

I. An Outline of Local Land Use Law and Citizen Input

Limited Scope of Outline

Scope of Outline:County-wide Proposals This is an outline of land use law that affects regulations regarding the use of shoreline property North Central Washington and explains how citizens can become involved in helping to make the law. It focuses on Chelan County, but the general concepts would apply to the other counties and to the cities in our region. This outline is a general tutorial and does not contain legal advice that applies to any particular parcel of land.

Two old saws apply: 1. “The devil is in the details.” Any action to modify a law requires a close look at that law and coordinating laws. 2. “For every solution, there is a problem.” The enactment of County land use law has been a mammoth undertaking. Nobody should be surprised if conflict of law have slipped in, or if there is room for improvement.

Individual Permits Not Addressed Here. Individual applications for permits to use the shoreline are not discussed here. People who want a permit to use the shoreline, and others who may oppose any such project, should be aware that extensive regulations pertain to any development, to any hearing about it, and to any appeal from a decision to grant, condition, or deny a project.

State Law. At least two State statutes are important to local land use law. They are the Growth Management Act, RCW 36.70(a) and the Shorelines Management Act, RCW 90.58.

The Growth Management Act requires the County to develop a master plan that maps areas for certain land uses, such as housing, capital facilities, utilities, and rural development. It is required to contain a Critical Areas Ordinance that provides for protection of areas that are frequently flooded, fish and wildlife conservation areas, geologically hazardous areas, and wetlands. It is required to incorporate regulations for the use of shorelines that are consistent with the State’s shorelines Management Plan.

The Shorelines Management Act requires Counties to map the shorelines within the County and to enact laws to protect the shoreline environment from environmental damage. Certain larger shorelines are classified as “Shorelines of Statewide Significance” where land use planning considers the interests of the people of the State as having priority over individual interests, and considers long-term plans to have priority over shorter term land uses, among other details.

The State has adopted a system for rating the wetlands of eastern Washington that pertains to how those wetlands are used. It is called the Eastern Washington Wetland Rating System. It rates major waters as “Category S” for forest practices purposes and Category 1 for the Eastern Washington Wetlands rating system. Both requires buffers from development at shorelines.

Additional State and Federal laws, such as the Endangered Species Act and the Forest Management Act impose further regulation on the use of land.

County Laws

Comprehensive Plan The Comprehensive Plan establishes goals and objectives pertaining to areas within the County. Most of the plan is aspirational, not regulatory. However, it contains two parts that are regulatory (mandatory), a Shorelines Master Program and within the Shorelines program, that part of the County’s Critical Areas Ordinance that pertains to wetlands. They are discussed further below.

The Comprehensive Plan may be amended only one time annually as a matter of State law.

Zoning Laws. The County has adopted a traditional zoning code of the sort that the U.S. Supreme Court held to be legal, and not an unconstitutional deprivation of property rights, in 1926. It divides the County into areas and specifies what land uses are permitted within each such zone. It can be quite detailed, specifying for example permitted lot coverage, required setbacks keeping buildings distant from property borders, and building height with leeway for chimneys.

The Zoning Code also contains “overlays,” maps of additional regulations that cover a part, but not all, of one or more zones. The Shorelines Management Program (SMP) and Critical Areas Ordinance (CAO) are overlays.

Of environmental interest, the Zoning Code does establish buffers for both wetlands and riparian areas. CCC 11.78, 11.89. In Chelan County, the zoning code buffers are not consistent with the Shoreline Master Program’s buffers. The Shoreline Master Program specifies that in case of conflict, the law that protects the environment the most shall prevail; but it also says that portions of the CAO within the Shoreline program control over parts of the CAO outside the SMP.

Shoreline Master Program The Shoreline Master Program sets forth the rules and regulations for land use on shorelines within the County, over and above zoning regulations. In general, the Program limits the use of shoreline and wetland buffers. The County considers fragile environmental conditions, cultural or historical associations with the site, and scientific value of the site in deciding whether to allow land use within a buffer. The County allows some use of

buffers outright. For example, vegetation within buffers must be preserved, but a limited view corridor may be cut. Docks may be permitted and may be maintained. However, the County's prime objective is to preserve the buffers. Where a use necessarily damages a buffer, if that cannot be prevented, then restoration is required, and if the buffer can't be restored, the County may require mitigation—providing an equally valuable ecological environment at a different location.

Limitations on the owner's use of shoreline property are offset by some uses that are permitted outright; by some authority within the discretion of the Planning Director to reduce buffers; by buffer averaging, establishing a new buffer mathematically somewhere between a neighbor's small buffer on one side and the full buffer width on the other; by allowing mitigation in lieu of preserving a buffer; or by allowing a relief from buffering by the process of applying for a variance. Typically, an applicant for the variance must show that it is needed through no fault of the owner, but rather, is due to site problems on his land, and he cannot otherwise enjoy the same sort of use of his lot as others within the same zone enjoy. A variance may not give him special privileges to use his land differently than others in his zone.

II. **Citizen Involvement**

Typical Hearings When the Director of the County Department of Community Development proposes a change to County Land Use codes, the County calls for testimony at public hearings to take input from citizens about whether a change should be made. Hearings frequently involve testimony taken live and testimony submitted in writing, with deadlines.

To testify on an issue of County-wide interest, such as Comp Plan changes, citizens should begin by stating their names and addresses. It is helpful for them to state how they happen to be familiar with the issues they wish to speak to. For example, a person who wishes to talk about the importance of vegetated shorelines buffers for feeding trout could explain that he or she loves to fish and sees what fish eat, or could explain that he has a college degree in fisheries. No particular degree of expertise is required. The speaker should state what he or she wants—to increase buffers, to reduce buffers, to modify buffers so the Shoreline Master Program and the Zoning Code are consistent, or whatever.

Limited Area Issue If a hearing is convened to address an issue of less than county-wide interest, such as a hearing on a single applicant's petition to reduce his set-back from the street, only owners of property within a short distance of the property, such as 600', will be allowed to speak.

Environmental Hearings. The Environmental Protection Act, as adopted into local government codes, allows for public hearings at several stages when the local government is processing permits for developments. Typically, any person may testify. First, the County will call for

comments on a scoping statement, asking just how broad should the environmental studies about a project be. Next, when a draft environmental impact statement (EIS) is issued, a hearing may ask whether it is comprehensive enough. Appeals from the scoping statement or on the final EIS may be made to courts, but the case will be based only upon on the paper trail that developers and witnesses have laid down. No new witnesses or testimony will be considered. That's why testimony and written statements at hearings are so important to a case on appeal.

III. What Happens Next?

Proposed Changes to the SMP Any person may initiate a proposal to change the Shorelines Master Plan. The Planning Commission conducts a hearing and sends its recommendation to the Board of County Commissioners. If the Board of County Commissioners approves a change to the SMP, it must make an express finding that the changes will make the SMP conform more closely to the State Shorelines Management Program, make the program more equitable due to changes in conditions, and result in no net loss of ecological function.

The Board sends its finding to the State Department of Ecology, which invites written comments from "all interested parties of record," namely those seeking amendment or testifying at a hearing or requesting to be named an interested party. The DOE may conduct a hearing in its discretion. It may deny the change, approve the changes, or send the proposed changes back to the local board with its suggestions. If that happens, the County may agree, or prepare a new proposal, and convene a new hearing.

Appeal from the decision of the Department of Ecology is to the Growth Management Hearing Board, which my review the amendment only for compliance with the Shorelines Management Program. The appellant must prove the case by clear and convincing evidence, which is a very high standard of proof. Appeal from the Growth Management Hearing Board decision is to a court. RCW 90.58.090.

IV. Links to Some Local Land Use Law

Chelan County GIS map:

<https://maps.co.chelan.wa.us/GIS/>

Chelan County Comprehensive Plan. Google it, or see it at:

<https://www.co.chelan.wa.us/community-development/pages/comprehensive-plan-2017-2027>

The Appendixes to the plan contain a zoning atlas, the map of the comp plan in the county.

Chelan County Zoning Code. Google it, or see it at”:

<https://www.codepublishing.com/WA/ChelanCounty/>

Then the link opens, a list of the chapter of the zoning code appears in a column on the left. See Chapter 11 for Zoning, with details of permitted land use per zone. The wetland overlay sets buffers at section 11.80.060.

The Chelan County Shoreline Master Program. Google it, or see it at

<https://www.co.chelan.wa.us/community-development/pages/shoreline-master-program>

That link opens to a Community Development Department website with a further link to the text of the program. The program is very, very, long, but is searchable by clicking on an entry in its table of contents.

Section 1.5 recites that in case of a conflict with other parts of the County Code, the law that protects the environment the most will pertain, except that part of the Critical Areas Code for Wetlands contained in the Shoreline Master Program will prevail over any conflicting part of the Critical Areas ordinance outside of wetlands.

Shorelines buffers are set at Table 3.8-a. Appendix B treats Critical Areas.

Appendix B Section 6.1.2 requires categorizing wetlands according to the State Wetland Rating System for Eastern Washington. It sets buffer widths at Section 6.1.3.1, Table 1. Table 2 tells how upland uses are categorized for their impacts on buffers, and which upland uses require greater buffers.