RCW § 36.70A.160.
115 Settle & Gavigan, supra note 96, at 906. Other substantive requirements call for increased affordable housing and ensuring public facility construction concurrent with new development. Id. The GMA does not apply to the entire state. Counties fall within its mandate if they either exceed specific population and growth rate thresholds, or by choice, and approximately one-third of the current GMA counties have adopted it by choice. Nonetheless, all counties, regardless of whether they have adopted the GMA, were required to demarcate critical areas. Alison Moss & Beverlee E. Silva, Regulation Of Wetlands In Western Washington Under The Growth Management Act, 16 U. Puget Sound L. Rev. 1059, 1062 (1993); Robert L. Fischman, Jaelith Hall-Rivera, A Lesson For Conservation From Pollution Control Law: Cooperative Federalism For Recovery Under The Endangered Species Act, 27 Colum. J. Envtl. L. 45, 125 (2002).
Critical areas included wetlands; areas that serve to recharge aquifers used for potable water; fish and wildlife habitat conservation areas; and frequently flooded areas.\footnote{Moss, supra note 115, at 1062-63. Protecting critical areas is defined as permitting no net loss of their “structure, values and functions,” so localities may decide to develop certain areas if they prevent or mitigate its adverse impacts. \textit{Id.}} Subsequent comprehensive development plans must establish Urban Growth Areas (UGAs) where all urban development would be concentrated.\footnote{\textit{Id.}} As opposed to the English Green Belts, which were placed where best suited to providing amenities and urban limits, Washington’s urban development and amenities are based obey ecosystem boundaries.

2. Procedural Structure

Political pressure from local governments as well as rural property owners and developers who felt that local governments would impose less onerous restrictions on property use, resulted in a statute that imposed procedural rather than substantive requirements on local planners.\footnote{Interview with Rita Robison, supra note 105.} The GMA requires that local authorities design a
comprehensive growth plan to serve as the basis for development.¹¹⁹ Unlike the English plans, the GMA proposals are presumed valid and do not need state approval.¹²⁰

Plans can only be challenged if another GMA county or city, the state, or person (including corporations and other organizations) files suit at the regional Hearings Board, the GMA’s enforcement mechanism.¹²¹ To appease rural Washingtonians, who feared oversight from an anti-development urban body, three regional Boards were established.¹²² Each is composed of land use experts.¹²³ The power to remand noncompliant plan provisions to local councils for rectification or impose sanctions forms the extent of the Boards’ authority.¹²⁴

Local authorities possess the discretion to decide how to prioritize the Act’s often conflicting goals; minimum standards of density for urban and rural areas; the size of their demarcated urban development area relative to projected local population growth; and the nature of environmentally critical and natural resource area protection.¹²⁵ The state agency which oversees the Act cannot issue binding guidelines and regulations, but is limited to providing information, technical assistance, and outlining procedures for plan adoption.¹²⁶ Similarly, the state’s Office of Financial Management issues population projections for each county, but counties are not required to limit the size of

¹¹⁹ Settle & Gavigan, supra note 96, at 904, 915.
¹²⁰ Id. at 874. But see Or. Rev. Stat. § 197.540 (1995). Oregon’s land use system, like its sister two-decades-old Florida land use program, retains extensive state authority to approve local plans. Programs in Maryland, Rhode Island, Maine, Vermont, and Georgia are considered “bottoms-up,” like Washington’s, and do not. Porter, 13 Pace Envt’l L. Rev. at 553-554, 554 n. 20.
¹²² Id. at 11.
¹²³ Id.
¹²⁴ Id. at 10.
¹²⁵ Id. at 901, 936, 938.
¹²⁶ Eustis, supra note 109, at 1188; Settle & Gavigan, supra note 96, at 899. The current oversight agency, the Washington State Department of Community, Trade and Development, was entitled the Department of Community Development at the time of the GMA’s passage Id.
their development areas proportionately, only to consider the projections in forming their plans. The GMA supplies vague and conflicting goals and expertise to achieve them, but fails to ensure that the expertise is used to reach the goals.

2. Hearing Boards: Attempting to Fill Substantive Gaps

The Growth Management Hearing Boards’ controversial practice of issuing substantive requirements emphasizes the gaps in the GMA’s procedural structure. Their rulings contain bright-line requirements, absent from the statute, such as a minimum urban density of four homes per acre. Recognizing that their procedurally-based law necessitated such judicial gap-filling, the state legislature affirmed the Boards’ asserted authority in 1995 GMA amendments above the protests of property rights interest groups. The amendments authorized the Boards to invalidate local comprehensive plans and regulations. Many comprehensive plans have changed their zoning density requirements as a result of their rulings.

Though the Boards’ powers have expanded, the only check on comprehensive plans’ adherence to GMA goals occurs when citizens and nonprofit organizations muster

127 Lloyd, supra note 100, at143. Establishing a proper UGA size is essential to the success of a comprehensive plan. If it is too small, it will cause inflationary land and housing costs inside of it and encourage people to move to neighboring counties, whereas if it is too large it will encourage low density development within. Keith W. Dearborn & Ann M. Gygi, Planner’s Panacea or Pandora’s Box: A Realistic Assessment of UGAs in Achieving Growth Mgmt Goals, 16 U. Puget Sound L. Rev. 975, 999 (1993).
129 Interview with Rita Robison, supra note 105.
130 See generally CTED, supra note 121, at 32.
131 Id.
132 See generally LEAGUE OF WOMEN VOTERS, supra note 95, at 43 for examples of Board decisions. When appealed to state courts, the Boards have been upheld 94.7% of the time. TROHIMOVICH, supra note 97, at 17.
resources to file challenges. Yet when citizens lack resources to mount a legal challenge within the required time interval, weaknesses remain in comprehensive plans indefinitely. The Boards’ limited jurisdiction to invalidate plans that happen to be challenged does not compensate for the lack of comprehensive county plan oversight.

D. Problems of Decentralization

While the GMA has experienced great successes in preserving green space from urban development, its critical areas protections have been the most controversial and the least consistently enforced. This section explores the disadvantages that a decentralized form of critical areas protections poses in contrast to the state-based substantive restrictions imposed on Green Belt development. The gravest problem with the latitude accorded many local governments to demarcate critical areas is its frequent failure to implement stringent protections due to political pressure from the business and rural property-rights community. Jurisdictions where property rights interest groups have exerted greatest pressure have failed to properly designate fish and wildlife habitat, flooded areas, and steep slopes as critical areas, or to establish appropriate wetlands buffers.

133 Telephone Interview with Tim Trohimovich, Planning Director, Futurewise (Nov. 1, 2006). Environmental organizations challenge most weak critical area ordinances. The need for environmental enforcement is evident in the fact that their challenges to comprehensive plans and ordinances win, Trohimovich estimates, 85-90% of their suits, whereas developers’ challenges tend to lose. Id.

134 LEAGUE OF WOMEN VOTERS, supra note 95, at 43.

135 Interview with Rita Robison, supra note 105; see also TROHIMOVICH, supra note 97, at 27. Examples of successes include a dramatic reduction in the rate of development of agricultural land and the fact that in the past twenty years, residents of Washington State have used less land per capita than residents in all but six other states. For further examples, see generally TROHIMOVICH, supra note 97, at 6-7.

136 TROHIMOVICH, supra note 97, at 27.

137 LEAGUE OF WOMEN VOTERS, supra note 95, at 32.
Decentralization also hinders precise measurements of the effectiveness of critical area protections. Each county developed a particular method of surveying, marking, and protecting critical areas, rendering a comparative evaluation difficult.\textsuperscript{138} In addition, the need to develop design surveys and plans on their own, rather than receiving state instruction, is prohibitively costly and burdensome for many counties.\textsuperscript{139} Poor rural counties, with few resources and many potential critical area designations, tend to encounter the most difficulty.\textsuperscript{140} Finally, variations between counties and the uncertainty of the judicially-based review process create business uncertainty for farmers and developers, hindering their investment ability.\textsuperscript{141}

Past state efforts at smart growth failed because they emphasized procedure in place of substantive mandates and enforcement mechanisms.\textsuperscript{142} For example, the State Environmental Policy Act established a review program of local regulatory and public facility development actions, but it was based on a given local government’s voluntary commitment.\textsuperscript{143} The Washington Supreme Court’s requirement that local officials consider the external environmental impacts of their land use regulations was similarly too general to be effective.\textsuperscript{144} Without the state’s statutory backing, few local council members were able or willing to face down the development and property rights

\textsuperscript{138} Id. at 33; TROHIMOVICH, supra note 97, at 26-27. GMA assessments of non-profit organizations and state agencies have so far been unable to develop a quantitative comparison in the degree of protection afforded by each. Trohimovich, supra note 97, at 26-27; See generally CTED, supra note 121.

\textsuperscript{139} CTED, supra note 121, at 20; Settle & Gavigan, supra note 96, at 898.

\textsuperscript{140} LEAGUE OF WOMEN VOTERS, supra note 95, at 33. Tim Trohimovich noted that Seattle’s planning staff’s lack of expertise has resulted in ineffective critical areas ordinances there as well. Trohimovich Interview, supra note 133.

\textsuperscript{141} Id. at 30.

\textsuperscript{142} Settle & Gavigan, supra note 96, at 877.

\textsuperscript{143} Id. at 877-78.

\textsuperscript{144} S.A.V.E. v. Bothell, 89 Wash. 2d 862, 869 (1978).
The Growth Management Act provides more backing than these efforts and environmentalists hope that it provides enough.

Responding to the problems of decentralization, environmentalists and scholars have issued continuous calls for an enhanced state role, closer to the Green Belt model. Futurewise, a state non-profit land use organization, suggests that the state should review and approve comprehensive plans and development regulations to ensure greater compliance consistency and that the administering state agency receive authority to issue binding interpretive rules through notice and comment rulemaking. The League of Women Voters also recommends a “safe harbor” regulation that would protect jurisdictions from judicial challenges if they follow state designated procedures.

E. Science-Based Decentralization

While environmental advocates and scholars pressure the state for more specific and substantive critical areas guidance, they have also emphasized the need for wetlands regulations to be tailored to accommodate ecosystem differences. Current land use scholarship is in agreement that environmental protection must build upon analyses of individual resources’ interconnections with elements in their surroundings, such as species or pollution sources. The movement for localized scientific analyses hinders

145 Settle & Gavigan, supra note 96, at 879, 898.
146 See, e.g., Trohimovich, supra note 97, at 28, Settle & Gavigan, supra note 96, at 899.
147 TROHIMOVICH, supra note 97, at 28.
148 LEAGUE OF WOMEN VOTERS at 32.
149 See generally Moss; Wash. State Dep’t of Ecology.
the imposition of the substantive state mandates that environmentalists seek and
counteracts lobbies for centralized rulemaking.

For example, responding to environmentalist pressure to strengthen the GMA’s
decentralized critical areas regulations, the state legislature convened a commission to
write a comprehensive state critical areas code.\textsuperscript{151} As they were completing their task,
property rights activism persuaded the legislature to pass a compromise amendment
instead. Rather than imposing a substantive state code, the legislature passed an
amendment requiring counties to establish their own critical area codes using Best
Available Science.\textsuperscript{152}

All parties hailed the Best Available Science requirement as a fair compromise
because though individual counties retained all decisionmaking authority, their
protections must be based in ecosystem science.\textsuperscript{153} Environmentalists ceded substantive
 gains in exchange for science-based procedural rules. Yet the procedures were not fully
effective. They further burdened counties’ planning procedures and many found them
too cumbersome or expensive to use.\textsuperscript{154} In addition, Best Available Science requirements
limits discretion to plan around personal property boundaries or uses, so this procedural
requirement likely generated fiercer resistance at the already vulnerable local level from
rural property owners and developers.

The tension between substantive and science-based regulation also appears in the
state’s wetlands protection guidance. Before the GMA was enacted, the state issued a

\textsuperscript{151} Interview with Rita Robison, \textit{supra} note 105.
\textsuperscript{152} \textit{Id.} Interpretive regulations issued five years after the 1995 amendment defined “best” as choosing
based upon the scientific information presented; “available” as a requirement that the science must be
practically and economically feasible; and “science” as peer reviewed “methodology that can be replicated,
logical conclusions and reasonable inferences, quantitative analysis, proper context to frame the
assumptions, and references.” League of Women Voters, \textit{supra} note 95, at 32.
\textsuperscript{153} \textit{See generally} Trohimovich, \textit{supra} note 97, at 27.
\textsuperscript{154} Trohimovich, \textit{supra} note 97, at 27.
model ordinance for wetlands protection and encouraged local governments to base regulations on it. The ordinance’s rigid requirements, such as precise minimum wetland buffer size requirements regardless of the wetland’s size, reaped harsh criticism from scholars. They emphasized the need to impose wetlands preservation in the contexts of their particular watersheds and neighborhoods rather than establishing one-size-fits-all rules.

In response to the critique, the most recent GMA wetlands guidance for county use was based in the concept of adaptive management. Adaptive management acknowledges that ecosystems are inherently unpredictable and aims to provide a process by which decision-making can be constantly revised and informed by newly available scientific information and data. Wetlands planning must be flexible enough to take into account variations in community needs; some areas might value their flood control function, whereas others might prioritize their water quality function. To accommodate such differences, the guidance provides a wide range of buffer width options, suggesting, for example, a 25-75 foot width for wetlands with adjacent low-intensity land uses, and 50-150 feet for wetlands with adjacent high-intensity land uses. The guidance asks counties to first learn about particular wetlands’ surrounding landscape processes and then design protections best suited for that ecosystem.

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156 See, e.g., Moss, supra note 115, at 1079, 1083.
157 Id. at 1089.
159 Id.
160 Id. at 1-6.
161 Id. at 3-10.
162 Id. at 6-2.
recommends conducting landscape planning with Geographic Information Systems (GIS), an expensive tool that enables uniquely detailed topographical assessments.\textsuperscript{163}

The state’s recommended adaptive management procedures are based in environmental scientists’ recognition of ecosystems’ distinctive needs of ecosystems in different areas. Serving those needs requires that protection decisions be made at the local level, which is most sensitive to and able to monitor and reevaluate those needs. Yet local governments have proved inconsistent in resisting property rights interests and implementing strict regulations. Moreover, in addition to often lacking political will, many local governments lack resources to design a protection plan on its own. If GIS mapping, best available science research, and other management techniques are too costly to use, counties are left with neither procedural nor substantive guidance.

\textbf{IV. Comparing the Environmental Benefits of the Green Belt and Wetlands Green Space Preservation Regimes}

Washington State’s environmental protections lack the forceful, substantive state regulation of England’s mid-century Green Belt program. First, the Green Belt appealed to specific desires of particular powerful interest groups, whereas environmental protections serve an abstract and collective good. The mid-twentieth century Green Belt tangibly fulfilled political interest groups’ desires. It established attractive recreational spaces, protected rural industries, and maintained the characters of cities as well as the sentimentalized countryside. The Green Belt regime’s rejection of its original aims of elevating the urban poor emphasizes that the plan was shaped to appeal to the politically powerful.

\textsuperscript{163} \textit{Id.} at 6-5.
In contrast, the GMA’s critical areas protections aim to protect places that provide no tangible benefits to particular interest groups. Wetlands are virtually invisible until their absence results in environmental damage and the tax base as a whole, rather than specific interest groups, pays the damage bills. Swampy wetlands even lack the charismatic image that environmentalists have used to mobilize support, for example, for the Endangered Species Act.\(^{164}\)

The second reason for the Green Belt’s greater substantive force is that because it was established to serve particular social and business needs, its boundaries were shaped in accordance with those goals. The surrounding ecosystem did not need to be thoroughly analyzed.\(^{165}\) In Washington State, environmental advocates and planners seek to conserve based on analyses of individual landscapes and their connections with external influences.\(^{166}\) As landscape influences constantly change, the protections must too be subject to regular re-evaluations and monitoring.\(^{167}\) The particularized investigations lend themselves to local decisionmaking.

Differences in political systems and historical circumstances further contributed to the structural disparity between the Green Belt’s top-down regime and the wetlands bottoms-up plan. Most notably, the Green Belt system was implemented after World War II, when cities needed to be rebuilt and citizens had fresh confidence in the national government’s ability to achieve large projects.\(^{168}\) In addition, whereas the English plan compensated owners for lost development rights, the GMA does not compensate property

\(^{164}\) While environmentalists of course comprise a political lobby group, individuals are not harmed as directly or painfully by lapses in wetlands protection as other groups are harmed by the failure to protect, for example, one’s farm or a park, and are therefore less likely to lobby as urgently as farmers or neighborhood park users for environmental purposes.

\(^{165}\) Wiersama, supra note 150, at 16.

\(^{166}\) Id. at 10.

\(^{167}\) Id.

\(^{168}\) CULLINGWORTH & NADIN, supra note 40, at 20.
owners for wetlands-based restrictions unless the rules prohibit any productive use of the
property.  

The lack of forceful interest group backing and need for particularized ecosystem planning in environmentally based preservation, combined with the absence of historical and political circumstances that supported the Green Belt’s strong mandate, left GMA wetlands protections primarily procedural.  Yet procedural safeguards do not prevent local planning authorities, which have fewer resources, are less subject to scrutiny, and more closely linked to local businesses than the state government, from choosing development permissions over ecosystem protections after conducting mandated balancing tests.  No matter their stringency or scientific bases, procedures cannot remove value judgments from decision-making, nor can they remove the appearance that local governments are forming value judgments.  Procedural instructions leave the difficult political decision-making to local county councils, thrusting them back to the buffets of interest group pressure, and will not stop the newspaper headlines from stating that the local council “has decided . . . ” In addition, local governments often cannot afford the costs of particularized ecosystem assessments or scientific research.  State grants could fund such investigations, but funding different studies in each county poses higher costs to the state than creating a single model.

The GMA’s critical areas ordinances have not protected as many areas as a more centralized and substantive regime would have set aside, but it likely preserved more areas of environmental value.  The Green Belt regime has proved durable and popular, but it runs roughshod over natural ecosystem boundaries and, in sometimes creating gaps

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169 Eustis, supra note 109, at 1191-1194; see supra note 110.
170 See Wiersama, supra note 150, at 27, discussing the danger that procedural requirements will be politically captured.
between older and newer development, stretched development further into rural areas than it otherwise would have done. A quantitative comparison of the relative environmental benefits of each regime is impossible, as discussed above, because of the difficulty in measuring critical area protections and because the Green Belt regime has been remodeled over the years so that current protections do not exclusively reflect the results of its original shape.

Washington planners and environmentalists consistently argue for Green Belt-like national and inflexible protection schemes while simultaneously supporting particularized methodologies that render such schemes difficult. In contrast, English environmentalists have denounced the recently issued government commission report, the Barker Review, which calls for greater Green Belt flexibility. Though it justifies its recommendation of flexibility on the needs for both increased development and for ecosystem-based, rather than arbitrarily designated, green space protections, environmentalists have shown knee-jerk opposition to the prospect of loosening restrictions. As opposed to Washington State environmental advocates, they are unwilling to accept weaker state mandates in exchange for scientifically-based procedural requirements.

Urban planning is a dynamic process which must continually strive to avoid the opposite evils of counter-productive ossification and permitting excessive latitude to those who are unable or unwilling to adhere to its goals. This paper does not argue that

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171 See generally Capra, supra note 33.
one is more dangerous than the other, but only tries to help illuminate how adding
scientific procedural requirements may disguise and not resolve the problem of excessive
local discretion. Ecosystem-based planning, as advanced in Washington’s wetlands
guidance and the Barker Review, is a valuable tool. However, it must be approached
with wary understanding of the obstacles it imposes on substantive land protections.