



**CASCADIA COMMUNITY
PLANNING SERVICES**

GROWTH MANAGEMENT HEARINGS BOARDS

**Efficiency Study and
Restructuring Analysis**

October 2009

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Executive Summary

State budget realities and almost 20 years of Growth Management Act (GMA) experience suggest that options be developed and an assessment made as to whether it is feasible to reorganize the Growth Management Hearings Boards (GMHBs) for greater efficiency, while still fulfilling the quasi-judicial hearings and dispute resolution functions assigned to the boards under GMA. To that end, the GMHBs retained Triangle Associates, Inc.¹ (Triangle) to conduct this efficiency study and restructuring analysis. The purpose of the study is to identify alternatives for Board restructuring that will save costs to the state and stakeholders and preserve regional representation, while maintaining the GMA quasi-judicial hearing/dispute resolution functions. The study is intended to summarize the pros and cons of the selected alternatives. It is also intended to review caseload indicators and trends, workflow, and other relevant factors.

The study first presents an overview of the *restructuring options* Triangle was asked to assess. That is followed by a summary of key findings from the *caseload analysis and projections* conducted by Triangle and its subcontractor Cascadia Community Planning Services. After that, the study presents the *key themes* that emerged from confidential assessment interviews with key internal (current and former Board members and staff) and external (stakeholder and government) informants. All of the above-described information was used to develop a section of *recommendations* regarding restructuring the Boards and achieving efficiencies. The study concludes with a description of *next steps* for the restructuring process, and several *appendices*. Each of those sections is briefly summarized below.

Restructuring Options

A number of options are under discussion as possible future scenarios for restructuring the GMHBs. These options were presented to the internal and external interviewees, who were asked to compare them in terms of how likely they are to: 1) maintain the GMA's quasi-judicial hearing/dispute resolution process; 2) save costs to the state and stakeholders; and 3) preserve regional representation. Interviewees were also asked to identify the alternatives that seem likely to do the best job of accomplishing all three of these goals, and which are the most and least politically feasible. The options include:

- Status Quo
- Ability to Serve in a Different Region on a Pro Tem Basis
- Consolidate the Boards Under the Environmental Hearings Office (EHO)
- Two Boards/Seven Members/Three-Member Regional Panels
- One Board/Seven Members/Three-Member Regional Panels
- One Board/Six Members/Three-Member Regional Panels
- One Board/Five Members/One Panel
- Eliminate the Boards, File Cases in Court
- Other/Hybrid Options

A paragraph describing each option is included in the *Restructuring Options* section of this study. The section entitled *Key Themes from Interviews* describes which options were preferred by interviewees, both

¹ More information on Triangle Associates is available at www.triangleassociates.com.

in terms of specific criteria and overall. The *Recommendations* section takes that and other information into account, in order to provide recommended options.

Caseload Analysis and Projections

The consultant team reviewed a variety of data sources related to historic GMHB workloads and trends, workflow, service area and population. A summary of this analysis can be found in the *Caseload Analysis and Projections* section of this study. Detailed analysis, projections and conclusions can be found in the appendices.

This review suggests that the clearest and most reliable indicators of GMHB workload are *petitions for review (PFRs)*, *new cases (consolidated)* and *decisions issued*. However, it recognizes that filed PFRs may not accurately reflect total workload in a particular geographic region when multiple compliance or remand hearings processes take place over multiple years. Although the day-to-day functions of the GMHBs encompass a much broader range of activities than just reviewing PFRs, hearing new cases and issuing decisions, it is the view of the consultant team that these three selected indicators provide a representative picture of the relative workloads of the boards. By all three of these indicators, the data show that the Central Puget Sound and Western Washington GMHBs have historically experienced higher PFRs, new cases (consolidated) and decisions than the Eastern Washington GMHB.

Three scenarios were prepared in an attempt to provide some general idea as to the future potential workloads of the GMHBs, and when future fluctuations in workload might reasonably be expected to occur. Two of the scenarios postulate that the future workload will be somewhat less than has been the case over the first 18 years of the GMHBs; one scenario anticipates that caseloads will be modestly higher than historic trends. These scenarios also suggest that the precise timing of the ebb and flow of future caseload will be difficult to predict, though significant increases are expected in relation to the Ruckelshaus Center's review of agriculture and critical areas ordinances and the seven-year GMA Plan and Code Update deadlines. It must be stressed that these scenarios present only a hypothetical range of possible caseload activity over the coming 20 years, rather than an authoritative prediction. They present two ends of a spectrum, recognizing that the actual scenario is more likely to fall somewhere between the "bookends."

A central conclusion of this analysis is that both the current and projected workloads of the GMHBs could be successfully handled by a reduced number of board members. If the ratio of PFRs to decisions were to remain constant over the coming decades, individual board members could expect to author an average of three to six decisions per year, assuming three boards, with three members each (i.e., nine total). This does not take into account the time spent by GMHB members to read, analyze, deliberate and write compliance, motion and remand hearing decisions. That number could increase to as many as nine decisions per year per member if the total number of members is reduced to six and the higher PFR rate assumptions prove to be accurate. This would not appear to represent an unmanageable number of decisions per board member.

Key Themes from Interviews

In September 2009, Triangle conducted confidential assessment interviews with over 35 key internal (current and former Board members and staff) and external (stakeholder and government)

informants,² asking them questions about the current GMHB structure and process, and for their assessment of the pros and cons of the restructuring options under discussion as possible future scenarios for the GMHBs. Interviewees offered their opinions about what was working well and not working well in the current GMHB process. They suggested specific ways to measure success for a restructuring effort. They provided input on how the GMHBs could improve how its data is collected, reported and distributed. Interviewees were asked to compare the options in terms of how likely they are to: 1) maintain the GMA's quasi-judicial hearing/dispute resolution process, 2) save costs to the state and stakeholders, and 3) preserve regional representation. They were also asked how important regional representation and the other GMHB appointment criteria are. Finally, they were asked to identify the alternatives that seem likely to do the best job of accomplishing all three of the goals, and which are the most and least politically feasible.

The key themes that emerged from those interviews are presented in the *Key Themes from Interviews* section of this study. It is important to read that section, because the rich and diverse input provided cannot be adequately summarized here. However, when asked which of the restructuring options they preferred overall and would like to see move forward in the legislative process this session (and when asked which are the most politically feasible), interviewees most commonly cited the following options:

- ➔ Ability to serve in a different region on a pro tem basis
- ➔ One board/seven members/three-member regional panels
- ➔ One board/six members/three-member regional panels

Recommendations

The information from the interviews, the results of the caseload analysis and projection, and input received from stakeholders and GMHB members at the GMHBs' Joint Annual Meeting on October 1, 2009 was used to develop recommendations regarding restructuring the Boards and achieving efficiencies. Those recommendations are presented below, but can be best understood by reading the *Recommendations* section of this study, which includes supporting and explanatory information for each recommendation.

1. *Consolidate the GMHBs into one Board with Two Members from Each Region, Hearing Cases via Three-Member Regional Panels.*
2. *Retain a Seventh, At-Large Member if Workload or Membership Criteria Requires It.*
3. *Reduce the Number of GMHB Members, and the Budget, via a Phased Approach and/or Attrition.*
4. *Preserve Regional Representation.*
5. *Allow Members to Hear Cases in Another Region; Allow Retired Members to Hear Cases on a Pro Tem Basis.*
6. *Keep the Local Elected Official Criteria; Keep or Increase the Land Use Attorney Criteria; Consider Adding a Land Use Planning Criteria.*
7. *Eliminate or Modify the Political Affiliation Requirement.*
8. *Replace the Three Regional Administrative Chairs with One Chair and One or Two Vice Chairs.*

² A list of interviewees and the interview guide are included in the appendices to this document.

9. *Confirm the Consolidation of Administrative Functions to One Office.*
10. *Consider Folding the GMHBs into EHO.*
11. *Consider Alternatives to Full Time Equivalency (FTE) for GMHB Members.*
12. *Improve Data Management, Including the Creation of One Database for all GMHB Records.*

It is important to emphasize that, as a neutral third party, Triangle had no preconceptions going into this process and has no stake in a particular outcome. Triangle also acknowledges that it is likely and understandable that ideas and proposals will evolve as the restructuring process unfolds. Triangle hopes this report and these recommendations will help move that process forward towards a consensus solution that works well for both internal and external stakeholders and governments.

Next Steps

The study was finalized for delivery to the GMHBs, who will convey it to the Governor's Office by the end of October, 2009, accompanied by a cover letter expressing the GMHBs' opinions and preferences on restructuring. The Governor has chosen to not fill a vacancy on the Central Puget Sound GMHB, pending the outcome of this and other studies. This includes a natural resources reform effort involving the natural resource agency directors, Commissioner of Public Lands, Governor's Office, and stakeholders that includes 25+ separate options for reforming natural resource agencies. It is anticipated that these studies and the discussions they foster will lead to legislation being introduced in the next session of the Washington State Legislature.

Introduction

The Growth Management Act (GMA)³ sets up a quasi-judicial review procedure to hear and decide challenges to city and county plans and development regulations under the GMA, along with related State Environmental Policy Act (SEPA) and Shoreline Management Act (SMA) issues. The GMA calls for three separate Growth Management Hearing Boards (GMHBs) of three members each. The Central Puget Sound Board hears cases arising in King, Pierce, Snohomish and Kitsap counties (87 jurisdictions in all). The Western Washington Board hears cases arising in the other GMA-planning counties west of the Cascade crest (52 jurisdictions). The Eastern Washington Board hears cases arising in GMA-planning counties east of the Cascade crest (86 jurisdictions). While the GMHBs administer land use related appeals under the GMA, administrative review of environmental and natural resource agency and local government permit decisions occurs at the Environmental Hearings Office (EHO) through a number of independent boards including the Pollution Control Hearings Board, Shoreline Hearings Board, Forest Practices Hearings Board, Environmental and Land Use Hearings Board, and Hydraulic Appeals Board.

The GMA contemplates that each GMHB will be sensitive to regional distinctions in application of GMA goals and requirements. The GMA includes statutory requirements for each three-person GMHB to include a member from each of the two major political parties, an attorney, and a former local elected official. Over time, the Boards have developed some variations in how they process cases. The number of new petitions filed each year with the various GMHBs has fluctuated over time; from less than 10 to over 50 (the Boards also deal with compliance proceedings and court remands). The fluctuation in case filings is due in part to the staggered statutory schedule for Comprehensive Plan, Shoreline Master Program (SMP) and Critical Areas Ordinance (CAO) updates. The GMA does not provide for a Board member from one GMHB to assist with the spiking case load of another on a pro tem or other temporary basis.

State budget realities and almost 20 years of GMA experience suggest that options be developed and an assessment made as to whether it is feasible to reorganize the GMHBs for greater efficiency, while still fulfilling the quasi-judicial hearings and dispute resolution functions assigned to the boards under GMA. To that end, the GMHBs retained Triangle Associates, Inc.⁴ (Triangle) to conduct this efficiency study and restructuring analysis. The purpose of the study is to identify alternatives for Board restructuring that will save costs to the state and stakeholders and preserve regional representation, while maintaining the GMA quasi-judicial hearing/dispute resolution functions. The study is intended to summarize the pros and cons of the selected alternatives. It is also intended to review caseload indicators and trends, workflow, service area, population, resolution by settlement or mediation, workload driven by statutory deadlines, timeliness of case resolution, jurisdiction compliance or remands to the Boards, and other relevant factors.

This study first presents an overview of the restructuring options Triangle was asked to assess. That is followed by a summary of key findings from the caseload analysis and projections conducted by Triangle and its subcontractor Cascadia Community Planning Services, based on data provided by the GMHBs, the Office of Financial Management and the Attorney General's Office.⁵ After that, the study presents the key themes that emerged from confidential assessment interviews with key internal (current and former Board members and staff) and external (stakeholder and government) informants.⁶ All of the above-described information was used to develop a section of recommendations regarding restructuring the Boards and achieving efficiencies. The study concludes with a description of next steps for the restructuring process, and several appendices.

³ RCW Chapter 36.70A.

⁴ More information on Triangle Associates is available at www.triangleassociates.com.

⁵ The full caseload analysis and projections report is included as an appendix to this document

⁶ The appendices include the interview guide and a list of interviewees.

Restructuring Options

A number of options are under discussion as possible future scenarios for restructuring the GMHBs. These options were presented to the internal and external interviewees, who were asked to compare them in terms of how likely they are to: 1) maintain the GMA's quasi-judicial hearing/dispute resolution process; 2) save costs to the state and stakeholders; and 3) preserve regional representation. Interviewees were also asked to identify the alternatives that seem likely to do the best job of accomplishing all three of these goals, and which are the most and least politically feasible.

The options are described briefly below. The first describes the status quo. Following that are descriptions of two options that would most likely be adjunct to another option, rather than “freestanding.” After that, a series of options are presented that each represent a reduction in the number of board members to seven, six, five or zero (in an option that would eliminate the Boards altogether). The section entitled *Key Themes from Interviews* describes which options were preferred by interviewees, both in terms of specific criteria and overall. The *Recommendations* section takes that and other information into account, in order to provide recommended options.

Status Quo

The GMA established three separate GMHBs (Central Puget Sound, Western Washington and Eastern Washington), each with three Board members and its own administrative office and staff person. In addition to this regional representation, the GMA includes statutory requirements for each Board to include at least one member from each of the two major political parties, an attorney, and a former local elected official. The Boards have for several years shared one staff attorney. These parameters define the status quo for the GMHBs, with two significant exceptions: 1) in response to budget cuts, the GMHBs have in 2009 consolidated their administrative functions to one administrative office in Olympia; and 2) The Governor has chosen to not fill a current vacancy on the Central Puget Sound GMHB, pending the outcome of this and other studies.

Ability to Serve in a Different Region on a Pro Tem Basis

A proposal introduced in the Washington State House of Representatives in 2009⁷ did not change the current number of Board members nor criteria for appointment, but would have provided the ability for a Board member to serve in a different region on a pro tem basis as needed, to deal with temporary absences or workload fluctuations. This option is not necessarily “freestanding,” in that it could be combined with, or is central to, several of the options presented below.

Consolidate the Boards Under the EHO

Over 25 different options for reorganizing the natural resource agencies and the appeals process are under discussion as part of a natural resources reform effort involving the natural resource agency directors, Commissioner of Public Lands, Governor's Office, and stakeholders.⁸ One of the “Quasi-Judicial Review” options being considered as part of that process envisions consolidating functions currently performed

⁷ ESHB 2338.

⁸ For more information, see “Ideas to Improve Management of Washington's Natural Resources” on the Governor's website, www.governor.wa.gov.

by the Environmental Hearings Office (EHO), its many boards, and the three GMHBs into a single, umbrella adjudicative agency. That agency would contain two major quasi-judicial components—one that handles appeals of natural resource and environmental regulatory matters (those handled by the current EHO boards), and another that addresses land use-related appeals (a consolidated GMHB). This option is also not “freestanding,” because it does not specify what the consolidated GMHB would look like. Instead, it leaves those details to this efficiency study/restructuring analysis process. Therefore, any of the consolidation options described below (or some other consolidation option) could be selected to accompany this option.

Two Boards/Seven Members/Three-Member Regional Panels

This option would retain the three-member Eastern Washington GMHB and the three-member Western Washington GMHB, but eliminate the Central Puget Sound GMHB. Cases currently heard by the Central Board would be heard by the Western Board. Cases would still be heard by three-member regional panels. One “floating” Board member (a practicing attorney specializing in land use in Washington State) would be appointed with flexibility to work on any case as needed, throughout the state. Because the Western GMHB would now manage the caseloads currently heard by the Western and Central GMHBs, it is likely that the floating member would mostly assist with cases in western Washington, meaning the three Western members and one “floating” member would each serve on two-thirds of the Western Board’s cases.

One Board/Seven Members/Three-Member Regional Panels

This option would retain the three GMHB regions (Eastern, Western and Central) by keeping two Board members from each region. A seventh member would be appointed at large. Each case would be heard by a three-member regional panel of which two members would be from the region where the case arose, with the third member chosen based on workload. The Governor’s 2005 Land Use Agenda⁹ proposed to structure a consolidated GMHB in this way, and to fold it into the EHO. It is important to point out that the third panel member on a given case would not necessarily be the at-large member.

One Board/Six Members/Three-Member Regional Panels

This option is the same as the previous option, except that it does not include the seventh, at-large member. It would feature six members on one consolidated GMHB, organized into case-by-case regional panels (each panel including two from the region where the case originated, plus one member from one of the other two regions). It is important to point out that although this option features an even number of Board members, cases would still heard by three-member regional panels, avoiding tie decisions.

One Board/Five Members/One Panel

A proposal introduced in the Washington State Senate in 2009¹⁰ would have created one, five-member GMHB to hear GMA cases from the entire state. Two members would be from east of the Cascades; three would be from west of the Cascades. Each side of the state would provide at least one attorney, one former

⁹ More information on the Governor’s 2005 Land Use Agenda is available at www.commerce.wa.gov/DesktopModules/CTEDPublications/CT-EDPublicationsView.aspx?tabID=0&ItemID=6682&MIId=944&wvversion=Staging.

¹⁰ SB 6083.

local elected official, and one representative from each party. The Board would not, under this option, organize itself into three-member regional panels to hear cases; all cases would be heard by the entire five-member board.

Eliminate the Boards, File Cases in Court

The 1998 Land Use Study Commission report¹¹ did not recommend major changes to the structure of the GMHBs, but did discuss an option that involved eliminating the GMHBs and instead either providing that all appeals are filed in Superior Court or allowing cases to be filed directly in the Court of Appeals. The Commission's recommendation was to "maintain the status quo for the time being, while giving further study to the alternatives and the issues that divide the constituents who care deeply about this issue."

Other/Hybrid Options

In addition to sharing opinions on the above-described options, interviewees articulated a number of different or hybrid options they believed should be considered. These additional options are described in the *Key Themes from Interviews* section of this study.

¹¹ Available online at www.commerce.wa.gov/landuse/report/.

Caseload Analysis and Projections

Introduction

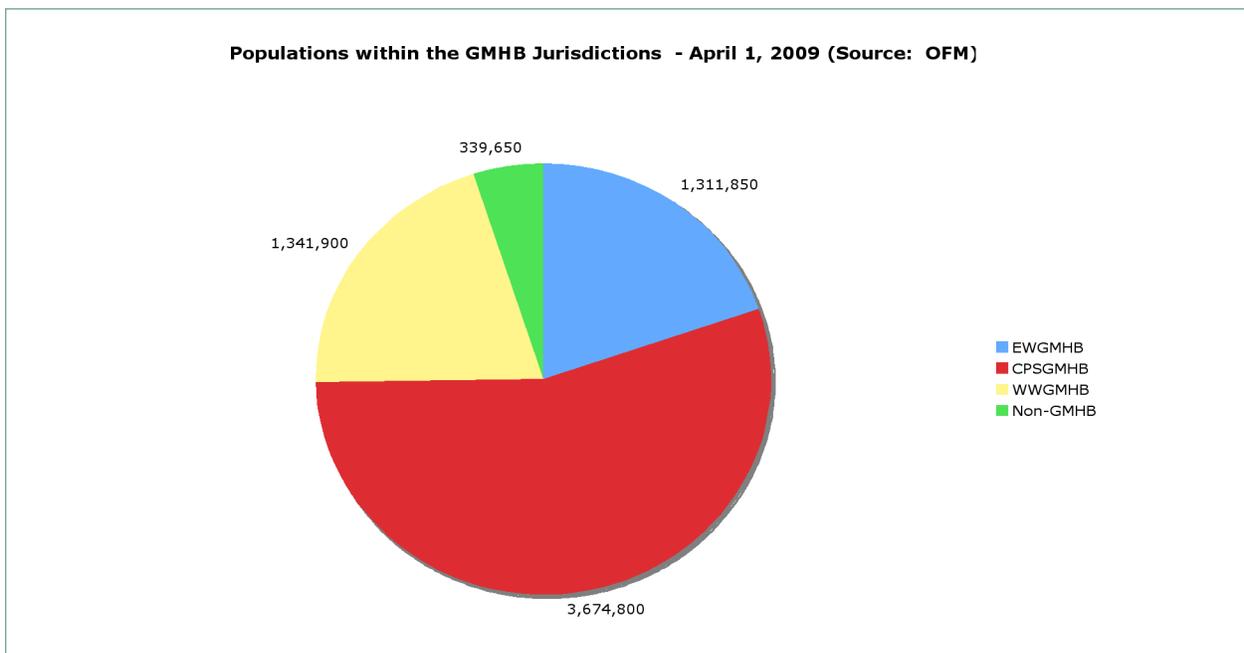
The consultant team of Cascadia Community Planning Services and Triangle Associates, Inc. reviewed a variety of data sources related to historic GMHB workloads and trends, workflow, service area and population. A detailed analysis, projections and conclusions can be found in the appendices to this document. This section is intended to provide the key findings from that full analysis.

To the extent possible, given the format in which data have been collected by the three boards, the consultant team has also attempted to identify the extent to which the GMHBs resolve cases through settlement or mediation, as well as workloads related to findings of noncompliance and remands to counties and cities. Findings on those topics are reported in the full analysis. However, because of inconsistencies in data collection and reporting methods, as well as unavailable and/or incomplete data, no final conclusions regarding those topics can be reached as part of this analysis.

Caseload Analysis

GMHB Jurisdictions

The GMHBs serve 254 jurisdictions statewide (29 counties, and 225 cities/towns), which are home to nearly 95% of Washington's total population (6,328,550 of 6,668,200).¹² Of these 254 counties, cities and towns, 203 were originally required to plan under RCW 36.70A.040(1), while 11 counties and the cities and towns located therein "opted in" to GMA compliance under RCW 36.70A.040(2).

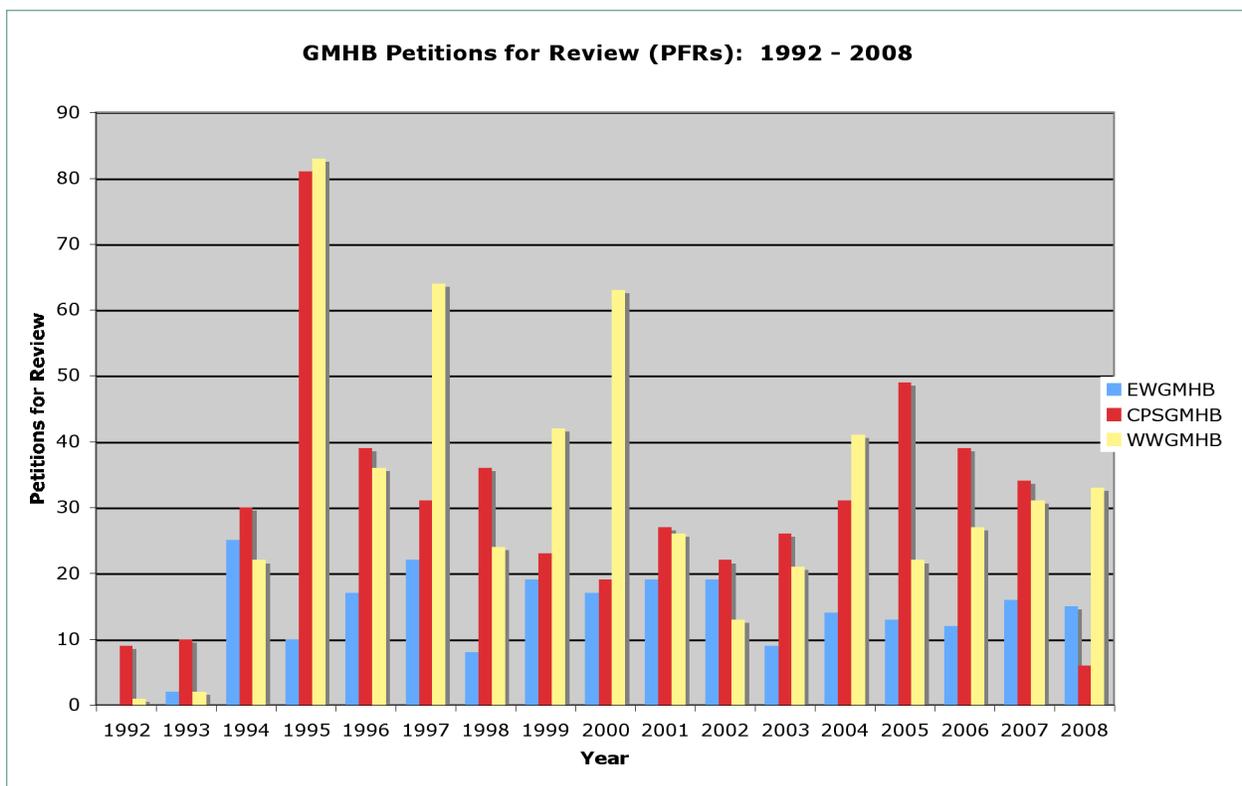


¹² Present population figures obtained from April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009. Information regarding "required to plan" vs. "opt in" jurisdictions obtained from Paul Johnson, Washington State Department of Commerce.

Caseload Data—Overview

This review suggests that the clearest and most reliable indicators of GMHB workload are *petitions for review (PFRs)*, *new cases (consolidated)* and *decisions issued*. PFRs represent the most straightforward and understandable data point common to all three boards. PFRs give the most basic of all pictures—how many filings alleging GMA non-compliance by local governments came through the door of each board, regardless of their final disposition. *New cases (consolidated)* includes new cases per year, after the boards have consolidated multiple PFRs relating to the same GMA enactment. *Decisions* includes all dismissed cases,¹³ and Final Decisions and Orders (FDOs) either upholding or remanding a GMA enactment to a local jurisdiction. However, filed PFRs may not accurately reflect total workload in a particular geographic region when multiple compliance or remand hearings processes take place over multiple years. Although the day-to-day functions of the GMHBs encompass a much broader range of activities than just reviewing PFRs, hearing new cases and issuing decisions, it is our view that these three selected indicators provide a representative picture of the relative workloads of the boards.

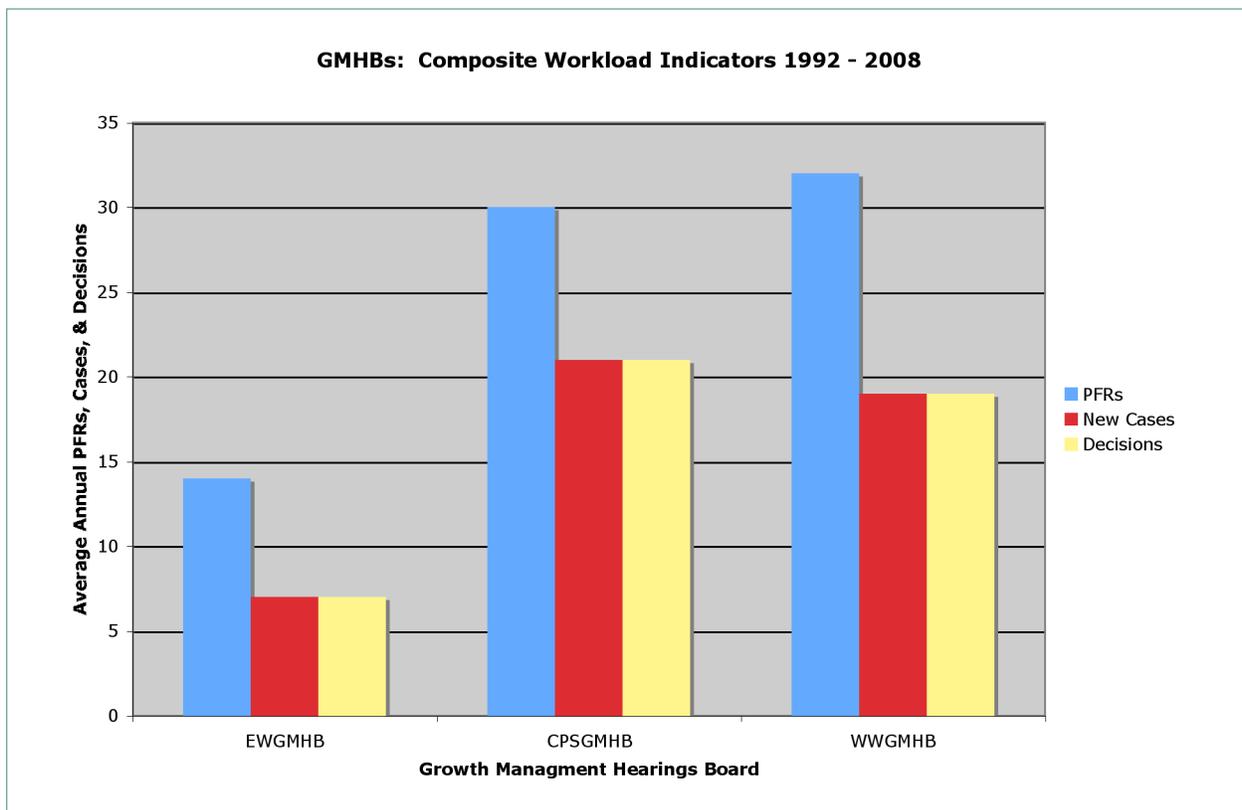
By all three of these indicators, the data show that the Central and Western Boards have historically experienced higher PFRs, new cases (consolidated) and decisions than the Eastern Board. The following chart summarizes the 1992–2008 PFR data for the three boards. The table following that chart summarizes, and also presents a composite GMHB average for, each indicator.



¹³ “Dismissed cases” include PFRs withdrawn by petitioners, Stipulated Dismissals pursuant to a Settlement Agreement, and Dismissals by GMHB Order.

Composite Workload Indicators for an “Average Year” by GMHB				
Indicator	EWGMHB	CPSGMHB	WWGMHB	GMHB Avg.
PFRs	14	30	32	25
New Cases (Consolidated)	7	21	19	16
Decisions Issued	7	21	19	16

The following graph provides a visual representation of GMHB workload in an “average year.”



Cases Dismissed & Upheld

Statewide, between 2000–06, nearly half (48.2%) of all cases were dismissed by the GMHBs, while local governments were upheld by the GMHBs nearly one-quarter of the time (21.56%). Stated another way, local jurisdictions prevailed in over two-thirds of all cases before the GMHBs (70.38%) between 2000–06 (i.e., 297 of 422 cases), either through dismissal or being upheld.

Decisions Appealed to the Courts

Data obtained from the Washington State Attorney General’s Office in August of 2009 indicate that approximately 40% of all cases decided by the GMHBs have been appealed to the courts (i.e., 326 of 834).

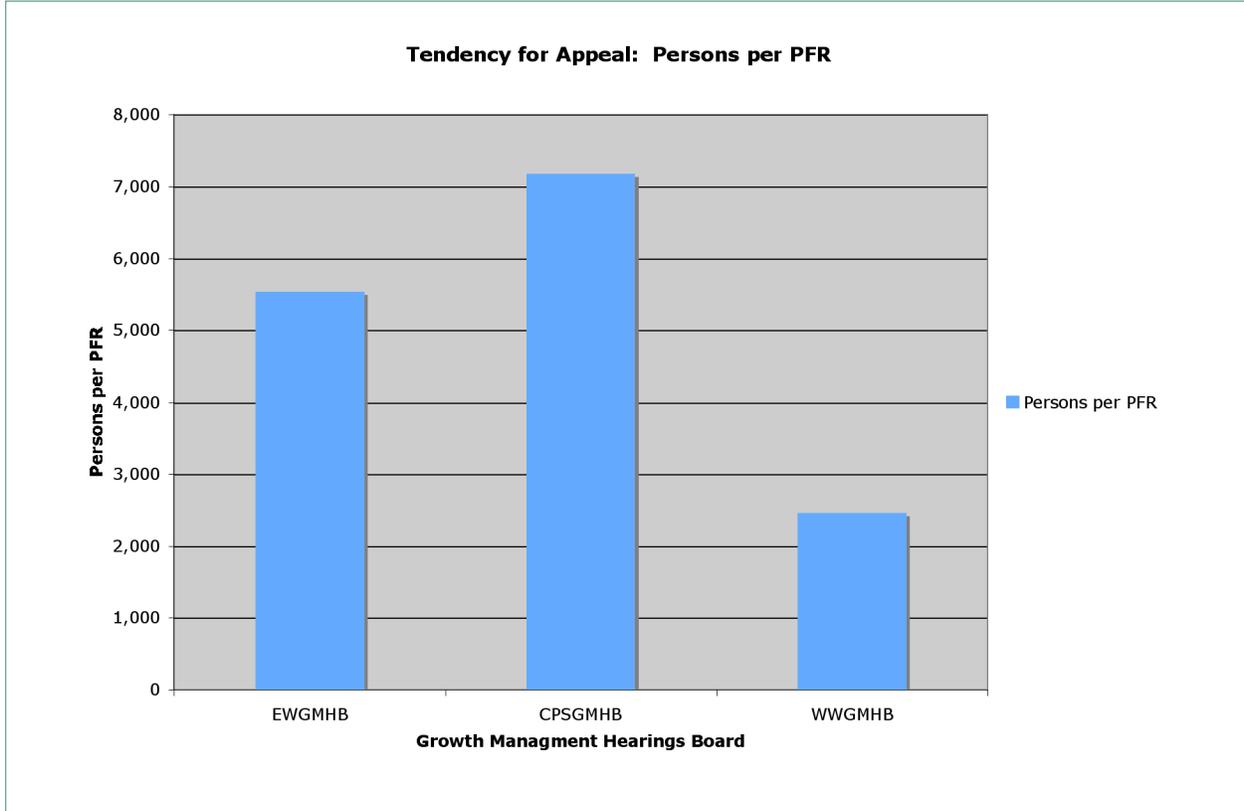
Washington courts have decided 83.4% of the GMHB decisions appealed to date (i.e., 272 of the 326). The courts have remanded 62 GMHB decisions, or 7.4% of cases decided, for further action by the Boards. These data are reported in the table below.

GMHB Decisions Appealed to the Courts - 1992 to 2009				
	EWGMHB	CPSGMHB	WWGMHB	Totals
GMHB Cases	170	362	302	834
Appealed to Court	81 (52%)	110 (31%)	135 (46%)	326 (40%)
In Progress	21	5	28	54
Decided by Court	60	105	107	272
Dismissed	27	31	33	91
Affirmed	19	49	51	119
Affirmed in Part/ Reversed in Part	5	15	10	30
Reversed	9	10	13	32
GMHB Decisions Remanded	14 (8.2%)	25 (6.9%)	23 (7.6%)	62 (7.4%)

(Source: Appellate Case Status Reports from Martha P. Lantz, Assistant Attorney General to the GMHBs (August 6, 2009)).

Regional Appeal Tendencies

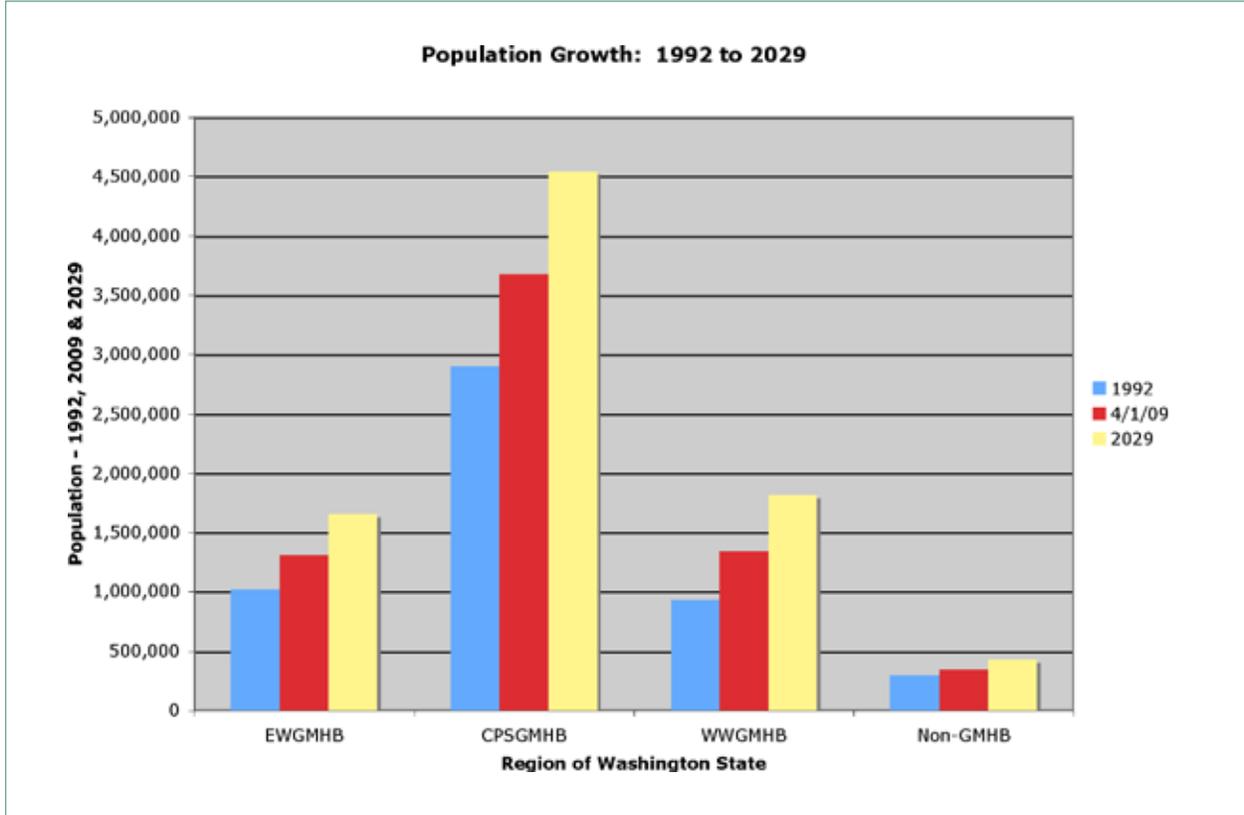
Available data indicate that the Western Board experiences substantially more caseload activity in relation to the population and number of jurisdictions it serves than the other boards. The following graph depicts the “per capita” incidence of PFRs in each Board jurisdiction. The fewer persons per PFR, the higher the tendency for appeal in relation to population served. In relation to population served, appeals are almost three times more likely in the Western Board’s jurisdiction than in the Central’s, and more than twice as likely as in the Eastern Board’s jurisdiction.



Looking Ahead, 2010-29

Population Growth

Over the period the GMHBs have been in existence, the population of Washington State has grown by approximately 1.5 million persons (from 5,141,177 in 1992 to 6,668,200 as of April 1, 2009). This represents an average annual growth rate of nearly three percent (2.97%). OFM’s “medium” series Growth Management Planning Projections, most recently updated in 2007, estimate that the state’s population will grow by over 1.6 million persons between 2010–29 (from 6,792,318 to 8,433,276), an annual growth rate of approximately 2.4%. The chart below illustrates the past and projected future population within each of the GMHB jurisdictions, as well as those counties, cities and towns outside the jurisdiction of the GMHBs.



Potential Future Caseload Scenarios

Given time and budgetary constraints, a sophisticated projection and distribution of potential future GMHB appeal activity was beyond the reach of this analysis. However, three scenarios were prepared in an attempt to provide some general idea as to the future potential workloads of the GMHBs, and when future fluctuations in workload might reasonably be expected to occur. Two of these scenarios (A and B) factor the following considerations and assumptions:

- Historic average annual PFRs.
- The relative decline in PFRs experienced statewide after the initial round of GMA implementation.
- Slightly slower population growth rates projected by OFM, which appear unlikely to materially alter historic caseload patterns.
- Increasing sophistication among GMA jurisdictions that could continue the trend towards fewer appeals over the coming 20 years.
- “Spikes” in appeal activity that are likely to be experienced in the years when seven-year Plan and Code Updates are due in each GMHB region under RCW 36.70A.130(4), in correlation with the total number of updates due in a given year.
- Future amendments to the GMA could permit “Opt-In” GMA jurisdictions to “opt-out” of GMA compliance.

A third scenario (C) assumes that, despite increasing sophistication among jurisdictions implementing the GMA, historic average annual PFRs will not decrease, and could instead significantly increase due to the following factors:

- Appeals of Shoreline Master Program Updates.
- Potential appeals of local updates to critical areas ordinance provisions relating to agriculture (i.e., following amendments to the GMA in the 2010 legislative session based upon the recommendations of the Ruckelshaus Center Report).
- Potential amendments to WAC 365-190 and 365-195 and changes to the Department of Commerce “Update Checklists” that might contribute to an increased frequency of appeals of periodic plan and code updates.
- The potential for the Puget Sound Partnership’s Action Plan implementation monitoring data to be used by appellants as evidence of GMA noncompliance.
- The potential for the Legislature to enact new substantive requirements within the GMA (e.g., climate change provisions).
- “Spikes” in appeal activity in relation to seven-year Plan and Code Updates under RCW 36.70A.130(4).

The scenarios are as follows:

Scenario A – Low Caseload Estimate: All of the “Opt-In” jurisdictions will be allowed to “opt-out” of GMA compliance, and will choose to do so. This scenario results in a projection of 920 PFRs over the 20 years ending in 2029 (i.e., an average of 46 PFRs per year, statewide).

Scenario B – Medium Caseload Estimate: All jurisdictions currently planning under GMA will still be doing so in 2029. This scenario results in a projection of 1,060 PFRs over 20 years ending in 2029 (i.e., an average of 53 PFRs per year, statewide).

Scenario C – High Caseload Estimate: All jurisdictions currently planning under GMA will still be doing so in 2029, and statutory changes will result in caseloads modestly higher than historical trends. This scenario results in a projection of 1,660 PFRs over the 20 years ending in 2029 (i.e., an average of 83 PFRs per year, statewide).

It must be stressed that these scenarios present only a hypothetical range of possible caseload activity over the coming 20 years, rather than an authoritative prediction. They present two ends of a spectrum, recognizing that the actual scenario is more likely to fall somewhere between the “bookends” described in scenarios A and C.

Conclusions

The caseload projections plot three potential scenarios, two of which postulate that the future workload will be somewhat less than has been the case over the first 18 years of the GMHBs; one scenario anticipates that caseloads will be modestly higher than historic trends. These scenarios also suggest that the precise timing of the ebb and flow of future caseload will be difficult to predict, though significant increases in GMHB activity are expected in relation to Ruckelshaus Center’s review of agriculture and critical area ordinances and the seven-year GMA Plan and Code Update deadlines under RCW 36.70A.130(4).

A central conclusion of this analysis is that both the current and projected workloads of the GMHBs could be successfully handled by a reduced number of board members. As the table below shows, if the ratio of PFRs to decisions were to remain constant over the coming decades, individual board members could expect to author an average of three to six decisions per year, assuming three boards, with three members each (i.e., nine total). This does not take into account the time spent by GMHB members to read, analyze, deliberate and write compliance, motion and remand hearing decisions. That number could increase to as many as nine decisions per year per member if the total number of members is reduced to six and the higher PFR rate assumptions of Scenario C prove to be accurate. This would not appear to represent an unmanageable number of decisions per board member.

Historic & Potential Future Decisions Per Year Per GMHB Member						
Scenario	Total PFRs	Total Decisions	Decisions Per Year	9 Member Board – Decisions Per Year Per Member	7 Member Board – Decisions Per Year Per Member	6 Member Board – Decisions Per Year Per Member
Historic Totals 1992 – 2008	1,296	805	47.35	5.26	Inapplicable	Inapplicable
Hypothetical Scenario “A”	920	571	28.55	3.17	4.07	4.76
Hypothetical Scenario “B”	1,060	658	32.90	3.65	4.70	5.48
Hypothetical Scenario “C”	1,660	1,031	51.55	5.73	7.36	8.59

Another conclusion of this analysis is that PFRs, new cases (consolidated) and decisions have historically been higher in absolute terms within the Central Board and Western Board than in the Eastern Board. The board jurisdiction with the highest workload in absolute terms is the Central Board. While it receives the second highest number of PFRs, the Central Board nevertheless manages the most new cases (i.e., consolidated), and issues more decisions than either the Eastern Board or Western Board.

The Western Board experiences only a slightly lower number of PFRs, new cases (consolidated) and decisions than the Central Board, and contends with disproportionately higher volumes of PFRs, new cases and decisions in relation to the population and number of local jurisdictions served than either other board. The Eastern Board has consistently received the fewest PFRs, resulting in fewer consolidated cases and decisions. When available historical trend data are viewed in conjunction with OFM’s Growth Management Planning Population Projections for the period 2010–29, a fundamental alteration of this situation would appear unlikely. But it should be borne in mind that PFR filings are driven by multiple factors that shift over time, thereby making it difficult to make accurate predictions of future filings.

Looking to the future, this review and assessment has revealed a pressing need for the GMHBs to agree upon key workload indicators and other benchmarks for which data should be collected, monitored and reported on over the long term. Missing data sets (e.g., motions on reconsideration) and differences in

how the Boards have defined data sets (e.g., hearings held) and documented their respective workloads over the past 17 years are not insignificant, and this lack of clear and consistent data has made a more comprehensive workload review and assessment difficult.

Key Themes from Interviews

In September 2009, Triangle conducted confidential assessment interviews with over 35 key internal (current and former Board members and staff) and external (stakeholder and government) informants, asking them questions about the current GMHB structure and process, and for their assessment of the pros and cons of a number of options under discussion as possible future scenarios for restructuring the GMHBs.¹⁴ Interviewees were asked to compare the options in terms of how likely they are to: 1) maintain the GMA's quasi-judicial hearing/dispute resolution process, 2) save costs to the state and stakeholders, and 3) preserve regional representation. Interviewees were also asked to identify the alternatives that seem likely to do the best job of accomplishing all three of these goals, and which are the most and least politically feasible.

Presented below are the key themes that emerged from those interviews. This information, plus the results of the caseload analysis and projection, was used to develop the section of recommendations regarding restructuring the Boards and achieving efficiencies that follows in this document.

What Is Working Well?

When asked what is working well about the current GMHB process and structure, many interviewees responded that it is a fairly efficient and cost-effective means for citizens to get involved in growth management planning, to appeal plans they feel are inadequate, and to hold local governments accountable without having to be (or retain) a lawyer. They said the process offers the satisfaction of being heard when you disagree with a local government action.

Many interviewees said the GMHBs' decisions are usually thorough, well-written, well-reasoned, not partisan, based on a good review of the record, and often upheld by the courts upon appeal. They said the GMHBs are generally good at articulating their decisions, and the reasoning and research that went into them. They said the GMHBs are timely in handling petitions (several pointed out that the Boards never miss the 180 day limit for rendering a decision). Some stated that the GMHB staff is efficient and effective, very helpful, and that the GMHBs operate on relatively low overhead.

Many interviewees pointed to the regional representation built into the GMHBs as working well. They value that the process and structure provides leeway to operate in a regionally-sensitive and appropriate manner. They appreciate the bottom-up approach, and the involvement of local people with diverse backgrounds.

Other interviewees said that the GMHBs provide closure on growth management controversies, and keep the courts from being clogged with land use appeals. They said the GMHBs have helped create overall acceptance of GMA planning and accord on major GMA goals, including Urban Growth Areas, Critical Areas Ordinances and other elements. They say counties and cities are proceeding with GMA implementation; challenges to the whole system are becoming rarer; land owners and developers are getting used to living under GMA.

¹⁴ A list of interviewees and the interview guide are included in the appendices to this document.

What Is Not Working Well?

As is typical during assessment interviews, interviewees had more to say about what is *not* working well about the current process and structure. Many interviewees focused on the fact that there are three separate boards, and that their decisions and interpretations can be inconsistent with each other and/or with the GMA. They said the GMHBs can be parochial, differing too much from region to region in terms of their procedures and findings. They said the three GMHBs rarely sit down and think through important GMA issues together. These interviewees see some competition, “turf wars” and discord among and between the GMHBs. Some of these interviewees also said there are too few cases for the current number of GMHB members. One said the fact that the GMHB members are appointed, rather than elected, fosters mistrust.

Other interviewees said there is no clear leadership structure on the GMHBs, but rather nine board members operating largely independently. They said the administrative chairs and/or members with strong personalities sometimes take on a leadership role, but the system was not really designed that way. There is no one to settle differences among boards and/or the administrative chairs.

Some said the GMHB administration is redundant or not efficient. They see staff as needing more supervision and clear guidelines. A few interviewees said that the GMHBs made mistakes in its recent administrative consolidation. For example, they believe people do not want to have to file cases in Olympia, and need a regional office to ask questions and get involved in the process. They also believe the GMA needs to be amended in order for the administrative consolidation to be consistent with the statute.

Other interviewees said it is too easy to file an appeal under the current process. They believe some pro se appellants and attorneys file too many cases—some of them frivolous—“gaming the system” in order to stall it and make it cumbersome. They say some stakeholders use the threat of an appeal or lawsuit to get their way with local governments. These interviewees find it frustrating to win a case in front of a GMHB or other quasi-judicial board, only to have it appealed to Superior Court. They say the cost of participating in GMHB hearings is substantial for some local governments, and not recoverable. They see the GMHBs being used by more sophisticated participants as a place where the record gets assembled for higher court challenge.

Other interviewees said that the system is flawed in that many jurisdictions are not challenged on comprehensive plans that do not adequately meet the goals of the GMA. They say large amounts of land are already platted incompatibly with GMA goals, and that some local elected officials still do not “get” GMA, or decide to ignore it and the GMHBs’ findings. They say the emphasis is on what landowners need, not on the needs of the natural and cultural resources, which should be the starting point. They also say stakeholders and tribes are not notified soon enough in the development process.

Some of these interviewees say there are insufficient consequences for non-compliance with GMA, asserting that the Department of Commerce has awarded grant money to non-compliant jurisdictions via alternate avenues, rather than enforcing GMA penalties. They worry that the GMHBs do not have enforcement authority and the courts do not provide deference to GMHB decisions, or accept them as binding or case law. Some also wonder if there is a way to expedite the decision and appeals process, feeling that some GMHB cases have dragged on too long.

A common response was that the GMHBs lack the resources to fully implement their dispute resolution function. Interviewees felt that the mediation services the GMHBs are supposed to offer are very valuable,

can produce good solutions and save time and money, but are not working because the GMHB members and staff often do not have dispute resolution skill sets or training, nor the resources to involve dispute resolution professionals.

Some interviewees questioned whether the GMHBs always have the right mix of people and skill sets among their members. They cited complex legal issues coming before a board that may have only one attorney, where the other members might not really understand the intricacies of the legal case. Or they questioned whether some members had adequate planning and/or scientific background or guidance to understand important issues that had come before them. They questioned whether some appointments have been based more on politics than qualifications, or whether some members are too closely tied or beholden to local elected officials or constituent groups.

A few interviewees said that some of the GMHBs have become too policy-/advocacy-oriented. They felt those GMHBs are getting away from their role of interpreting and applying the GMA, and instead getting involved in actively coming up with policy solutions for perceived gaps in GMA. One said the GMHBs “invent the law, rather than following it.” This interviewee said development interests know they will lose before the GMHBs. Another said some boards have gone from being very helpful to pro se applicants to being resistant to them, expecting them to act just like attorneys. This interviewee said that some boards are getting too formal.

A few interviewees responded that there are fundamental flaws in the GMA system that restructuring the GMHBs will not address, and that would instead require legislative changes to the GMA. Issues cited included: 1) the fact that GMHB decisions do not go back to the date of adoption, so vesting can occur, which can be the rationale for future aberrations from GMA; 2) In other realms of law, the court asks if a state agency’s decision is based on substantial evidence, but here, it’s whether the municipality’s decision is based on substantial evidence, which involves second guessing the GMHBs; 3) because the GMA says the GMHBs can’t give advisory opinions, each case has to be argued on its merits and the body of case law is rendered less meaningful; and 4) You need a judicial rule of standing under SEPA, proving harm will happen, and that you will be hurt by that harm, in order to file a SEPA claim at the Central Board. This is a high burden on something as conceptual as 20 year comprehensive plan.

Measures of Success

Interviewees identified a number of concrete and specific ways that they would be able to look back at some point in the future (the suggested timeframe was anywhere from six months to five years) and determine that the restructuring effort was successful. These measures of success included:

- Restructuring legislation is approved by the Legislature and widely supported by stakeholders and governments. There is a smooth transition to a new structure.
- The restructuring preserves regional representation and other board member diversity criteria.
- The GMHBs maintain their ability to reach timely, well-reasoned decisions as well as certainty, predictability, consistency, uniformity, and the sense of a fair hearing for the people who come before them.
- GMHBs are responsive, inquisitive, appropriately applying GMA to factual situations, not biased or beholden to agencies or stakeholders.
- Some cost savings are achieved, not only to the state, but to local governments and litigants.

- There is buy-in, compliance, credibility, trust and respect on GMHB decisions and the GMA system from local and other governments and stakeholders.
- There is excellent public access to, and participation in, a simpler and more user-friendly GMHB process. The GMHBs are reaching out, making it easy to participate, holding more frequent meetings with stakeholders. More, better and standardized information is available online.
- There are fewer appeals to court and/or more cases upheld upon appeal.
- There are more mediated settlements and dispute resolution. It is clear to Board members, petitioners and governments that this is an essential part of the GMHBs' function, and they have the resources to perform it.
- There is an equal distribution of workload and responsibility among GMHB members.
- Rural and natural resource industry interests are protected.
- Treaty rights are respected.
- Structural flaws in the GMA are addressed.
- The GMHBs are eliminated.

Data Management

Interviewees were asked if they had thoughts or comments about how data on GMHB caseload, workflow, service area, population growth patterns, etc. is collected, reported and distributed. Many said they never looked at this data and/or had no comments. But others had thoughts to share.

Most of these interviewees said there are significant differences in how the GMHBs collect, report and distribute data, and that these differences need to be dealt with in the restructuring process. They said the GMHBs need to agree to one set of definitions, standards, procedures, formats and forms. Some said it is extremely problematic that the GMHBs report cases and gather data differently. Other said there are reasons for the differences, and that the number of cases doesn't capture the full dimension of work in some places. Others said technology should be better used to refine data and get more robust information.

A number of other interviewees focused on the benefits that would be derived from improving accessibility to GMHB forms, decisions, and other information, especially online. They said the *GMHB Handbook* is a good start, but the GMHBs can do more, for example, providing tools and examples for how counties and cities can comply with GMHB findings. They said it would be of great benefit to have more timely updates of the digests of decisions—say every month versus every six months. It would also help to ensure rulings are available on the website as soon as they are completed. One interviewee saw an opportunity to improve the GMHBs performance measures, and their reporting to and relationships with the Legislature, Governor and public.

Maintaining the Boards' Functions

When asked which of the restructuring options was most likely to maintain the GMHBs' quasi-judicial hearing and dispute resolution functions, interviewees most commonly cited the following options:

- ➔ Ability to serve in a different region on a pro tem basis
- ➔ One board/seven members/three-member regional panels
- ➔ One board/six members/three-member regional panels

The most common response was that most of the restructuring options would be likely to preserve the GMHB's functions, but eliminating the GMHBs would not maintain the functions. These interviewees said that citizens would be intimidated if they have to appeal in court. They said most Superior Court judges don't have the background to rule effectively on land use cases (one suggested skipping Superior Court and having appeals of GMHB decisions appealed directly to the Court of Appeals). They said most judges don't like land use cases, are overloaded already, and would resist being handed land use cases. Some interviewees also said that courts do not have to explain decisions, make their findings detailed, or take a detailed look at the record. A few interviewees disagreed, and felt that the interview guide was worded in such a way as to discourage interviewees from supporting this option.

There was concern expressed that a five member board might be too small to maintain quality and timeliness. Some interviewees said that fluctuating caseload and 'spikes' are not that big a deal, and that boards are not normally overwhelmed. It was also reiterated that the dispute resolution function is not currently being maintained, as the resources are lacking.

Several interviewees said it is very important to have enough legal expertise on the boards. These interviewees expressed the opinion that the attorney members tend write more of the decisions and best understand the issues. Though some interviewees felt that folding the GMHBs into the EHO would not result in better decisions, others thought that access to the EHO administrative law judges and dispute resolution expertise would improve the GMHBs ability to maintain its functions under GMA.

Saving Costs

When asked which of the restructuring options are most likely to save costs to the state and stakeholders, interviewees most commonly cited the following options:

- ➔ One board/seven members/three-member regional panels
- ➔ One board/six members/three-member regional panels
- ➔ Consolidate the boards under the EHO

Interviewees frequently stated that the only way to realize cost savings of any size is to have a smaller number of board members. Many interviewees said that the GMHBs do not need eight or nine board members; they have room to take on more cases, even if the number of members is reduced.

A few suggested allowing some members to be part time, based on how many cases they want to hear, or allowing all members' FTE to fluctuate alongside caseload. Some called for better use of electronic communication, reducing travel, and/or holding hearings in a central location (though others pointed out that this reduces regional representation).

One interviewee said there could be a reduction of staff without affecting service. Several pointed out that administrative consolidation has already happened, including the laying off of staff. A number of interviewees asserted that consolidating with EHO would save more money. Some felt EHO's

administrative law judges, paralegals and/or administrative staff could perform some functions currently done by GMHB members. One interviewee said the GMHBs need to codify the administrative consolidation that has already occurred, so it will be consistent with the GMA.

But most of these interviewees also said that it is important to recognize that the GMHBs are a small state agency, so there will be no major cost savings as compared to the overall state budget, no matter what choices are made. Some of these interviewees said the goal should be a structure that is the most representative and democratic and that leads to the best decisions on the merits, not saving costs. Others said that none of the options save costs to stakeholders or other governments.

A few interviewees said eliminating the boards altogether would save money; they are just an added step in front of court, where cases end up anyway. They said that petitioners might be discouraged from filing legal challenges in the first place if they had to do so in court, thus creating a cost savings. But others said judicial time is much more expensive than administrative hearing time, for state and local jurisdictions as well as stakeholders. Some of them suggested saving costs with pre-petition settlement discussions.

Preserving Regional Representation

When asked which of the restructuring options are most likely to preserve regional representation, interviewees most commonly cited the following options:

- ➔ Ability to serve in a different region on a pro tem basis
- ➔ One board/seven members/three-member regional panels
- ➔ One board/six members/three-member regional panels

Interviewees were also asked how important regional representation and the other GMHB appointment criteria are. Most respondents said that regional representation is very important. They said there are significant differences between eastern Washington, western Washington and Central Puget Sound, and that having a structure that acknowledges and accommodates those differences is critical to the success of the GMHB process. They said regional boards increase the legitimacy of GMHB decisions, and that regional people have the relationships to talk to the participants before and after hearings. They have a tie to the community that is valuable for achieving acceptance when decisions are rendered. They said this is especially important to people in eastern Washington, where it is also important to have people involved who work directly with the land.

These interviewees said it is good to have hearings held in the regions. They said this helps the GMHBs understand the context in which decisions are made, how they fit the geography, culture, economics, etc. Interviewees said that the regional differences are not the only important differences that need to be acknowledged. Other differences include north/south, urban/rural (or urban/urbanizing/rural), conservation, “smart growth”/development, natural resource industry.

A smaller number of interviewees said that regional representation is not that important, and was added for political reasons. They said all the differences cited above exist within all three regions—the difference between Sultan and Seattle is much like that between Ephrata and Spokane or Vancouver and Napavine. These interviewees prefer a more neutral, statewide approach.

In terms of other appointment criteria, interviewees were nearly unanimous in agreeing that the requirement for at least some board members to be land use attorneys is critical. Many called it the most important position on board. However, one interviewee felt that attorneys should not be voting board members, just support staff. There was also near unanimity that political affiliation is not a very important criterion, and that it was added for political reasons. Most said it is not emphasized on boards, doesn't effect decisions very often, and that the GMHBs do not operate along political lines. However, most interviewees thought this criterion was important to the Governor and/or Legislature.

A few interviewees did see the political affiliation criteria as important, because they represent partisan organizations and/or memberships. One interviewee said that this criterion is not followed correctly, because only the most liberal, pro-environment Republicans are appointed.

Most respondents stated that the criteria requiring a former local elected official on each GMHB is a good one, because these members bring valuable perspective and experience. However, most believe these members also need a solid land use and environmental protection background, and the ability to write decisions. A few interviewees stated that local elected officials are not important to the GMHBs, because they tend to be political appointments and to not have expertise on land use and writing decisions.

A few interviewees suggested that the restructuring effort consider adding a requirement for a planner and/or scientist to serve on the GMHBs. This would be in acknowledgment that a GMHB hearing is not a purely legal analysis; it is a planning analysis as well.

One interviewee said that five members are not enough to meet the membership criteria and balance. Another said five members is not fair to eastern Washington. A few were concerned about having a GMHB member from outside the region on serving on a regional panel (on either a pro tem or regular basis), even if the majority of members are from the region. They were concerned that member could 'set the tone' and would lessen regional representation and local credibility.

Several interviewees said that eliminating the GMHBs eliminates regional representation. However, one interviewee said eliminating the GMHBs improves regional representation, because there is a Superior Court in each county. This interviewee also suggested that the GMHBs could be limited to procedural issues, with substantive issues heard in court.

Political Feasibility

When asked which of the restructuring options are the most and least politically feasible, interviewees most commonly cited the following options:

- ➔ Ability to serve in a different region on a pro tem basis
- ➔ One board/seven members/three-member regional panels
- ➔ One board/six members/three-member regional panels

Most interviewees said that eliminating the GMHBs is not politically feasible. They felt that the Legislature and many stakeholder groups would not allow it. They also felt that most people support the continuation of GMA and the GMHBs quasi-judicial functions. And they said the courts do not have the expertise, time, money or desire to hear these cases.

Several interviewees said that the status quo is not feasible, that budget realities and the natural resources reform effort require that the GMHBs change. They also said that the workload does not support nine members.

Many interviewees said that preserving regional representation would be important for achieving political feasibility, and that this is one reason the five member option may not be feasible.

Some felt the major obstacle that a six member option would face would be explaining that although the board would have six members, cases would still be heard by three-member regional panels, so regional representation would be preserved and tie decisions would not be a problem.

Preferred Options

When asked which of the restructuring options they preferred overall and would like to see move forward in the legislative process this session, interviewees most commonly cited the following options:

- ➔ Ability to serve in a different region on a pro tem basis
- ➔ One board/seven members/three-member regional panels
- ➔ One board/six members/three-member regional panels

The most common response was that, if nothing else happens, it will at least be essential to provide the flexibility for members to serve in another region on a pro tem basis (though a few interviewees thought this might reduce regional representation). But most interviewees said that adding this flexibility would not on its own go far enough to meet the goals of the restructuring effort. They said that budget efficiencies, matching board membership to caseload/workflow, and improving consistency across the regions all speak to the benefit of consolidating the boards and reducing the number of board members, while preserving regional representation and necessary administrative support.

The options that interviewees most commonly identified as best achieving that balance were the ones that featured one consolidated board with two members from each of the three current regions, hearing cases as three-member regional panels (where two of the members are from the region where the case arose). They suggested adding a seventh, at-large member if the workload would be too large for six members to handle. They said that if the six member option is chosen, it will be important to emphasize that cases would be heard by three-member panels, not six-member panels where ties would be possible. Many expressed the opinion that one five-member board would not be adequate to either handle the workload or preserve regional representation and a balance in the other membership criteria. The options that featured eliminating the Central Board were seen by most interviewees as counterproductive, since that region has the highest caseload.

Interviewees were split as to whether a consolidated board should be folded into EHO as a new wing of that agency that hears land use-related appeals. Interviewees pointed out a number of ‘pros,’ including the belief that co-location makes sense to the public (who, they say, wonder why all these quasi-judicial boards are not more closely coordinated), may save staff and money, and allows the GMHB and EHO boards to better share lessons learned, experience, and resources such as the EHO’s administrative law judges. Some saw it as an important opportunity to advance regulatory reform, and standardize criteria, processes and timelines—for the “right hand to see what the left hand is doing.” But interviewees also identified “cons,” including a belief that the EHO and GMHB boards may function too differently (one conducting trials in

Olympia, the other reviews around the state) to fit together easily, and that combining the two agencies could overtax the staff and require new hires, negating potential savings. All in all, this option was seen as perhaps the most complex and least straightforward choice. It was common for interviewees to say of this option, “the devil is in details.”

Interviewees also encouraged selecting an option that is simple and easy to explain. Some said that whatever option is chosen, the GMHBs need to work closely with Governor’s Office, and Legislature on a simple, sensible proposal that can achieve consensus or near consensus from stakeholders and governments. A few said that the process might benefit from a follow-up facilitation effort to improve cross-board communication, standardize processes, and/or facilitate reaching consensus on, adoption of, and transition to a new structure.

Different/Hybrid Options

Interviewees identified a number of ideas for different or hybrid restructuring options. None of these were as widely cited or supported as the preferred options cited above, but they are presented below, to preserve the ideas:

- The GMHBs could be consolidated into one board with six or seven members, but without regional representation.
- The GMHBs could be consolidated into one board with eight members—five from western Washington and three from Eastern Washington.
- The GMHBs regions could be restructured, for example with the Puget Sound counties served by one board and the rest of state by another. Or there could be more than three regions, including Puget Sound, the Washington Coast, etc. Other ways to restructure the regions included by watershed, economics/jobshed, traffic alignment, etc. But it was acknowledged that any option that included more than three regions would require more, not less, resources.
- The GMHBs could follow the EHO model, where members sit on different boards with support from administrative law judges who help hear cases and do dispute resolution. This could perhaps entail one board with five members and two administrative law judges.
- The GMHBs’ rules of operation could be changed to allow one member to be designated as a “presiding officer” for a simpler case. That member could do most of the work on the case, with the full three-member panel convening only at the end of the process to render a decision.
- The Legislature could create a land use court, similar to the Oregon Land Use Appeals Board or Colorado Water Board, with judges and panels. Or the Legislature could institute state agency approval of comprehensive plans, CAOs, etc. and a smaller GMHB to hear the remaining quasi-judicial appeals, which is how most states with growth management legislation do it.
- The Legislature could expand jurisdiction of the Land Use Appeals Board currently hearing cases in Grays Harbor County across state, and give that caseload to GMHBs.
- Appeals of GMHB decisions could skip Superior Court, going directly to the Court of Appeals.
- The GMHBs could be replaced by binding arbitration if there isn’t enough caseload and/or financial resource to maintain the GMHBs.

- GMHB members' six-year terms could be capped at two or shortened to four years, to provide more oversight and turnover. The GMA could also be modified to provide a method for removing GMHB members short of going to the Washington State Supreme Court with charges of malfeasance.
- The focus on restructuring options could be set aside in favor of a focus on fixing larger flaws in the GMA (including those mentioned in the responses to the question about what is not working well) and/or inadequacies in the phasing of GMA update cycles.

Other Information Needed

Interviewees were asked if there was additional information that it would be important to know about the options, to inform decision-making. The most common response was an assessment of workload, including the number of cases heard, decided, settled, withdrawn on motions and/or appealed.¹⁵ Projected future caseload was also often mentioned, though it was acknowledged that this is hard to predict. The other information commonly cited was an independent evaluation of the true and complete cost of the restructuring options, beyond just the savings associated with a reduction of member and/or staff salaries.¹⁶ This included how travel costs might go up or down in the various options, and the cost to local governments and stakeholders to participate in cases. Some interviewees encouraged looking five to ten years down the road, and not just at what saves money today.

¹⁵ See section entitled *Caseload Analysis and Projections*.

¹⁶ Triangle understands that the Office of Financial Management will be preparing a fiscal analysis of the options as part of the restructuring discussion.

Recommendations

Presented below are Triangle's recommendations for restructuring the GMHBs to maintain their quasi-judicial and dispute resolution functions under GMA, while saving costs to the state and stakeholder and preserving regional representation. These recommendations are based on the caseload data provided by the GMHBs and OFM, assessment interviews conducted with over 35 internal and external stakeholders and governments, and input received from stakeholders and GMHB members at the GMHBs' Joint Annual Meeting on October 1, 2009.

It is important to emphasize that, as a neutral third party, Triangle had no preconceptions going into this process and has no stake in a particular outcome. Triangle also acknowledges that it is likely and understandable that ideas and proposals will evolve as the restructuring process unfolds. Triangle hopes this report and these recommendations will help move that process forward towards a consensus solution that works well for both internal and external stakeholders and governments.

- 1. Consolidate the GMHBs into one Board with Two Members from Each Region, Hearing Cases via Three-Member Regional Panels**—Both the data assessment and the interviews indicate that this option is likely to maintain the GMHBs' functions, while saving costs via the only remaining significant vehicle identified (Board member salaries, benefits and associated costs). Because it retains two members from each of the current regions, it would also preserve regional representation, which is important to the vast majority of interviewees. Because of the balance it strikes between function, workload and fiscal savings, it is also seen by interviewees as one of the most politically-feasible of the options. And it provides for a good "cross pollination" of ideas among the Boards. The data assessment indicates that six members should be able to handle the number of cases expected to come before the GMHBs.
- 2. Retain a Seventh, At-Large Member if Workload or Membership Criteria Requires It**—The interviews indicate that there is also support for an option that, while otherwise the same as the six-member option recommended above, retains a seventh member, not appointed to one of the three regions, to assist in any region as needed. This "at-large" member could be a means to ensure the GMHB includes additional land use planning or legal expertise, as called for by many interviewees¹⁷ and could also be responsible for some or all of the GMHBs' administrative duties.¹⁸ The caseload assessment indicates that a seventh member may not be necessary strictly for workload reasons, though some interviewees believe workload may increase in the future. And (as some interviewees pointed out) regardless of the fact that this seventh member would be appointed "at-large," he/she will be identified by many or most people as "belonging to" one of the three regions, regardless of the "at-large" title.
- 3. Reduce the Number of GMHB Members, and the Budget, via a Phased Approach and/or Attrition**—The GMHBs have already been reduced from nine to eight members by the Governor's decision to not fill a vacancy on the Central Puget Sound GMHB in mid 2009. This number could be kept in place through mid 2010 (while the restructuring is approved and implemented), at which time the number of members could be reduced to seven by eliminating one position on the Western Washington or Eastern Washington GMHB. The remaining GMHB could be reduced to two members (and an "at-large" member appointed, if necessary) in mid 2011. In this way, it is likely that the reductions could occur via voluntary attrition and/or at the expiration of current

¹⁷ See recommendation #6.

¹⁸ See the appendices for a document describing the GMHBs' administrative responsibilities.

members' terms, rather than having to let members go mid-term. Of course, this approach would have to be matched with preserving the correct mix of appointment criteria.¹⁹ The GMHBs' budget should be reduced consistent with this phased approach, so that budget reductions do not occur prior to the reduction in members and their associated costs.

4. ***Preserve Regional Representation***—Although a few interviewees saw the GMHBs' regional representation structure and membership criteria as unimportant or deleterious to the implementation of GMA, a large majority saw it as a strength of the current process and essential to a fair, effective and accepted application of GMA at the local level. Any option that does not preserve this regional representation is likely to face significant opposition. Restructuring should not eliminate any of the three current regions, and should ensure that cases continue to be heard in the regions, by panels featuring a majority of members from the region.
5. ***Allow Members to Hear Cases in Another Region; Allow Retired Members to Hear Cases on a Pro Tem Basis***—Almost all of the interviewees support the concept of providing the ability for members to serve in another region, as long as the cases continue to be heard by a majority of regional members. Many of the restructuring options require this ability. For example, the options recommended above would require that GMHB members be allowed to hear cases in other regions, while ensuring (as noted above) that the majority of members on a case be from the region where the case arose. In addition, workload fluctuations and “spikes” could be addressed by allowing retired GMHB members to hear cases on a pro tem basis.
6. ***Keep the Local Elected Official Criteria; Keep or Increase the Land Use Attorney Criteria; Consider Adding a Land Use Planning Criteria***—Although a number of interviewees believe that the criteria requiring the GMHBs to include members who are former local elected officials are unimportant or even diminish the effectiveness of the Boards, most see this requirement as providing important experience and perspective, and as going hand-in-hand with regional representation. The effectiveness of the GMHBs would be unlikely to increase by attempting to change this criterion. There was perhaps more consensus around the value of the criterion requiring that the GMHBs include members who are land use attorneys than any other area. A significant number of interviewees would like to see an even larger percentage of the GMHB members with this background. Many would also like to see a requirement that the GMHB members include a land use planner and/or that the non-attorney members have more specific experience with the application of the GMA. An often-cited reason for this is to ensure all members are able to shoulder a fair portion of the writing of decisions and other orders. These criteria could be met by having at least three attorneys and three local elected officials on a six or seven member board, with all members required to demonstrate specific and concrete GMA/land use planning experience, and the ability to write orders and decisions.
7. ***Eliminate or Modify the Political Affiliation Requirement***—The requirement that members state a political affiliation was seen as irrelevant or unimportant by almost all interviewees, most of whom felt that the GMHBs are not operating in a partisan manner. But almost all of these same interviewees thought that this requirement is important to the Legislature and/or the Governor. Therefore, the recommendation is to eliminate this requirement, unless doing so becomes a

¹⁹ If this approach will not work for this or other reasons, an alternative is to have all current members submit letters of resignation to the Governor, who would then reappoint at least three and fill the remaining slots with current or new members, consistent with the appointment criteria. This is reportedly similar to the approach featured in SB 6083. It would have to be established that these or other approaches are consistent with GMHB members' terms of service.

stumbling block in the political process. If the latter is the case, alternatives include: 1) leaving the requirement as it is (few interviewees saw it as having a large effect on the process); 2) modifying it to require at least three members from each of the two major political parties on a six- or seven-member board; or 3) replacing the political affiliation requirement with Legislative confirmation of GMHB members (without applicants having to declare a party).

- 8. *Replace the Three Regional Administrative Chairs with One Chair and One or Two Vice Chairs***—The current lack of clear leadership and consistency reported by interviewees could be addressed by replacing the current structure (under which each regional GMHB rotates which member is to serve as an administrative chair with limited authority) with one in which the members of a consolidated GMHB choose one of their own to serve as chair. This chair would have administrative responsibilities and authority similar to the chair of other boards, such as managing caseloads, making assignments, interacting with agencies and stakeholders, speaking on behalf of the Board, and making management decisions. This chair would serve one two-year, non-sequential term. The chairship could rotate among regions, if desired. The chair could designate one or two GMHB members to serve as vice chair, to spread the workload and/or provide additional expertise in specific areas not in the chairs' background (like budget, administration, external relations, etc.).²⁰ It is important to note that if two vice chairs are appointed, there would be the same number of administrative officers (three) handling the same administrative workload as at present. The vote and transition to this new leadership structure could occur in mid 2010, when the GMHBs reduce to seven members. The Governor could be empowered to choose the chair if no member achieves a majority of votes. The means of selecting the chair and vice chairs could be specified via statute, leaving the specific duties, authorities, responsibilities, etc. to be determined by GMHB rules.
- 9. *Confirm the Consolidation of Administrative Functions to One Office***—The GMHBs responded to a budget reduction in 2009 by consolidating administrative function to one office. Future budget efficiencies will likely require making this arrangement permanent. It was also cited by many interviewees as a good way to improve communication and consistency in the procedures and outcomes of the regional hearings. But the GMHBs should preserve those regional hearings, which are important to local jurisdictions and stakeholders, both for keeping their costs down and maintaining the GMHBs' regional credibility. However, the GMHBs should use information technologies where possible to reduce travel costs and improve communication. In addition, it will be important for the restructuring legislation to codify the administrative consolidation, so it is clearly consistent with the GMA.
- 10. *Consider Folding the GMHBs into EHO***—While some opposed the idea, many interviewees made a compelling case for folding the consolidated GMHBs into EHO.²¹ However, given the large number of variables and minimal amount of specific information available at this time, it is beyond the scope of this analysis to make a definitive recommendation on this option. Therefore, the recommendation is to consider this option, carefully weighing the risks and benefits, and moving forward if the risk/benefit ratio is favorable. If this option is exercised, it would most likely make sense to do it after the reduction of GMHB members has been phased in, so that there is time to plan for an orderly transition.

²⁰ See the appendices for a document describing the administrative functions that are the responsibility of the current regional administrative chairs, and which would fall to the chair and vice chairs under the structure described above.

²¹ See discussion in the *Key Themes from Interviews* section of this report.

- 11. Consider Alternatives to Full Time Equivalency (FTE) for GMHB Members**—Whether the GMHBs wind up with nine, eight, seven, six or five members, there may be benefit to allowing more flexibility in how many hours per week to which a member is committed. Depending on workload, some members may choose to work at less than one FTE, with a pro rated salary. This choice could be made each quarter. Or it could be clear when new members apply that FTE may fluctuate alongside workload. Either method would save money and help more closely tailor FTE to workload.
- 12. Improve Data Management, Including the Creation of One Database for all GMHB Records**—The difficulty in establishing key indicators for the caseload analysis due to differences in how information is collected, recorded and reported among the three GMHBs provides compelling evidence that the GMHBs, other governments, stakeholders and the public would benefit from more consistent and complete data management. Establishing one central database to house this information would be a good first step. Improving and expanding what information is available online would be another.

Next Steps

This study was presented in draft form to the GMHBs at their annual joint meeting on October 1, 2009. Board members and external stakeholders/government representatives had the opportunity to comment on the draft study at that time. The study was then finalized for delivery to the GMHBs, who will convey it to the Governor's Office by the end of October, 2009, accompanied by a cover letter expressing the GMHBs' opinions and preferences on restructuring.

The Governor has chosen to not fill a vacancy on the Central Puget Sound GMHB, pending the outcome of this and other studies. This includes a natural resources reform effort involving the natural resource agency directors, Commissioner of Public Lands, Governor's Office, and stakeholders that includes 25+ separate options for reforming natural resource agencies.²²

It is anticipated that these studies and the discussions they foster will lead to legislation being introduced in the next session of the Washington State Legislature.

²² For more information, see "Ideas to Improve Management of Washington's Natural Resources" on the Governor's website, www.governor.wa.gov.

APPENDICES

A: List of Interviewees

External Stakeholders and Government Representatives

Joe Tovar, Past President, American Planning Association–Washington Chapter
Jeff Eustis, Attorney, Aramburu & Eustis
Chris McCabe, Government Affairs Director, Association of Washington Business
Dave Williams, Municipal Policy Associate, Association of Washington Cities
Timothy Harris, General Counsel, Building Industry Association of Washington
Trent England, Director, Property Rights Center, Evergreen Freedom Foundation
Tim Trohimovich, Planning Director, and Rob Beattey, Legal Director, Futurewise
Linnea Hurst, President, Ann Aagard, Shorelines and Wetlands Chair, and Elizabeth Davis, Natural Resource Chair, League of Women Voters of Washington State
Scott Hildebrand, Public Policy Director, Master Builders of King and Snohomish Counties
Alix Foster, Director, Tribal Attorney’s Office, Swinomish Indian Tribal Community
Scott Merriman, Deputy Director, Washington State Association of Counties
Jack Field, Executive Director, Washington State Cattlemen’s Association
Jay Gordon, Executive Director, Washington State Dairy Federation
Leonard Bauer, Director, Growth Management Services, Washington State Department of Commerce
Kathy Mix, Chair, Washington State Environmental Hearings Office
Dan Woods, Director of Government Relations, Washington State Farm Bureau
Terry Hunt, Director of Government Affairs, Washington State Grange
Johnson Meninick, Cultural Resources Program Manager, Yakama Nation
Vince Panesko, retired (pro se appellant to Eastern and Western GMHBs)

Note: comments provided at the GMHBs’ annual meeting by the following stakeholders were also taken into account in the finalization of this study:

Rob Chave, American Planning Association–Washington Chapter
Alexander (Sandy) Mackie, Association of Washington Business
Dave Williams, Municipal Policy Associate, Association of Washington Cities
Tim Trohimovich, Planning Director, Futurewise
John Moffat, Washington State Association of Counties
Eric Laschever, Washington State Association of Municipal Attorneys
Dan Woods, Director of Government Relations, Washington State Farm Bureau

GMHB Current and Former Board Members and Staff

Eastern Washington Growth Management Hearings Board

Joyce Mulliken (Administrative Chair)
Ray Paoella
John Roskelley
Dennis Dellwo (former)

Central Puget Sound Growth Management Hearings Board

Dave Earling (Administrative Chair)
Margaret Pageler
Ed McGuire (former)

Western Washington Growth Management Hearings Board

Nina Carter (Administrative Chair)
Jim McNamara
Will Roehl
Holly Gadbow (former)

Staff

Julie Ainsworth-Taylor (Staff Attorney)
Linda Kerr-Stores (Central)
Paulette Yorke (Western)
Angie Andreas (Eastern, former)

Interviews conducted in 2005–06 with individuals involved in crafting the GMA and the GMHBs, as part of the Washington Secretary of State’s Oral History Project, were also reviewed as source material for this study.²³

²³ See bibliography.

B: Interview Guide

Growth Management Hearings Boards Efficiency Study INTERVIEW GUIDE²⁴

Background

RCW Chapter 36.70A sets up a quasi-judicial review procedure to hear and decide challenges to city and county plans and development regulations under the Growth Management Act (GMA), along with related SEPA and SMA issues. The GMA calls for three separate Growth Management Hearing Boards (GMHBs) of three members each. The Central Board hears cases arising in King, Pierce, Snohomish and Kitsap counties (87 jurisdictions in all). The Western Board hears cases arising in the other GMA-planning counties west of the Cascade crest (52 jurisdictions). The Eastern Board hears cases arising in GMA-planning counties east of the Cascade crest (86 jurisdictions). The statute contemplates that each Board will be sensitive to regional distinctions in application of GMA goals and requirements. Over time, the Boards have also developed some variations in how they process cases. Administrative review of environmental and natural resource agency and local government permit decisions occurs at the Environmental Hearings Office (EHO) through a number of independent Boards (the Pollution Control Hearings Board or PCHB, Shoreline Hearings Board or SHB, and Forest Practices Hearings Board or FPHB).

State budget realities and over 15 years of GMA experience suggest that options be developed and an assessment be made as to whether it is feasible to reorganize the GMHBs for greater efficiency while still fulfilling the quasi-judicial hearings functions. The GMA structure for the Boards includes statutory requirements for each three-person Board to include a member from each party, an attorney, and a former local elected official. The number of new petitions filed each year with the various Boards has fluctuated widely over time; from less than 10 to over 50 (the Boards also deal with compliance proceedings and court remands). The fluctuation in case filings is due in part to the staggered statutory schedule for Comprehensive Plan, Shoreline Plan and Critical Areas updates. However, the GMA does not provide for a Board member from one Board to assist with the spiking case load of another Board on a pro tem or other temporary basis.

The GMHBs have retained Triangle Associates, Inc. to conduct an efficiency study. The purpose of the study is to identify alternatives for Board restructuring that will save costs to the state and stakeholders and preserve regional representation, while maintaining the Growth Management Act quasi-judicial hearing/dispute resolution functions. The study will summarize the pros and cons of the selected alternatives. It will also provide an objective review of caseload indicators and trends, workflow, service area, population, resolution by settlement or mediation, workload driven by statutory deadlines, timeliness of case resolution, jurisdiction compliance or remands to the Boards, and other relevant factors. This study will be sent to the Governor by October 15. The Governor has chosen to not fill the third position for the Central Board in 2009 pending the outcome of this and other studies.

²⁴ This appendix reproduces the interview guide exactly as it was provided to interviewees in advance of their interview. It is important to note that it contains at least one factual error—that the 1998 Land Use Study Commission recommended eliminating the GMHBs (the Commission recommended the status quo, but raised for discussion the idea of eliminating the GMHBs, along with other ideas). This error was pointed out to interviewees once it was discovered. In addition, readers of this study will note that the descriptions of the restructuring options in the *Restructuring Options* section of the study differs in some ways from the descriptions in this interview guide. This was done to provide more clarity on the options, based on lessons learned from explaining the options to interviewees.

Interview Questions

An important element of the study will be interviews with key internal and external stakeholders. You have been identified as one of those stakeholders and are scheduled for a telephone interview during September 8–18, 2009. The interview questions are included below, to provide the opportunity for advance reflection. However, it is not necessary to prepare responses beforehand, and written responses are not expected.

We estimate that the interview will take 30–60 minutes. The interview will be confidential, which means that while we will provide a list of the people interviewed and a summary of the key themes that emerge during the interviews, no names will be associated with specific statements in the summary (unless you specifically request that we associate your name with your comments).

1. *What organization(s) or entity(s) do you represent? What are your title, role and responsibilities?*
2. *Please briefly describe your experience working on growth management issues and with the GMHBs.*
3. *We will discuss specific alternatives that are under consideration shortly. But first, we would like to ask a few overarching questions. In a few sentences, what would you say is working well about the current GMHB process and structure? What is not working well?*
4. *How would you measure success for a GMHB restructuring effort? With restructuring, what specific and concrete things would happen (or not happen) in the next six months, one year or five years? What would be different (or the same)?*
5. *Do you have any thoughts or comments about how data on GMHB caseload, workflow, service area, population growth patterns, is collected, reported and distributed? Are there differences in data management among Boards that need to be addressed?*
6. *Several options are under discussion as possible future scenarios for restructuring the GMHBs. The efficiency study will compare the options in terms of how likely they are to: 1) maintain the GMA's quasi-judicial hearing/dispute resolution process, 2) save costs to the state and stakeholders, and 3) preserve regional representation. The study will identify the alternatives that seem likely to do the best job of accomplishing all three of these goals. The options under discussion include:*
 - A 2009 legislative proposal introduced in the House did not change the current number of Board members (nine) nor criteria for appointment, but provided flexibility by allowing a Board member to serve in a different region on a pro tem basis as needed, to deal with temporary absences or workload fluctuations.
 - *Seven Members/Three-Member Panels*—This option would retain the three GMHB regions by retaining two Board members from each region. A seventh member would be appointed at large. Each case would be heard by a panel of which two members would be from the region where the case arose, with the third member chosen based on workload. The Governor's 2005 Land Use Agenda proposed to structure a consolidated Growth Board in this way, and to fold it into the Environmental Hearings Office (EHO).
 - *Seven Members/Two Three-Member Panels with One "Floating" Member*—This option would retain the three member Eastern Washington Board and the three member Western Board, eliminating the Central Puget Sound Board. One "floating" Board Member, who should be

a practicing attorney specializing in land use in Washington State, would be appointed with flexibility to work on any case as needed throughout the state.

- *Six Members/Two from Each Region*—This option would feature six members on one consolidated Board, organized into case-by-case panels (each panel including two from the region where the case originated, plus one other member).
- A 2009 legislative proposal introduced in the Senate would have created one five-member Board to hear GMA cases from the entire state. Two members would be from east of the Cascades and three from the west. Each side of the state would provide one attorney, one former local elected official, and one representative from each party.
- *Quasi-Judicial Review*—Several options are under discussion through the Governor’s Office about reorganizing the natural resource agencies and the appeals process. Stakeholder groups are working with the Governor’s Office throughout September to discuss these options. One option envisions that the multi-member Boards that hear appeals of environmental and land use matters throughout the State be consolidated into one agency. Part of this option is to consolidate functions currently performed by the EHO, its many boards and the three GMHBs into a single, umbrella adjudicative agency. That agency would contain two major quasi-judicial components—one that handles appeals of natural resource and environmental regulatory matters, the other that addresses land use related appeals.
- *Land Use Study Commission*—This 1998 study recommended eliminating the GMHBs and instead either provide that all appeals are filed in Superior Court or allow cases to be filed directly in the Court of Appeals. However, Legislative Fiscal Notes have shown that the increased court costs would outweigh the budget savings, and the courts have expressed a desire to keep land use appeals out of their system.

7. *Which of the above options do you think are most likely to maintain the GMA quasi-judicial hearing/dispute resolution functions? Why?*
8. *Which of the above options do you think are most likely to save costs to the state and stakeholders? Why? What other methods could be considered to reduce expenses?*
9. *Which of the above options do you think are most likely to preserve regional representation? Why? How important is it to your organization for the GMHBs to have regional representation and/or the ability to appoint an attorney, local elected official, Republican and Democrat from each region?*
10. *Which of the above options do you think are most likely to achieve the best balance of all three goals listed in question 6? Why?*
11. *Which options do you think are the most/least politically feasible? Why?*
12. *Is there a different (or hybrid) option that you would recommend? Or do you prefer the status quo?*

<i>(This table can be used to rank the options, 1 = top choice)</i>	Maintain GMA Hearings Functions	Save Costs	Preserve Reg. Representation	Balance All 3	Political Feasibility
9 members with flexibility					
7 Members/3 Panels					
7 Members/2 Panels					
6 Members/2 per Region					
One 5-member board					
1998 LUSC (eliminate boards)					
Hybrid/Other/Status Quo?					

13. *What else would be important to know about these or other options to inform decision-making?*
14. *Given your responses to the prior questions, which one or two options would you like to see move forward in the legislative process this session?*
15. *How should a restructuring option take into account the cyclical nature of the Boards' workload and differences in sequencing local government plan updates?*
16. *Do you have any thoughts or comments about a proposed amendment to GMA that would allow a Board member to serve in a different region on a pro tem basis as needed, to deal with temporary absences or workload fluctuations?*
17. *What organizations or individuals do you think need to be involved in this discussion of restructuring alternatives for the GMHBs?*
18. *Do you have any questions for us? What should we have asked that we did not? If you are interested in continuing to learn more about this report, please attend the October 1 Joint Board meeting in Edmonds and, also, contact Linda Stores at the GMHB's administrative offices in Olympia (360) 586-0257.*

C: Caseload Analysis and Projections: Supporting Data

CASELOAD ANALYSIS & PROJECTIONS: Washington State Growth Management Hearings Boards (GMHBs)

*Prepared by Cascadia Community Planning Services
September 2009*

BACKGROUND

Introduction

The Growth Management Hearings Boards (GMHBs) have retained Triangle Associates, Inc. and Cascadia Community Planning Services to conduct an efficiency study. The purpose of the study is to identify alternatives for GMHB restructuring that will save costs to the state and stakeholders and preserve regional representation, while implementing the Growth Management Act (GMA). The study is intended to summarize the pros and cons of the selected alternatives. It will also provide an objective review of the past workload of the GMHBs to help inform the legislative discussion regarding board restructuring.

Accordingly, this document reviews historic workload indicators and trends, workflow, service area, and population. It also provides two potential future caseload scenarios that factor this data. To the extent possible given the format data have been collected by the three boards, the analysis seeks to identify the extent to which the boards have resolved cases through settlement or mediation, as well as past GMHB workloads related to compliance proceedings. However, because of inconsistencies in the data collection and reporting methods between the GMHBs, as well as unavailable and/or incomplete data, no final conclusions regarding settlement/mediation or noncompliance/remand tendencies have been reached.

Growth Management Hearings Board (GMHB) Jurisdictions

The Growth Management Hearings Boards (GMHBs) serve some 254 jurisdictions statewide (29 counties, and 225 cities and towns), which are home to nearly 95% of Washington's total population (6,328,550 of 6,668,200)²⁵. Of these 254 jurisdictions, 203 were originally required to plan under RCW 36.70A.040(1), while 11 counties and the cities and towns located therein "opted in" to GMA compliance under RCW 36.70A.040(2).

Table #1, and the graph which follows it, summarizes the information relating to counties and cities served by each board.

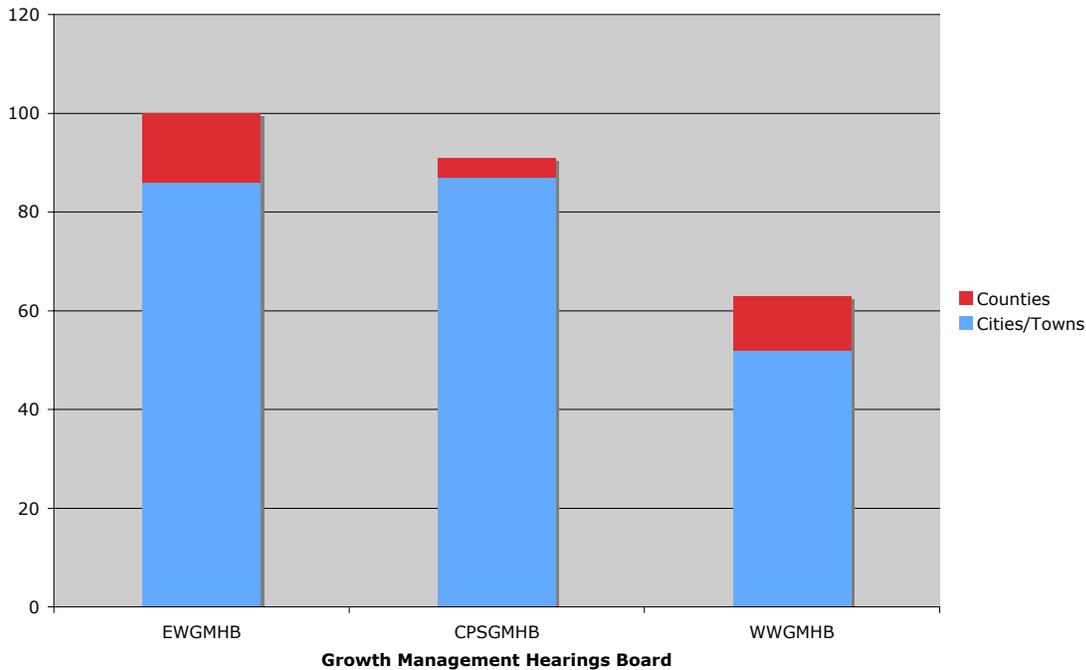
²⁵ Present population figures obtained from [April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington](#), Washington State Office of Financial Management (OFM), April 1, 2009. Information regarding "required to plan" vs. "opt in" jurisdictions obtained from Paul Johnson, Washington State Department of Commerce.

TABLE #1: Counties, Cities & Towns Served by the GMHBs				
Type of Jurisdiction	EWGMHB	CPSGMHB	WWGMHB	Total - Statewide
Unincorporated Areas (Counties)	14 (4)*	4	11 (10)	29 (18)
Incorporated Areas (Cities & Towns)	86 (47)	87	52 (48)	225 (182)
Total Counties, Cities & Towns	100 (51)	91	63 (58)	254 (200)

(Sources: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009; Undated Map of Required to Plan vs. "Opt In" Counties, Paul Johnson, Washington State Department of Commerce).

* Note: Numbers in parentheses indicate jurisdictions "required to plan" under RCW 36.70A.040 (1), versus those that "opted-in" under RCW 36.70A.040 (2).

Total Jurisdictions Served by the GMHBs



(Source: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009).

Eastern Washington Growth Management Hearings Board (EWGMHB)

The EWGMHB serves a total of 100 jurisdictions (14 counties and 86 incorporated cities and towns) lying east of the crest of the Cascade Mountain Range. The EWGMHB’s jurisdictional area is presently home to approximately 19.67% of the statewide population (1,311,850 of 6,668,200) and 20.73% of the total population subject to GMHB jurisdiction (1,311,850 of 6,328,550).

Four (4) counties and 47 incorporated cities and towns within the EWGMHB jurisdiction were required to plan under RCW 36.70A.040 (1), while 10 counties and the 39 incorporated cities and towns therein “opted in” to GMA compliance. Counties, cities and towns required to plan under the GMA are home to approximately 65.72% of the population within the EWGMHB’s jurisdictional area (862,100 of 1,311,850). By contrast, counties and cities and towns lying therein that “opted in” to GMA compliance encompass 34.28% of the EWGMHB’s population (449,750 of 1,311,850).

Central Puget Sound Growth Management Hearings Board (CPSGMHB)

The CPSGMHB serves a total of 91 jurisdictions (4 counties and 87 incorporated cities and towns) all lying within the four (4) central Puget Sound counties of King, Kitsap, Pierce, Snohomish. The CPSGMHB’s jurisdictional area is presently home to approximately 55.11% of the statewide population (3,674,800 of 6,668,200) and 58.07% of the population subject to the jurisdiction of the GMHBs as a whole (3,674,800 of 6,328,550). All counties and cities within the CPSGMHB jurisdiction were required to plan under RCW 36.70A.040 (1).

Western Washington Growth Management Hearings Board (WGMHB)

The WWGMHB serves a total of 63 jurisdictions (11 counties and 52 incorporated cities and towns) lying west of the crest of the Cascade Mountain Range and outside the central Puget Sound region. The WWGMHB’s jurisdictional area is presently home to approximately 20.12% of the statewide population (1,341,900 of 6,668,200) and 21.20% of the population subject to the jurisdiction of the GMHBs as a whole (1,341,900 of 6,328,550).

Ten (10) counties and 48 cities and towns within the WWGMHB jurisdiction were required to plan under RCW 36.70A.040(1), while one (1) county (i.e., Pacific) and the four (4) incorporated cities and towns therein “opted in” to GMA compliance. Counties, cities and towns required to plan under the GMA are home to approximately 98.38% of the population within the WWGMHB’s jurisdictional area (i.e., 1,320,100 of 1,341,900). By contrast, the one (1) county and four (4) cities within Pacific County that “opted in” to GMA compliance encompass only 1.62% of the WWGMHB’s population (i.e., 21,800 of 1,341,900).

Table #2, and the chart which follows it, summarizes the population information for the respective GMHBs.

Population	EWGMHB	CPSGMHB	WWGMHB	Total
Unincorporated	454,339	1,223,975	721,246	2,399,560
Incorporated	857,511	2,450,825	620,654	3,928,990
Total	1,311,850	3,674,800	1,341,900	6,328,550

TABLE #2 (continued): Populations Served by the GMHBs				
Population	EWGMHB	CPSGMHB	WWGMHB	Total
Percentage of Total Population Subject to GMHB Jurisdiction	20.73%	58.07%	21.20%	100%
Percentage of Statewide Population	19.67%	55.11%	20.12%	94.90%

(Source: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009).

GMHB Populations - April 1, 2009 (Source: OFM)

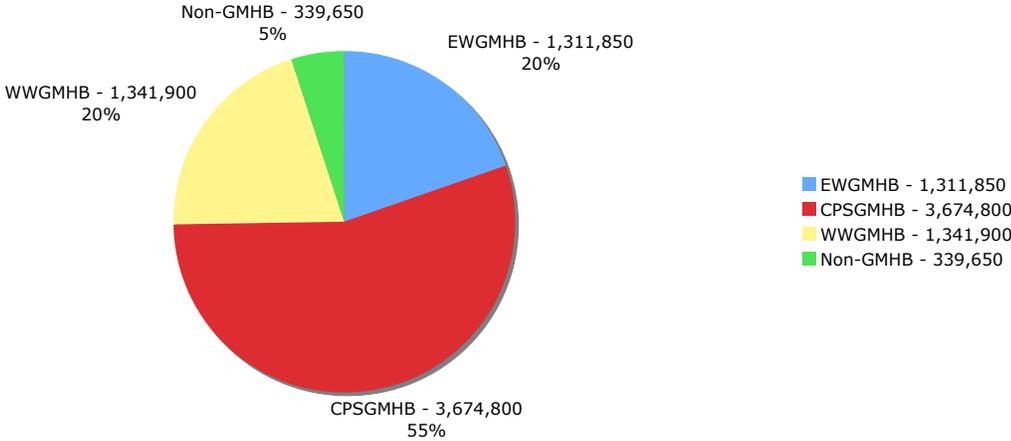
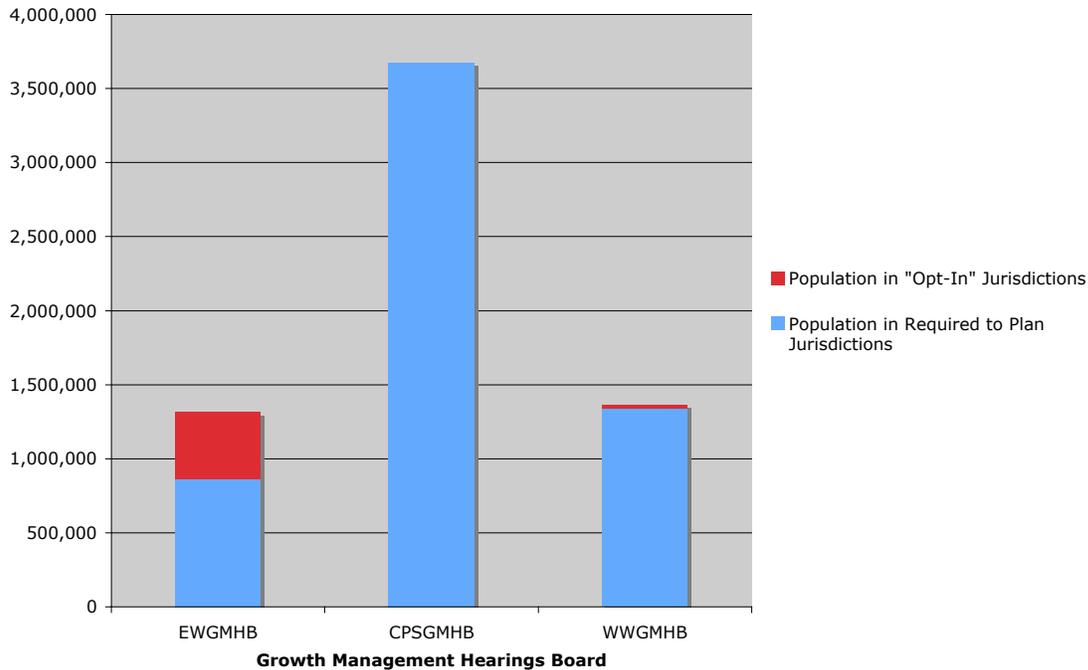


Table #3, and the chart which follows it on the following page, summarizes the population information pertaining to populations within “opt-in” vs. “required to plan” jurisdictions under RCW 36.70.A.040(1) and (2).

TABLE #3: Populations in "Opt-In" vs. "Required to Plan" Jurisdictions			
Data Set	EWGMHB	CPSGMHB	WWGMHB
Total Jurisdictions Served: Counties Cities & Towns	100 14 counties 86 cities	91 4 counties 87 cities	63 11 counties 52 cities
Population in "Required to Plan" Jurisdictions	862,100 (65.2%)	3,674,800 (100%)	1,320,100 (98.38%)
Population in "Opt-In" Jurisdictions	449,750 (34.28%)	0 (0.00%)	21,800 (1.62%)
Total Population subject to GMHB Jurisdiction	1,311,850	3,674,800	1,341,900

(Sources: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009; Undated Map of Required to Plan vs. "Opt In" Counties, Paul Johnson, Washington State Department of Commerce).

Population in Required to Plan vs. "Opt-In" GMA Jurisdictions



(Sources: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009; Undated Map of Required to Plan vs. "Opt In" Counties, Paul Johnson, Washington State Department of Commerce).

HISTORICAL CASELOAD DATA & TRENDS 1992 - 2008

Petitions for Review (PFRs)

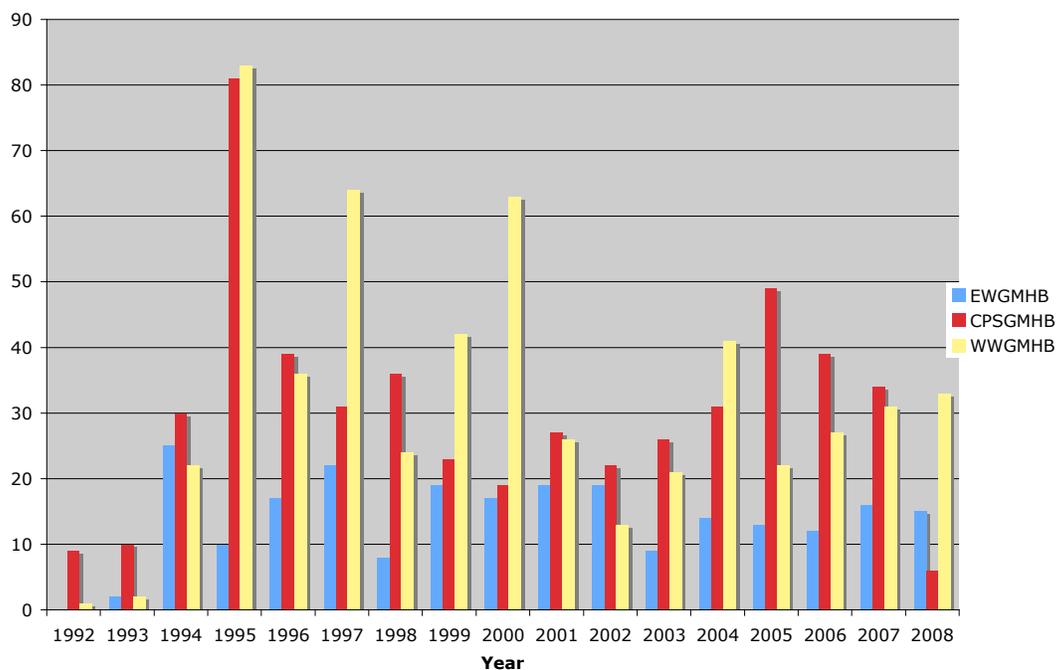
Petitions for Review (PFRs) represent the most straightforward and understandable data point common to all three boards. This caseload indicator gives the most basic of all pictures: how many filings alleging GMA non-compliance by local governments came through the door of each board, regardless of their final disposition. Table #4, below, and the graph on the following page, summarize the 1992 to 2008 PFR data for the three boards.

TABLE #4: Petitions for Review (PFRs) Per Year – 1992 to 2008				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
1992	0	9	1	10
1993	2	10	2	14
1994	25	30	22	77
1995	10	81	83	174
1996	17	39	36	92
1997	22	31	64	117
1998	8	36	24	68
1999	19	23	42	84
2000	17	19	63	99
2001	19	27	26	72
2002	19	22	13	54
2003	9	26	21	56
2004	14	31	41	86
2005	13	49	22	84
2006	12	39	27	78
2007	16	34	31	81
2008	15	6	33	54

TABLE #4 (continued): Petitions for Review (PFRs) Per Year – 1992 to 2008				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
Total PFRs	237	512	547	1,296
Average Annual PFRs	14 (13.94)	30 (30.12)	32 (32.18)	76 (76.24)

(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

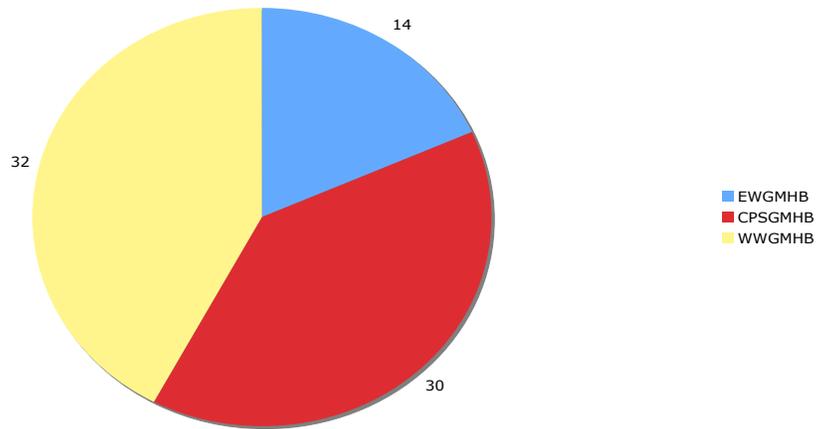
GMHB Petitions for Review (PFRs): 1992 - 2008



(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

The following chart graphically depicts the average number of PFRs filed with each board over the period 1992 to 2008. The data clearly show that the CPSGMHB and WWGMHB have dealt with a substantially higher overall number of appeals, as well as annual average, than the EWGMHB.

GMHB Average Annual PFRs: 1992 -



(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

“New Cases” (Consolidated Cases)

This data set includes new cases per year, after the boards have consolidated multiple petitions for review (PFRs) relating to the same GMA enactment. Table #5 summarizes the 1992 to 2008 data for new cases in each of the three boards. The chart on the following page shows the relative tendency of the three GMHBs to consolidate multiple PFRs into single cases.

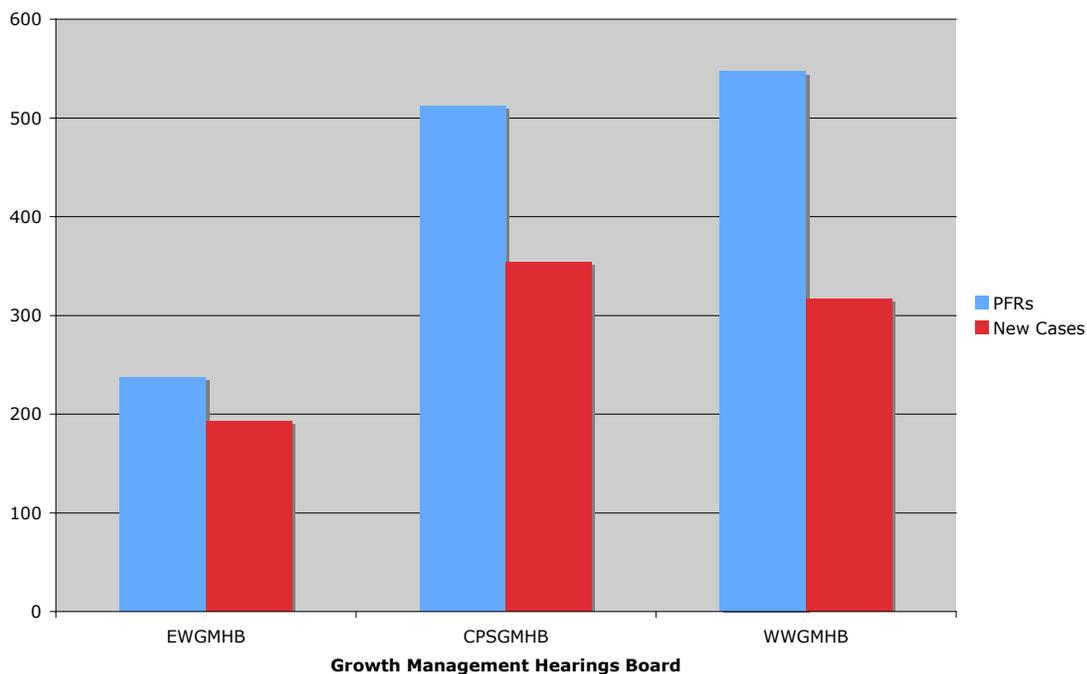
TABLE #5: New Cases Per Year – 1992 to 2008				
Year	EWGMHB	CPSGMHB	WWGMHB	Statewide Total
1992	0	6	1	7
1993	2	5	2	9
1994	12	19	22	53
1995	9	28	22	59
1996	10	31	32	73
1997	12	17	17	46
1998	7	17	22	46
1999	16	19	29	64
2000	17	18	28	63
2001	18	24	20	62
2002	17	17	11	45
2003	9	25	17	51
2004	13	26	10	49

**TABLE #5 (continued):
New Cases Per Year – 1992 to 2008**

Year	EWGMHB	CPSGMHB	WWGMHB	Statewide Total
2005	13	39	20	72
2006	12	33	17	62
2007	15	24	28	67
2008	11	6	19	36
Total New Cases	193	354	317	864
New Cases as Percentage of Total PFRs	81.43%	69.14%	57.95%	66.66%

(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

GMHB New (Consolidated) Cases in Relation to PFRs: 1992 - 2008



(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

These data show that PFRs filed with the WWGMHB are substantially more likely to be consolidated into single cases than is true within either the EWGMHB or CPSGMHB jurisdictions. This suggests that GMA enactments in the WWGMHB region are more likely to be appealed by multiple parties.

Decisions

The number of cases decided provides another clear data point in assessing the relative workload of the three boards. This data set includes all dismissed cases²⁶ and Final Decisions and Orders (FDOs) either upholding or remanding a GMA enactment to a local jurisdiction. It does not include cases remanded from higher courts. Table #6, on the following page, summarizes the 1992 to 2008 case decision data for the three boards. These data show that the CPSGMHB and WWGMHB consistently experience higher numbers than the EWGMHB. The data also suggest that in an “average” year, statewide, an individual GMHB member would be expected to author approximately 5 decisions (i.e., 805 decisions ÷ 17 years = 47.35; 47.35 ÷ 9 GMHB members = 5.3).

Year	EWGMHB	CPSGMHB	WWGMHB	Total
1992	0	6	0	6
1993	1	5	0	6
1994	5	19	10	34
1995	4	28	13	45
1996	7	31	23	61
1997	5	17	25	47
1998	6	17	20	43
1999	6	19	24	49
2000	11	18	24	53
2001	9	24	23	56
2002	7	17	20	44
2003	7	25	22	54
2004	10	26	29	65
2005	7	39	35	81
2006	12	32	35	79

²⁶ “Dismissed cases” include PFRs withdrawn by petitioners, Stipulated Dismissals pursuant to a Settlement Agreement, and Dismissals by GMHB Order.

TABLE #6 (continued): Cases Decided by the GMHBs – 1992 to 2008				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
2007	17	24	6	47
2008	12	5	18	35
Total	126 (15.65%)	352 (43.73%)	327 (40.62%)	805 (100%)

(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

Cases Dismissed

This data includes all cases withdrawn or stipulated dismissals, or dismissed by orders of the boards. Presently, available information does not allow discrete identification of cases dismissed by way of settlement or mediation, though such cases are captured within this data subset. Table #7, below, summarizes the 1992 to 2008 case decision data for the three boards.

TABLE #7: Cases Dismissed Per Year by GMHB – 1992 to 2008				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
1992	0	2	0	2
1993	0	2	1	3
1994	0	8	4	12
1995	2	11	9	22
1996	5	21	1	27
1997	5	12	9	26
1998	3	8	10	21
1999	5	10	11	26
2000	6	9	13	28
2001	5	11	4	20

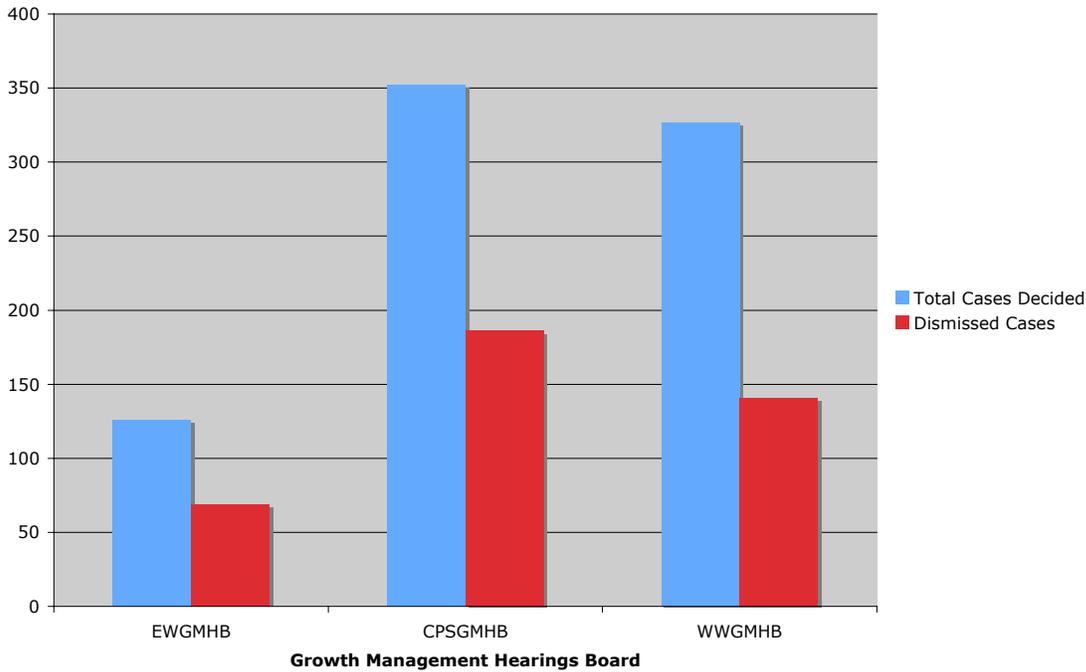
**TABLE #7 (continued):
Cases Dismissed Per Year by GMHB – 1992 to 2008**

Year	EWGMHB	CPSGMHB	WWGMHB	Total
2002	4	11	6	21
2003	5	12	7	24
2004	5	13	12	30
2005	6	24	16	46
2006	7	15	15	37
2007	3	14	16	33
2008	8	3	7	18
Total Cases Dismissed	69	186	141	396
Dismissals as a % of Cases Decided	54.76%	52.84%	43.12%	49.19%

(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

The following graph portrays dismissed cases in relation to total cases decided in each board jurisdiction. Statewide, nearly 50% of all cases decided by the GMHBs have resulted in dismissals, with the highest incidence of dismissals occurring within the EWGMHB (55%), followed by the CPSGMHB (53%) and WGMHB (43%), respectively. These data may be suggestive of a slightly higher tendency to resolve cases through settlement and mediation in the EWGMHB and CPSGMHB than the WWGMHB.

GMHB Cases Dismissed in Relation to Total Cases Decided: 1992 - 2008



(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

Cases Upheld

This data set includes all cases where a petitioner’s challenge failed and/or the local government action was found to comply. As noted at the outset of this report, inconsistencies in the data collection and reporting methods of the three boards, as well as unavailable and/or incomplete data, have posed obstacles to presenting a more thorough analysis. “Cases upheld” are one such area. Complete data for all GMHBs tabulating the number of decisions upholding local GMA enactments exists only for the period 2000 to 2006. Nevertheless, Table #8, on the following page, shows the number of cases upheld each year between 2000 and 2006.

Statewide between 2000 and 2006, nearly half (48.2%) of all cases were dismissed, while local governments were upheld nearly one-quarter of the time (21.56%). Stated another way, local jurisdictions prevailed in over two-thirds of all cases (70.38%) between 2000 and 2006 (i.e., 297 of 422 cases).

Year	EWGMHB	CPSGMHB	WWGMHB	Total
2000	5	3	2	10
2001	1	3	8	12

**TABLE #8 (continued):
Cases Upheld Per Year – 2000 to 2006***

Year	EWGMHB	CPSGMHB	WWGMHB	Total
2002	3	2	9	14
2003	0	1	7	8
2004	1	4	6	11
2005	0	4	10	14
2006	3	7	12	22
Total Cases Upheld	13	24	54	91
Total Cases Upheld as a % of Cases Decided	20.63%	14.04%	28.72%	21.56%

* Complete data for all three boards do not exist for the periods 1992 to 1999, and 2007 and 2008. (Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

Compliance Proceedings (Remands to Local Jurisdictions)

Compliance proceedings are another potentially useful indicator of workload. Such proceedings occur following issuance of a FDO finding the local jurisdiction out of compliance with the GMA. The FDO grants the local jurisdiction a period of time to achieve GMA compliance. When the locality believes it has adopted appropriate measures to achieve compliance, there is a briefing from Petitioners and Respondents, a compliance hearing, Board deliberations, and then a Compliance Order is issued. In practice, such proceedings can be as work intensive as the original Hearing on the Merits and issuance of the FDO. If complex compliance issues are involved, the process of conducting multiple compliance hearings and issuing multiple compliance orders can require a period of years to complete. Thus, a case stemming from one PFR can lead to an FDO that requires years of compliance proceedings before a jurisdiction is found to fully comply with the GMA.

Unfortunately, as was true with “cases upheld” (discussed immediately above), complete data tracking the number of remands to local jurisdictions following issuance of a FDO finding noncompliance exists only for the period 2000 to 2006. Moreover, from that data, it is not possible to correlate the remands with the original FDO finding noncompliance, which may well have occurred in a prior calendar year. Thus, “remands” cannot be confidently identified as a subspecies of “cases decided” in a given year. For this reason, the sum of cases dismissed, cases upheld and cases remanded during the period 2000 to 2006 (483) exceeds the total number of cases decided during the same period (422).

Table #9 presents the number of remands by GMHB during the period 2000 to 2006.

Year	EWGMHB	CPSGMHB	WWGMHB	Total
2000	6	7*	9	22
2001	5	11*	11	27
2002	13	4	5	22
2003	3	15*	8	26
2004	9	10*	11	30
2005	4	12	9	25
2006	16	10*	8	34
Total Cases Remanded	56	69	61	186

*Complete data for all three boards do not exist for the periods 1992 to 1999, and 2007 and 2008. (Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

Table #10 presents information on the number of cases remanded between 2000 and 2008 that also included a determination of invalidity on at least one of the non-compliant actions.

Year	EWGMHB	CPSGMHB	WWGMHB	Total
2000	1	3	0	4
2001	1	4	0	5
2002	3	1	1	5
2003	0	9	1	10
2004	0	5	2	7
2005	3	3	1	7
2006	3	3	1	7
Total Orders of Invalidity	10	28	6	44
Orders of Invalidity as a % of Remands	17.86%	40.58%	9.84%	23.66%

*The boards did not receive the authority to invalidate local GMA enactments until 1995; complete data for all three boards do not exist for the periods 1992 to 1999, and 2007 and 2008. (Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

These data show that orders of invalidity are a comparatively rare phenomenon, particularly in the WWGMHB and EWGMHB jurisdictions.

Motions on Reconsideration

Anecdotal information suggests that Motions for Reconsideration may create a significant amount of workload that has not heretofore been effectively tracked by the GMHBs. Board members have indicated that non-prevailing parties frequently file Motions for Reconsideration following issuance of a FDO (see WAC 242-02-832).

Such motions allege that the FDO contained errors of procedure or misinterpretations of fact or law, or that hearing irregularities prevented the party from having fair hearing, or that the FDO contained clerical mistakes. The prevailing party is allowed to respond to the Motion for Reconsideration, and the Board then considers the briefings, reviews its earlier FDO, deliberates and issues an Order on Motion for Reconsideration. Thus, the Board must analyze its FDO and determine whether it was justified, or requires modification.

However, because the amount of work created by such motions cannot be accurately quantified at this time, no data regarding Motions on Reconsideration have been included within this report.

Hearings Held

This workload indicator includes pre-hearing conferences, motion hearings, hearings on the merits, and compliance hearings. Because 1993 to 1998 data do not exist for the EWGMHB, the information presented covers only the period 1999 to 2008. However, because this data was apparently not tracked by the WWGMHB for any portion of the period 1992 - 2008, the figures provided are estimates only.²⁷ As such, this may be less reliable than other workload indicators, and likely underreports the number of hearings held by the WWGMHB. Moreover, the fact that this indicator fails to correlate well with the PFR, consolidated case and decision data, reported above, underscores its tenuous nature. Table #11 summarizes the estimated number of hearings for each board for the period 2000 to 2008.

Year	EWGMHB	CPSGMHB	WWGMHB	Total
1999	21	34	32	87
2000	54	51	50	155
2001	62	43	49	154
2002	73	29	27	129
2003	39	60	27	126
2004	52	52	13	117
2005	39	66	34	139

²⁷ WWGMHB estimates are based upon the following assumptions: each PFR = 1 hearing (i.e., pre-hearing conference); each FDO = 1 hearing on the merits; each case remanded to a jurisdiction due to noncompliance/invalidity = 1 compliance hearing (minimum).

TABLE #11 (continued): Estimated* Hearings Per Year by GMHB – 1999 to 2008				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
2006	45	60	34	139
2007	58	43	39	140
2008	42	30	53	125
Total Hearings Held	485	468	358	1,311

* Because this data was not kept by the WWGMHB, the information presented in this table is an estimate only, and may significantly underreport the average number of hearings conducted annually by the WWGMHB. (Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

Decisions Appealed to the Courts

Data obtained from the Washington State Attorney General’s Office in August of 2009 indicate that approximately 40% of all cases decided by the GMHBs have been appealed to the courts (i.e., 326 of 834). Washington Courts have decided 83.4% of the GMHB decisions appealed to date (i.e., 272 of the 326). The courts have remanded sixty-two (62) GMHB decisions, or 7.4% of cases decided, for further action by the Boards. While these data do not, in our assessment, provide a clear indicator of workload, they are nevertheless reported in Table #12, below.

TABLE #12: GMHB Decisions Appealed to the Courts – 1992 to 2009				
	EWGMHB	CPSGMHB	WWGMHB	Totals
GMHB Cases	170	362	302	834
Appealed to Court	81 (52%)	110 (31%)	135 (46%)	326 (40%)
In Progress	21	5	28	54
Decided by Court	60	105	107	272
Dismissed	27	31	33	91
Affirmed	19	49	51	119

**TABLE #12 (continued):
GMHB Decisions Appealed to the Courts – 1992 to 2009**

	EWGMHB	CPSGMHB	WWGMHB	Totals
Affirmed in Part/ Reversed in Part	5	15	10	30
Reversed	9	10	13	32
GMHB Decisions Remanded	14 (8.2%)	25 (6.9%)	23 (7.6%)	62 (7.4%)

(Source: Appellate Case Status Reports from Martha P. Lance, Assistant Attorney General to the GMHBs (August 6, 2009)).

Regional Appeal Tendencies

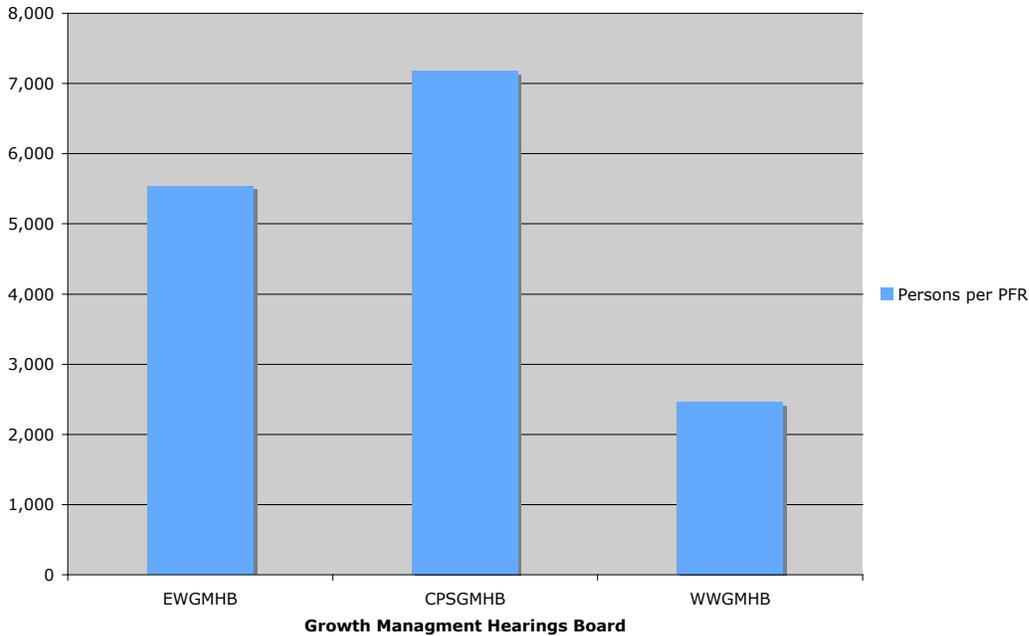
All available data indicate that the WWGMHB experiences substantially more caseload activity in relation to the population and number of jurisdictions it serves than either other board. Table #13 depicts the persons per PFR in each board jurisdiction. In relation to population served, appeals are almost three times more likely in the WWGMHB's jurisdiction than in the CPSGMHB, and more than twice as likely as in EWGMHB.

**TABLE #13:
Tendency for Appeals - Total PFRs in Relation to Population**

Board Jurisdiction	Total PFRs '92 to '08	Population Subject to the GMHBs	Ratio of Total PFRs to Population
EWGMHB	237	1,311,850	1 PFR: 5,535 persons
CPSGMHB	512	3,674,800	1 PFR: 7,177 persons
WWGMHB	547	1,341,900	1 PFR: per 2,453
Statewide Totals	1,296	6,328,550	1 PFR: per 4,883 persons

(Sources: [April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington](#), Washington State Office of Financial Management (OFM), April 1, 2009), [Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB](#)).

Tendency for Appeal: Persons per PFR



(Sources: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009), Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

The preceding graph shows the persons per PFR in each GMHB jurisdiction. The fewer persons per PFR, the higher the tendency for appeal in relation to population served.

Table #14 describes the relationship between the percentage of total PFRs, statewide, and the percentage of population in each board jurisdiction.

Board Jurisdiction	Percentage of Total PFRs '92 to '08	Percentage of Population Subject to GMHB Jurisdiction
EWGMHB	18.30% of PFRs	20.73% of population
CPSGMHB	39.50% of PFRs	58.07% of population
WWGMHB	42.20% of PFRs	21.20% of population
Totals	100% of PFRs	100% of population

(Sources: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009), Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

The chart below presents the information from Table #14 in graphic form. Again, this shows the disproportionate nature of the number of appeals received by the WWGMHB in relation to the population it serves.

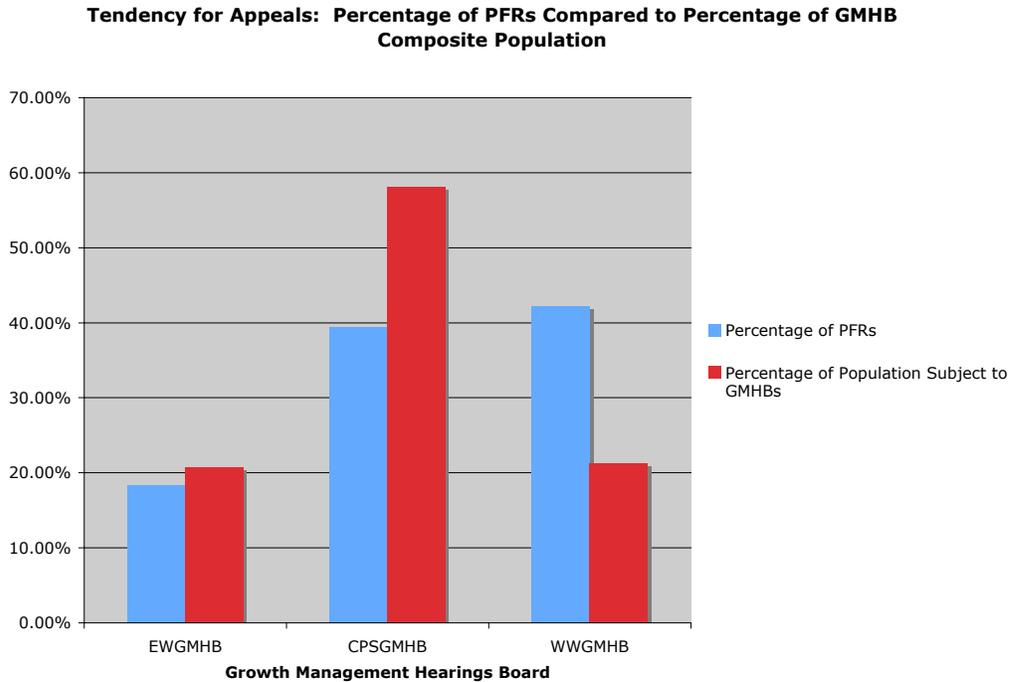
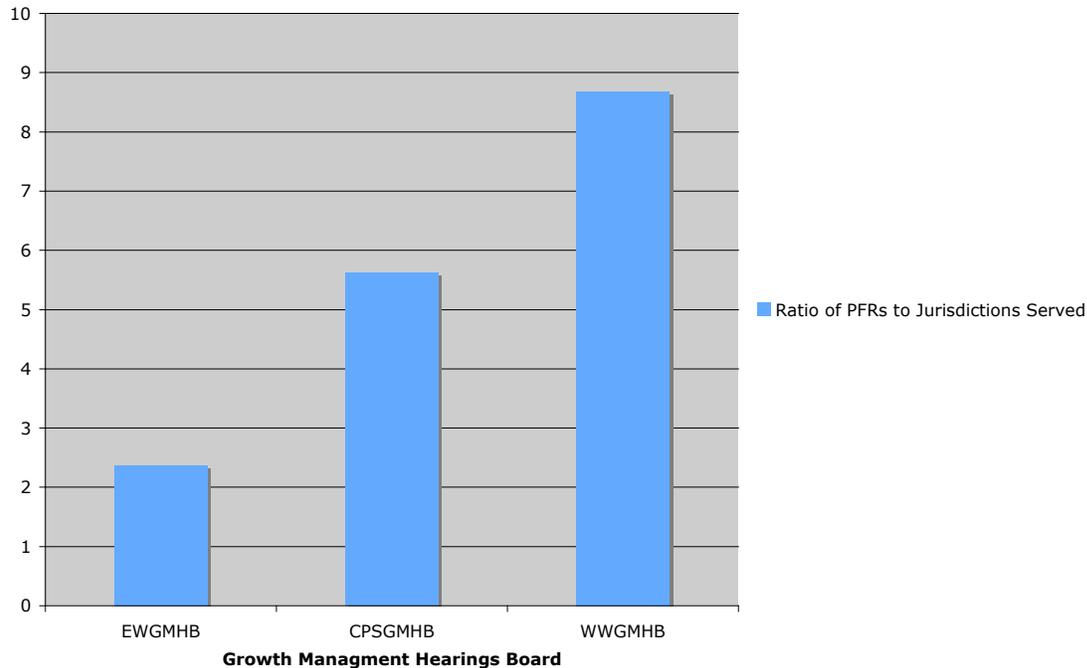


Table #15 and the chart on the following page, present information regarding the ratio of jurisdictions served by each board in relation to the number of appeals (PFRs) filed with each.

TABLE #15: Tendency for Appeals - PFRs in Relation to Jurisdictions Served (Counties, Cities & Towns)			
Board Jurisdiction	Total PFRs '92 to '08	Total Jurisdictions	Ratio of PFRs to Jurisdictions
EWGMHB	237	100 (14 counties; 86 cities & towns)	2.37 PFRs per jurisdiction
CPSGMHB	512	91 (4 counties; 87 cities & towns)	5.62 PFRs per jurisdiction
WWGMHB	547	63 (11 counties; 52 cities & towns)	8.68 PFRs per jurisdiction
Statewide Totals	1,296	254 (29 counties; 225 cities & towns)	5.10 PFRs per jurisdiction

(Sources: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009), Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

Tendency for Appeals: PFRs in Relation to Jurisdictions Served



(Sources: April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM), April 1, 2009), Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

These data underscore the fact that the WWGMHB experiences substantially more caseload activity in relation to the number of jurisdictions it serves than either the CPSGMHB or EWGMHB.

Caseload Data - Overview

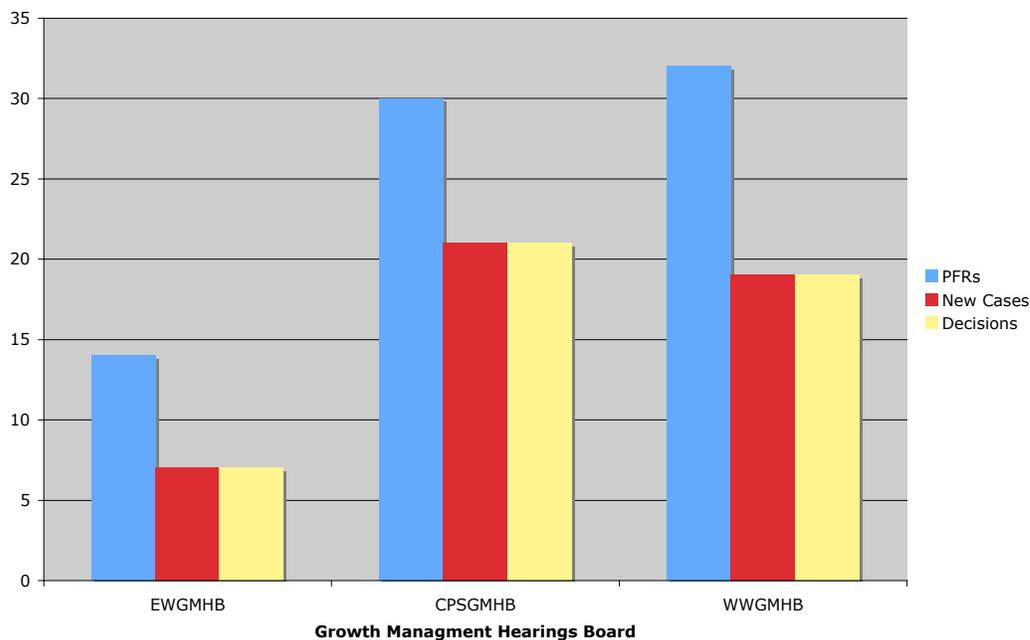
Our review suggests that the clearest and most reliable indicators of GMHB workload are PFRs, new cases (consolidated) and decisions issued. By all three of these indicators, the data show that the CPSGMHB and WWGMHB have historically experienced significantly higher PFRs, new cases (consolidated) and decisions than the EWGMHB. Table #16 and the graph below summarize this information, and also present a composite GMHB annual average for each indicator. However, filed PFRs may not accurately reflect total workload in a particular geographic region when multiple compliance or remand hearings processes take place over multiple years. Although the day-to-day functions of the GMHBs encompass a much broader range of activities than just reviewing PFRs, hearing new cases and issuing decisions, it is our view that these three selected indicators provide a representative picture of the relative workloads of the boards.

**TABLE #16:
GMHBs - Composite Workload Indicators 1992 to 2008 (Average Annual)**

Indicator	EWGMHB	CPSGMHB	WWGMHB	Combined GMHB Average
PFRs	14	30	32	25
New Cases (Consolidated)	7	21	19	16
Decisions Issued	7	21	19	16

(Source: Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, EWGMHB, CPSGMHB, and WWGMHB).

GMHBs: Composite Workload Indicators 1992 - 2008



LOOKING AHEAD 2010 – 2029

Population Growth

Over the period the GMHBs have been in existence, the population of Washington State has grown by approximately 1.5 million persons (from 5,141,177 in 1992 to 6,668,200 as of April 1, 2009). This represents an average annual growth rate of nearly 3.0% (2.97%). OFM's "medium" series Growth Management Planning Projections, most recently updated in 2007, estimate that the state's population will grow by over 1.6 million persons between 2010 and 2029 (from 6,792,318 to 8,433,276), an annual growth rate of approximately 2.4%.

Tables #17 and #18, below, summarize the historic and future projected growth rates within the GMHB jurisdictions and the state as a whole.

Table #17: Population Growth – 1992 to April 1, 2009			
Region	1992 Population	2009 Population	Average Annual Growth Rate
EWGMHB	1,018,175	1,311,850	2.88%
CPSGMHB	2,895,138	3,674,800	2.36%
WWGMHB	932,509	1,341,900	3.05%
NON-GMHB	295,355	339,650	1.49%
STATEWIDE TOTAL	5,141,177	6,668,200	2.97%

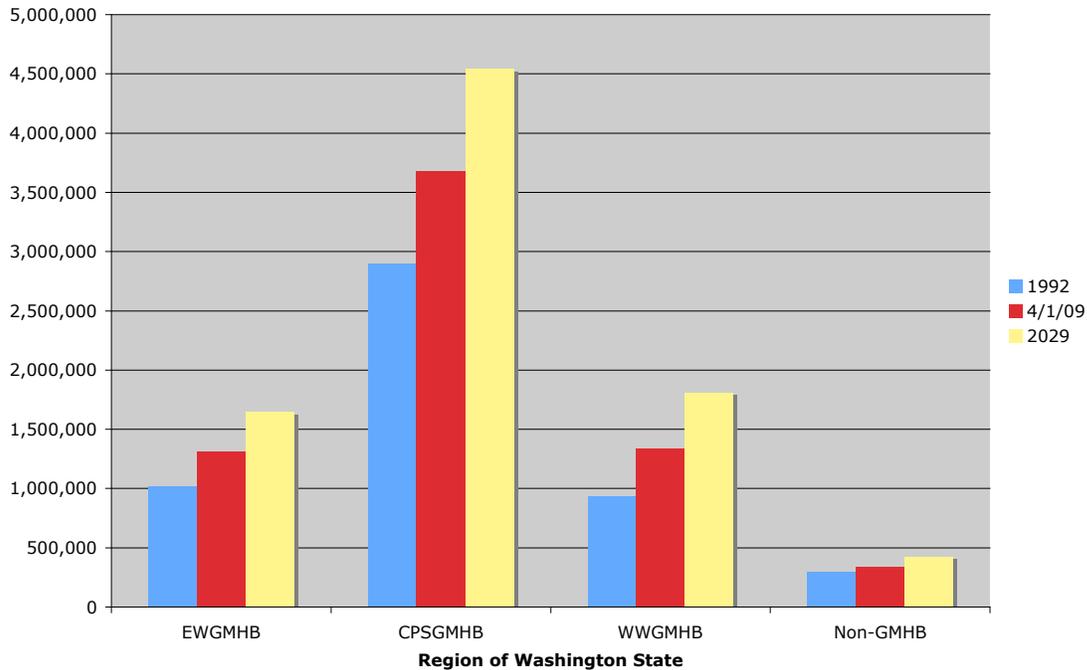
(Source: Washington State Office of Financial Management).

Table #18: Population Growth – 2010 to 2029 OFM Medium Series Growth Management Planning Projections			
Region	Projected 2010 Population	Projected 2029 Population	Average Annual Growth Rate
EWGMHB	1,325,305	1,649,882	2.45%
CPSGMHB	3,743,805	4,542,122	2.13%
WWGMHB	1,346,162	1,812,156	3.46%
NON-GMHB	377,046	429,116	1.38%
STATEWIDE TOTAL	6,792,318	8,433,276	2.42%

(Source: Washington State Office of Financial Management, Washington State County Growth Management Population Projections, Medium Series (2007)).

The following chart illustrates the past and projected future population within each of the GMHB jurisdictions, as well as those counties, cities and towns outside the jurisdiction of the GMHBs.

Population Growth: 1992 to 2029



(Source: Washington State Office of Financial Management).

Potential Future Caseload Scenarios

Given time and budgetary constraints, a sophisticated projection and distribution of potential future GMHB appeal activity is beyond the reach of this analysis. However, three scenarios were prepared in an attempt to provide some general idea as to the future potential workloads of the GMHBs, and when future fluctuations in workload might reasonably be expected to occur.

Two of these scenarios (“A” and “B”) factor the following assumptions:

- Historic average annual PFRs.
- The relative decline in PFRs experienced statewide after the initial round of GMA implementation.
- Slightly slower population growth rates anticipated by OFM (i.e., projected by OFM) that appear unlikely to materially alter historic caseload patterns.
- Increasing sophistication among GMA jurisdictions will continue the trend towards fewer appeals over the coming 20 years.
- “Spikes” in appeal activity are likely to be experienced in the years when 7-year Plan and Code Updates are due in each GMHB region under RCW 36.70A.130(4), in correlation with the total number of updates due in a given year.
- Future amendments to the GMA could permit “Opt-In” GMA jurisdictions to “Opt-Out” of GMA compliance.

A third scenario (“C”) assumes that despite increasing sophistication among jurisdictions implementing the GMA, historic average annual PFRs will not decrease, and could significantly increase due to the following factors:

- Appeals of Shoreline Master Program Updates.
- Potential appeals of local updates to critical areas ordinance provisions relating to agriculture (i.e., following amendments to the GMA in the 2010 legislative session based upon the recommendations of the Ruckelshaus Center Report).
- Potential amendments to WAC 365-190 and 365-195 and changes to the Department of Commerce “Update Checklists” that might contribute to an increased frequency of appeals of periodic plan and code updates.
- The potential for the Puget Sound Partnership’s Action Plan implementation monitoring data to be used by appellants as evidence of GMA noncompliance.
- The potential for the legislature to enact new substantive requirements within the GMA (e.g., climate change provisions).
- “Spikes” in appeal activity in relation to 7-year Plan and Code Updates under RCW 36.70A.130 (4).

A more detailed description of the procedure followed in formulating these scenarios can be found in the “Caseload Projections – Assumptions & Approach,” which is contained in Attachment “A” to this report. In brief, application of the analysis assumptions suggests three potential caseload scenarios over the coming decades, as follows:

Scenario “A” - Low Caseload Estimate: Under this scenario, all of the “Opt-In” jurisdictions would be allowed to “Opt-Out” of GMA compliance, and would do so.

Scenario “B” – Medium Caseload Estimate: Under scenario “B” all jurisdictions currently planning under GMA would still be doing so in 2029.

Scenario “C” – High Caseload Estimate: Under scenario “C” statutory changes would result in higher caseloads and the GMHB’s geographic jurisdiction would not be reduced.

Taken together, these scenarios should be viewed only as presenting a hypothetical range of possible caseload activity over the coming 20 years, rather than an incontestable prediction.

It should be stressed that the “average” caseload for the various boards will likely fluctuate markedly during the coming 20 years in relation to the number of Seven-Year GMA Plan and Development Regulation Updates due in a given year. Notably, after the initial round of Shoreline Master Program (SMP) Updates (slated to be completed by December 2014 under the deadlines codified at RCW 90.58.080(2)), local governments are thereafter required to conduct a review, and if necessary revise, their SMPs at least once every seven years. (See RCW 90.58.080(4)). Thus, there exists at least a theoretical potential, if not a statutory mandate, for Seven-Year SMP Updates to be synchronous with the required Seven-Year GMA Updates.

However, this analysis does not attempt to differentiate between GMA and SMP Updates, and assumes a uniform “Update” factor in distributing average anticipated caseload (PFRs).²⁸ As a final aside, it should also be observed that appeals of future Seven-Year Updates would not necessarily occur within the year

²⁸ To date, 2 of the 8 SMPs updated under WAC 173-26 have been appealed.

such Updates fall due. For instance, a jurisdiction that publishes a notice of adoption for a Seven-Year Update in December of 2011 would not likely face an appeal (i.e., PFR) until early in 2012. Table #19, on the following page, shows when and how many Seven-Year Updates are due in each of the three GMHB jurisdictions.

TABLE #19: Required 7-Year GMA Plan/Code Updates (RCW 36.70A.130(4)) 2010 to 2029				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
2010	0	0	0	0
2011	0	91	31	122
2012	0	0	27	27
2013	70 (51)*	0	0	70 (51)
2014	30 (0)	0	5 (0)	35 (0)
2015	0	0	0	0
2016	0	0	0	0
2017	0	0	0	0
2018	0	91	31	122
2019	0	0	27	27
2020	70 (51)	0	0	70 (51)
2021	30 (0)	0	5 (0)	35 (0)
2022	0	0	0	0
2023	0	0	0	0
2024	0	0	0	0
2025	0	91	31	122
2026	0	0	27	27

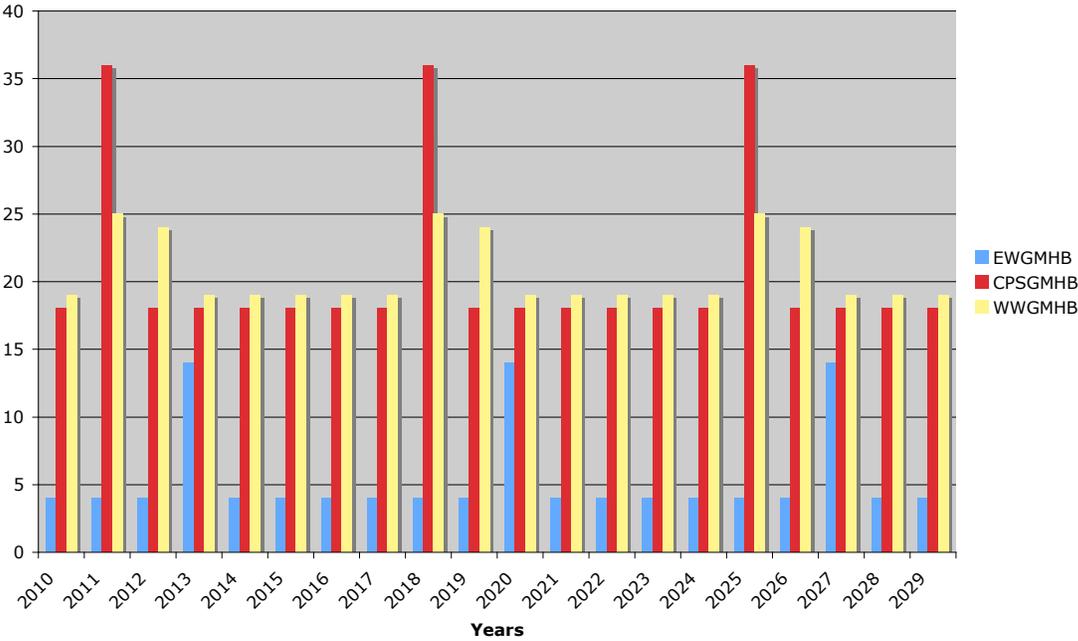
TABLE #19 (continued): Required 7-Year GMA Plan/Code Updates (RCW 36.70A.130(4)) 2010 to 2029				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
2027	70 (51)	0	0	70 (51)
2028	30 (0)	0	5 (0)	35 (0)
2029	0	0	0	0
Total Required GMA/SMA Updates	300 (153)	273	189 (174)	762 (600)

* Note: Figures in parentheses represent the number of updates due in “required to plan” jurisdictions; see RCW 36.70A.040 (1).

Scenario “A” – Low Caseload Estimate: All “Opt-In” Jurisdictions “Opt-Out” of GMA

The following chart depicts the result of applying the projection assumptions described above for scenarios “A” and “B”, but with a significant modification: in this scenario, the “baseline” PFR average for the EWGMHB and WWGMHB would each be reduced in direct proportion to the total number of jurisdictions that could notionally “opt-out” of GMA under future amendments to the Act in each region. For example, of 100 total jurisdictions in the EWGMHB, 49 might “opt-out”, resulting in a corresponding 49% reduction in average annual PFRs (i.e. from 10 to 5.1, with rounding, 5). Similarly, in the WWGMHB, of 63 total jurisdictions, 5 might be allowed to “opt-out”, resulting in an 8% reduction in average annual PFRs (i.e., from 22 to 20.24, with rounding, 20). Thus, it is based on an average of 5 PFRs per year being filed in an “average” year in the EWGMHB, and 21 and 20 in the CPSGMHB and WWGMHB, respectively. Under this scenario, only 100 PFRs would be anticipated in the EWGMHB between 2010 and 2029, with 420 CPSGMHB and 400 in the WWGMHB.

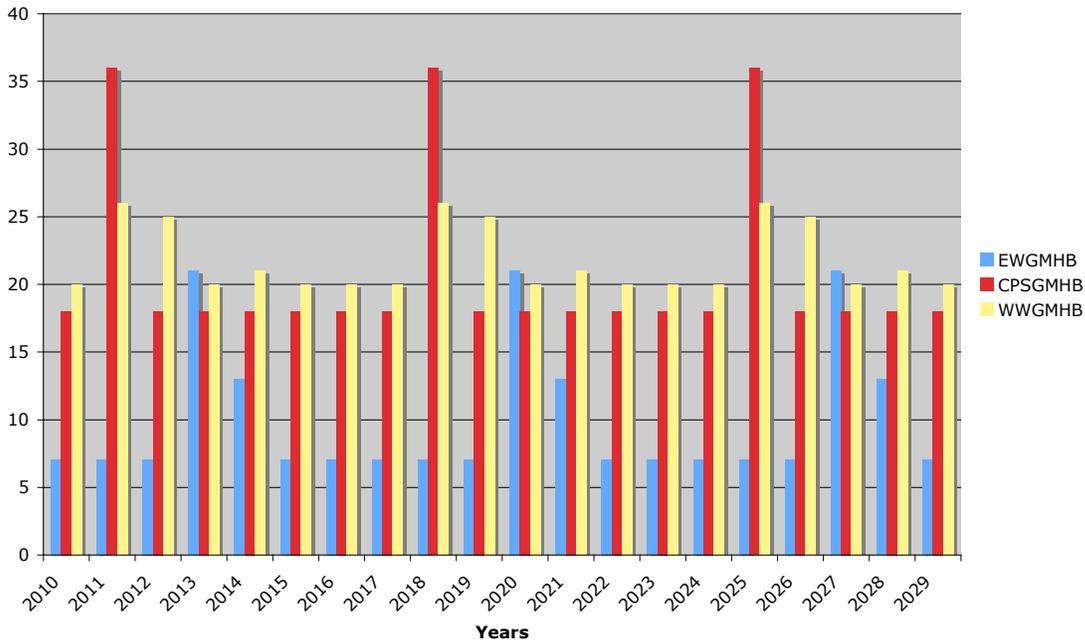
Scenario "A": Low Estimate - Hypthetical GMHB Petitions for Review 2010 - 2029



Scenario “B” – Medium Caseload Estimate - No Change in GMHB Geographic Jurisdiction

The chart below depicts the result of applying the projection method described above. It is based on an average of 10 PFRs per year being filed in an “average” year in the EWGMHB, and 21 and 22 in the CPSGMHB and WWGMHB, respectively. Under this scenario, 200 PFRs would be expected in the EWGMHB between 2010 and 2029, with 420 CPSGMHB and 440 in the WWGMHB. The chart graphically illustrates how workloads could fluctuate markedly in relation to GMA Update deadlines.

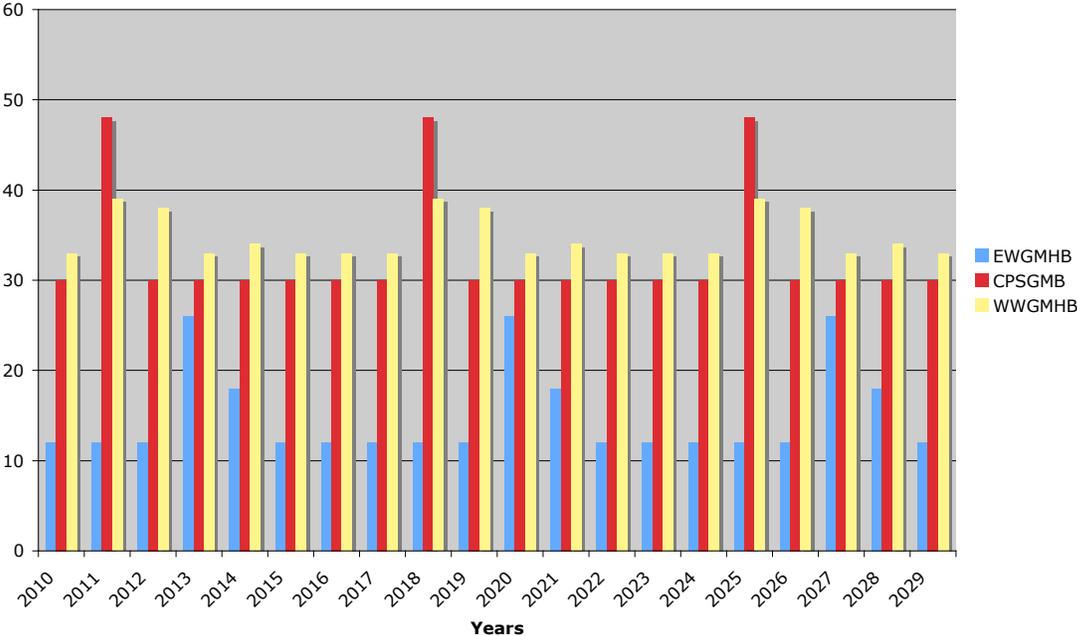
Scenario "B": Medium Estimate - Hypothetical GMHB Petitions for Review (PFRs) 2010 - 2029



Scenario "C" – High Caseload Estimate – Statutory Changes Result in Higher Caseloads - GMHB Geographic Jurisdiction Unchanged

Scenario "C" merely assumes a uniform increase of 10% over historic caseload averages from 1992 to 2008 to account for potential appeals of SMP updates as well as appeals related to other potential statutory and administrative code changes. It is based on an average of 15 PFRs per year being filed in an "average" year in the EWGMHB, and 33 and 35 in the CPSGMHB and WWGMHB, respectively. Under this scenario, 300 PFRs would be expected in the EWGMHB between 2010 and 2029, with 660 CPSGMHB and 700 in the WWGMHB. As was true with the other scenarios, it is assumed that workloads could fluctuate markedly in relation to GMA Update deadlines.

**Scenario "C": High Estimate - Hypothetical GMHB Petitions for Review (PFRs)
2010 - 2029**



Tables #20, #21, and #22, which follow, portray the PFR estimates underpinning the three scenarios presented above.

TABLE #20: Scenario "A" – Low Caseload Estimate Hypothetical Petitions for Review 2010 to 2029				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
2010	4	18	19	41
2011	4	36	25	65
2012	4	18	24	46
2013	14	18	19	51
2014	4	18	19	41
2015	4	18	19	41
2016	4	18	19	41

TABLE #20 (continued): Scenario "A" – Low Caseload Estimate Hypothetical Petitions for Review 2010 to 2029				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
2017	4	18	19	41
2018	4	36	25	65
2019	4	18	24	46
2020	14	18	19	51
2021	4	18	19	41
2022	4	18	19	41
2023	4	18	19	41
2024	4	18	19	41
2025	4	36	25	65
2026	4	18	24	46
2027	14	18	19	51
2028	4	18	19	41
2029	4	18	19	41
Total Projected PFRs	110*	414*	413*	937*

*Under the methodology employed, 100 total PFRs are projected for the EWGMHB, 420 for the CPSGMHB, and 400 for the WWGMHB, with 920 PFRs statewide; the discrepancies are due to rounding.

TABLE #21: Scenario "B" – Medium Caseload Estimate Hypothetical Petitions for Review 2010 to 2029				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
2010	7	18	20	45
2011	7	36	26	69

TABLE #21 (continued):
Scenario “B” – Medium Caseload Estimate
Hypothetical Petitions for Review 2010 to 2029

Year	EWGMHB	CPSGMHB	WWGMHB	Total
2012	7	18	25	50
2013	21	18	20	59
2014	13	18	21	52
2015	7	18	20	45
2016	7	18	20	45
2017	7	18	20	45
2018	7	36	26	69
2019	7	18	25	50
2020	21	18	20	59
2021	13	18	21	52
2022	7	18	20	45
2023	7	18	20	45
2024	7	18	20	45
2025	7	36	26	69
2026	7	18	25	50
2027	21	18	20	59
2028	13	18	21	52
2029	7	18	20	45
Total Projected PFRs	200	414*	436*	1,050*

*Under the methodology employed, 200 total PFRs are projected for the EWGMHB, 420 for the CPSGMHB, and 440 for the WWGMHB, with 1,060 PFRs statewide; the discrepancies are due to rounding.

TABLE #22:
Scenario “B” – High Caseload Estimate
Hypothetical Petitions for Review 2010 to 2029

Year	EWGMHB	CPSGMHB	WWGMHB	Total
2010	12	30	33	75
2011	12	48	39	99
2012	12	30	38	80
2013	26	30	33	89
2014	18	30	34	82
2015	12	30	33	75
2016	12	30	33	75
2017	12	30	33	75
2018	12	48	39	99
2019	12	30	38	80
2020	26	30	33	89
2021	18	30	34	82
2022	12	30	33	75
2023	12	30	33	75
2024	12	30	33	75
2025	12	48	39	99
2026	12	30	38	80
2027	26	30	33	89
2028	18	30	34	82

TABLE #22 (continued): Scenario "B" – High Caseload Estimate Hypothetical Petitions for Review 2010 to 2029				
Year	EWGMHB	CPSGMHB	WWGMHB	Total
2029	12	30	33	75
Total Projected PFRs	300	654*	696*	1,650*

*Under the methodology employed, 300 total PFRs are projected for the EWGMHB, 660 for the CPSGMHB, and 700 for the WWGMHB, with 1,660 PFRs statewide; the discrepancies are due to rounding.

Conclusions

The caseload projections plot three potential scenarios: two scenarios postulate that the future workload will be somewhat less than has been the case over the first 18 years of the GMHBs; one scenario anticipates that caseloads will be modestly higher than historic trends. These alternatives also suggest that the precise timing of the ebb and flow of future caseload will be difficult to predict, though significant increases in GMHB activity are expected in relation to the Ruckelshaus Center's review of agriculture and critical area ordinances and the seven-year GMA Plan and Code Update deadlines under RCW 36.70A.130(4).

A central conclusion of this analysis is that both the current and projected workloads of the GMHBs could be successfully handled by a reduced number of board members. As table #23 below shows, if the ratio of PFRs to decisions were to remain constant over the coming decades, individual board members could expect to author an average of three to six decisions per year, assuming three boards, with three members each (i.e., nine total). This does not take into account the time spent to read, analyze, deliberate and write compliance, motion and remand hearing decisions by GMHB members. That number could increase to as many as nine decisions per year per member if the total number of members is reduced to six and the higher PFR rate assumptions of Scenario "C" prove to be accurate. This would not appear to represent an unmanageable number of decisions per board member.

Table #23: Historic & Potential Future Decisions Per Year Per GMHB Member						
Scenario	Total PFRs	Total Decisions	Decisions Per Year	9 Member Board - Decisions Per Year Per Member	7 Member Board – Decisions Per Year Per Member	6 Member Board – Decisions Per Year Per Member
Historic Totals 1992 – 2008	1,296	805	47.35	5.26	Inapplicable	Inapplicable
Hypothetical Scenario "A"	920	571	28.55	3.17	4.07	4.76
Hypothetical Scenario "B"	1,060	658	32.90	3.65	4.70	5.48
Hypothetical Scenario "C"	1,660	1,031	51.55	5.73	7.36	8.59

Another conclusion of this analysis is that PFRs, new cases (consolidated) and decisions have historically been higher in absolute terms within the CPSGMHB and WWGMHB than in the EWGMHB. Further, it is clear that the jurisdiction with the highest workload in absolute terms is the CPSGMHB. While it receives the second highest number of PFRs, the CPSGMHB nevertheless manages the most new cases (i.e., consolidated), and issues more decisions than either the EWGMHB or WWGMHB.

The WWGMHB experiences only a slightly lower number of PFRs, new cases (consolidated) and decisions than the CPSGMHB, and contends with disproportionately higher volumes of PFRs, new cases and decisions in relation to the population and number of local jurisdictions served than either other board. The EWGMHB has consistently received the fewest PFRs, resulting in fewer consolidated cases and decisions. When available historical trend data are viewed in conjunction with OFM's Growth Management Planning Population Projections for the period 2010 to 2029, a fundamental alteration of this situation would appear unlikely. But it should be borne in mind that PFR filings are driven by multiple factors that shift over time, thereby making it difficult to make accurate predictions of future filings.

Looking to the future, our review and assessment has revealed a pressing need for the Boards to collectively agree upon key workload indicators and other key benchmarks for which data should be collected, monitored, and reported on over the long term. Missing data sets (e.g., Motions on Reconsideration) and differences in how the Boards have defined data sets (e.g., Hearings Held) and documented their respective workloads over the past 17 years are not insignificant, and this lack of clear and consistent data has made a more comprehensive workload review and assessment problematic.

A NOTE ON SOURCES

In addition to the relevant provisions of the Washington State Growth Management Act (GMA, Chapter 36.70A RCW) and the Washington State Shoreline Management Act (SMA, Chapter 90.58 RCW), the following primary source documents were used in the preparation of this report:

Washington State Attorney General's Office, Growth Management Hearings Board Appellate Case Status Reports (Memoranda dated August 6, 2009, prepared by Martha P. Lantz, Assistant Attorney General)

Washington State Department of Community Trade and Economic Development, Growth Management Services Division, Map of Washington State Growth Management Hearings Boards (dated November 2008).

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Washington State Office of Financial Management, Washington State County Growth Management Population Projections, Medium Series (2007).

Washington State Office of Financial Management, Official April 1, 2009 Population Estimates (2009).

Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, Central Puget Sound Growth Management Hearings Board (CPSGMHB) (April 2009).

Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, Eastern Washington Growth Management Hearings Board (EWGMHB) (December 2008).

Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, Western Washington Growth Management Hearings Board (WWGMHB) (August 2009).

D: GMHBs Administrative Duties

(Source: Growth Management Hearings Boards)

SUMMARY of GMHB Administrative Duties

Governor's Office, Office of Financial Management and the Legislature:

Respond to information requests on the boards' operations, caseload, budget, performance measures

Prepare reports in response to general government operations: Risk Assessment; Printing Department assessment; GMAP; Emergency Response Management; etc. etc.

Represent the Joint Boards on Governor or Legislative task forces; prepare PowerPoint presentations, written materials or other documents for Legislative or Governor information about the Boards.

Develop strategic plan and performance measures; analyze and report quarterly to OFM.

Attend monthly Small Agency Cabinet meetings and complete assignments as necessary.

Budget:

Assemble and analyze data to prepare OFM budget decision packages

Analyze, review and finalize legislative fiscal notes for Governor and Legislature

Monthly meetings with OFM staff to discuss and amend projected vs. actual budgets

Accounting:

Research, prepare and manage agency contracts; oversee contractor performance and payments

Oversee and approve weekly invoices from vendors, state agencies, AGs office, contractors; oversee board/staff per diem payment forms

Reconcile differences or analyze one-time problems with billing and budget projections.

Personnel:

Supervise office staff through weekly staff meetings and establishing work priorities

Oversee schedules and work products for Joint Board meetings (information from AG, OFM, Personnel)

Evaluate staff every year using the "360 Degree" evaluation process from Dept. of Personnel

Information Technology:

Review and monitor report on agency's Information Technology Plan (IT) required by Department of Information Services.

Monitor annual technology needs for board and staff members. Order and dispose of new and old equipment.

DETAILS of Responsibilities of the Administrative Chair

Ongoing

- Oversee the administration of the office
- Review invoices –Initial Them – Per Audit Report, each invoice needs two signatures. When the Administrative Chair is available in the office, one signature should be the Executive Assistant and one should be Administrative Chair. If Administrative Chair is located remotely, Executive Assistant and Administrative Assistant should provide this function. Remotely located Administrative Chair should review invoices monthly.
- Authorize purchases of up to \$5,000. Purchases for costing more must be authorized by the Board.
- Sign Executive Assistant's Leave Slips - Executive Assistant Leave lasting more than several days should be arranged with consultation of all Board Members.
- Board Members, themselves, should have signed leave slips (Board Member signature) in file. (Auditor's requirement)
- Meet with other Administrative Chairs on Business Affecting All Three Boards:
 - Consultation over the Database
 - Coordination on Performance Measures
 - Annual Budget and Supplemental Budget Requests
- Assignments from OFM, Governor's Office, General Administration – Generally the Western Administrative Chair and Executive Assistant have taken lead in ensuring these are completed.
- Call Special Board Meetings
 - Board Members must be notified 24 hours in advance.
 - Board Members can be notified by e-mail, if authorization to do this is in file.

Monthly

- Work with Executive Assistant to prepare agenda and review minutes for monthly board meeting
 - Meeting is set by rule for the 2nd Wednesday of each month.
 - Agenda is posted on office door 24 hours in advance
 - Cancel Monthly Board Meeting – Post cancellation on notice on office door 24 hours in advance.
 - If monthly meeting is changed, rules require it be posted in the
 - Special meetings and continued meetings do not require this posting.
 - Meeting minutes and agendas are filed.
- Attend Small Agency Cabinet Meetings(SAC) and Network of Adjudicatory Agencies (NAA)
 - SAC is 4th Wednesday of the month at noon. Last an hour, never more than 1.5 hours. Meets in Governor's Conference Room or Conference Room in Lt. Governor's office. Loosely required. Benefit connects Board to Governor's office, state government. Governor's office notices sporadic attendance.
 - NAA meets at 9:30 am on 4th Wednesday of the month before SAC meeting at

Department of Revenue. It is purely optional. Made up of chairs or administrators of agencies that do adjudicatory work. Exchange of ideas on administrative, legislative, and legal issues. Beneficial to hear about new emerging legal issues and source of ways to complete administrative tasks assigned to each state agency (examples – policies for state agencies of similar size). NAA sponsors a continuing legal education course annually, or biannually. Stay on mailing list just to get information if you don't attend. The contacts made in the group were beneficial.

Quarterly

- Meet with OFM's Small Agency Client Services to review Western's budget and monitor expenses.

Annually

- Coordinate Semiannual Meeting

Set by rule for the 4th Thursday in April.

Secure place – January, February.

Work with Western Board members to prepare agenda – February

Circulate it to all Growth Management Hearings Board Members for comment with firm deadline. (early March)

Agenda must be posted on website one month in advance of meeting (last week in March (established by rule).

If meeting is changed from date established by rule, it must be posted in the Register

Invite speakers (late March, early April).

Work with Paulette to arrange for food, overnight arrangements for out of town Board Members, parking.

- Work with Executive Assistant, Other Administrative Chairs, accountant at Small Agency Services at OFM, and Linda Steinman, Board's Budget Analyst to prepare annual budget and supplemental decision packages – usually due in August for annual budget, October for supplemental budget. OFM will let you know the deadline.
- Coordinate Executive Assistant's annual evaluation.
- Prepare Report on Annual Performance Measures – calculated on a fiscal year basis (July 1 – June 30). Currently (1) number of settlements, withdrawals, (2) number of cases completed by statutory deadline. Will change in next biennium to include or replace one of these – Number of cases upheld on appeal (procedure only). Due by July 1 every year.

Legislative Session

- Ensure that some Board Member is Fiscal Note Coordinator. If you don't, it will be you. OFM provides instruction. Executive Assistant can help input information into the system. SAC's accountant does fiscal analysis. Fiscal Note Coordinator authorizes note's release to OFM. As long as Linda Steinman is our Budget Analyst is good to consult with her on complex fiscal notes before finalizing it.

Biannually

Work with other Boards to update strategic plan and performance measures (deadline –spring of year before biannual budget session –even years)

Key to Your Success

- Executive Assistant and Administrative Assistant – Paulette and Vanessa – Paulette knows these duties and can assist, and generally will remind you when tasks need to be done.
- SACs – Dian Lewallen, Yolanda
- Budget Analyst –Linda Steinman, OFM

E: Bibliography

In addition to the relevant provisions of the Washington State Growth Management Act (GMA, Chapter 36.70A RCW) and the Washington State Shoreline Management Act (SMA, Chapter 90.58 RCW), the following primary source documents were used in the preparation of this report:

Appellate Case Status Report, Central Puget Sound Growth Management Hearings Board (CPSGMHB) (August 6, 2009).

Appellate Case Status Report, Eastern Washington Growth Management Hearings Board (EWGMHB) (August 6, 2009).

Appellate Case Status Report, Western Washington Growth Management Hearings Board (WWGMHB) (August 6, 2009).

Central Puget Sound Growth Management Hearings Board (CPSGMHB). 2008 Survey Questionnaire. (2008).

Eastern Washington Growth Management Hearings Board (EWGMHB). EWGMHB 2001 Survey Results. (Revised August 20, 2009).

Growth Management Hearings Boards. State of Washington Growth Management Hearings Board: Practicing before the Growth Management hearings Boards for Washington State. (October 2007).

Land Use Study Commission. Final Report of the Land Use Study Commission. (1998). Available online at <http://www.commerce.wa.gov/landuse/report/toc.html>

League of Women Voters of Washington. The Growth Management Act of Washington State: Successes and Challenges. League of Women Voters of Washington Education Fund. Seattle, WA. (August 2006). Available online at: www.lwvwa.org/pdfs/studies/GMA_Study.pdf.

McGuire, Edward G. Growth Management in Washington State. PowerPoint. APA International Division and the New Zealand Planning Institute (online webinar). (September 17, 2009).

Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, Central Puget Sound Growth Management Hearings Board (CPSGMHB) (April 2009).

Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, Eastern Washington Growth Management Hearings Board (EWGMHB) (December 2008).

Summary Tabular Data Re: PFRs, Cases, Hearings and Decisions & Disposition of Cases, Western Washington Growth Management Hearings Board (WWGMHB) (August 2009).

Washington Secretary of State. Washington Secretary of State's Collaborative Oral History Project: Growth Management Acts 1990, 1991. (2006).

Washington State Attorney General's Office, Growth Management Hearings Board Appellate Case Status Reports (Memoranda dated August 6, 2009, prepared by Martha P. Lantz, Assistant Attorney General)

Washington State Department of Community Trade and Economic Development, Growth Management Services Division, Map of Washington State Growth Management Hearings Boards (dated November 2008).

Washington State Department of Community Trade and Economic Development, Growth Management Services Division, Map of Counties Fully Planning Under GMA (Differentiating Between "Required to Plan" and "Opt-In" Jurisdictions), (Undated; provided by Paul Johnson, Washington State Department of Commerce, September 2009).

Washington State House of Representatives. Engrossed Substitute House Bill 2338: An act relating to the administration and operations of growth management hearings boards (2009). Available at: <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/House%20Bills/2338-S.E.pdf>.

Washington State Office of Financial Management, Official April 1, 2009 Population Estimates (2009).

Washington State Office of Financial Management, Washington State County Growth Management Population Projections, Medium Series (2007).

Washington State Office of Financial Management. April 1, Population of Cities, Towns & Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management (OFM) (April 1, 2009). Information regarding "required to plan" vs. "opt in" jurisdictions obtained from Paul Johnson, Washington State Department of Commerce.

Washington State Office of the Governor. Ideas to Improve Management of Washington's Natural Resources. Available online at: <http://www.governor.wa.gov/priorities/reform/naturalresources.asp>. (Accessed October 5, 2009).

Washington State Office of the Governor. Governor's 2005 Land Use Agenda. Available at www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=6682&MIId=944&wversion=Staging (Accessed September 30, 2009).

Washington State Senate. Senate Bill 6083: Consolidating the growth management hearings boards (2009). Available at: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6083>.

This report was authored by Michael Kern of Triangle Associates, Inc. and Eric Toews of Cascadia Community Planning Services, with assistance from Dave Robison (Cascadia), Blake Trask (Triangle) and Maggie Flynn (Triangle).

The authors would like to thank the stakeholders, government representatives, and current and former GMHB board members and staff who took the time to share their thoughts and insights on this restructuring process. Their collective wisdom and varied perspectives provided the basis for this report's recommendations. The authors would also like to thank the staff of the Growth Management Hearings Boards, Office of Financial Management and Attorney General's Office for providing the data that informed the caseload analysis included in this report.

More information on this report and the Growth Management Hearings Boards is available at www.gmhb.wa.gov/. More information on Triangle Associates is available at www.triangleassociates.com.



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PLANNING SERVICES**