



The Legal Basis of Planning in Washington State

THE SHORT COURSE ON LOCAL PLANNING
WASHINGTON STATE DEPARTMENT OF COMMERCE

JUNE 2025

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What is land use planning?

- Regulation of
 - use or development
 - of real property
- Generally through
 - land use plans
 - zoning
 - other “development regulations”
- It’s not the “building code,” which is adopted under RCW 19.27.

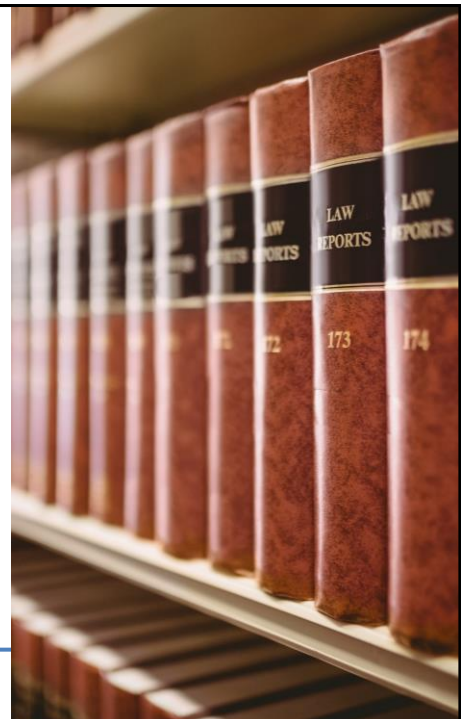
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Legal Authority for Planning in Washington State

- State Constitution
- State statutes
- City/town/county codes

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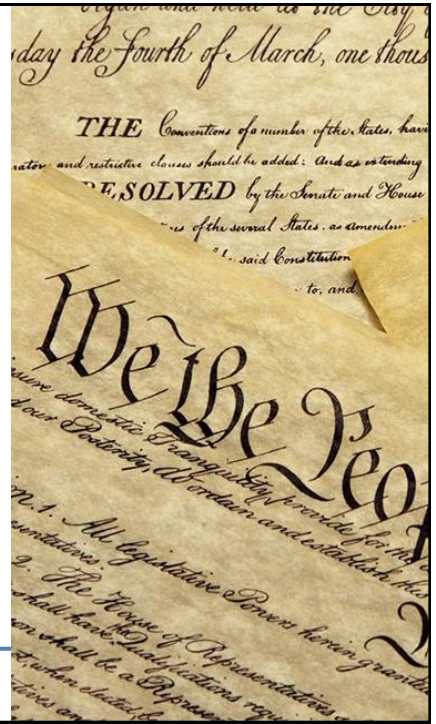


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Constitutional Authority

- Washington State Constitution
- Article XI (County, City, and Township Organization)
 - Section 11 (Police and Sanitary Regulations)
- “Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”
- Police power was validated as sufficient to authorize zoning (regulations varying by location) by the U.S. Supreme Court in *Euclid (Ohio) v Amber Realty*, 272 US 365 (1926).

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Washington Statutory Basis

- Planning Enabling Act, et al.
RCW 36.70, 35.63, 35A.63
- Subdivision Act
RCW 58.17 (1969)
- State Environmental Policy Act (“SEPA”)
RCW 43.21C (1971)
- Shorelines Management Act (“SMA”)
RCW 90.58 (1971)
- Growth Management Act (“GMA”)
RCW 36.70A (1990)
- Local Project Review Act
RCW 36.70B (1995)
- Land Use Petition Act (“LUPA”)
RCW 36.70C (1995)
- Appearance of Fairness Doctrine
RCW 42.36 (1982)
- Property Rights—Damages from Governmental Actions
RCW 64.40 (1982)

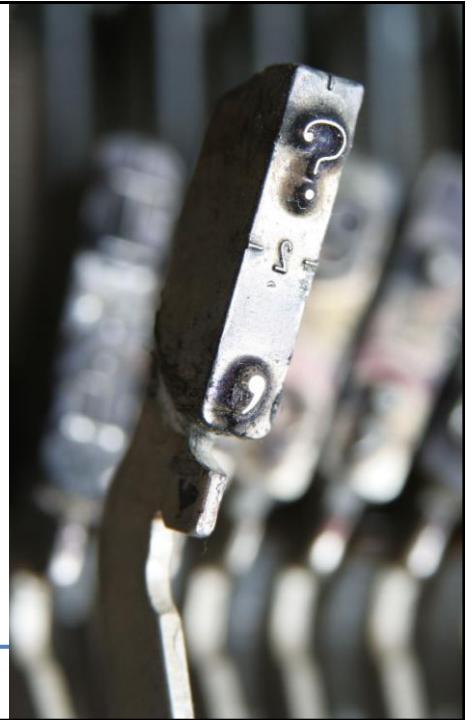
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Planning Enabling

- Various planning enabling statutes:
 - RCW 36.70 (counties)
 - RCW 35.63 (cities or counties)
 - RCW 35A.63 (code cities)
- Your code may cite to a specific statute as authority for creation of your planning department or planning commission; follow it
- Cities have implemented planning in various ways (e.g., Development Commission, Planning Policy Commission)

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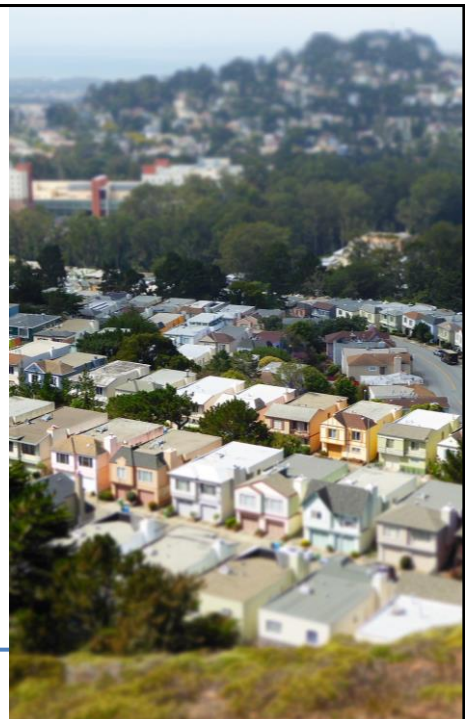


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Subdivision Act

- Adopted 1969
- Creates process for dividing land for separate sale and development
- Terms:
 - **short subdivision** = 4 or fewer lots (except that a city/county may increase up to 9 lots) with faster approval process
 - **subdivision** = 5 or more lots (or more) with two-step approval process (preliminary and final plat)
 - **plat** = the map representing the subdivision
- Subdivisions must be approved before lots may be sold

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State Environmental Policy Act (“SEPA”)

- Adopted 1971; modeled on federal NEPA, introduced by Scoop Jackson
- Requires state and local governments to review environmental effects of actions prior to taking them
- Applies to issuance of permits
- Applies to both “project” and “non-project” proposals
- Three steps:
 - Applicant submits SEPA checklist
 - Agency makes “threshold determination” of significant (DS) or non-significant (DNS) impact
 - If significant impact, then Environmental Impact Statement required
- Authorizes agencies to condition or deny a proposal based on its environmental impacts

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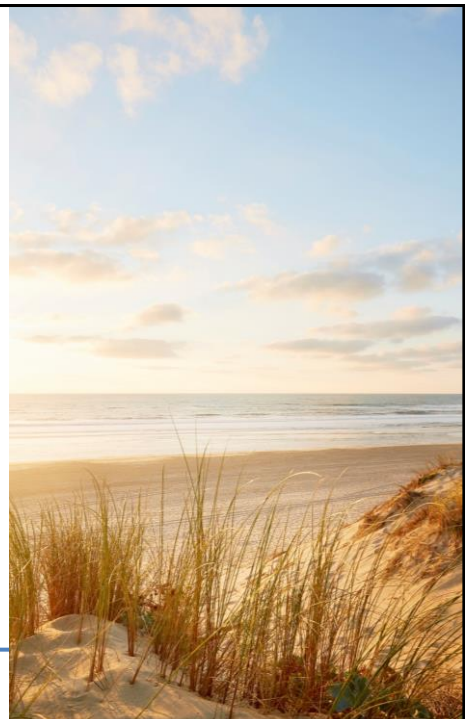


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Shoreline Management Act

- Adopted 1971 by voter initiative to:
 - regulate development on shorelines
 - prioritize water-dependent uses
 - protect public access
- Requires cities and counties to adopt a “Shoreline Master Program”
 - consistent with state regs
 - and obtain approval from the Department of Ecology
 - may be appealed to Growth Management Hearings Board
- Legislature updated SMA to ensure “no net loss” of shoreline ecological function

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Growth Management Act (“GMA”)

- Adopted 1990
- Mostly codified in RCW 36.70A
– also WAC 365-185 through 365-199
- GMA is now THE primary framework for land use planning
- Except it doesn’t apply everywhere and doesn’t replace planning enabling statutes
- Originally few mandatory provisions, but requires protection of natural resource lands and critical areas
- 13 unprioritized planning goals
+ 14th shoreline goal incorporating SMA
+ NEW 15th climate goal (E2SHB 1181)
- Balancing of the goals is allowed
- GMA plans and development regulations are **presumed compliant** upon adoption
- May be appealed to the Growth Management Hearings Board within 60 days of adoption

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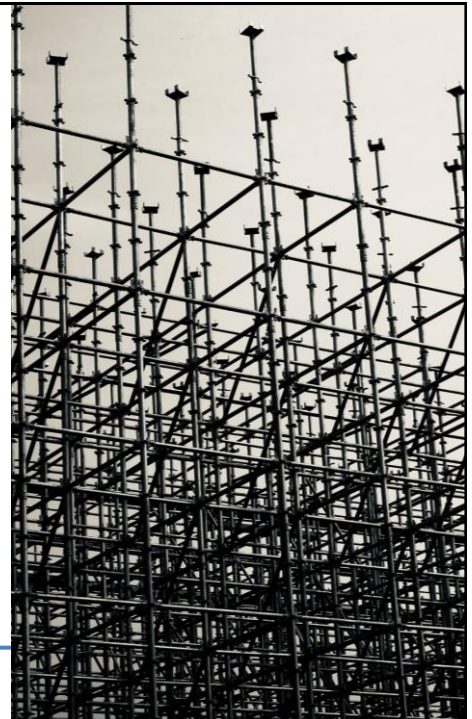
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Local Framework

- Countywide Planning Policies (GMA)
 - Comprehensive Plan (GMA) / SMP (SMA)
 - Zoning/Development/Land Use Code
 - [Building Code]
- consistency required
- consistency required



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Local Project Review Act

- Adopted 1995 as “reg reform” for project permits
- Requires:
 - option for consolidated application review
 - no more than one open-record hearing
 - no more than one closed-record appeal
 - public notices
- Creates 28-day deadline to determine an application complete
- Requires application processing within certain time limits— see NEW requirements from 2023 legislation (2SSB 5290)

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Land Use Petition Act

- Adopted 1995
- Applies to judicial review of local government decisions on “land use decisions,” which include:
 - applications for project permits
 - interpretations of land use codes against a specific property
 - code enforcement
- Creates uniform review criteria
- Requires appeal within 21 days of the land use decision

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Damages from Governmental Actions

- RCW 64.40
- Property owners who have filed an application for a permit may sue for damages to obtain relief from
 - acts of an agency that are
 - arbitrary,
 - capricious,
 - unlawful, or
 - exceed lawful authority,
 - or relief from a failure to act within time limits established by law
- Prevailing party entitled to reasonable costs and attorneys fees
- Must sue within 30 days of exhaustion of administrative remedies
- Essentially implements constitutional procedural due process requirement:
 - Notice of what is happening
 - Opportunity to be heard
 - Before deprivation of a right

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Appearance of Fairness Doctrine (1/2)

- Statutory doctrine (RCW 42.36) revised common law doctrine
- Applies to quasi-judicial land use decisions (not legislative decisions)
- A quasi-judicial action is where an application is authorized by and is being evaluated against the requirements of the code...and should be judged on that basis
- Quasi-judicial:
 - permit applications
 - subdivisions
 - variances
 - special-use permits
 - site-specific rezones not authorized by a comprehensive plan amendment
- Legislative:
 - amendments to development regulations
 - comprehensive plan amendments
 - area-wide rezones

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Appearance of Fairness Doctrine (2/2)

- Prohibits personal bias
- Prohibits prejudgment bias
- Prohibits partiality
- Prohibits *ex parte* communications (with requirements for disclosure and rebuttal) during pendency of proceeding
- Does not preclude correspondence between a citizen and his or her elected official if such correspondence is made a part of the record...**but don't.**
- Avoid site-visits, research, communications outside the record
- Consequences for violation: void, delay, and damages