

# **The Impact of Vested Development In the Central Puget Sound Region**

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# **The Impact of Vested Development in the Central Puget Sound Region**

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## EXECUTIVE SUMMARY

The Washington State Legislature adopted the Washington State Vested Rights Doctrine<sup>1</sup> (VRD) in 1987 to provide certainty and fairness to developers and municipalities. A vested right to subdivide is established when a subdivision or building permit application is deemed complete by the appropriate jurisdiction. Once vested, a developer has some protection from changes in the applicable permit ordinance, zoning ordinance, or other land use control ordinances.

Vesting is important, especially in the Growth Management Act (GMA) context, because GMA led to significant revisions of local land use designations and because there was an increase in subdivision and building permits in the time period between the adoption of the GMA and when jurisdictions finished developing their GMA-mandated development regulations. These permits have a vested right to develop under the pre-GMA regulations. These vested rights potentially allow for development that may not be in compliance with GMA regulations and therefore, may not be in line with the public interest. Although this time period is important, there are also many lots of record that existed before GMA was adopted, and these too are vested based on pre-GMA development regulations.

Analysis of recent development in the region, in comparison to each county's last set of GMA-mandated growth targets found significantly more growth in the rural areas than what was targeted.<sup>2</sup> This led the Puget Sound Regional Council to conduct this study, with the assistance of two University of Washington graduate students to investigate vested development rights in the four counties' rural areas- King, Kitsap, Pierce, and Snohomish.

This study encompasses a legal and policy examination of the application of vested rights to land use subdivisions and a significant data collection and analysis. The legal and policy analysis addresses the complex federal, state, and local regulations and ordinances that have an impact on the issue on vested rights and subdivisions. The subdivision permit process has many stages - and tools exist at almost every stage that impact vested development rights. While these tools are not new, the majority of the four counties studied have not adopted the full force of the existing tools to address the vesting issue.<sup>3</sup>

Beyond the policy analysis, this research seeks to address the following data questions:

1. *Following the implementation of GMA by each county, what number and percentage of new housing units have been permitted on lots vested under pre-GMA development regulations?*
2. *What number and percentage of these vested lots do not conform to current GMA zoning regulations?*
3. *How many undeveloped lots and active lot applications vested under pre-GMA development regulations still exist?*

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<sup>1</sup> Washington State Vested Rights Doctrine, RCW 58.17.170

<sup>2</sup> Growth Management By the Numbers: Population, Household, and Employment Growth Targets in the Central Puget Sound Region, Puget Sound Regional Council, April 2005. (While some of the counties were close to their original rural targets, most counties experienced growth in the rural areas above their targets.) See Targets Report for county-specific growth numbers.

<sup>3</sup> Pierce County appears to be the only county that has adopted most of the tools authorized by state law. Chapter 5 discusses specific policy tools adopted by Pierce County.

The two researchers worked closely with lead county staff to try to answer these three questions. At the end of the project, the conclusion of all involved is that without considerable work and resources that exceed those available for this project, the answers to these questions are not readily available using existing data systems. For the two counties where the data were available to partially answer the research questions, Snohomish and Kitsap Counties, the analysis suggests that the amount of development occurring on pre-GMA vested lots is diminishing more slowly than expected.

- Snohomish County- The breakdown of building permits on formal plats for 1999 and 2003 found that 94 percent and 86 percent, respectively, of development occurred on lots vested under pre-GMA development regulations.
- Kitsap County- For a sample of fifty permits, the results are similar; the analysis of building permits for formal and short plats for 2000 and 2003 found that 88 percent and 92 percent, respectively, occurred on pre-GMA vested lots.

The second question proved difficult to answer. While these data suggest that the majority of building permits applied to in the sample years in the rural areas is on lots with pre-GMA vested rights, due to limited time and resources for this study, it is undetermined at this time whether this development is in compliance or not with GMA regulations.

Some of the findings regarding the use of policy tools include the following:

- All of the counties offer or require a pre-application process.
- All employ the provision authorized under state law to make sure that approved formal preliminary plats move forward to become final plat applications within five years. (For short plats, Kitsap and Pierce use a three year limitation)
- Most of the counties allow for extensions if building or subdivision permit applications have not moved forward before the expiration of the preliminary plat review period is passed.
- Pierce is the only county that has an adopted a local ordinance authorized under state law to expire the zoning or use associated with a recorded final plat after the five-year window.
- All of the counties have ordinances in place to ensure that short plats are not re-divided in less than five years, unless through the formal plat application process.

The state of the region in terms of addressing vested development rights in rural areas of these four counties is mixed and can, for the most part, be termed elusive. While the limited evidence suggests that vesting could be a problem, useful data sources for determining vesting dates are not available and the tools are not fully implemented.

Further study is needed to fully understand the impact of vesting in the central Puget Sound. This study begins to address some important concerns, however, is limited by a lack of time and resources. However, based on the experience of this project and through the process of working closely with lead county staff, the researchers concluded the following:

- Vesting is an important issue, but no one knows enough to conclusively state how large an issue it is in this region.
- Understanding vesting would require significant efforts to collect, sort, and analyze relevant data. This would require a significant mandate, such as an extension of the

Buildable Lands Program to the rural area with a requirement to analyze rural area capacity to ensure the collection of meaningful data and rigorous analyses.

Based on these conclusions, the researchers recommend the following:

- The counties should ensure that relevant data are collected and that the data are effectively being used to measure the desired outcomes.
- To help understand vesting, PSRC should strongly consider forming a regional working group that analyzes the impact of vesting on land use and its impact on the goals of the GMA.
- Counties should ensure that all policy tools that they are using to manage vested subdivision rights are transparent and easily accessible.
- Counties should review policy tools that are relevant to vesting and possibly adopt local ordinances that expire vested rights in the rural areas.

In conclusion, addressing vested development rights in the region's rural areas remains an important and nearly intractable issue. Understanding the impact of vested development will help to ensure that development in the rural areas occurs in a manner consistent with county and regional growth management goals. Realizing these goals will not only provide consistency with growth management objectives, but will produce quality of life benefits as well, such as the preservation of habitat, protection of natural resources, and well-planned infrastructure and services throughout the region.

## 1. INTRODUCTION

The Washington State Legislature adopted the Vested Rights Doctrine<sup>4</sup> (VRD) in 1987 to provide certainty and fairness to developers and municipalities. Prior to adoption, common law entitled developers to have a land development proposal processed under the regulations in effect at the time a complete *building permit* application was filed.<sup>5</sup> In 1987, the legislature codified the common-law doctrine and extended the rights to *subdivision* and *short subdivision* applications. The doctrine is designed to protect a developer's interest by creating a level of certainty that the applicable rules will not continue to change while the landowner attempts to develop property. It also accommodates local governments' interests in shaping land use codes that meet the needs of the community. The doctrine does this by fixing a point in time at which a developer can no longer be subject to changes in local land use law.

This document addresses questions surrounding development rights vested under pre-Growth Management Act (GMA) development regulations and the impact of vested development on GMA implementation. Development permits vested under the VRD allow property owners to develop under the standards in place at the time of the original application for the preliminary plat, even if these standards are not in compliance with current zoning and subdivision standards. Although vesting can happen with a number of different types of permits, for the purpose of this report, the term "vested" refers to subdivision permits applied for prior to the adoption of county GMA development regulations. This research is focused on the rural areas of King, Kitsap, Pierce, and Snohomish Counties to better understand the development trends in these areas.

The Puget Sound Regional Council (PSRC) initiated this study and limited the scope to the rural areas of the central Puget Sound region. This study focuses on the following questions:

- *What impact has pre-GMA vested development had on rural development patterns in King, Kitsap, Pierce, and Snohomish counties? Specifically, since the adoption of each county's GMA rural development regulations, what number and percentage of new housing units were permitted on rural lots that were vested under pre-GMA regulations?*
- *What pre-GMA vested development potential remains in each county? Specifically, how many lots that were recorded prior to GMA development regulations still exist?*

There is a complex legal and policy framework that governs how and when the VRD applies, and when it is superseded by other federal, state, and local laws and regulations. To understand the vesting issue within the broader context, the project also seeks answers to the following questions:

- *What is the Vested Rights Doctrine? What court cases have been important in shaping the understanding and interpretation of vested rights in this state? How and when does a development right vest? How and when does a vested right expire?*
- *What additional elements comprise the legal/policy framework governing vesting? How and when do these laws and regulations supersede the VRD?*
- *What policy tools are available to or have been utilized by the regions' jurisdictions to address the vesting issue?*

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<sup>4</sup> Washington State Vested Rights Doctrine, RCW 58.17.170

<sup>5</sup> Washington State Supreme Court case of *State ex rel. Ogden v. Bellevue*, 45 Wn.2d 492 (1954).

Part of the monitoring conducted by the Puget Sound Regional Council includes the tracking of building permits throughout the region, including the rural areas of the Puget Sound. Recently, the issue of development on vested lands has drawn attention as a matter that needs further study. This interest is due to the following recent findings:

- 1) *PSRC Growth Targets Report*: PSRC recently completed a study that looked at the GMA mandated growth targets.<sup>6</sup> The study found a significant variance between the “old” target (adopted in 1992) and development trends from 1995-2002 for rural areas. Vested building permits were identified as one potential cause of this variance. The analysis prompted this study to determine the impact of vesting on development trends.
- 2) *Update of Vision 2020*: PSRC is updating the growth management, economic, and transportation strategy for the region. Understanding the potential of vested development will help shape the VISION 2020 update.

### **1.1. Study Overview**

The PSRC issued this research question to two graduate students at the Evans School of Public Affairs at the University of Washington. PSRC divided the project between the two students (herein referred to as the “researchers”). Christina O’Claire conducted her research on King and Kitsap Counties while Margo Tufts focused on Pierce and Snohomish Counties. The project contacts at Puget Sound Regional Council are Ivan Miller, Principal Economic Development Specialist, and Carol Naito, Senior Planner and Demographer.

While the region conducted a major study on the capacity of urban areas (*Buildable Lands Study*), limited study has been conducted on the development capacity in the rural areas. This means that the impacts of vested permits, the number of remaining vested permits, and the policy procedures for dealing with the vested rights in the rural areas were not analyzed. For this reason, as well as the unexplained development trends in the *Targets Report*, this study will focus solely on rural areas.

As mentioned above, this study encompasses two pieces of analysis; the legal and policy framework and the data analysis. Chapter 2 describes the legal and policy methodology, while Chapter 3 provides the background context for this research. Chapter 4 describes relevant federal and state laws that impact vesting in this state. Chapter 5 explains the state and local permitting process for subdivisions and begins to detail policy tools that may be used to expire vested rights.

For the second piece of analysis, the researchers analyzed data from each county to understand the impact that pre-GMA vested development had on rural development trends. The Chapter 6, data methodology section and Chapter 7, the data findings section, detail the available data and the data limitations of each county. Finally, the researchers present their recommendations from the research in Chapter 8.

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<sup>6</sup> Growth Management By the Numbers: Population, Household, and Employment Growth Targets in the Central Puget Sound Region, Puget Sound Regional Council, April 2005.

## **2. LEGAL AND POLICY METHODOLOGY**

This section explains the techniques used by the researchers to collect information, analyze the history of land use legislation in Washington, explore the impact of the Vested Rights Doctrine on land use, and understand the state and local subdivision processes. Chapter 6 details the methods used by the researchers for data collection and analysis.

### **2.1. Common Sources**

In general, this study used the following common tools for both the legal and policy analysis and the data analysis.

#### **2.1.1. Written Documents**

The internet was a primary means of gaining access to the following information:

- County planning documents and policies (comprehensive plans, zoning codes, and land-use regulations)
- Land use publications and research by scholars
- Case law and legal documents

A key document for providing background on GMA and vesting to this report was *A Short Course on Local Planning*, which was developed by the Planning Association of Washington and the State of Washington Department of Community, Trade and Economic Development. Published in November 1999, this document provided valuable information including the constitutional and statutory basis for planning, the specifics of the GMA, vested rights, and the development process. It also provided information about other environmental laws that play a role in planning and development. Another key document that provided the framework for the legal and policy sections was *The Washington Lawyers' Practice Manual*, King County Bar Association (Chapter 23, 2004). This manual for practicing lawyers provided a condensed guide to the legal framework of the subdivision and GMA processes. The researchers also utilized a law review article by Roger D. Wynne, *Land Use- Washington's Rights Doctrine: How We have Muddled a Simple Concept and How We Can Reclaim It* (Information Bulletin 517 (2003) Legal Notes).

#### **2.1.2. Interviews**

The researchers gathered other information from PSRC-identified professionals in each of the counties. PSRC organized a meeting with representatives from each of the four counties on February 1, 2005.<sup>7</sup> The PSRC introduced the researchers to county contacts with whom they would be working on the data collection. The participants also defined and discussed the scope of the data analysis. The meeting resulted in a better understanding of the data limitations and a revised methodology that differed for each county. Furthermore, the meeting participants provided the researchers with contacts within each of their counties to use as additional resources. After the meeting, the researchers scheduled individual interviews/meetings with county representatives to determine the unique approach to the research questions that would be employed in each county.

Prior to each county visit, the researchers emailed the representatives a set of general questions to help lead the discussion. After each visit, the researchers followed up with a summary of the

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<sup>7</sup> For a complete list of the attendees, see Appendix D

proposed methodology for that particular county. Due to the complexity of the project and the data, communication clarifying the data required several follow-up visits, emails and/or calls to fully understand the strategy that would be employed in each county.

To help the researchers clarify the policy tools each county utilizes for vested permits, the students followed up with a series of questions related to subdivision. To ensure accurate information, the researchers provided the counties with an opportunity to comment on research during the final drafts of the study.

## **2.2. Legal and Policy Methodology**

The first part of this research is to analyze the legal and policy framework of the Washington State VRD. Listed below are the legal and policy research questions related to part one of this study:

- *What is the Vested Rights Doctrine? What court cases have been important in shaping the understanding and interpretation of vested rights in this state? How and when does a development right vest? How and when does a vested right expire?*
- *What additional elements comprise the legal/policy framework governing vesting? How and when do these laws and regulations supersede the VRD?*
- *What policy tools are available to or have been utilized by the regions' jurisdictions to address the vesting issue?*

As mentioned, the researchers obtained this information from a combination of academic research and county representative interviews. Due to the complexity of this study and the lack of documentation on vested rights in relation to subdivisions, the students primarily relied on county staff responses and the documents mentioned previously.

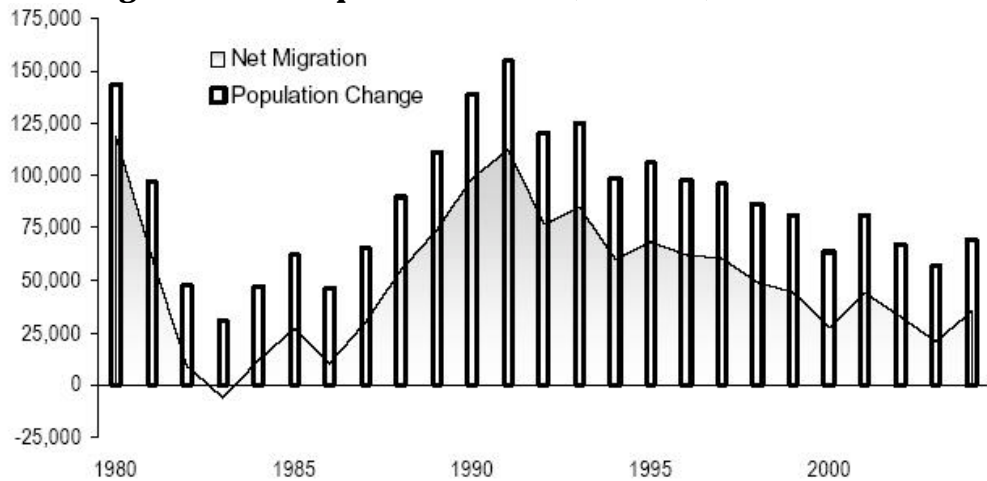
### 3. LEGAL AND POLICY BACKGROUND

In the late 1980's, Washington citizens and lawmakers acknowledged concerns regarding uncoordinated and unplanned growth throughout the State of Washington, especially in the rural areas. This concern was also due to the projected population trends that predicted significant population growth in the state. Furthermore, the state had no common growth or economic goals, nor a guiding strategic plan to direct policy decisions. At that time, the state was ready for an aggressive approach to growth management. The trends described in this section help set the context for the population growth pressures experienced in Washington around the time of the adoption of the Growth Management Act.

#### 3.1. Past Growth Trends

Washington State has experienced rapid population growth since the mid 1970's. The overall state population grew by 28.6 percent between 1975 and 1990.<sup>8</sup> According to the *PSRC's Targets Report*, the central Puget Sound saw an increase in 15.8 percent in population from 1970-1980 and then a 22.7 percent increase from 1980-1990.<sup>9</sup> Furthermore, a shift in population distribution has occurred from urban centers to traditionally more rural counties. While King County's population has decreased from 53.3 percent of the region's population in 1970 to 49.4 percent in 1990, Snohomish County's share has increased from 12.7 percent to 15.3 percent in the same time frame. Kitsap County's population share has increased by 4.9 percent to 6.2 percent as well while Pierce County continued to have a consistent share of the state population. These development patterns in the central Puget Sound increased pressure on infrastructure and services and, through the GMA, forced the region to reexamine the way it adapts to population growth and distribution trends.

**Figure 1: State Population Growth (1980-2000)**



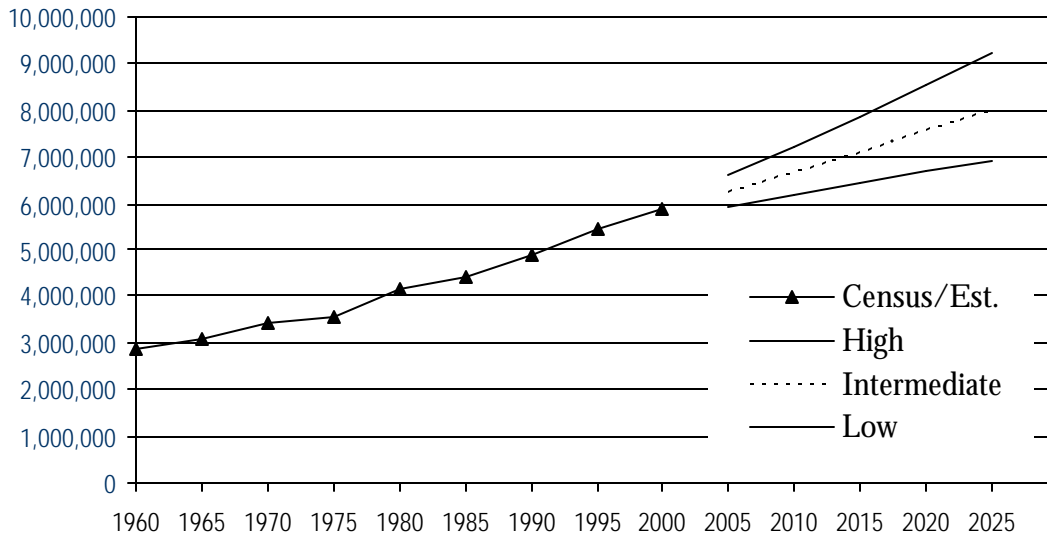
OFM Forecasting, State of Washington

<sup>8</sup> *Growth Management by the Numbers: Population, Household, and Employment Growth Targets in the Central Puget Sound Region*, Puget Sound Regional Council, April 2005. According to census data, the region's population grew from 1,963,090 in 1975 to 2,748,867 in 1990.

### 3.2. Projected Growth Trends

This growth is not expected to subside. According to the Washington Office of Financial Management, Washington State should expect to see over a million new residents by 2020 (see Figure 2 below).<sup>10</sup> This growth will be spread out through many of the urban population centers throughout the state and the Puget Sound region will absorb 70 percent of this projected growth. Between 2005 and 2020, King County is projecting an increase of a quarter of a million people. Snohomish County expects an increase of 200,000, Pierce an increase of 150,000, and Kitsap expects to increase by 90,000. Growth in residents necessitates an increase in housing and transportation capacity. According to the *PSRC Growth Targets Report*, most of the new growth is targeted to cities (58 percent).<sup>11</sup> However, urban unincorporated areas are targeted to receive 28 percent of the growth and the rural areas are targeted to receive 14 percent of the growth. With scarce resources such as land and water become increasingly stressed, well-planned land use becomes more important.

**Figure 2: Projected Residential Growth in Washington State**



PSRC Targets Report

### 3.3. The Growth Management Act

In 1990, Washington State became one of nine states to adopt some type of growth management plan. Development and planning in the Puget Sound region now occurs under the framework of the State Growth Management Act.<sup>12</sup> The GMA requires cities and counties planning under GMA to work together to develop comprehensive plans, more consistent development regulations, and establish urban growth areas. The legislative findings declare that:

<sup>10</sup> Office of Financial Management, <http://www.ofm.wa.gov/pop/gma/gmintermediate.pdf>

<sup>11</sup> Growth Management by the Numbers: Population, Household, and Employment Growth Targets in the Central Puget Sound Region," Puget Sound Regional Council, April 2005.

<sup>12</sup> RCW 36.70

*[U]ncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning<sup>13</sup>*

Washington's citizens and lawmakers favored a future that would protect natural resources and rural community character while encouraging economic growth and established urban centers.

The GMA sets out a new course in planning and development by incorporating a regional and statewide vision for the future. The Act intends to reduce sprawl into rural areas, protect critical habitat and sensitive areas, and involve local communities in establishing comprehensive plans that encompass this regional vision. Although Washington State is not the only state with a growth management statute, the concept is still relatively new in the United States. This relative newness calls for extensive monitoring and research to understand how the GMA is impacting the region's economic growth, development, and land use. Unlike some states with growth management statutes, Washington's GMA focuses on local control in planning although there are a number of state agencies that are responsible for overseeing the implementation of the GMA.

The GMA lays out fourteen growth management goals that include: sprawl reduction, concentrated urban growth, economic development, environmental protection, adequate infrastructure, affordable housing, and regional transportation.<sup>14</sup> The goals discourage sprawl while encouraging development in urban centers with adequate public facilities. They provide planning for economic opportunity and development, promote efficient multimodal transportation systems, and provide for the protection of property rights while seeking a more predictable regulatory environment. In order to achieve these goals, the GMA directs the state's most populous and fastest growing counties and their cities to prepare comprehensive land use plans that anticipate growth for a 20-year horizon.

**Summary of the GMA Goals:**

- Provide affordable housing for citizens of all income levels, promote a variety of housing densities and types, and preserve the existing housing stock.
- Promote economic opportunity consistent with the capacities of the state's natural resources and public services and facilities.
- Respect private property rights.
- Provide timely, fair and predictable permit review processes.
- Conserve and enhance natural resources.
- Retain open space, conserve fish and wildlife habitat, increase access to natural resource lands and water, and provide recreational opportunities.
- Protect the environment and enhance the state's high quality of life.
- Encourage citizen participation in the planning process and ensure coordination among jurisdictions.
- Ensure that public facilities and services are adequate.
- Preserve historic and archaeological resources.

<sup>13</sup> RCW 36.70A.010

<sup>14</sup> RCW 36.70A.020 and RCW 36.70A.480(1)

A key component of the comprehensive planning process is the establishment of urban growth areas (UGAs), which designate where the majority of growth will be focused. The UGAs must be sufficient to accommodate the increase in population projected to occur over the next 20 years.<sup>15</sup> Development is limited outside urban growth areas in order to protect rural and natural resource lands. UGAs are reviewed and updated every ten years by counties and local governments.

In attempting to limit unplanned growth in the rural areas, the GMA limits rural density. These new requirements have created substantial controversy, generating appeals to the Growth Management Hearings Boards. The legislature dealt with this controversy by enacting detailed provisions for what must be addressed in the rural element of each comprehensive plan. The rural element includes the consideration of local conditions, the protection of resource lands, and the enhancement of the rural sense of community and quality of life. Parts of the enacted provisions include:

- Establishing a variety of rural densities that may provide for clustering, density transfer, and conservation easements provided that these uses are in harmony with GMA requirements
- Permitting some rural development, forestry and agriculture
- Providing essential public facilities and rural governmental services
- Allowing potential limited areas of more intensive rural development and industrial areas (LAMIRDs) may be permitted as long as they meet requirements set out in the GMA
- Potential for fully contained communities, such as master planned resorts, fully contained communities, and industrial development if they meet the requirements of the GMA

The rural element of each comprehensive plan recognizes the need for flexibility in rural areas to create opportunities for business development and the expansion of existing businesses, however, stresses the mandatory compliance with GMA goals for the protection of rural character and resource lands.

### **3.4. Puget Sound Regional Council**

The Puget Sound Regional Council (PSRC) is an association of cities, towns, ports, and state agencies that serves as a forum for developing policy regarding regional growth and

transportation issues in the four-county (King, Kitsap, Pierce, and Snohomish Counties) central Puget Sound region. PSRC serves as the federally-designated metropolitan planning agency and the state-designated regional transportation planning organization for Puget Sound local governments. The PSRC has specific mandated roles under the GMA to develop a long-range transportation plan, monitor progress,

#### PSRC Mission:

The mission of the PSRC, as established in the Interlocal Agreement, is "to preserve and enhance the quality of life in the central Puget Sound area." To achieve this mission, the PSRC will:

- *Prepare, adopt and maintain goals, policies, and standards for regional transportation and regional growth management based on local comprehensive plans of jurisdictions within the region; and*
- *Ensure that provisions of state and federal laws pertaining to regional transportation planning and regional growth management are implemented in the region.*

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<sup>15</sup> The Office of Financial Management is responsible for conducting census studies and analysis to project growth targets in the region.

provide assistance, and promote sound policy to resolve growth and transportation issues in the region. One of the roles of the Puget Sound Regional Council is to monitor and ensure that counties and cities are following the guidelines set forth by the GMA and implement the regional vision outlined in its goals.

### **3.4.1. Vision 2020**

Under the mandates of the GMA, the PSRC has developed a core, long-range growth, transportation, and economic vision- VISION 2020. State laws, including the Growth Management Act, and federal laws, including the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) and 1990 Clear Air Act Amendments, require the central Puget Sound region to have some of the components of this regional growth management strategy.

VISION 2020 serves as the multi-county policies for King, Kitsap, Pierce, and Snohomish counties.<sup>16</sup> A major component of the strategy is to focus growth into designated urban centers. By focusing growth, the region can serve a greater number of people with high-capacity transit; create areas where people can live without the need for full-time access to cars, preserve rural land and open space, and help support environmental protection efforts.

### **3.5. County Responsibility**

All counties and cities planning under GMA must plan for a 20-year population growth based on adopted growth targets. These targets are based on the population projections from the Washington Office of Financial Management<sup>17</sup> and work collaboratively with the region and cities to accommodate an equitable proportion of the expected growth of the region. Each city and county is required to adopt a long-range Comprehensive Plan that identifies where and how growth will occur. The counties, therefore, must complete rigorous studies in order to fully comprehend the environment in which this growth will take place. In order to accurately address the growth in the rural areas as required for the Comprehensive Plans, each county must understand the extent of vested development and the impact it will have on development in the rural areas.

County-Wide Planning Policies are designed to:

- Implement urban growth boundaries
- Promote an orderly provision of urban services to urban development areas
- Site public capital facilities of a county-wide or statewide nature
- Provide county-wide transportation
- Assure adequate, affordable housing
- Enable joint city/county planning within urban growth areas
- Encourage county-wide economic development
- Analyze fiscal impact

(From *A Short Course on Local Planning*)

#### **3.5.1. Buildable Lands Program**

As indicated above, one of the major questions that the counties seek to understand is where the growth is likely to take place and what capacity exists in the urban and rural areas. The passage of the 1997 Buildable Lands Amendment to the Growth Management Act sought to ensure that counties and cities had adequate capacity to meet the growth targets set out in their comprehensive plans. Others sought the survey to ensure that sufficient land would be available for economic activity. The Buildable Lands Program requires cities and counties to conduct a

<sup>16</sup> RCW 36.70A.210 (7)

<sup>17</sup> A Short Course on Local Planning, CTED, November, 1999.

specific analysis of the growth capacity in all of the cities. The plan specifies that the analysis must be “based on the actual density of development... review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period.”<sup>18</sup>

Many cities have completed this study in order to map exactly where capacity is located and where urban densities can increase. Importantly, this study only occurred in the urban areas (within urban growth areas) and not in the rural or unincorporated areas. The rural areas expect to see growth as well; however, there is no clear understanding of the capacity that remains in the rural areas – this includes lots with vested rights to be developed.

### **3.6. Land Use Study Commission**

The 1995 legislature established the Land Use Study Commission with the goal of integrating Washington’s land use and environmental laws into a single, manageable statute. One of the tasks assigned to the Land Use Study Commission included an examination of Washington’s vesting law. The study looked at overall trends in development permit submittals before the adoption of new development regulations and also examined whether the vesting law allows projects to vest under regulations that are inconsistent with the goals of the GMA.<sup>19</sup> The study found that some counties across the state noticed a slight rise in development permit application numbers prior to the specific adoption dates of GMA regulations and attributed this rise to landowners wishing to vest rights before new regulations came into effect. Although none of the jurisdictions participating in the study complained of a widespread vesting problem, many participants remained concerned that the issue could potentially have long-lasting negative effects on growth management. Overall, the report found that vesting during the period of the GMA appeal was a localized issue involving relatively few properties and did not present a widespread undermining of the GMA.<sup>20</sup> The report also stated that the data were difficult to locate, but it was assumed the problem would diminish with time due to the utilization and expiration of these vested rights.

While the Commission recommended no change to Washington’s vesting statute, the report acknowledged the concern of some Commission members and environmental community representatives that the data collected were insufficient to determine the importance of the vesting issue. They believed that the Washington State Vested Rights Doctrine could complicate the implementation of the GMA regulations. Although local governments do have authority to adopt a moratorium (to limit vesting during plan adoption if a problem arises) or adopt ordinances to limit vesting, some representatives believe that a moratorium could be insufficient to protect growth management goals and that more direct legislative changes to the vesting laws would be appropriate. The region has not conducted a systematic study to indicate whether vesting is a threat to future growth management strategies.

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<sup>18</sup> *Targets Report*, PSRC, pg. 10

<sup>19</sup> *Land Use Commission Final Report*- Chapter 2- <http://www.cted.wa.gov/landuse/report/chapter2.html>

<sup>20</sup> Report on Permits Vested During Periods of Invalidity or Non-Compliance Under the Growth Management Act, Report to the Land Use Study Commission, David Evans and Associates, pp. 24-25 (September 1998)

### **3.7. Conclusion - Chapter 3**

In response to rapidly increasing growth and development pressure, the Washington State Legislature enacted the Growth Management Act in 1990 to protect the quality of life in the Pacific Northwest. Citizens and lawmakers expressed concern that population growth and suburban sprawl would threaten Washington's limited environmental resources and strain the public infrastructure. The PSRC is responsible for setting the policies for regional growth management while the local jurisdictions including counties are responsible for the implementation of the GMA. The responsibilities of the counties and the PSRC in regards to vested development rights will be discussed in more detail later in this report.

## 4. LEGAL AND POLICY FRAMEWORK – FEDERAL AND STATE

The context of this study cannot be separated from the complex legal and policy framework of land use in the United States and Washington. Many federal, state, and local laws guide land use and development in Washington State and these land use laws also apply to the Vesting Rights Doctrine which seeks to provide a measure of certainty to developers and to protect their expectations against evolving land use policy. The legal and policy fundamentals that will be examined in this section include:

- Essential Elements of the Legal and Policy Framework- Federal and State
- Washington State’s Vested Rights Doctrine
  - Expiration of Vested Rights
  - Health and Safety and Vested Rights
  - Critical Areas and Vested Rights
- Takings and Vested Rights
- The Impact of *Noble Manor* on the Vested Rights Doctrine
- State Environmental Policy Act and Vested Rights

### 4.1. Essential Elements of the Legal and Policy Framework – Federal & State

A complex legal and policy framework surrounds the main issues in this study. There is a long history of federal and state law that seeks to balance private property rights, planning, and protection of natural resources. The main laws that surround vesting of land use rights and that require decisions makers to develop a comprehensive understanding are the Washington State Vested Rights Doctrine and the Washington State Growth Management Act. Due to the uncertainty of common law surrounding the relationship of the VRD to land use, specifically subdivision, courts continue to interpret the practical applications of the doctrine, defining some circumstances where vested rights are protected and others where vested rights to subdivide are extinguished. Courts have expanded and reinterpreted the doctrine in the past and will continue to do so as long as the VRD remains vague as to its implications on land use.

The Growth Management Act lays out specific goals and policies that address problems the state must solve in order to protect rural areas, resource lands, and to continue creating a livable Washington State. Aspects of the Act, such as critical areas designation and its relationship to SEPA still hold the potential for conflict, negotiation, or for more interpretation. It is vital to the success of GMA that its mandates for protection public interest and rural lands are understood under the framework of laws that seek to protect private property such as the VRD.<sup>21</sup>

### 4.2. Washington State Vested Rights Doctrine

The Washington State Supreme Court first recognized common law vested rights in 1954<sup>22</sup> and the legislature adopted the Vested Rights Doctrine as a state law in 1987.<sup>23</sup> The doctrine is

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<sup>21</sup> In *Erickson & Associates v. McLerran* the Supreme Court held that, “A proposed development, which does not conform to newly adopted laws, is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted.” *Erickson & Associates v. McLerran*, 123 Wn.2d 864,874 (1994).

<sup>22</sup> Washington State has adhered to the current vested rights doctrine since the Supreme Court case of *State ex rel. Ogden v. Bellevue*, 45 Wn.2d 492 (1954).

generally applied to the protection of the right to do something or acquire something in the future without the government enacting a new law that impedes realization of that right. Within land use, the doctrine is historically associated with building permit applications; however, through the adoption of the VRD (as a state law), the legislature expanded the scope to include other land use actions, including subdivisions. The VRD freezes the right to develop under regulations at the time a fully complete development permit application is submitted. The doctrine attempts to provide certainty to property owners and developers. Over time, the courts have extended the doctrine beyond building permit applications to include other forms of land use, including conditional use, grading, shoreline substantial development, and septic tank installations, and, important to this study, the division of land. This extension is a result of the courts interpreting the legislation adapted to extend the doctrine beyond building permits.

<b>Vested Rights</b> - freeze the right to develop under regulations at the time a fully completed development application is submitted.
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In the 1980's, there were two significant modifications to the VRD. First, in 1987 the legislature extended the doctrine to applications for land division.<sup>24</sup> The second major shift required an application to be "fully complete" before it vests, rather than "sufficiently complete" as previously required by common law.<sup>25</sup> RCW 58.17.033 requires local jurisdictions to specifically describe the requirements for a complete application for a subdivision. The designation of a fully complete subdivision is critical to determining the date that the development rights will be vested. The definition of fully complete can vary by jurisdiction. The interpretation of a fully complete application has been challenged in court on numerous occasions. In *Friends of the Law v. King County*,<sup>26</sup> the courts determined that a "substantially complete" application was not sufficient for vesting rights of development.<sup>27</sup>

The purpose of the vesting doctrine is to allow developers to determine, or "fix", the rules that will govern their land development.<sup>28</sup> Notions of fundamental fairness support the doctrine. As President James Madison stressed, citizens should be protected from the "fluctuating policy" of the legislature.<sup>29</sup> Persons should be able to plan their conduct with reasonable certainty of the legal consequences.<sup>30</sup> Society suffers if property owners cannot plan development with reasonable certainty, and cannot carry out existing projects. The VRD is based on constitutional principles of fundamental fairness and due process of laws, reflecting the importance of individual property rights in this nation.<sup>31</sup> It is important to note that "(a) vested right involves 'more than . . . a mere expectation'; the right must have become 'a title, legal or equitable, to the present or future enjoyment of property.'<sup>32</sup>

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<sup>23</sup> Unlike most states, Washington, along with only Colorado, Massachusetts, and Texas, adopted a minority rule, "the early vesting rule" a statute which grants vesting earlier than the majority of states. Washington State is in the minority by providing vesting at the complete application stage.

<sup>24</sup> RCW 19.27.095; RCW 58.17.033

<sup>25</sup> Wash. Rev. Code § 19.27.095(1)2000; Wash. Rev. Code § 58.17.033(1) (2000)

<sup>26</sup> *Friends of the Law v. King County*, 123 Wn.2d 518,869 P.2d 1056 (1994)

<sup>27</sup> Appendix B includes a summary of all relevant case law mentioned in this research.

<sup>28</sup> *West Main Assocs. V. City of Bellevue*, 106 Wn. 2d 47, 51, 720 P.2d782 (1986)

<sup>29</sup> Madison, James, *The Federalist No. 44*, at 301 (January 25, 1788)

<sup>30</sup> Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harvard Law Review 692 (1960)

<sup>31</sup> *Erickson & Assocs., Inc. v. McLerran*, 123 Wn.2d 864, 870, 872 P.2d 1090 (1994).

<sup>32</sup> *F.D. Processing, Inc.*, 119 Wn.2d 452, 463, 832 P.2d 1303 (1992).

Although the VRD is powerful and provides a certain amount of protection against regulatory change, there are limits to the VRD. Vested rights can have an expiration date and can be superseded by local, state, and federal government for the protection of the public interest. The Supreme Court held in *Erickson & Associates v. McLerran* that, “a proposed development, which does not conform to newly adopted laws, is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted.”<sup>33</sup> If landowners have vested rights to develop, uses that may not be in line with the public interest may not only threaten health and safety, but the growth management goals of the region as well.

#### **4.2.1. Expiration of Vested Rights**

The Washington State Legislation recognized in RCW 58.17.170 that vested rights to divide land and use land are not granted in perpetuity. There are stages at which a subdivision application or a recorded development permit can expire. After a preliminary plat is approved by the local jurisdiction, a landowner has up to five years to submit engineering and construction plans and negotiate details with the local government for the final plat approval. After the local government gives final approval, construction can begin. According to state law, after the final plat approval and recording, the lots are “a valid land use” for five years even if the zoning changes.<sup>34</sup> However, in order for the counties to enact the state law, they must adopt the regulation as a local ordinance. These cases of development permit expiration opportunities will be discussed in more detail in the state and local subdivision process section (Chapter 5).

#### **4.2.2. Health and Safety and Vested Rights**

There are other limitations to vested rights. Government has the authority and responsibility to protect public health and safety. Municipalities reserve the right to alter or extinguish a vested right by exercising reasonable police powers to protect public health, safety, morals, and general welfare.<sup>35</sup> Generally, Washington courts have refused to apply the VRD to health and safety related rules and regulations, such as on-site sewage disposal systems. Health and safety requirements, governed mostly by the county departments of public health can override the vested rights of landowners. State law currently restricts the issuance of a septic tank permit for land that is divided in violation of current state regulations.<sup>36</sup>

Restrictions on septic installation permits can hinder the usability of a parcel of land. Although a plat may be subdivided for many units on a lot, the courts held in *Thurston County Rental Owners Ass’n v. Thurston County* (1997) that vested rights apply to the subdivision permit only and not for the operation or installation of a septic tank. It is important to note that in *Noble Manor*<sup>37</sup> (discussed in the next section of this document), the application vests to the land use that apply both to subdivision of the property and its development, this does not apply to health and safety regulations (i.e., septic tanks). The Washington State Department of Health must approve these permits and will not approve septic permits where public health may be put at risk. In *Rhod-A-Zalea & 35<sup>th</sup>, Inc. v. Snohomish County* (1998),<sup>38</sup> the court held that the vested rights rule “has no bearing on the issue of whether a nonconforming use is subject to later enacted health and safety

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<sup>33</sup> *Erickson & Associates v. McLerran*, 123 Wn.2d 864,874 (1994).

<sup>34</sup> RCW 58.17.205

<sup>35</sup> *Hass v. Kirkland*, 78 Wn.2d 929, 481 P.2d 9 (1971)

<sup>36</sup> RCW 58.17.210 Building, septic tank or other development permits not to be issued for land divided in violation of chapter 0 or regulations.

<sup>37</sup> *Noble Manor v. Pierce County*,133 Wn.2d 269, 943 P.2d 1378 (1997)

<sup>38</sup> *Rhod-A-Zalea & 35<sup>th</sup>, Inc. v. Snohomish County*, 136 Wn.2d 1, 16, 959 P.2d 1024 (1998).

regulations, as the doctrine only applies to development permit applications.” The VRD, therefore, does not apply where the health and safety of the public may be compromised as a result of the intended development. There are other limitations to vested rights.

#### **4.2.3. Critical Areas and Vested Rights**

One ambiguity of the VRD is its application to critical areas ordinances. The GMA requires that each city and county in the state must identify resource lands and critical areas before identifying areas of urban growth.<sup>39</sup> Critical areas include both hazardous areas (such as floodplains and steep slopes) and environmentally sensitive areas (like wetlands and streams). Critical areas also include zones that are important for protecting groundwater. The GMA requires counties to protect the “functions and values” of these identified critical areas. Examples of wetland functions are filtration of pollutants, wildlife habitat, flood control, and groundwater recharge. The importance of these areas is made apparent in the language of the GMA that specifies these designations as a top priority of the GMA.

The GMA directs local governments to protect critical areas.<sup>40</sup> However, the Growth Management Hearings Board has not interpreted the meaning of “protect” to rule out any negative impacts on those areas. In one court case in particular, *Pilchuck II*,<sup>41</sup> the Hearings Board acknowledged the importance of preserving the structure, value and functions of wetlands. The court ruled that the GMA does not prohibit any alteration of or negative impacts to such critical areas. Local governments have the authority to adopt development regulations that may result in the loss or impact to critical areas. The decision by the Hearings Board does maintain that this should only be allowed for good cause, should be used sparingly, and should not result in a net loss of the natural system.

In practice, counties do allow a certain amount of development in critical areas. However, in most jurisdictions, development can only occur under certain circumstances. For example, Snohomish County outlines the following regulations that outline when development may occur in critical areas:

- A suitable alternate location for a new structure does not exist outside the critical area
- New structures are constructed in areas that minimize disruption to the critical areas
- All critical areas and their buffers that have been disrupted during development are restored as much as possible to their original state
- Construction and use of new or improved structures complies with applicable existing laws
- Development activities are consistent with approved site plans.<sup>42</sup>

Vested rights are not directly discussed in legislation regarding critical areas. From this research, it is clear that vested rights are not automatically trumped by the adoption of a critical areas ordinance. However, many critical areas in the state are also considered habitat of endangered species. The Endangered Species Act (ESA), a federal statute protecting threatened and endangered species, can override rights to develop by prohibiting certain activities on private

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<sup>39</sup> RCW 36.70A.170

<sup>40</sup> WAC 825(2)(b)

<sup>41</sup> *Pilchuck v. Snohomish County (Pilchuck II)*, CPSGMH Case No. 95-3-0047, Final Decision and Order, Dec. 6, 1995

<sup>42</sup> Snohomish County Planning & Development Services, Bulletin #15, Critical Areas Regulations for Residential Projects

property. Reasonable use exceptions do exist in order to provide a safety valve from regulations that would deplete all viable economic use of a piece of property.<sup>43</sup> These reasonable use exceptions may be applied for if all reasonable effort has been made to comply with the regulations and mitigation strategies have been outlined.<sup>44</sup>

It is unclear what impact the VRD has on CAO and ESA regulations. In most cases, the federal and state governments allow some construction at the very minimum to prevent a “taking” of private property. For example, a single residential unit is almost always allowed on a parcel in the rural area to provide some economic benefit to the landowner to prevent a taking.

### **4.3 Takings and Vested Rights**

The Fifth Amendment to the United States Constitution protects property owners from unconstitutional taking of private property by the government. When the state or federal government, through its police power (eminent domain), regulates the use of private property to the point where the value and use are virtually eliminated, a regulatory taking has occurred and the property owner is entitled to just compensation.<sup>45</sup>

Decision makers and planners regulating land use frequently face the takings issue. Takings claims arise when either there has been a physical invasion or appropriation of property, when land-use regulations deprive a property owner of reasonable use of his or her land, and when conditions are imposed on land-use permits. When regulating land use in the rural areas, takings claims may be generated by growth moratoria and could potentially be made on lots with expired vested rights if the landowner loses reasonable use of the property. For this reason, state and local jurisdictions often allow the building of a single residential unit in the rural areas to provide economic value to the landowners and therefore prevent a takings claim.

*A Short Course on Local Planning* explains that reasonable use limitations are often held up in courts to allow local planners to regulate land to serve the public interest. Regulatory actions that serve the public interest may include zoning patterns, regulations that protect the public safety and health, and wetland regulations, including critical areas.<sup>46</sup> According to *A Short Course on Local Planning* the rationale for the reasonable use limitations is based on Washington’s vesting doctrine. It states that:

*“Each individual is entitled to use property according to the laws on the books at the time an application is made... However, no law requires a community to hold a zone available forever. If a community decides to change zoning to serve the needs of the large community, it may do so, even if this limits or takes away previously authorized rights to use property.”<sup>47</sup>*

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<sup>43</sup> When the federal or state government exercises its police powers either through regulations or the use of private property, landowners can use the Fifth Amendment to the Constitution to challenge that a “taking” has occurred and that the landowner is entitled to just compensation. Most counties and local jurisdictions allow for one residential unit to be built on a lot regardless of other ordinances in order to prevent a “takings” claim.

<sup>44</sup> <http://www.co.snohomish.wa.us/documents/Departments/pds/building/residential/63esa.pdf>

<sup>45</sup> United States Constitution, Article I § 16

<sup>46</sup> *A Short Course on Local Planning*, State of Washington, Department of Community, Trade and Economic Development, Version 4.1, November 1999.

<sup>47</sup> *A Short Course*, Chapter 4, pg. 9.

In the past, courts have generally recognized that local planners must be able to enact regulations that protect the public interest. Compensation is not awarded without significant proof of economic detriment.

#### **4.4. The Impact of *Noble Manor* on the Vested Rights Doctrine**

The impact of the VRD on land use is not explicit in Washington State law. Jurisdictions rely on courts to interpret the meaning of the doctrine by piecemeal decisions. The question that *Noble Manor* invokes is how does the doctrine affect applications for land use authorizations other than building permits and laws other than zoning?

Prior to the *Noble Manor* decision in 1997 and actually in the language of the decision, courts interpreted the VRD to acknowledge the application-by-application manner of applying the VRD. A subdivision approval therefore, would not vest other permits that may be applied for in this process. Subsequent permits, including building, health and engineering plats, would vest with their own date. In the *Noble Manor* decision, a landmark decision interpreted RCW 58.17.033 to mean that the use of the land is vested along with the right to divide the land under the land use regulations in effect at the time the subdivision application is submitted. In *Noble Manor v. Pierce County*, the Court held that when an application to subdivide sets forth the intended use, the use, as well as the division of land, is protected under the VRD.<sup>48</sup> The court reasoned that the statute must have intended this protection because without it, the landowner would have no protection at all.

While *Noble Manor* begins to address some of the uncertainty with how vesting associates with land uses, the impact of *Noble Manor* on subdivision decisions and on the development permitting process is still unknown. This interpretation of the VRD poses serious threats to the vision of the GMA by creating the possibility for additional uses that may not comply with GMA. According to one law review article addressing the doctrine, the decision essentially holds that “any land use application ‘vests’ the right to freeze in time the law that will control all aspects of later development or use of that land, as long as that development or use is consistent with the type of use disclosed”.<sup>49</sup> Although the implications of this case are yet to be seen, this does represent a major shift from previous interpretations of the doctrine and could play an important role in subsequent vesting matters.

#### **4.5. State Environmental Policy Act and Vested Rights**

Another law that influences the GMA is the State Environmental Policy Act (SEPA). The state legislature enacted this statute in 1971. Although, it predated GMA, SEPA is now assimilated into the growth management planning process. Until the passage of the GMA, SEPA was the primary project review tool used in planning and development. SEPA requires all government agencies to review environmental impacts of decisions. Although the original passage of the GMA did not substantially change SEPA review and regulations, the GMA mandate to streamline the regulatory process has had an impact on the SEPA process. In 1995, the legislature adopted "regulatory reform" legislation (Engrossed Substitute House Bill 1724)<sup>50</sup> to ensure the integration

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<sup>48</sup> *Noble Manor v. Pierce County*, 133 Wn.2d 269, 943 P.2d 1378 (1997)

<sup>49</sup> Wynne, Roger D. “Washington’s Vested Rights Doctrine: How We Have Muddled a Simple Concept and How We Can Reclaim It”, *Seattle University Law Review*, Vol. 24:851, pg. 916.

<sup>50</sup> WAC 197-11-210 through 197-11-235

and simplification of state land use and environmental regulations.<sup>51</sup> All of the legislation's requirements apply to cities and counties planning under the GMA, while only part of its requirements apply to non-GMA cities and counties.

While the impact of vested rights on SEPA is not the principle issue, a simple understanding provides relevant context to this study. The SEPA determination is vested with the subdivision permit. Subdivisions must be reviewed in the SEPA process to determine whether they have significant environmental impacts. Some short subdivisions are exempt from the process.<sup>52</sup> For short subdivisions that are not subject to environmental review under SEPA, the project is vested to the ordinances in effect at the time of the threshold determination of significant or non-significant environmental impact.<sup>53</sup>

#### **4.6. Conclusion – Chapter 4**

As seen with the *Noble Manor* case, there are many questions that remain for the interpretation of the VRD such as which rights are vested and what permit types are applicable to vesting. This chapter concludes the following to help guide the interpretation of the VRD:

- The VRD freezes the right to develop under the regulation at the time a fully complete permit application is submitted.
- Vested rights to divide land and use land are not granted in perpetuity. These expiration dates will be discussed in the state and local subdivision process, Chapter 5.
- Vested rights may not apply to health and safety requirements when the safety of the public may be compromised.
- In most cases for the rural areas, landowners are allowed to build one-residential unit in perpetuity per parcel.
- The impact of vested rights on ESA and CAO is unclear, but at minimum governments allow some development to prevent a “taking” of private property.
- The SEPA determination is vested with the subdivision permit.

The actual application of the VRD to all uses of land remains vague. Furthermore, interpretations of the VRD, such as in *Noble Manor*, could potentially have large impacts to development on vested lots. Recommendations regarding these vesting issues will be addressed in the Chapter 8.

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<sup>51</sup> RCW 36.70B

<sup>52</sup> Short subdivisions will be discussed in more detail in the following chapter.

<sup>53</sup> Chapter 197-1-660 Washington Administrative Code (WAC)

## 5. LEGAL AND POLICY - STATE AND LOCAL SUBDIVISION PROCESSES

There are Washington State regulations governing subdivisions and plats as well as county and local ordinances detailing specific jurisdictional requirements. The state regulations are outlined in RCW 58.17. All subdivisions are required to comply with the provisions of that chapter. Furthermore, pursuant to 58.17.060, every short subdivision as defined in RCW 58.17.030 needs to comply with the specific provisions of any local regulation. Local regulations can vary for each jurisdiction. The vesting of rights to develop occurs during the subdivision permitting process. The permitting process also includes occasions for vested rights to divest or to re-vest under a different date. This section will define permitting terms, outline the permitting process and describe any jurisdictional differences in the process. Furthermore, this section will explain the role that the subdivision permitting process has on the effects of vesting for King, Kitsap, Pierce, and Snohomish Counties and what policy tools are available to ensure that the goals of the GMA are not impeded by the vesting of development rights in the state. The following topics will be discussed in more detail:

- Subdivision Definitions
- Subdivision Approval Process
  - Preliminary Plat Approval Process
  - Final Plat Filing Period
  - Final Plat Approval Process
  - Short Plat Distinctions
  - Process Time Limitations
- Jurisdictional Differences

### 5.1. Subdivision Definitions

When a property owner wants to sell a portion of property to someone other than an owner of an abutting property, the property must first be subdivided.<sup>54</sup> The subdivision of land in Washington is governed by both the provision of state law and is supplemented by local ordinances, regulation, and procedures.<sup>55</sup> State law defines the subdivision of land as the following:

*Subdivision is the division or re-division of land into five or more lots, tracts, parcels, sites, or division for the purpose of sale, lease or transfer of ownership.*<sup>56</sup>

State and County laws require permits for subdivision for the following reasons<sup>57</sup>:

- To ensure that the new lots meet minimum zoning requirements for building
- To protect the interests of the seller, buyers, builders, and neighbors
- To prevent or mitigate drainage problems, access and traffic safety problems, and public health hazards
- To plan wisely for community growth and neighborhood traffic circulation
- To maintain accurate public records of land division

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<sup>54</sup> Generally, every division of land is subject to subdivision regulations. There are exceptions, however. These exceptions are set forth in RCW 58.17.040.

<sup>55</sup> For information regarding the laws governing subdivision, see Chapter 58.17 of the RCW and Appendix E of this report for specific county statutes.

<sup>56</sup> RCW 58.17.020

<sup>57</sup> King County Bulletin #25

There are several specific terms relating to subdivision that are defined by state law. Listed below are the most relevant terms as defined by RCW 58.17.020 to this discussion of subdivisions.<sup>58</sup>

- *Plat*- is a map or representation of subdivision, showing the division of a tract or parcel of land into lots, blocks, streets, or other division and dedication.
- *Preliminary Plat*- is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks and other elements. The preliminary plat shall be the basis for approval or disapproval of the general layout of subdivision.
- *Final Plat*- is the final drawing of a subdivision and dedication of land prepared for recording with the County Auditor and containing all elements and requirements outlined in the local government's development regulations.
- *Formal Subdivision*- is the division or re-division of land into five or more lots, tracts, or parcels or in cities and within the UGAs, up to nine lots at the option of the city or county.
- *Large Lot Divisions*- is any number of divisions of land into lots, tracts or parcels for any purpose, each of which the smallest lot size is five acres or larger or 1/128 of a Section but smaller than 20 acres or larger.<sup>59</sup>
- *Short Subdivision*- is the division or re-division of land into four or fewer lots, tracts, parcels, sites or division for the purpose of sale, lease or transfer of ownership. However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.<sup>60</sup>

## 5.2. Subdivision Approval Process

In general, every division of land into two or more lots or tracts, or one or more of which is less than five acres in size, must be accomplished through a subdivision or short subdivision and must comply with RCW 58.17 and with local ordinances, regulations, and procedures. The procedure can vary by jurisdiction as discussed later in the chapter. Although the process generally begins with the application, most jurisdictions have either optional or mandatory pre-application meeting requirements.<sup>61</sup> Pursuant to RCW 36.70B.060 and .120, the GMA mandates local jurisdictions to adopt a consolidated development permit process so the subdivision platting approval process takes place concurrently with any other applications of the subdivision. The platting process has two phases: the preliminary plat and the final plat. Figure 3 depicts this process.<sup>62</sup>

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<sup>58</sup> For additional definitions see Appendix A: Definitions and Terms

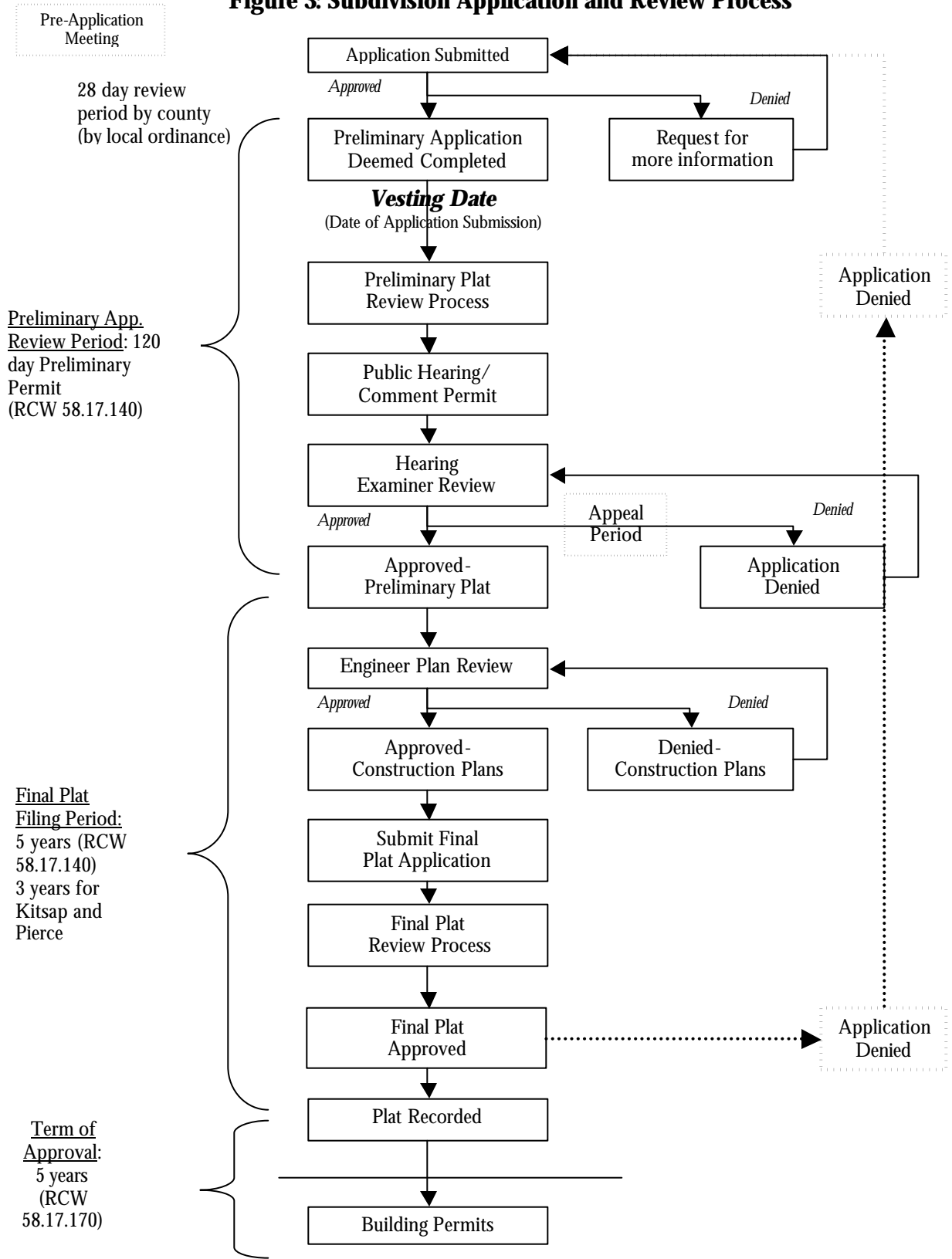
<sup>59</sup> From Pierce County Code, Title 16.02.020

<sup>60</sup> The legislative authority of any county planning under RCW 36.70A.040 that has adopted a comprehensive plan and development regulation in compliance with chapter 36.70.RCW may by ordinance increase the number of lots, tract or parcels to be regulated as short subdivision to a maximum of nine in any urban growth area.

<sup>61</sup> King County has a mandatory pre-application meeting requirement, while Pierce, Kitsap, and Snohomish Counties have optional meetings.

<sup>62</sup> For a more specific example, Appendix F includes King County's flow chart for their subdivision approval process.

**Figure 3: Subdivision Application and Review Process**



### **5.2.1. Preliminary Plat Approval Process**

The preliminary plat is the conceptual plan. A preliminary plat includes a drawing of the proposed development with the general layout of streets and lots, amenities, and any other requirements of the local jurisdiction. Most jurisdictions require a very detailed preliminary plat and only use the term preliminary to allow for minor modifications between the preliminary and final plat.

The preliminary plat of a formal subdivision is subject to a public hearing before a planning commission or hearing examiner and the approving authority. The hearing is to determine if appropriate provisions have been made for the public health, safety, and general welfare of the public, among other things. The hearing examiner can also determine at this time whether the public interest will be served by the subdivision.<sup>63</sup> The planning commission makes an advisory recommendation to the approving authority based on evidence at the hearing. The approving authority may make additional requests of the subdivision; however they must act in a timely fashion, and in accordance with adopted policies of the jurisdictions. The approving authority then must state in writing the findings and the reasons to support the approval or denial.<sup>64</sup>

The local land use ordinances covering such matters as zoning, critical areas, shorelines, utilities, and storm water drainage are applicable to the design of the preliminary plat and will dictate the plat configuration. Compliance with the requirements of local land use ordinances is necessary to achieve compliance with RCW 58.17.110.

### **5.2.2. Final Plat Filing Period**

Plats (formal plats and short plats) are vested when a fully complete preliminary plat application is filed.<sup>65</sup> State law requires local jurisdictions to identify the requirements for a complete application for a subdivision.<sup>66</sup> Fulfillment of the local government's requirement for a complete application is necessary to vest rights to develop land under the land use regulations and zoning in effect at the time the application is submitted. The applicant has up to five years from preliminary plat approval to submit the final plat for both formal and short subdivisions.

Many jurisdictions offer a possible one-year extension in which to record with the county auditor. In practice, jurisdictions can offer multiple one-year extensions if a developer demonstrates a good faith effort to complete the application. Criteria for issuing extensions vary by jurisdiction.<sup>67</sup> If not recorded within the designated time period of the jurisdiction and extensions are no longer in place, the preliminary application becomes void and a preliminary subdivision application must be resubmitted. The original preliminary application for a subdivision, therefore, is no longer valid and the vested rights associated with this application are no longer binding.

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<sup>63</sup> RCW 58.17.110

<sup>64</sup> RCW 58.17.195

<sup>65</sup> RCW 58.17.033

<sup>66</sup> RCW 58.17.033

<sup>67</sup> For more information on criteria for permit application extensions, please see each county's land use policies.

### **5.2.3. Final Plat Approval Process**

The final plat is the final drawing of the subdivision prepared for filing for record with the county auditor. The final plat must meet all requirements of both the state and local regulations. These are included in RCW 58.17.150 - .165. The final plat will include engineering drawings, improvements, and should be consistent with the preliminary plat. After the final plat approval, uses are vested for five years. Pursuant to state law:

*Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of five years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.<sup>68</sup>*

According to the *King County Bar Association Washington Lawyer's Practice Manual*, "there are no Washington court cases interpreting the meaning of the phrase, 'a valid land use,' although "most commentators agree that an approved lot is eligible for a building permit for five (5) years even if subsequent zoning requires a larger lot size."<sup>69</sup> This issue will be discussed in more detail in Figure 4.

### **5.2.4. Short Plat Distinction**

Historically an application to create four or fewer lots (a short plat) was relatively simple and governed almost entirely by local ordinances. Over time, state law has changed to impose more requirements on short plats. Short plats are generally reviewed and approved administratively by local planning departments and are not subject to a public hearing or approval by the county hearing examiner. Denied short plat applications may have the right of appeal to the hearing examiner or planning commission however.

Currently, lots created by short plat cannot be further divided for five years unless a formal plat is filed or unless the new short plat contains fewer than four parcels.<sup>70</sup> An alternation<sup>71</sup> may be used to create a total of four lots within the five-year period. Short plats are usually exempt from SEPA requirements unless the division is a re-division of land, or the land is covered by water, requires grading, or would require a Forest Practices Conversion permit, among other exceptions.<sup>72</sup> Furthermore, the property may be required to comply with county drainage requirements and critical areas regulations if the property contains steep slopes, stream corridors, water bodies or wetlands.

A short plat approval is not subject to the same time limits as formal plats. State law leaves this open to jurisdictions to determine.

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<sup>68</sup> RCW 58.17.170

<sup>69</sup> *The Washington Lawyer's Practice Manual*, King County Bar Association, Chapter 23, 4-13, 2004.

<sup>70</sup> RCW 58.17.060

<sup>71</sup> An alternation of a plat is subject to a procedure outlined in RCW 58.17.215 and is used for the purposes as rearranging lots, altering road alignments, etc.

<sup>72</sup> Specific regulations are listed in RCW 43.21(c), WAC 197-11-800 (6)(a)

### **5.2.5. Process Time Limitations**

There are differences between subdivision and short subdivision ordinances in different local jurisdictions. However, all must conform to RCW 58.17. Pursuant to RCW 58.17.140, the following time limitations are required for approval or disapproval of a preliminary plat application and for extensions on approval dates. The language of the statute best describes the time frame of the approval process.

- “Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3).”
- “...The ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency.”
- “Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period.”
- “A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within five years of the date of preliminary plat approval.”

Pursuant to RCW 58.17.170, there are also limitations on the length of time a final plat holds its vested rights to develop.

- “Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing.”
- “A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of five years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.”

The statutes allow for local jurisdictions to modify these general guidelines. Figure 3, the Subdivision Application and Review Process chart, identifies specific jurisdictional differences to the permitting process and time limitations. At each stage in the subdivision permitting process, time limitations provide an opportunity for jurisdictions to reassess individual projects and expire permits. While vested rights associated with outdated development regulations may expire, jurisdictions almost always allow for some reasonable use (usually one residential unit) of the property in the rural areas to ensure that the economic value of the property is not entirely diminished. This allowance curtails potential takings claims.<sup>73</sup> According to the research of this study, Pierce County is the only jurisdiction that has adopted regulation consistent through the chart with state law. Title 18 of the Pierce County Code outlines specific regulation relating to the expiration of vested rights.

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<sup>73</sup> Typical development in rural areas consists of residential units. Therefore, while the loss of vested rights to develop land in the rural areas, and therefore the potential for takings claims is not as great of an issue in the rural areas, it is still relevant to this discussion due to the potential impact of this development. See Chapter 4.3 for more information on takings.

### **5.3. Jurisdictional Differences**

The following table (Figure 4) outlines the regulations pursuant to Washington State law and the specific jurisdictional differences that are adopted by county ordinance. The boxes in front of the specific time limitations show whether the counties apply the tools that are authorized in state law. An open box suggests that the counties have not adopted the tool authorized by state law through their local ordinances. A checked box suggests that the counties have adopted ordinances that at least comply with state law, but may contain stricter standards in county ordinances that relate to the subdivision process. A question mark indicates that more information is needed from the counties to determine how each tool is applied.

The opportunity to expire vested rights provides a valuable tool to counties to develop in accordance with the GMA. However, if counties do not apply the divesting ordinances, development permits with vested rights remain in the system and potentially pose a threat to the goal of curbing rural sprawl. Although many counties apply the expiration dates for the preliminary applications of formal and short plats before the recording of a final plat, the expiration of final plat rights to develop is not as apparent.

**Figure 4: County Policy Tools Regarding Vesting**

	<b>King</b>	<b>Kitsap</b>	<b>Pierce</b>	<b>Snohomish</b>	<b>State Law</b>
<b>Pre-Application</b>					
<b>Meeting</b>	Mandatory Meeting	Meeting Recommended	Meeting Recommended	Meeting Recommended	Jurisdictional Option
<b>Preliminary Application Review Period</b>					
<b>Review Period</b>	?	?	?	<input checked="" type="checkbox"/> 120 days (need code)	<input checked="" type="checkbox"/> 90 days, plus 21 days if public hearing is requested, extension if approved by applicant. (RCW 58.17.140)
<b>Preliminary Plat Approved</b>					
<b>Short Plat Term of Preliminary Approval</b>	<input checked="" type="checkbox"/> Short- 5 years (KCC 19A.12.040)	<input checked="" type="checkbox"/> Short- 3 years (KCC 16.48.140)	<input checked="" type="checkbox"/> Short- 3 years (PCC 16.08.040)	<input checked="" type="checkbox"/> Short- 5 years (30.41B SCC)	<input checked="" type="checkbox"/> Short- 5 years
<b>Formal Plat Term of Preliminary Approval</b>	<input checked="" type="checkbox"/> Formal-5 yrs (need code)	<input checked="" type="checkbox"/> Formal- 5 yrs (KCC 16.52.140)	<input checked="" type="checkbox"/> Formal- 3 yrs (PCC 16.08.040)	<input checked="" type="checkbox"/> Formal- 5 yrs (30.41A.600 SCC)	<input checked="" type="checkbox"/> Formal- Final plat must be approved and recorded within 5 years of preliminary approval (RCW 58.17.140)
Extensions	<input checked="" type="checkbox"/> None except 'qualified' plats may have extended periods (need code)	<input checked="" type="checkbox"/> Extension w/good faith effort + additional subject to request (need code)	<input checked="" type="checkbox"/> 1 yr extension w/good faith effort + additional subject to request (need code)	<input checked="" type="checkbox"/> 1 yr extension w/good faith effort + additional subject to request (need code)	<input checked="" type="checkbox"/> State law allows local jurisdictions to ordinances which would allow for extensions of time. (RCW 58.17.140)
<b>Final Plat Recorded</b>					
<b>Short Plat Term of Approval</b> (not determined by statute, but usually less than five years)	<input type="checkbox"/> Short- allows building permits to fall under plat regulations for 5 years (need code)	<input type="checkbox"/> Short- None	<input type="checkbox"/> Short- None	<input type="checkbox"/> Short- None	<input type="checkbox"/> Short- None
<b>Formal Plat Term of Approval</b>	<input type="checkbox"/> Formal- 5 yrs	<input type="checkbox"/> Formal- 5 yrs	<input type="checkbox"/> Formal- 5 yrs	<input type="checkbox"/> Formal- 5 yrs	<input checked="" type="checkbox"/> Formal- Valid land use for 5 years after final plat approval, unless public safety is threatened (RCW 58.17.170)
<b>Re-division Time Period</b>					
<b>Short plat</b>	<input checked="" type="checkbox"/> Conforms with state law (need code)	<input checked="" type="checkbox"/> Conforms with state law (need code)	<input checked="" type="checkbox"/> Conforms with state law (need code)	<input checked="" type="checkbox"/> Conforms with state law (need code)	<input checked="" type="checkbox"/> Short – cannot re-divide within 5 years w/o filing formal plat (RCW 58.17.060)
<b>Formal Plat</b>	<input checked="" type="checkbox"/> Conforms with state law (need code)	<input checked="" type="checkbox"/> Conforms with state law (need code)	<input checked="" type="checkbox"/> Conforms with state law (need code)	<input checked="" type="checkbox"/> Conforms with state law (need code)	Any re-division requires new formal plat application (need RCW)

Tool adopted by county  
 Not adopted by county  
 ? Need further information

#### **5.4. Conclusion - Chapter 5**

The VRD was established to protect the rights of private property owners from shifting development regulations so that investments in property would be used efficiently and so that development in the region would not be suppressed. However, the role of government is also to protect the public interest— their general welfare, health and safety, and to protect resources that are vital to the region. For this reason, state law also outlines methods for limiting the amount of time land has vested rights to out-of-date development regulations.

As seen in this chapter, a number of regulatory frameworks and ordinances provide jurisdictions an opportunity to limit vested rights; however, these opportunities are not being fully utilized by the counties. Listed below are key points summarizing the timeline and permitting process for vested development.

- Only King County requires a mandatory meeting prior to submission of permit application, which may prevent future conflicts.
- Each county is at least complying with the state law for the final plat filing period (5 years), however the length of time can vary for each county for formal and short plats.
- For short plats, both Kitsap and Pierce allow up to 3 years to submit a final plat.
- In all counties, preliminary plat approval becomes null and void if the final plat is not received before the end of the filing period or if there are substantial changes to the permit application.
- Municipalities can alter or extinguish vested rights by exercising a police power to protect the public interest.
- For all the counties, shorts plats shall not be re-divided within five years without filing for a formal plat. For formal plats, a re-division is allowed by submitting a new formal plat application.
- The counties allow extensions during the permitting process. Each of the counties indicated the need for “good faith effort and additional subject to request.” The criteria for extensions should be reviewed to determine clear guidelines for consistent information.
- If the vested preliminary subdivision application is extinguished, applicants need to resubmit a new subdivision application.
- After the final plat is recorded with the auditor, the lines of the lot are recorded in perpetuity. However, according to state law, a building permit must be submitted within the five year time period or the vested right to the use expires.
- Pierce County is the only jurisdiction that has adopted local regulations that expire vested rights of zoning and uses that are associated with final recorded plats.
- Even if vested rights expire, most cases jurisdictions allow for the building of one residential unit in the rural areas to curtail potential takings claims.

## **6. DATA METHODOLOGY**

While Chapter 3 detailed the Legal and Policy Methodology of this research project, this section outlines the methodology that the researchers used in the analysis of data collected from each county.

### **6.1. Data Questions**

Listed below is a set of research questions that relate to part two of this study.

1. *Following the implementation of GMA by each county, what number and percentage of new housing units have been permitted on lots vested under pre-GMA development regulations?*
2. *What number and percentage of these vested lots do not conform to current GMA zoning regulations?*
3. *How many undeveloped lots and active lot applications vested under pre-GMA development regulations still exist?*

### **6.2. Narrowing of Original Scope**

The researchers narrowed the original scope of the project as they discovered data and other practical limitations. The following sections detail the steps of narrowing the scope of the project.

#### **6.2.1. The Universe of Vested Development**

The PSRC originally expected to gather data on the entire universe of vested lots and lot applications, including those that were both fully exercised (lots recorded and developed) and those that still exist with vested rights (undeveloped lots and active lot applications vested under pre-GMA development regulations).<sup>74</sup> After meeting with county staff, the PSRC and researchers determined that the data were either unavailable or unsuitable for analyzing the third research question, and decided to focus on the first two questions that specifically address the extent to which vesting impacted residential development patterns subsequent to GMA implementation.

#### **6.2.2. Why is the Study Focused on the Rural Areas Only?**

The original project also aimed to collect and analyze data for the unincorporated urban as well as rural areas of each county. After meeting with county staff, PSRC and the researchers determined that a valid analysis of the impacts of vesting on urban development patterns could not be accomplished without including data from the cities in each county. However, given that this would exponentially complicate data collection and analysis efforts, the researchers decided to focus the study on the rural areas of each county (the areas outside the Urban Growth Areas).

#### **6.2.3. Years Selected for Study**

Initially, PSRC and the researchers intended to analyze data covering the entire period following the implementation of each county's rural development regulations to the present. A principle goal was to identify any trends in the extent to which vesting impacts rural development patterns. But to maintain a reasonable scope of work, the researchers decided to select just two years for the study, which would still allow for a limited trend analysis:

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<sup>74</sup> Refer to Appendix G for a table of the universe of development regulations and the original scope of the project. This table also explains why certain dates were selected as important to the issue of vesting.

- 2003 – the most recent year with available data
- 1998, 1999 or 2000 – a comparison year, selected on the basis of quality and completeness of the data in those years per county

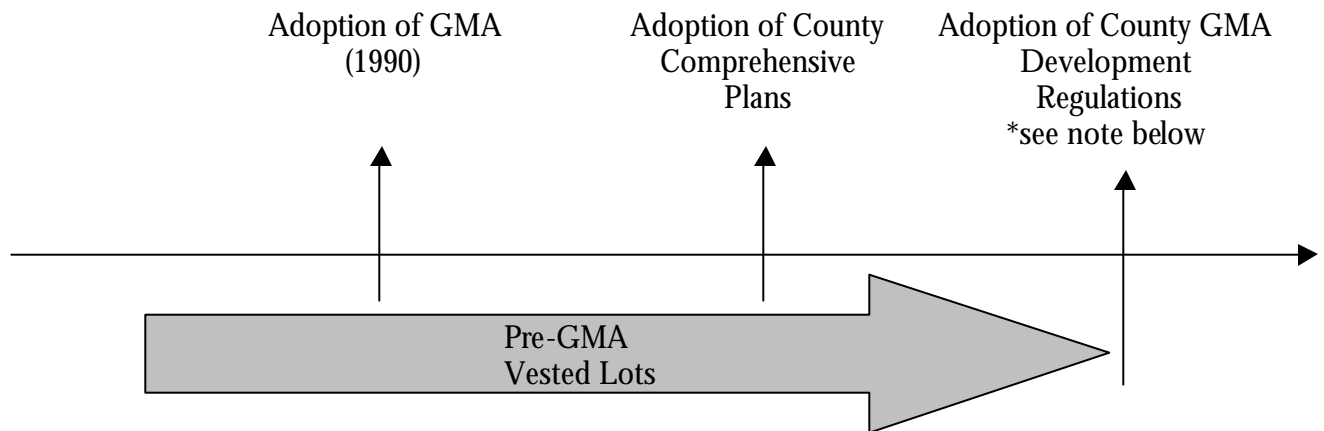
### 6.3. Proposed Methodology

The section below identifies relevant dates for the study and the selected methodology for each research question including a description of databases.

#### 6.3.1. Effective Date of GMA Implementation

A key step in designing the data analysis to answer Research Question #1 was to determine the effective date of GMA implementation in each county. By definition, this represents the point at which all existing development rights became vested under pre-GMA regulations. The flow chart below provides a temporal context to the various phases of GMA implementation.

**Figure 5: Growth Management Act Implementation Timeline**



\*Note: Each county’s GMA development regulations were adopted at slightly different times for each city, the urban unincorporated areas, and the rural areas.

After discussions with county staff, PSRC and the researchers decided that, given the narrowed scope of the data analysis to rural areas, the adoption date of each county’s rural zoning regulations would best represent the effective date of GMA implementation for purposes of this study. Lot applications submitted prior to these adoption dates would be considered vested in the analysis. The adoption dates of each county’s GMA rural zoning regulations are reported in Figure 6 below.

**Figure 6: Relevant Dates for GMA Implementation**

	<b>Adoption of County Comprehensive Plan</b>	<b>Adoption of County Rural Zoning Regulations</b>
<b>King County</b>	November 1994	February 1994
<b>Kitsap County</b>	May 1998	May 1998
<b>Pierce County</b>	January 1995	July 1995
<b>Snohomish County</b>	June 1995	December 1996

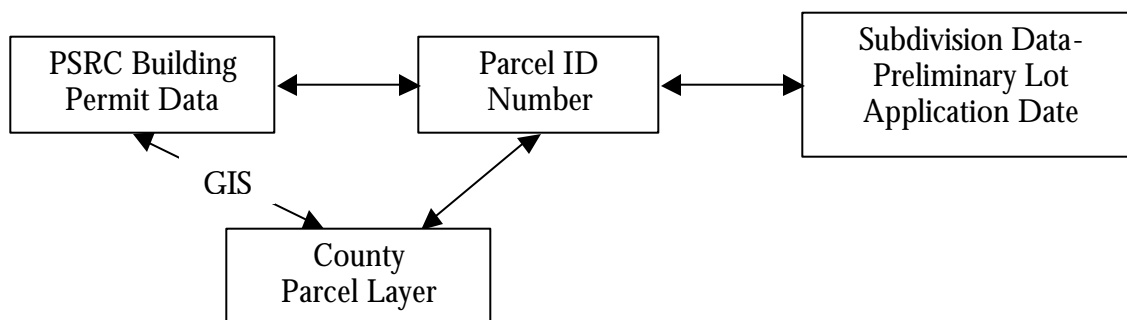
### **6.3.2. PSRC Building Permit Data**

The ideal methodology begins with the PSRC building permit database, which contains individual records of all new residential dwelling units authorized within the region from 1991-2003. All records have a unique PSRC-assigned identification number and, with a few exceptions, contain a “parcel identification number” and a “site address.” Each record is also geo-referenced with x,y coordinates, which allows for the data to be brought into GIS. For each county, the researchers queried this database for records of building permits authorizing new housing units in the rural areas issued during calendar year 2003 and a comparison year.

### **6.3.3. Research Question #1**

To answer Research Question #1, the building permit records must first be associated with a land parcel, and the parcel with subdivision data that contains “preliminary lot application dates.” The “parcel identification number” is the key data field that allows for these relationships to be created. In cases where a building permit lacks a parcel ID number, the permit record can be overlaid with a county parcel layer in GIS to obtain the parcel ID number. “Address” fields in the building permit and county assessor data (joined to the county parcel layer in GIS) can be used to verify that the parcel ID number is correct. Once the necessary data relationships have been created, the “preliminary lot application date” can be used to determine whether or not the permitted housing unit was authorized on a pre-GMA vested lot (see Figure 7).

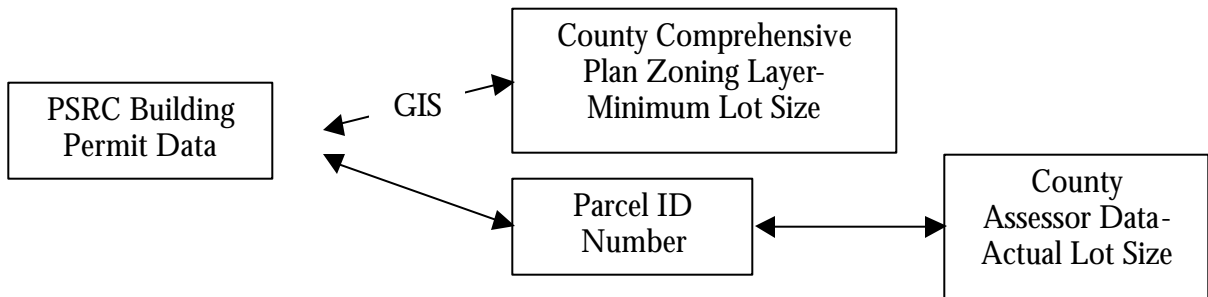
**Figure 7: Connecting the Data- Research Question #1**



### **6.3.4. Research Question #2**

To answer Research Question #2, the building permit records and associated parcels must be overlaid with county comprehensive plan zoning layers in GIS to obtain the current rural zoning regulations and “minimum lot size” requirements governing the parcels in the study. The building permit records and associated parcels must then be linked to county assessor data to obtain the “actual lot size” for each parcel. Again, the “parcel identification number” is a key data field for creating this relationship. Comparing the zoned “minimum lot size” requirements to the “actual lot size” will determine whether or not the parcels in the study conform to current GMA regulations (see Figure 8).

**Figure 8: Connecting the Data- Research Question #2**



**6.3.5. Data Requirements**

The table below summarizes the data sets that are required to fully complete the ideal research design laid out above. The data sets must all be available in a tabular electronic format, and the required data fields must be complete.

**Figure 9: Relevant Vesting Data**

Data Set	Required Data Field(s)	Geospatial?
PSRC building permit data/layer	Parcel identification number Site address	Yes
County subdivision data	Parcel identification number Preliminary lot application date	No
County parcel layer	Parcel identification number	Yes
County assessor data	Parcel identification number Address Lot size	No
County comprehensive plan zoning layer	Zoning code Zoning code definition Minimum lot size	Yes

**6.4. Data Limitations**

In meeting with county staff, PSRC and the researchers discovered that none of the counties had complete data sets with the required data fields necessary for carrying out the ideal research design. In some cases, additional data sets are needed to create the necessary relationships between key data fields. In other cases, not all the data are available in tabular electronic format, which means that the data relationships need to be created manually, an extremely time consuming effort. In some instances, only partial data are available.

During the data analysis the researchers discovered that it is much more difficult to understand what percentage of vested lots do not conform to current GMA zoning regulations in each county, than initially thought. Rural clustering and other non-traditional kinds of zoning lead to the lot lines being recorded in a way that would suggest non-compliance, when in fact, the development is in compliance.

After realizing the limitations of data in the counties, the researchers sought to document these limitations and the status of data collection in each of the counties. The documentation will be

used in this report to make recommendations to the counties regarding further data collection and the steps that would be need to execute a full analysis as originally desired by the PSRC. This documentation was guided by the following questions:

- *Is the ideal methodology possible in each county? If not, why?*
- *What data are available in each of the counties? What data is missing?*
- *What alternative steps did the researchers take to perform a full or partial analysis?*

## **6.5. County Data Methodology**

Each jurisdiction has a unique method for collecting development permit information and managing their databases. State law mandates that each of the counties collect data, but the State does not mandate how the data is collected. This section documents the data availability and limitations, as well as how far the data analysis was taken, in each county.

### **6.5.1. King County**

The PSRC provided the 2003 and 1998 building permit data for the study while King County provided the following data sources for this study:

- *Subdivision parcel database*- collected from the development permit database including the parcel number associated with the preliminary plat application date.
- *Permit parcel database*- a list of the parcel number associated with geospatial data developed by King County permit staff (not a complete list, still being developed).
- *Parcel history database*- a list of the parent parcel associated with the child parcel (not a complete list, still being developed).
- *Parcel shape files*- a list of all the parcel lines drawn for King County.
- *Spatial data* – UGA boundary lines, future land use, and zoning shapefiles.

#### *Data Limitations*

The King County representatives and the researchers could not connect the databases listed above to determine the vesting date for the building permits. The preliminary application date is associated with the parent parcel number and the PSRC Permit Data is associated with the child parcel number. Even with the county's parcel history table, many of the child parcel numbers did not match with the parent parcel numbers.

#### *Selected Methodology*

The researchers attempted to analyze development permits for 2003 and 1998. The researchers and county staff tried to connect the building permit data with the vesting date utilizing the data bases listed above. A detailed description of the methods utilized to match the building permits with the preliminary application dates is described in Appendix C.

### **6.5.2. Kitsap County**

Kitsap County hired an intern to process some of the data requests of this study since the files utilized for this study are located at the Kitsap County office. Kitsap County provided the following data sources for this study.

- *Kitsap County Vesting Data*- a manually generated data base by an intern that connects the PSRC building permit data with the vesting date for the subdivision.
- *Spatial data* – UGA boundary lines, future land use, and zoning shapefiles.

### *Data Limitations*

Kitsap County does not have data available that would allow for the full research and analysis. In March of 2004, Kitsap moved the Assessor Treasury System (ATS) to Land Information System (LIS) upgrading the system for tracking their permits. All the dates associated with tax accounts were not transferred. LIS documents the date the lot was recorded, not necessarily when the application was submitted. Do to the fact that Kitsap County passed their Comprehensive Plan and the GMA regulations associated with this plan in 1998, this study uses 2000 for a comparison year to all for all development regulations to be active.

### *Selected Methodology*

Due to the data limitations, the researchers analyzed a random sample of the building permits for 2003 and 2000 with a sample size of 50 permits per year.<sup>75</sup> From this sample, Kitsap County provided the preliminary application data for the subdivision permit. Kitsap County provided an interne to manually look up each of the application dates in the Assessors Files.

### **6.5.3. Pierce County**

As in the other counties, PSRC supplied the building permit data which included the PSRC permit ID #, the county assessor tax parcel number (PIN), and geo-coding (X and Y coordinates).

Pierce County supplied the following data to the study:

- *Engineering and development spatial data*- for formal plats, short plats and large lots.
- *Spatial Data*- UGA boundary lines, future land use, and zoning shapefiles.<sup>76</sup>

### *Data Limitations*

Pierce County does not have data available that would allow for the full research and analysis. Although County staff is currently working on a more complete data collection system, their current system does not allow the researchers to link the lot parcel #'s with the date of the preliminary plat application. This information is contained in two separate databases.

### *Selected Methodology*

In lieu of data limitations, the researchers selected the alternative methodology for Pierce County. The researchers selected a random sample of PSRC development permits from 2003 and 1999 and pursued the preliminary application date for the selected parcels through Pierce County's Planning and Land Services website.<sup>77</sup> A detailed description of the method of matching the building permits with preliminary application date is described in Appendix C.

### **6.5.4. Snohomish County**

PSRC supplied the building permit data which included the PSRC permit ID #, the county assessor tax parcel number (PIN), and geo-coding (X and Y coordinates). PSRC supplied data for 1999 and 2003. This number proved useful in the joining of the databases.

Snohomish County supplied the following data to the study:

- *Snohomish County Plat Information* –data generated by Snohomish County that includes all of the recorded formal plats recorded from 1995-2003 in the county. This plat information

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<sup>75</sup> A University of Washington professor provided the random sample method.

<sup>76</sup> <http://wagda.lib.washington.edu/data/washdata.html#county>

<sup>77</sup> <http://www.co.pierce.wa.us/pc/services/home/property/pals/palsmain.htm>

includes a six-digit identifier (Plat #) that was used to link this information to the PSRC data.

- *Spatial data* – UGA boundary lines, future land use, and zoning shapefiles.

#### *Data Limitations*

Although Snohomish County provided the most complete data set for the purpose of this study, the availability of data in Snohomish County remains a limiting factor for further understanding of the vesting issue. First, the data set provided by the county only includes formal plats. The data collection of short plats is more difficult for the counties due to the complexity of lot descriptions.

Furthermore, the researchers were also not able to answer research question #2. While the geospatial data were available to overlay the comprehensive plan layer with the parcel information, the complexity of rural land use regulations, combined with the time limitations of the study, prevented a complete analysis.

#### *Selected Methodology*

For the purpose of this survey, Snohomish County collects and maintains the most complete data set. The researchers selected the original ideal methodology that included information from two comparison years- 1999 and 2003. The researchers generated a database that included the PSRC ID#, parcel #, and preliminary plat application date to answer the first part of the research question pertaining to the number of building permits issued on vested lots in 1999 and 2000. For the second part of the analysis, the researchers joined the Assessor data to this database to analyze lot size, land use, and zoning to determine whether this development conforms to GMA-development regulations.

### **6.6. Conclusion – Chapter 6**

Since each of the counties has different local regulations and methods for collecting their data, the researchers employed unique methods for each county. Also, due to data limitations it was not feasible to connect the preliminary vesting date to the building permit data for King and Pierce counties. The data findings for the counties are discussed in Chapter 7.

## 7. DATA FINDINGS

Overall, the data limitations of this study prevented a complete analysis of development trends in the rural areas – specifically, the amount of development occurring on lots vested under pre-GMA development regulations. Although the original project endeavored to understand the universe of lots in the rural areas, the reality is that very little is known in the Puget Sound region regarding the potential impact of vesting on rural land development. This chapter will present the findings from the data collection and analysis.

The following are the quantitative questions for the data analysis of this study:

- *Following the implementation of GMA by each county, what number and percentage of new housing units have been permitted on lots vested under pre-GMA development regulations?*
- *What number and percentage of these vested lots do not conform to current GMA zoning regulations?*

### 7.1. Availability of Data

While substantial amounts of data are available in each of the counties, the format of the databases as well as time and resource limitations prevented a full analysis. None of the counties have the information connected in a way to fully conduct the desired analysis. An analysis could not be conducted in King and Pierce County. These two counties do not have a ccessible data to match the building permit data with the submittal date of the preliminary subdivision application; the date when the development rights were vested. Although the researchers conducted a partial analysis of the available data for Snohomish and Kitsap Counties, data were limited for these counties as well. Snohomish provided data that permitted an analysis of building permits on formal plats for 2003 and 1999 and Kitsap County conducted a random sample of building permits for 2003 and 2000.

#### 7.1.1. King County

After talking with several permit data experts from King County Department of Development and Environmental Services, the county representatives and the researchers concluded that a viable connection did not exist between the building permits and the vesting dates. There are no data results related to the vesting of subdivision permits for King County. King County indicated that they are actively working to update their databases. A full analysis would require considerable time because the data are not readily available.

#### 7.1.2. Kitsap County

With the assistance of an intern and county staff, the researchers conducted an analysis of a random sample of fifty building permits in both calendar years 2003 and 2000. The table below outlines the findings from Kitsap County.

<b>Year</b>	<b>Pre- GMA Dev. Regs.</b>		<b>GMA Dev. Regs.</b>	
<b>2000</b>	44	88%	6	12%
<b>2003</b>	46	92%	4	8%

As the table suggests, the majority of development permits that Kitsap County recorded in 2000 and 2003 occurred on lots vested under pre-GMA development regulations. In 2000, 88 percent (44 out of the 50) of development permits were applied for on lots with pre-GMA development

regulation vested rights. In 2003, the situation is similar with a slight increase to 92 percent (46 out of the 50) of development permits. The slight increase in this small sample is not statistically significant and therefore it cannot be determined whether permits on vested lots is increasing or decreasing.<sup>78</sup> However, these data suggest that development on land with vested rights continues to comprise an overwhelming majority of rural residential development in Kitsap County and that the county may need to focus on the potential impact of this development with regards to the goals of the GMA.

### **7.1.3. Pierce County**

The researchers attempted a full analysis with the data supplied by Pierce County. Working with the county representative, the researchers developed and attempted a method to connect parcel numbers and building permits. As outlined in Appendix C, this method included a random sample of development permits and a manual search in the Pierce County electronic database. Unfortunately, many of the records did not include the submittal date of the preliminary subdivision applications. Therefore, the data were inconclusive regarding the amount of buildings permitted for development in 1999 and 2003.

Pierce County is currently collecting and compiling data that will be useful to a future study on this issue. The current subdivision application is more complete and the County’s electronic database, PALS, collects substantial permit information, including some preliminary application dates. Furthermore, Pierce County has taken significant steps to move vested lots through the pipeline. One useful tool that Pierce County employs is the maintenance of a database of “old dogs” -large formal plats that are in the permit process pipeline with vested rights. As seen in Figure 4, the County also adopted new regulations in 1995 that limits the time period that a use remains valid after recording. These steps should produce a decrease in lots with vested rights that has the potential effect of generating development that is not in compliance with GMA in the rural areas.

### **7.1.4. Snohomish County**

By request, Snohomish County provided researchers with a database of the formal plats that were recorded between 1995 and 2003 and their respective initiation date (or date of preliminary plat application submittal). This database proved valuable to conduct the analysis outlined in the data methodology chapter. Currently, a database that includes the preliminary application date for short plats does not exist. The following table outlines the findings for Snohomish County.

<b>Figure 11: Housing Units Permitted by Snohomish County Outside the UGA on Lots in Formal Plat Subdivisions</b>				
<b>Year</b>	<b>Vested Under Pre-GMA Dev. Regs.</b>		<b>Vested Under Post-GMA Dev. Regs.</b>	
<b>1999</b>	478	94%	31	6%
<b>2003</b>	365	86%	61	14%

As the table suggests, the majority of development permits that were recorded in 1999 and 2003 in Snohomish County occurred on lots with pre-GMA vested rights. In 1999, 94 percent of applications for development are for lots with pre-GMA development regulation vested rights. In

<sup>78</sup> At the 95 percent confidence level, the difference between the percent of vested permits in 2000 and 2003 is insignificant.

2003, the situation is similar with a slight decline to 86 percent of development permits. These data suggest that development on land with vested rights is diminishing slowly.

Due to data complexity and time constraints, the researchers were not able to answer the second research question. In order to determine whether this development on vested lots is contrary to the goals of GMA, it will be necessary to complete the second part of the analysis. Given that the majority of development continues to occur on lots with pre-GMA vested rights, Snohomish County should conduct this analysis to understand whether vesting presents a problem in the rural areas.

## **7.2. Barriers of Data Collection**

This study began with a broad scope spanning the entire universe of development permits (as seen in Appendix G). Although time and resource limitations focused the project on comparison years and random sampling, the unavailability of accessible data prevented a further analysis.

While data on the number and percentage of lots with vested rights are available for Kitsap and Snohomish Counties, the researchers could not determine if this development is in compliance with GMA regulations. County ordinances allow developers to “cluster” their development. Developers can reduce the lot size as long as a certain amount of land is dedicated to open space. This type of development, although legal through GMA regulations, may appear to have substandard lot sizes in the data.<sup>79</sup> In order to understand which lots are in compliance with GMA, each lot would require a detailed evaluation.

One key constraint was the decentralized knowledge base of county staff. Although many contacts worked diligently to produce results for this report, the amount of knowledge to understand the universe of this issue encompasses a large number of people. For instance, the staff that understands the policies of vesting in Washington State is not necessarily the same as the staff that understands the development permitting databases or the permitting process.

## **7.3. Conclusions from the Data Analysis**

Overall, the study was limited by the unavailability of connected databases.<sup>80</sup> Snohomish data show a slight decline; Kitsap data can be interpreted to show a flat trend, neither up nor down. These findings indicate that development on pre-GMA vested lots is not declining as rapidly as may be expected. Due to the complexity of the data, the researchers could not connect databases from Pierce and King Counties. The data limitations encountered in each of the counties must be addressed county-by-county before a further study is feasible.

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<sup>79</sup> For more information about rural clusters, see Snohomish County Planning Department, <[www.co.snohomish.wa.us/documents/Departments/PDS/Commerical\\_Land\\_Use/Subdivisions/44rural.pdf](http://www.co.snohomish.wa.us/documents/Departments/PDS/Commerical_Land_Use/Subdivisions/44rural.pdf)>

<sup>80</sup> The counties had five years and state grant funding to conduct the GMA buildable lands analysis.

## **8. RECOMMENDATIONS**

This chapter will detail the recommendations for data collection, tool adoption and further study. Before explaining the recommendations below, it is important to note that each county has a unique political situation and disparate policy tools that need to be considered. Furthermore, this research is the first step in the process for gaining an understanding of vesting in the rural areas. The researchers collected the maximum amount of data that were available. In order to fully understand the vesting issue in central Puget Sound, the PSRC and the four counties should utilize this research as a baseline for further study and invest resources to answer the remaining research questions.

This study focuses on two distinct elements of the impact of the Washington State Vested Rights Doctrine on rural development since the adoption of the Growth Management Act. The first part of this research focuses on the legal and policy framework of vested rights, specifically the tools that are currently used and that exist in state and local laws that apply to vesting and subdivision. The second element seeks to determine a quantified depiction of the impact of vesting on subdivision through an analysis of PSRC and county data. Through both elements of analysis, the study encountered several problems and limitations that are the focus of the recommendations.

### **8.1. Why is this Information Important?**

The Growth Management Act is the foundation for the conservation of vital resources, protection of rural landscapes, and the implementation of a responsible growth plan for the region. Underlying this plan is the need for a breadth of understanding of how the Puget Sound region uses land and resources. This understanding obliges county officials and decision makers to collect appropriate data to guide decisions and processes, adopt and utilize tools that not only protect land, but also protect private rights, and to provide transparent information when adopting policies that affect land use in the state.

Currently, King, Kitsap, Pierce, and Snohomish Counties do not have a thorough understanding of the extent of vested development in the rural areas. If a high percentage of the development in rural areas is occurring on lots with vested rights, then the counties may have limited control of the growth patterns in the rural areas. Furthermore, without a thorough understanding of vesting, the counties may not be able to accurately forecast growth and plan development accordingly to meet GMA regulations and goals.

A thorough investigation of the issue will likely present challenges. The following potential problems could stem from a more detailed analysis and increased focus on this issue:

- Collecting, analyzing and managing vested development will require substantial resource investment from counties
- Unclaimed or old lots with vested rights could surface and applicants could develop on these lots in accordance to their vested rights which may be inimical to the public interest
- Anti-GMA sentiment could increase in the rural areas

Although these potential challenges exist, it is vital to the success of growth management in the region that the counties gain a greater understanding of this issue and determine whether or not

vesting has potential impacts on land use. Counties must manage the challenges through open communication and the implementation of a consistent strategy.

This study presents inconclusive data results for King and Pierce Counties and limited findings for Snohomish and Kitsap Counties. For all four of the counties, limited resources and time prevented a full analysis of the data that were available. Although relevant data were available, the structure of the databases prevented straightforward access to vesting information. At this point, the researchers are unable to determine if vested rights explain the growth seen in the *PSRC Targets Report* for rural areas. Similarly, the policy tools related to vesting are quite complex. The counties do not have a clear direction on how to handle vested rights. As courts interpret the VRD and expand it to other land use permits, the situation will get more complex and elusive. It is paramount for counties to take the steps now to understand whether the VRD is a major factor in the unexplained growth in rural areas and whether it has potential future implications on GMA goals. More research is necessary to fully understand the data and the policy tools. The following is a list of recommendations to address the vesting issue and suggestions of further study.

## **8.2. Data Collection Recommendations**

The main limitation of this study centers on the lack of necessary data from all four participating counties. In many cases, pre-GMA vesting dates exist, but cannot be associated with relevant parcel numbers. The parcel numbers associated with the preliminary application dates are usually the parent parcel numbers whereas the building permit data are associated with child parcels.<sup>81</sup> Over time, the counties have collected abundant information related to land use; however, these databases lack the vital connections needed for this study. The following data recommendation should be adopted.

### **8.2.1. County Vesting Data Collection:**

A reassessment of the data collection goals and strategies would be useful to ensure that the most relevant data are collected and that the data are effectively being used to measure the desired outcomes.<sup>82</sup> Once counties determine what data needs to be collected, each county should generate a comprehensive database that includes information for lots, including, but not limited to, parent parcel numbers, child parcel numbers, all pending and completed development permits associated with those lots, and lot characteristics. This amount and collection of data will provide easier access to vesting dates, expiration dates, and also provide information regarding the status of vested lots in their respective counties. Each county acknowledged that their current databases are not adequate to monitor vesting.<sup>83</sup>

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<sup>81</sup> Each time a parcel is subdivided, the original parent parcel changes to a child parcel, then a grand-child parcel, etc

<sup>82</sup> Each county indicated that they are beginning to alter data collection to include more information that would be useful for a study of this nature. Pierce County, for instance, is revising their development permit application to obtain more comprehensive understanding of permit specifics.

<sup>83</sup> Specifically for King County, a comprehensive database of historical permit applications and processes could be developed. This database should include a listing of the child parcel number with the parent parcel number (and grand-parent parcel number, if applicable). King County started this type of database; however, the connection between the parent and child parcel is not easily accessible. This may be due to “grandchildren” parcels that have not been tracked through time. A parcel history table could outline all the subdivisions and parcel numbers associated with a particular lot and provide valuable information for a rural lands analysis.

### **8.3. Tool Adoption Recommendations**

There are policy tools that apply to vested rights and the subdivision of land. Most counties use tools to ensure that development is aligned with comprehensive community plans and to limit the vesting time associated with development rights. As seen in the State and Local Subdivision Process Chapter, there are timelines that an applicant must comply with in order to prevent the expiration of the associated vested rights. Furthermore, Washington State law outlines opportunities for counties to adopt even stricter ordinances limiting the time that permits remain valid. Although the need to maintain a balance between private property rights and the protection of resources and land conservation is apparent, the main issue is the transparency of these policy decisions. Although the legal and policy framework is complex, decision makers should not be bogged down by this complexity. The following is a list of recommended policy tools to manage vested development rights.

#### ***8.3.1. Regional Working Group***

As seen with the limited findings in this report, the availability of vesting data and the applicable policy tools are not completely understood at this time. The primary cause of the uncertainty is the lack of data that the counties have that includes vital vesting dates. To provide, collect, and share vesting information, the PSRC should convene a regional working group that analyzes the impact of vesting on land use and its impact on the goals of the GMA. The working group would be assigned to address the vesting issue, initiate further studies relating to vesting, and work with other counties to determine whether modifications in land use laws would address this uncertainty. This would provide a forum for each county to share the lessons learned from their data collection techniques and their policy tools.

#### ***8.3.2. Transparent Information on Vesting***

Counties need to be transparent with all the policy tools that they are using to manage vested subdivision rights. This should include a bulletin or worksheet outlining the interaction between vested rights and subdivisions. This information would be useful for staff within each county, staff in other agencies, and the general public.

#### ***8.3.3. Notices for Expiration of Vesting***

All of the counties indicated that there are development permits in the pipeline with expired vested rights. Counties must proceed, following state guidelines, to notify landowners of expiration dates of vesting and to move these development permits through the pipeline. Kitsap and Pierce Counties are beginning to discuss methods to signal landowners that their rights will expire. Counties should send a notice of expiration to vested properties three months prior to the expiration date. While these notices will have costs associated with them, they help control expired development rights in the rural areas.

#### ***8.3.4. Educate Staff and Adopt Relevant Policies***

Each county needs to adopt a county-specific ordinance that explains the details of vesting as it relates to land use. Even among county staff, there is a discrepancy of how vested rights apply to subdivisions. This ordinance could help with the need for transparency of information and staff education.

### **8.3.5. Codify Vesting Law by Adopting Additional Ordinances**

Currently, courts determine the interpretation of the application of the Washington State VRD on land use, specifically on how the doctrine applies to the subdivision of land. This is especially true for development projects that require multiple permits. Although the doctrine is codified as a general protection of private property rights, the application of it remains unclear. The Regional Working Group could be assigned to address the issue of whether the VRD should be revisited and what changes would be needed to improve land use decisions and permitting. One possibility is the Regional Working Group could assess whether the legislature should adopt a statutory rule that replaces the details of the current vesting doctrine.

### **8.3.6. Adoption of Local Ordinances to Limit Vesting**

Finally, as an alternative, the counties could explore the possibility of adopting local ordinances which would implement state time limitations on vesting. Through letters to property owners, the counties could notify individuals that vested development rights would expire after the five year vesting period and the counties could limit extensions. This would place the burden of responsibility on the landowners, rather than on the counties. This is likely to be a challenging recommendation to enact. The use of countywide planning policies, conceivably guided by the region's multi-county planning policies, might be necessary to move this recommendation forward.

## **8.4. Conclusion – Chapter 8**

Vested development rights in the region's rural areas remain an important and nearly intractable issue. The legal analysis in this report suggests that there is much ambiguity surrounding the exact rights associated with vested development. The data analysis suggests that vested development may be prevalent even though the exact impact in each of the counties cannot be determined. Snohomish data suggests a slight decline in vested rights, while Kitsap can be interpreted to show a flat trend, neither up nor down, in vested development. Addressing the impact of vested development and ensuring that development in the rural areas occurs in a manner consistent with each county and regional growth management goals will produce benefits to the region while providing a more consistent regulatory environment. It is the responsibility of regional and local governments to ensure that the opportunity to act to more fully understand the impact of vested rights and to protect the rural areas does not escape unnoticed.