

INTRODUCTION

The purpose of handout is to provide an overview of proposed code amendments to Cowlitz County Code, Title 18 (Land Use and Development). The intent of the amendments is to create a new Chapter 18.02, which clarifies and consolidates the county's vesting, nonconforming use and permit review regulations.

The objective of these code amendments is to reduce confusion and improve predictability for our landowners as to when-and-how new state laws and local regulations will affect pending applications and pre-existing land uses, and how applications will be processed and appealed. [NOTE: This proposal does not include any 'local' amendments to applications processed under building and construction codes, Title 16 CCC (residential, fire, mechanical, plumbing, and building codes), as such matters are controlled by state law in Chapter 19.26 RCW and by the state Building Code Council in Title 51 WAC.]

BACKGROUND

The proposed regulations are primarily focused on 'vesting' local landowners to existing land use laws and regulations, which requires the adoption of comprehensive, local permit review processes for the reasons discussed later in this guide. The vested rights doctrine in Washington was originally established by the courts in an attempt to balance the interests of a landowner's for certainty in how-and-when his/her property could be developed and later redeveloped, and current and later adopted state law mandates affecting local regulation of land use. In Washington State, the 'vested rights doctrine' "... refers generally to the notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the [permit] application's submission." *Noble Manor v. Pierce County*, 133 Wn.2d 269, 275 (1997). In order to provide certainty and predictability in land use regulations, the Washington state courts (in contrast to most other states), ruled that the vested rights doctrine applies as the date-of-receipt of a completed permit application, instead of some later date when a development 'breaks ground', as in most states.

The Washington state Legislature specifically codified the vested rights doctrine in two land use matters, namely: building permit applications (RCW 19.27.095), and in short subdivision and regular subdivision applications (RCW 58.17.033). As discussed below, that only two land use statutes have specifically addressed 'vesting' have fostered ambiguity and a lack of certainty as to how land can be developed or modified under existing or later adopted laws. Also discussed below, however, is that local governments have some authority to enact local vesting rules to address particular local needs, so long as those regulations remain within the sideboards of state law, namely: "Within the parameters of the doctrine established by statutory and case law, municipalities are free to develop vesting schemes best suited to the needs of a particular locality." *Erickson & Assoc. v. McLerran*, 123 Wn.2d 864, 873, (1994).

PURPOSE AND SCOPE

The purpose of the proposed regulations is to update and consolidate Cowlitz Code (dating from the mid-1970's to the mid-1990's) on permit application reviews, consolidated hearing procedures, and local vesting and nonconforming use standards within single, administrative section. In the process, the County will be adopting supplemental 'local' vesting and nonconforming use standards, carefully crafted to meet local needs, but remaining within the parameters of state law. These new code provisions establish a vesting framework that establishes, for County customers and staff, which additional

development permits can vest, and which particular land uses and which local land uses can continue and expand as nonconforming or ‘grandfathered’ uses when new laws are enacted.

Comprehensive local permit application review, vesting and nonconforming regulations have been in place for decades in most jurisdictions of Washington state, and more particularly in all counties and cities subject to the state Growth Management Act (GMA). This is a consequence of state law mandates, promoted by state building industry and realtors associations, that GMA counties adopt comprehensive, detailed, permit-processing regulations. For non-GMA counties, the constantly changing regulatory landscape arising from new land use laws, and complaints from local builders and realtors have spurred a number of non-GMA counties to voluntarily adopt comprehensive local regulations to afford local landowners the same ‘certainty’ in permitting afforded GMA-county landowners. Under state statutes and court rulings, ‘vesting’ or ‘grandfathering’ to land use regulations is set by the date of receipt of a complete permit application for development. Stated differently, in Washington, local regulations defining a ‘complete permit application’ are the lynch pin in deciding whether old or new land use laws, rules, and policies must be applied to a particular development.

As noted above, GMA counties planning under RCW 36.70A were required many years ago to develop regulations under RCW 36.70B which define when a complete application was received. Those counties were thereafter empowered to craft local ‘vesting’ and ‘grandfathering’ regulations for a wider variety of land uses than are addressed in state statute. Cowlitz County (as a non-GMA county and with adoption of such regulations being optional) never codified either a ‘complete application’ process or a comprehensive vesting rule. Times have changed, with recent Washington appellate court decisions, discussed below, threatening to erode the rights of landowners to ‘lock-in’ the regulations applicable to their property. The County’s solution is clear: adopt local permitting policies and procedures to remove ambiguities and lack of certainty in local vesting and non-conforming use rights.

VESTING LAW IN WASHINGTON STATE

In the 2014 case of *Potala Village Kirkland, LLC, v. City of Kirkland*, 183 Wn. App. 191, a state court of appeals ruled that for purposes of shorelines development permitting, the vested rights doctrine in Washington was controlled by state statute—which regulations have replaced, rather than have supplemented traditional common law vested rights. This decision followed the ruling that same year by the state Supreme Court in *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, wherein the court declared that while Washington’s vested rights doctrine may have originated at common law, subsequent state legislative actions have establishing a comprehensive regulatory scheme on land use in the state which had forever changed the nature of doctrine to being ‘statutory’. In other words, vesting of a particular land use to existing laws is determined SOLELY as to whether or not an adopted regulation declares it to be vested or grandfathered. As discussed above, local governments have some authority to adopt local code on such matters, provided they do not conflict with state law.

It is the opinion of staff that the proposed amendments to County Code as proposed in Chapter 18.02 do not conflict with state court rulings or state laws, but rather build upon and supplement them. It is pursuant to this judicially-recognized local authority and the county’s general police power that Cowlitz County can adopt the regulations being proposed.

The goal is for Cowlitz County to establish a comprehensive, complete-application code that also addresses whether or not the proposed development will be permissible with the current land use regulations (including under its local shoreline plan and regulations) at the time of application.

PROPOSAL

The proposed code amendments would add Chapter 18.02, which consolidates and expands existing permit application procedures and review, and consolidates and enhances vesting and nonconforming use language. The proposed code amendments would also remove existing language 'lumped' into the County's zoning and site development standards under Chapter 18.10, and shift those to this new administrative permit review chapter. The proposed amendments are not intended to change the purposes and intent for the County's existing land use approach, but to establish more certainty and predictability for landowners when they come to the permit counter to apply for development.

Proposed Chapter 18.02 CCC would:

- Establish how and when development permit applications are considered 'complete'.
- Clarify which/how development can vest or be recognized as nonconforming; and
- Clarify the how/when reviews/appeals would be consolidated during permit application review.