County Leaders Conference

HOT TOPICS IN LAND USE & ENVIRONMENTAL LAW

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Hot Topics

- Legislation and Rulemaking
- Comprehensive Plan Updates
- Takings
- Issues re: Homelessness
- Permitting Issues
- SEPA
- A Few Minutes on a Few Other Topics

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Some Themes that Run Throughout

- Role of the state in local planning
- Role of the Growth Management Hearing Board
- The Growth Management Act lives on
- And so does SEPA
- Evolution of traditional zoning
- Housing, housing, housing

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Housing – 5 Categories of Issues

- Homelessness
- Limitations on evictions and other tenant protections
- GMA planning requirement
- More SEPA exemptions and permit-process reform
- Mandatory changes to substantive development regulations

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Legislation – 2023 & 2024

- 2023 Legislation
  - GMA and climate change (HB 1181)
  - Middle housing (HB 1110)
  - Accessory dwelling units (HB 1337)
  - Expediting local project review (SB 5290)

- 2024 Legislation
  - Requires co-living to be allowed within the urban growth area (HB 1998)
  - Amendments to middle housing bill (HB 2321)
  - Residential parking requirements (SB 6015)

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Legislation – 2025

- Housing Accountability Act (SB 5148))
- Development regulations & GMA (HB 1183)
- More permit process reform (HB 1935)
- More permit expediting (SB 5611)
- Lot splitting (HB 1096) – applicable only in cities
- Remedies available in GMHB appeals (HB 1135)

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Legislation - 2026

- STEP Housing (HB 2266)
- ADUs in the rural area (HB 1345)
- Residential in commercial zones (SB 6026)
- Middle housing in LAMIRDs (HB 2269)
- Permit review procedures (HB 2418)

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Legislation on the Horizon

Bills that almost passed

- Cultural resources
- Subdivision reform
- Data centers
- TOD

Other potential legislative issues

- Net ecological gain
- Riparian areas
- Environmental justice
- Planning obligations of service districts
- Clean energy (including preemption)
- Housing & Parking
- Reform of planning process

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Other Legislative & Agency Activity

Ongoing Rulemaking

- Housing and other GMA requirements
- Climate change / implementing HB 1181
- LCB rulemaking to implement SB 5080 / Social Equity Licenses
- Shorelines

Natural Gas

- HB 1589 (2024)
- Initiative 2066
- *Climate Sols. v. State of Washington*, 596 P.3d 1069 (2026)

Mandatory Comp Plan Update

- GMA requires periodic review and update of comprehensive plans
- Some specific review requirements
  - New procedural requirements, including consultation with tribes (HB 1717 (2022))
  - Critical areas regulations, including Best Available Science (RCW 36.70A.130(1)(c))
  - Changes in the law
- Some update requirements apply to non-GMA municipalities
- Current schedule set forth in RCW 36.70A.130
- Five-year updates are due beginning in 2029 – note that this is an increasingly big requirement

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Critical Areas & Best Available Science

- What's new?
  - New science
  - New WAC requirements, including no net loss
- Multiple, potentially competing objectives: agriculture, housing, and other factors
- Issues
  - The extent to which no net loss is parcel specific versus ecosystem wide?
  - How to consider non-regulatory actions? Who pays?
- Making a record is critical
- Practical tip: anticipate a rush of permit applications and take a look at your local vesting rules

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Critical Areas & Best Available Science

- *Munce v. City of Anacortes*, 28 Wash. App. 1071 (2023) (unpublished).
  - The GHMB found that Anacortes has adopted undersized stream buffers without reasoned justification; Anacortes took action to compy
  - GMHB and Court of Appeals denied Munce's appeal
- *Confederated Tribes & Bands of the Yakama Nation* v. Kittitas County, No. 22-1-0002 (GMHB), appeal filed, No. 39671-1-III (Wash. Ct. App. Mar. 23, 2023)
  - The GMHB rejected a challenge based primarily on failure to follow WDFW guidelines
  - Appeal withdrawn by agreement of the parties
- *Futurewise v Snohomish County*, No. 25-3-0011 (GMHB)

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GMA Housing Requirements

- Historic county role under the GMA
- HB 1220 (2021)
- *Futurewise v. City of Mercer Island*, No. 25-3-0003, Final Decision and Order (GMHB Aug. 1, 2025)
- Relationship to recent state legislation
- Potential Dept. of Commerce Review
- Role of private covenants

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Climate Change

- History: GHG reduction targets
- 2021 – Climate Commitment Act & Clean Fuel Standard
- 2023 – HB 1181
  - Substantive provisions
    - Adds change and resiliency as a mandatory comprehensive plan element
    - Requires certain counties and cities to take additional action to reduced greenhouse gas emissions and vehicle miles traveled
    - Requires the Department of Commerce to prepare guidance and model provisions
  - Implementation Schedule
- Project-level review
  - Effect on Climate Commitment Act
  - Pending project-level appeals?

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Water Law – Some Background

- Prior Appropriation Doctrine
- Three sources of regulation
  - Washington Department of Ecology permitting; some projects exempt
  - GMA provisions regarding water quality and quantity
  - Private Litigation
- New challenges
  - Increasing concern about minimum instream flows - (*Postema* (2000); *Swinomish* (2013); *Foster* (2015))
  - Aggregated effect of exempt wells - Campbell & Gwinn (2002); *Kittitas County v. Growth Board* (2011)

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GMA & Water Withdrawals

- *Whatcom Cnty. v. Hirst*, 186 Wash. 2d 648, 381 P.3d 1 (2016).
  - Involved the extent to which the GMA requires counties independently to regulate state-exempt wells
  - Washington Supreme Court, affirming the Growth Board, holds that counties have broad obligations to regulate exempt wells
- 2018 Legislative Fix (ESSB 6091)
- Does *Hirst* suggest a broader change to judicial interpretation of Growth Board authority?
  - Viking Properties
- Planning and potential rulemaking remain

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Takings Jurisprudence

- Takings claims generally fall into four categories:
  - Physical invasion *(Lorretto)*
  - Loss of all economic value *(Lucas)*
  - Exactions requiring nexus and rough proportionality (*Nollan/Dolan*)
  - *Penn Central* balancing
- Supreme Court extended *Nollan/Dolan* to purely monetary conditions. *Koontz*, 570 U.S. 595 (2013)
- Similar Washington statutory provision: RCW 82.02.020

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Impact Fees

- *Nollan/Dolan* extends to legislatively established impact fees
- *Sheetz v. Cnty. of El Dorado, Ca.,* 144 S. Ct. 893 (2024), on remand, 113 Cal. App. 5th 113, 335 Cal. Rptr. 3d 316 (2025)
- Washington cases
  - *City of Fed. Way v. Town & Country Real Est*., LLC, 161 Wash. App. 17 (2011)
  - *Douglass Properties II, LLC v. City of Olympia*, 16 Wash. App. 2d 158 (2021)
  - *City of Olympia v. Drebick*, 156 Wash. 2d 289 (2006)

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Developing Takings Issues

- *Entel v. Asotin Cnty.,* 30 Wash. App. 2d (2024) (unpublished) (rejecting challenge to condition to construct secondary fire access road)
- *Rapczak v. City of Kirkland,* 32 Wash. App. 2d 1042 (2024) (unpublished) (challenge to required dedication for existing public path)
- *Rimmer v. City of Edmonds*, No. 87644-9-I, 2026 WL 734475 (Wash. Ct. App. Mar. 16, 2026) (unpublished)
  - Challenge to a tree-replacement ordinance
  - Dismissed as moot
- *Fox v. City of Pac. Grove, California*, 810 F. Supp. 3d 1065, 1068 (N.D. Cal. 2025) (rejecting challenge to tree-retention requirement)

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Affordable Housing & Tenant Protections

- *Adams v. City of Seattle, Washington*, No. 24-6505, 2025 WL 3081848 (9th Cir. Nov. 4, 2025)
  - Seattle requires new residential development to offer some units below market rate or to make a payment in lieu; Seattle offers a waiver process.
  - Adams brought a facial and as-applied challenge
  - Ninth Circuit dismissed based on failure by Adams to seek a waiver
- *GRE Downtowner v. City of Seattle*, No. 878867, 2026 WL 3205019 (Wash. Ct. App. Oct. 26, 2026)
  - Challenge to eviction restrictions
  - Court of appeals reversed dismissal and remanded for trial
- *Cederland Homes v. Ferguson*, No. 3:26-CV-05090-BJR (W.D. Wash.)

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Homelessness

United States Constitution - Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

- *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019)
- *Seattle v. Long*, 198 Wash. 2d 136 (2021)
  - Excessive Fines
  - Homestead Act
- *City of Grants Pass, Or. v. Johnson*, 144 S. Ct. 2202 (2024)

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Vesting and Non-Confirming Uses

- Vocabulary
  - Vesting – Establishes when the rules are established that will govern a particular permit decision
  - Finality – Once the government issues a decision, and a very short appeal period passes, the decision is final and the rights it grants generally cannot be disturbed
  - Legal Nonconforming Structures and Uses
- Limitations on legal nonconforming
  - Disfavored
  - Generally subject to new police-power regulations
  - Subject to amortization
- *Shadow Creek Investments, LLC v. City of Anacortes*, *appeal filed,* No. 86285-5 (Wash. Ct. App. Feb. 7, 2024)

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Comprehensive Plan & Project Review

- Background
  - Historic planning and zoning process with no appeals
  - Facts changed: once undevelopable property became developable
  - Neighbors challenged newly intensive development
- RCW 36.70B limits the role of comprehensive plans as part of permit-review
- But what if the zoning code cross references the comprehensive plan
- Court of appeals held that zoning code controls
- Consider potential impact on HB 1135 on any future planning/zoning amendments
- Note that this published opinion was the product of direct appellate review

Fall City Sustainable Growth v. King Cnty., 34 Wash. App. 2d 383, *rev. denied*, 5 Wash. 3d 1013 (2025)

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LUPA & Strict Compliance

- LUPA establishes strict procedural requirements, including regarding service. In this case, service was required on the city clerk.
- Property owner Wanthida Chandrruangphen attempted to appeal an adverse permit decision but served an office assistant.
- The supreme court held that substitute service was insufficient.
- The court also held that email did not constitute mailing for purposes of the calculating LUPA limitations period.
- Note subsequent LUPA amendment; underlying strict compliance holding stands. 2024 Wash. Laws ch. 347

Chandrruangphen v. City of Sammamish, 6 Wash.3d 103 (2026)

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SEPA – Background & the Basics

- SEPA
  - Adopted in 1971 as gap filler to supplement other land use and environmental laws
  - SEPA is the likely legislative vehicle for cultural resources and environmental justice legislation
- Three ways municipalities touch SEPA
  - As a regulator
  - Review of their own capital projects
  - Adoption of some types of plans and regulations
- Threshold questions
  - Lead agency
  - Is there a project action or nonproject action?
  - Is the action exempt from SEPA review?

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SEPA – Background & the Basics

- Procedural Steps
  - First and foremost, SEPA requires review and disclosure of information
  - Completion of checklist
- Threshold determination – is a deeper dive required - DNS, DS, and MDNS
  - Environmental Impact Statements
  - Identifies impacts
  - Alternatives analysis
- EIS is primarily informational but can support discretionary exercise of substantive authority
- Compare to National Environmental Policy Act (NEPA)
- Special SEPA issues
  - Establishing the lead agency
  - Taking lead adjacency status. City of Puyallup v. Pierce Cnty., 8 Wash. App. 2d 323 (2019)
  - Relying on past SEPA review

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Recent SEPA Decisions

- *Escala Owners Ass'n v. City of Seattle*, 22 Wash. App. 2d 1058 (2022) (unpublished)
  - Involves project-level SEPA review
  - Board language about relying on existing environmental documents
- *King Cnty. v. Friends of Sammamish Valley*, 3 Wash.3d 793 (2024)
  - Challenge to a county land use ordinance
  - Growth Board required review of project-level impacts and restricted use of existing SEPA documents
  - Supreme Court affirmed based on SEPA and GMA issues
- *Breske v. City of Seattle*, No. 26-3-0001 (GMHB Sept. 9, 2026), appeal filed, No. 26-2-06165-34 (Thurston Co. Super. Ct.)

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Recent SEPA Legislation & Decisions

- Legislation
  - HB 1923 (2019) – exempting certain city housing legislation from GMA & SEPA appeals and exempting some impacts of housing projects from SEPA review
  - SB 5818 (2022) - expanding exemption for certain types of housing projects
- New exemptions applicable to pending projects
  - *Fischer Studio Bldg. Condo. Owners Ass'n v. City of Seattle*, 25 Wash. App. 2d 593 (2023)
  - *City of Olympia v. W. Washington Growth Mgmt. Hearings Bd.*, 27 Wash. App. 2d 77 (2023)

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Public Duty Doctrine

- A duty to the general public is not enforceable by individuals; or "a duty to all is a duty to no one"
- Exceptions
  - Government has engaged in "volunteer rescue" efforts
  - Where government has a "special relationship" with the plaintiff
    - Avoid making promises and use disclaimers
  - Legislative intent to impose duty of care
    - *Perillo v. Island Cty.*, 15 Wash. App.2d 618 (2020), rev. denied, 197 Wash. 2d 1006 (2021)
  - Facts sufficient to support a "failure to enforce"
    - Requires actual knowledge of a violation and a statutory duty to take corrective action

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Federal Regulatory System

- Major Federal Environmental Statutes
  - Clean Water Act
    - Administered by the EPA and Army Corps, and through delegation to states
    - Implemented through NPDES system, 404 permits, and 401 water quality certifications
  - Endangered Species Act
    - Administered by Depts. of Interior (FWS) and Commerce (NOAA Fisheries or NMFS)
- Why does the federal system matter to local government
  - Affects whether, and the speed at which, complex projects move forward
  - In addition to being a component of project review, federal law creates local legislative requirements
  - Rigor of federal review often affects scope of state/local review

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A Few Minutes on a Few Other Topics

- Energy Storage Facilities
- Cell Towers
- RLUIPA/Free Exercise/First Amendment
- Sign Codes
- Cannabis
- Damages

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