

From: [Rebecca Messinger](#)
To: [Oliver Orjiako](#); [Jose Alvarez](#); [Sonja Wiser](#)
Subject: FW: The law regarding land use regulation in Washington State
Date: Monday, April 29, 2024 10:58:10 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Please see the below comments, for the record.

Thank you!



Rebecca Messinger
Clerk to the Council
COUNTY MANAGER'S OFFICE

564-397-4305



From: Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Sent: Monday, April 29, 2024 10:54 AM
To: Rebecca Messinger <Rebecca.Messinger@clark.wa.gov>
Subject: FW: The law regarding land use regulation in Washington State



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <ccuinc@yahoo.com>
Sent: Saturday, April 27, 2024 10:43 PM
To: Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Glen Yung

<Glen.Yung@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>

Subject: The law regarding land use regulation in Washington State

EXTERNAL: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Clark County Council
P.O.Box 5000
Vancouver, Washington 98666

April 27, 2024

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN UPDATE

Re: The law regarding land use regulation in Washington State

Dear Councilors,

Clark County Citizens United, Inc. believes it is important that the Clark County Council, and all county agents who are involved in the land use process, Comprehensive Plan and enabling ordinances, take seriously the following laws that regulate those activities. All too often, CCCU sees they are disregarded, or brushed over as not so important. In particular, there is much language as it regards rural land and property rights. Those topics are just as important in the state planning law, under the GMA, as any other topic. But they have not been given the respect that they demand and deserve.

Please review these laws and consider them to be very important, as you consider the Comprehensive Plan Update for 2025. CCCU has read the GMA, after the 2023 state update, and rural land and property rights continue to be important aspects of the Act. There is much local talk about affordable housing, etc. but rural land and property rights continue to stand out in the law.

The Washington Attorney General's office forwards directives to each county to direct them to adhere to the law, when regulating the people. If you have not received a copy of that, please ask the AG's office to send it to you. There is much in takings, property rights and over regulation warnings in that publication. Clark County would do well to adhere to it and consider the information as guidance.

Sincerely,

Carol Levanen, Exec. Secretary

Clark County Citizens United, Inc.
P.O. Box 2188
Battle Ground, Washington 98604

RCW [36.70C.020](#)

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

RCW [36.70C.120](#)

Scope of review—Discovery.

(1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the record may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the land use decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to the quasi-judicial proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the land use decision.

(3) For land use decisions other than those described in subsection (1) of this section, the record for judicial review may be supplemented by evidence of material facts that were not made part of the local jurisdiction's record.

Chapter 365-196 WAC
Last Update: 3/29/23

WAC 365-196-050

Regional and local variations.

(1) Regional and local variations and the diversity that exist among different counties and cities should be reflected in the use and application of these procedural criteria.

(2) Recognition of variations and diversity is implicit in the act's framework, with an emphasis on a "bottom up" planning process and on public participation. Such recognition is also inherent in the listing of goals without assignment of priority. Accordingly, this chapter seeks to accommodate regional and local differences by focusing on an analytical process, instead of on specific outcomes.

WAC 365-196-060

Goals.

The act lists 13 overall goals in RCW [36.70A.020](#), plus the shoreline goal added in RCW [36.70A.480\(1\)](#). Counties and cities should design comprehensive plans and development regulations to meet these goals.

(1) This list of 14 goals is not exclusive. Counties and cities may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the 14 statutory goals.

(2) Balancing the goals in the act.

(a) The act's goals are not listed in order of priority.

WAC 365-196-200

Statutory definitions.

(18) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW [36.70A.170](#)

Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(19) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW [36.70A.110\(4\)](#)

(23) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

WAC 365-196-210

Definitions of terms as used in this chapter.

(30) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

WAC 365-196-400

Mandatory elements.

WAC 365-196-405

Land use element.

(1) Requirements. **The land use element** must contain the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, **rural uses**, and other land uses.

(2) Recommendations for meeting requirements. **The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehensive plan, including transportation, housing, capital facilities, and, for counties, the rural element.** Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions in the land use element helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

WAC 365-196-445

Optional elements.

(1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

(a) Conservation;

(b) Solar energy.

(2) A comprehensive plan may include, where appropriate, subarea plans. Subarea plans must be consistent with the comprehensive plan.

(3) The department **recommends** that counties and cities give strong consideration to including elements on the following within comprehensive plans:

(a) Environmental protection (including critical areas);

- (b) Natural resource lands (where applicable);
- (c) Design;
- (d) Historic preservation;
- (e) Natural hazard reduction.

WAC 365-196-660

Supplementing, amending, and monitoring.

(a) This process should also include a review of comprehensive plan or regulatory deficiencies encountered during project review.

(b) The department recommends critical areas regulations be reviewed to ensure they are achieving no net loss of ecosystem functions and values. This review should include an analysis of monitoring plans, regulations and permits to ensure they are efficient and effective at achieving protection goals and implementation benchmarks.

(c) This process should be integrated with provisions for continuous public involvement. See WAC [365-196-600](#).

WAC 365-196-485

Critical areas.

(1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW [36.70A.020](#) guide the development and adoption of comprehensive plans and development regulations.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include, but are not limited to: Incentives, public education, and public

recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter [365-190](#) WAC.

WAC 365-196-580

Integration with the Shoreline Management Act.

(1) For shorelines of the state, the goals and policies of the Shoreline Management Act as set forth under RCW [90.58.020](#) are added as one of the goals of this chapter as set forth under RCW [36.70A.020](#) without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter [90.58](#) RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter [90.58](#) RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted

pursuant to the procedures under chapter [90.58](#) RCW rather than the goals, policies, and procedures set forth in chapter [36.70A](#) RCW for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter [90.58](#) RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with chapter [36.70A](#) RCW except as the shoreline master program is required to comply with the internal consistency provisions of RCW [36.70A.070](#), [36.70A.040\(4\)](#), [35.63.125](#), and [35A.63.105](#).

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under chapter [36.70A](#) RCW to protect critical areas **within shorelines of the state apply within shorelines of the state** until the department of ecology approves one of the following: A comprehensive master program update, as defined under RCW [90.58.030](#); a segment of a master program relating to critical areas, as provided under RCW [90.58.090](#); or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided under RCW [90.58.080](#). The adoption or update of development regulations to protect critical areas under chapter [36.70A](#) RCW prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of this subsection, **a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if:**

(A) The redevelopment or modification is consistent with the local government's master program; and

(B) The local government determines that the proposed redevelopment or **modification will result in no net loss of**

shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of (c) of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification.

"Agricultural activity," as used in (c) of this subsection, has the same meaning as defined under RCW [90.58.065](#).

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter [90.58](#) RCW and are not subject to the procedural and substantive requirements of chapter [36.70A](#) RCW, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or the act is intended to affect whether or to what extent agricultural activities, as defined under RCW [90.58.065](#), are subject to chapter [36.70A](#) RCW.

(e) The provisions under RCW [36.70A.172](#) shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter [90.58](#) RCW and applicable guidelines. Nothing in this section; however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required under chapter [90.58](#) RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW [90.58.060](#).

(5) Shorelines of the state shall not be considered critical areas under chapter [36.70A](#) RCW except to the extent that

specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided under RCW [36.70A.030](#)(5) and have been designated as such by a local government pursuant to RCW [36.70A.060](#)(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized under RCW [90.58.030](#) (2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW [36.70A.060](#)(2).

(7) County participation in the voluntary stewardship program does not change applicability of the Shoreline Management Act, or requirements of local shoreline master programs.

(a) As required by RCW [90.58.065](#), shoreline master programs shall not limit or modify existing and ongoing agricultural activities occurring on agricultural lands.

WAC 365-196-500

Internal consistency.

(1) Comprehensive plans must be internally consistent. This requirement means that differing parts of the comprehensive plan must fit together so that no one feature precludes the achievement of any other.

(2) Use of compatible assumptions. A county or city must use compatible assumptions in different aspects of the plan.

WAC 365-196-640

Comprehensive plan amendment procedures.

(b) Amendments may be considered more often under the following circumstances:

(4) Emergency amendments.

(6) Docketing of proposed amendments.

(a) RCW [36.70A.470](#)(2) requires that comprehensive plan

amendment procedures allow interested persons, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest amendments of comprehensive plans or development regulations. This process should include a means of docketing deficiencies in the comprehensive plan that arise during local project review. These suggestions must be docketed and considered at least annually.

WAC 365-196-715

Integrating external considerations.

(4) When drafting or amending comprehensive plans and development regulations, counties and cities should identify other related laws, evaluate any potential areas of conflict and make efforts to avoid such conflicts. Where the text of outside sources can appropriately serve local needs, consideration should be given to adoption of that text in local comprehensive plans or development regulations.

WAC 365-196-720

Sources of law.

(1) In seeking to identify other relevant legal authorities, planners should refer to sources at all levels of government, including federal and state constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof

WAC 365-196-725

Constitutional provisions.

(1) Comprehensive plans and development regulations adopted under the act are subject to the supremacy principle of Article VI, United States Constitution and of Article XI, Section 11, Washington state Constitution.

(2) Counties and cities planning under the act are required to use a process established by the state attorney general to assure that proposed regulatory or administrative actions do not

unconstitutionally infringe upon private property rights. As set forth in RCW [36.70A.370](#), the state attorney general has developed a publication entitled "Advisory Memorandum: *Avoiding Unconstitutional Takings of Private Property*," which is updated frequently to maintain consistency with changes in case law. Counties and cities should contact the department or state attorney general for the latest edition of this advisory memorandum.

[Statutory Authority: RCW [36.70A.050](#) and [36.70A.190](#). WSR 10-03-085, § 365-196-725, filed 1/19/10, effective 2/19/10.]

WAC 365-196-730

Federal authorities.

(1) Counties and cities drafting or amending comprehensive plans and development regulations under the act should consider the effects of federal authority over land or resource use within the planning area, including:

(c) Federal statutes or regulations imposing national standards;

(d) Federal permit programs and plans;

WAC 365-196-800

Relationship between development regulations and comprehensive plans.

(1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act.

"Implement" in this context has a more affirmative meaning than merely "consistent." See WAC [365-196-210](#). "Implement" connotes not only a lack of conflict but also a sufficient scope to

fully carry out the goals, policies, standards and directions contained in the comprehensive plan.

WAC 365-196-815

Conservation of natural resource lands.

(d) Prior uses. Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption.

WAC 365-196-830

Protection of critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter [365-195](#) WAC.

WAC 365-196-845

Local project review and development agreements.

(1) The local Project Review Act (chapter [36.70B](#) RCW) requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW [36.70B.020\(4\)](#), such as building permits, subdivisions, binding site plans, planned unit developments, conditional uses, and other permits or other land use actions. The project permitting procedures ensure that when counties and cities implement goal 7 of the act, under RCW [36.70A.020\(7\)](#), applications for both state and local government permits should be processed in a timely and fair manner.

(12) Project permit decisions

(ii) An explanation of how to file an administrative appeal (if provided) of the decision;

(14) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions.

(16) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of development regulations. For example, procedures should specify who provides an interpretation related to a specific project, and where a record of such code interpretations are kept so that subsequent interpretations are consistent. Code interpretation procedures help ensure a consistent and predictable interpretation of development regulations.

WAC 365-196-855

Protection of private property.

In the drafting of development regulations, counties and cities must use the attorney general's process of evaluation issued pursuant to RCW [36.70A.370](#), to assure that governmental actions do not result in an unconstitutional taking of private property. Procedures for avoiding takings, such as variances or exemptions, should be built into the overall regulatory process.

[Statutory Authority: RCW [36.70A.050](#) and [36.70A.190](#). WSR 10-03-085, § 365-196-855, filed 1/19/10, effective 2/19/10.]

WAC 365-196-860

Treatment of residential structures occupied by persons with handicaps.

(1) Counties and cities planning under the act may not enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals.

(2) The term "handicap" is defined by the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3602). It pertains to a person who:

(a) Has a physical or mental impairment that substantially limits one or more of their major life activities;

- (b) Has a record of having such impairment; or
- (c) Is regarded as having such impairment.

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604
E-Mail cccuinc@yahoo.com