NWPOA.ORG - *PERSPECTIVE*
KC Shoreline Protection Review of Pertinent Documents *(Nov/2013)*

Idaho Code Title 67-6500 - 2010 Comp Plan – Idaho Supreme Court Rulings - Current Ordinances – Lake Management Plan

North West Property Owners Alliance Inc. *(NWPOA)* is an Idaho based non-profit organization with a local county chapter made up of citizens from all political persuasions who live throughout Kootenai County. Our mission and goals focus on representing, educating and advocating for rural property owners regarding land use, zoning, building codes, environmental issues, septic and water issues, property taxes and privacy.

This perspective contains an abstract non-technical review of various documents related to "shoreline" around Kootenai County waterways and observations we have made as we look at the topic objectively. This perspective is relevant because NWPOA has members who are property owners along lakes and rivers and the shoreline owned by these members is receiving increasing attention.

Some environmentally minded agencies and groups have chosen to further define shoreline by adding the word "protection" after it. This perspective is not meant to establish what shoreline "protection" is but to offer a broader view of what it might encompass. It is important to our members that the topic be discussed in a balanced manner. Our review is intended to broaden the thoughts of those involved in discussing shoreline concerns and, if the topic is to be narrowed from "shoreline" to "shoreline protection," to examine possibilities of what shoreline protection might entail.

There is more than one perspective, seeing the picture in a more balanced fashion is worthwhile, especially when considering the impacts of regulations or ordinances upon property owners. It should be acknowledged by all that the owners of the shoreline property should have the greatest voice in what regulative burdens they are to bear. It is their land and they have legal documents attesting to their ownership of the land.



What constitutes shoreline? Online dictionaries provide the following definitions: *Shoreline – (1) the line where land and water meet, (2) the edge of a body of water and (3) a strip of land along the shoreline*.

People may also define shoreline as the area above the waterline where waves have washed away the vegetation, leaving an area of sand or rocks that is the direct interface between the water body and otherwise dry land. This area, depending on the season, can be either above or below the high water mark and may be very short, or very long in horizontal length, depending on the grade. The area below

the high water line is generally owned by the public at large, while the area above the high water line is typically owned by a private land owner.

In essence, the public has limited rights to enjoy the publicly owned areas *(water or land)* and the private land owner has rights to not only use and enjoy their property but to prohibit the public access upon his or her property.


Average shoreline


Flatter shoreline


Steep or abrupt shoreline

While some environmental special interest agencies and groups have successfully guided thought patterns with regards to protecting shoreline and the ideological course they support, most average citizens are not aware of anything wrong with the shoreline that might require it to be protected or regulated. As we continue, we must challenge our own thoughts by asking what does, and what could, "shoreline protection" mean? Depending on where we live in America, shoreline regulations have been promoted for various concerns. Does shoreline protection mean:

- Protecting the shoreline itself from erosion due to wind and waves?
- Protecting the shoreline itself from erosion due to boating?
- Protecting the shoreline by adding rock or boulders or concrete walls?
- Protecting the shoreline from deadwood and other debris that washes up on it?
- Protecting the shoreline owners from the public or boaters trying to use their private beach?
- Protecting it from public access?
- Protecting it from the use or occupancy by the property owner?
- Protecting it from any disturbance?
- Protecting the view of the shoreline for people who are in boats out on the water?

In considering all of the above questions, an analytical and open minded person would ask, *"what is the actual threat or threats to shoreline that necessitates protection?*" or "*What hazard necessitates regulation?"*


Shoreline stabilization


Shoreline owner access


Shoreline docks

From the agencies and groups seeking greater regulation upon shoreline owners, we perceive four core beliefs that fall under the umbrella of shoreline protection. Some of those in one camp may also support the goal of another.

The first and more common belief is shoreline protection is for protecting the water itself because shoreline development is perceived as a present day evil in which human habitation cause stream or lake water quality to degrade. By restricting human activity thought to have negative impact on water quality, they seek to protect it. Sediment and nutrient loading are frequently cited as the main culprits, both of which occur naturally and by human activity. These are frequently described as non-point pollutants. *(occurring over wide areas as opposed to a single point like a public sewer discharge location)*

A second group believes that the shoreline should have never been sold to private owners. They contend that because the shore surrounds public water, if it is off limits to the public, it should also be off limits to the property owners as well, to keep the shoreline surrounding public waters in their pristine condition. No disturbance setback buffers is seen as a easy way to correct this injustice.

A third group is focused on protecting the view of the shoreline *(ie; when someone looks at the natural beauty of a lake or stream, they should expect that the shoreline will remain uncluttered by very little, if any, visible development)*. This thought process can also occur between adjoining shoreline property owners who might try to build a house closer to the lake and/or a larger house, which would then obstruct the view of the lake to an adjacent property owner.

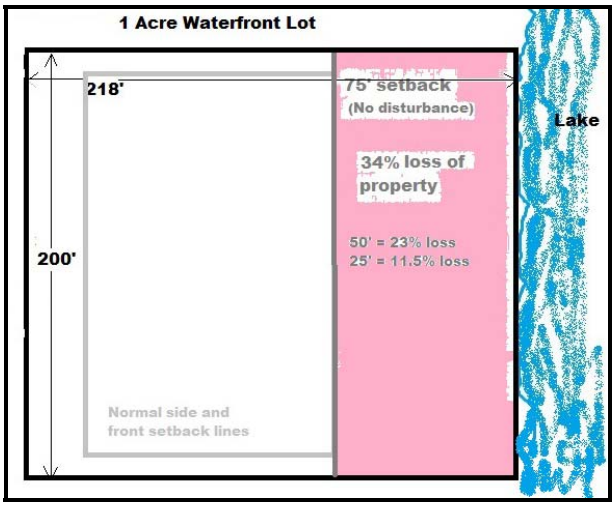
The fourth group is concerned about the erosion of shoreline from wind, waves, and boat traffic.

Perhaps an all encompassing environmentally based goal is in seeking "protection of shoreline" because they seek some kind of significant buffer between the development rights of the property owner and the natural beauty and quality of the water body. It is not that the shoreline presents any real danger, but it is a means to the end of forcing back any development near the water body. They see shoreline owners as collectively guilty of encroaching upon nature and thus harming the water body. Their methodology is simple: protecting the shoreline *(via setbacks and restrictions)* will protect nature *(fish, wildlife, trees, ecosystems, etc)* and the planets water. This rationale is supported by some studies completed in other locations that connect various aspects of lake and river water quality with adjacent human and domestic animal activity. Thus the mindset is born: *"if we stop activity on the shoreline, we stop degradation of natural ecosystems, habitats and the water itself".* All that is left is to implement stringent regulations upon the property owners. Missing is the direct evidence for any single property owner causing such degradation. Basically you are guilty if you're in the area.

Locally, the more dogmatic, environmentally minded groups have come close to moving the topic of shoreline protection beyond openly discussing why any specific owner has established a need for it, to focus on how far back the regulations should reach in the way of restricting all property owner activity. Very rarely is; ownership, new burdens, costs, loss of development rights, or any other loss of property rights a concern. Fundamentally, NWPOA will advocate that the entirety of the subject matter be discussed, including asking many questions related to whatever goal we jointly agree we are seeking. Research and data will certainly be a requirement, and so will compensation if solutions result in regulations that take away the rights of lakeshore property owners from enjoying property they not only own, but pay taxes for. Shoreline property owners deserve to be not only heard, but to be the majority voice in any discussions that would place additional regulative burdens upon their property.

One of our NWPOA members who is a respected local land use attorney makes the point that the ordinary high water mark, (OHWM) which defines property line boundaries around the lake as far as Idaho law is concerned is based on a state, not county definition. Idaho Lands has the following definition; *Ordinary High Water Mark - The high water elevation in a lake over a period of years,* ***uninfluenced by man made dams or works,*** *at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes (IDAPA 20.03.04.010.23).* For Cda Lake, that level would be the natural level last seen in July of 1890, prior to the installation of the dam. That would mean for the majority of properties around the Cda Lake, the property line may be well out into the current water level since the lake level has been artificially maintained by the dam managed then by Washington Water Power, now Avista. If you will, the utility has been continually flooding private land for over a hundred years.

To some in the dogmatic environmentally entrenched camp, we would be regressing to actually have open discussion on what they believe to be undisputable truth and the noble cause of saving our planet that they view as extremely fragile and on life support. They believe it is time to move on; to determine how restrictive we are going to be. Some environmental activists have advocated for 150' non-disturbance zones. Others have asked for 75'. In the two figures below, using a 1 acre lot as examples depicting 150' and 200' wide lots, we see that a 75" non-disturbance setback would result in a 26% or 34% respective loss of property. If the lots were half acre in size, the resulting percent loss of use could double. Not present with this desire to take away the use of the land, is any discussion to ask the property owner if it is OK, nor any offer to pay him or her for taking it.



Unabashedly these planet saving faithful are willing to "take" someone's private land and make it unusable to the owner, without compensation to the property owner. Somehow property owners are pictured as the current enemy to nature, when the fact is, nature and rural property owners live quite well together.

Every private waterfront property owner pays property taxes that reduce the property tax burden upon the rest of local property owners. Via property taxes, all property owners are the funding engine for all kinds of public services in the County. But it gets better, a part year waterfront property owner who resides here 8 weeks out of the year, will pay a full years worth of property taxes *(undiscounted)* but only add 15% of the human based demand on county services.

As we discuss this topic, we have determined that for our area what is really at the heart of the matter is a concern for our water quality. If the water body is the real topic, we can focus on what may, or may

not, need to be done. And if the real issue is the water body, we must apply a similar set of questions as we did above if we are going to add the word "protect" or "save" in front of it. Does protect or save the lake/river mean:

- Protect the water quality from water quality degradation?
- Protect it from commercial use?
- Save it for recreational use?
- Save it for fishing? Or save it for the fish?
- Save the view of it for people who live around it?
- Save it for boaters and water skiers?
- Discuss how clean is clean enough?

In all of these questions we have to ask, *"What is the actual threat to the lake that requires protection?*" This is certainly a different topic than shoreline protection; though some have framed the discussion to mean the same. Is shoreline a symptom or the cause? Another worthy topic is what constitutes water quality degradation, is the starting point the assumed quality of water before humans were around? Is it equivalent to rain water quality? Do we say today's water is the starting point? Who decides what the water quality should be and what public and scientific process led to establishing the base point?

After a hearty and complete discussion, should we jointly agree that restrictions need to be placed upon shoreline property owners to serve some public good, at the very least these property owners deserve to have in place a few dozen prescriptive handout standards that will negate the need for time consuming and costly permitting in the immediate shoreline area. Landscaping, terraced areas, retaining walls, BMP's *(Best Management Practices)*, vegetation buffers, shoreline stabilization, walkways, docks, etc, should be offered in a County provided prescriptive handout readily available at the permit counter and on line. Additionally there should be a distinction between the small footprint "mom & pop" waterfront home builder and the larger multi-home waterfront developments. This should include consideration for using some standard off the shelf calculations rather than being forced to hire expensive experts. Decision and approval/denial flow charts showing the process, needed documents and other requirements should be provided by the Planning Department. Voluntary measures should first be tried using targeted educational information and the results measured. All information should be balanced and have the approval of property owner associations.


Roadways along waterways


Public recreational access


Commercial development

NWPOA and perhaps 99.9% of lakeshore property owners support existing Federal and State laws banning pollution in public/private waterways and on public/private land. Rural and shoreline property owners are united in a desire to keep our various water bodies clean and healthy and we jointly are willing to do our part. However, we find plenty of room to object to the willy-nilly expansion of

restrictive regulations upon property owners on or near shorelines out of nothing more than a “fear” for public heath and safety. Doing so is akin to putting hand railing on street curbs because kids walk on the curbs and a couple fall down and hurt them selves.
No longer satisfied with banning truly hazardous types of pollution, more environmental activists are focused on fighting *(via new regulations upon property owners)* all kinds of “perceived threats” such as: rural development, watersheds, storm water, farming, and roadways. This is a religion to some of them; they believe they are the voice of reason for *“mother earth.”* History supports that most rural property owners are great stewards of their property. So why the push for new property regulations? Perhaps it is useful to let one of the local environmental groups own leadership describe their view of property owners. Terry Harris, KEA director, wrote the following on the KEA blog in July of 2012;

> *Ignoring the completely nutty “U.N. Agenda 21" conspiracy theorists, the ULUC opposition appears to be based primarily in a “property rights” viewpoint that ignores both the law and the policy choices that guide modern land use across the country. Despite the bluster coming from the usual North Idaho know-it-alls, “property rights” are simply not absolute. In fact, property rights of individuals are balanced to protect the property values in the community.*

It would seem that if you are a property owner and object to the doubling of regulations upon your lands, *(proposed ULUC)* KEA leadership thinks you’re a nut who should be maligned and ignored. The facts are, Agenda 21 is indeed a real U.N. program being promulgated around the world; property rights are, and should be, a major concern of property owners and while minimized as “bluster” rural property owners have every right to freedom of expression and to lobby for or against anything that affects our lands. It appears KEA does not want the voice of rural property owners to even be at the table. Based upon KEA’s comments, press releases, glares and stares when rural property owners represent ourselves in public meetings, we get the feeling they view us as “obnoxious uneducated country bumpkins”. They believe they know what is best for our property more than we do.

The fact is *(as anyone over 50 years of age is aware)*, when we look at America as a whole, our air, land and waters are all far, far, cleaner than when we grew up. Gone are the days when Lake Erie was basically a dead lake. Many rivers were also near dead, industry used waterways as a convenient sewer to dump waste into and our air was pretty bad in industrial locations. That is no longer the case, and anybody doing that today not only pays a hefty fine, but spends time in jail. Our north Idaho water bodies are cleaner *(in true pollution terms)* than they were 50 years ago. Governmental agencies are untied in stating that Coeur d’ Alene Lake has better water quality since the mid 1970’s. Rather than congratulating property owners, for a job well done, agenda based agencies and radical environmental groups have property owners in their sights. For some reason, we are their enemy.

Various types of residential development along the water

Recently the Kootenai County Planning Commission decided “shoreline” deserved a special meeting regarding regulations. The actual agenda was written as: “*Discussion regarding goals and policies for*

the development of County "shoreline" regulations." NPWOA submits this is not the place to start the discussion and doing so circumvents a number of logical steps that should be considered first. There must be solid evidence that shoreline is itself harmful and we must ask how is shoreline harmful that it needs regulated? Let's not forget the shoreline will not be required to comply with the resulting regulations, it will be the property owner. But we should refocus: if it is not the shoreline that is actually harmful, or being harmed, what is it that requires more regulation?

Let us take a look at the silliness of one aspect of shoreline protection regulation frequently expressed here in Kootenai County by the environmental zealots as very bad ie, allowing mechanical equipment near the edge of the water. Our current regulations do indeed ban mechanical equipment within the 25' "do not disturb" shoreline zone. What is ridiculous about this is that if the goal is truly water quality protection *(and it is)* at the waters edge of the very lot the property owner is hand shoveling holes for his steps down to the water, all kinds of boats and jet skis can be traveling up and down in front of his property. How does it make since to ban mechanical equipment near the lake when mechanical equipment is in the lake?

Consider this analogy: A person *(we'll call him Jake)* is found drunk and intoxicated in public. Jake is cited, fined and spends a night in jail. That seems like a just cause and affect. Jake enjoyed freedom, but when he violated the public good, his freedom was restricted. How about another scenario: because Jake misbehaved, the rulers decide everyone of us has the "potential" to be drunk and intoxicated in public as Jake did, so the rulers pass new laws, we are prevented from either drinking or being in public whether we are drunk or not. Now does it still seem right? We would argue no. It makes no sense to ban everyone who owns lakeshore property from using it, because someone else may have done wrong.

The reality for property owners is shoreline protection ordinances are based on a fear over water quality and a "potential" for water quality degradation via the property owner's shoreline interface. Thus, we should determine what constitutes degradation and also refocus our thoughts to the constituents we are concerned about that are *(not may)* entering the water. Then we must quantify to what degree water quality degradation has occurred and is it occurring based upon reasonably expected trends that warrant action? Also, a confirmed direct link establishing that adjoining property owners are the direct cause of such degradation *(including to what percent is their contribution to the problem)* should be determined. If we are talking about Coeur d' Alene Lake, we must also examine the fact that our water has been getting cleaner and review the practices are we currently doing that accounts for these improvements.

Correlation is not causation; fear is an emotion and may be irrational or rational. Does someone's fear justify regulating an entire group of people to ease their fears? All bodies of waters receive sediment from adjoining land even without human habitation. The natural process is that all things tall *(mountains)* will crumble and fill all things low *(valleys, river, and lakes)* to attribute all sediment as bad from a property is funny science, because science says that is the natural order of things. There must be accurate measures that quantify and separate natural or background degradation *(if we choose to call a natural process degradation)* from what is manmade. We know that restrictions placed upon lands not only limit the property owner's normal acceptable activity and right to live upon his/her land, but are often costly to the landowner.

Shoreline property owners are aware of their very direct connection to the water and are willing to be subject to some reasonable and substantiated restrictions. Citing Coeur d' Alene Lake, we know that since the late 1970's the water quality has improved in aspects unrelated to the poor mining practices that deposited large quantities of metals in the soils leading into the lake. Long time locals tell stories of the lake being white in color in some locations and highly turbid. We've come a long way in the right

direction for improving water quality and should be proud that we are doing a great job. The mining tailings are an unfortunate example of early America's lack of pollution controls.

We also believe that in the spirit of transparency, openness, and balance, every single affected shoreline property owner *(and other inland property owners should proposed restrictions move further inland)* should be sent a 1st class letter notifying them of any proposed changes to regulations that may affect their land or use on said land. These notices should not only include an invitation to attend, but also to participate in the formation of any proposed regulations. If any regulative activity is being considered, let's notify the affect property owners, it's the right thing to do.

What follows is a review of various documents relating to shoreline regulations and planning activities related to such. We'll begin with a short summary of what we gleaned and follow the summary with some greater detail taken out of each document.

- Idaho Code Title 67-6500 does not require nor discuss any need for shoreline protection.
- A Comprehensive Plan is the visionary instrument for the establishment of zoning districts via policies *(directly related to zoning districts)*. While Idaho Code does direct that zoning districts, should be in accordance with a Comp. Plan, the Idaho Supreme Court has ruled that does not have to occur immediately, or follow the Plan exactly.
- There is nothing in Idaho Code that directs a Plan's reach to extend beyond the establishment of zoning districts and uses within those districts. Compliance with goals or policies written into a Plan that go beyond the State's direction are at best recommendations and have no State authorized or required function.
- Other land use standards are independent from a Plan and are not regulatively controlled by a Plan. The creation of standards may be independent from the Plan.
- A 25' non-disturbance buffer is found in current Kootenai County regulations, however, if the owner of property is prohibited from disturbing or using property he/she holds title to, why would not he or she be entitled to compensation for the loss of use?

Idaho Code 67-6500 *(italics is the actual written code text)*

- There is only 1 mention of "shoreline" that occurs in one of the 16 components that must be analyzed when creating a Plan; *(f)* ***Natural Resources*** *-- An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and* ***shorelines****.* Thus, shorelines are one of the subtopics to be explored when analyzing natural resources in a Plan. It is important to note, however, that this analysis may be for such things as access, tourism, etc, in addition to being a boundary. Idaho Code 67-6500 does not define shorelines as needing protection, but that is how some people prefer to frame the topic. Another person might say this reference to shorelines means "enjoy" or even "economically make use of" shorelines. It is all a mater of perspective and there is more than one perspective. Protecting shorelines is not addressed in the land use portion of Idaho Code.
- The Plan is to "consider" 67-6508 *The Plan shall consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component. The Plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the Plan specifies reasons why a particular component is unneeded (what follows this code text, is the 16 individual items a Plan is to review).* In this section we see that the Plan is to consider the above

mentioned items as the Plan is being written, it does not state that the Plan's goals and objectives are generated in the Plan and to be the basis for establishing future land use regulations. They are an **input to the Plan, not an output from the Plan**. The distinction is often blurred by those seeking to create land use code from a Plan, the Plan's true purpose is for visionary establishment of zoning districts, not for visioning or formulating the code each district may have in it. The Plan is also not about goals or policies not specifically related to a zoning district type. That thought process is not found in Idaho Code.

- A Plan's purpose is visionary, not compulsory, it is developed to aid in the "establishment of zoning districts" 67-6511 states; *Zoning ordinance. Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The **zoning district**s shall be in accordance with the policies set forth in the adopted comprehensive plan.* At this point Idaho Code continues with; *Within a zoning district, the governing board shall where appropriate, establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.* What is missing is any reference that the resulting standards or regulations established for these zoning districts must also comply with the Plan, which was cited as being a requirement in setting up zoning districts. Resulting zoning districts must be in accordance with the policies of the Plan, however, land use regulations, standards or codes are not legally bound to be in accordance with the Plan. Other than establishing zoning districts and consideration for the granting of special use permits (Section 67-6512) which should "*not be in conflict"* with the Plan, there is no other requirement that goals and policies not specific to establishing zoning districts or granting special use permits, be in a Plan, or in accordance with the Plan's written goals and policies. Again, the distinction is often blurred by those seeking to create land use code from a Plan; yet the Plan's purpose is for establishing zoning districts, not land use standards.
- Further down in 67-6511 section, "c" Idaho Code states: *(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to section 67-6511(b), Idaho Code.* What is interesting is that even for a zoning ordinance change request that is in conflict with the Plan policies for zoning districts, the legislature wrote in a remedy: change the Plan to allow it is the option they wrote into the code. Being in conflict with the Plan doesn't mean an ultimate forever no, it can mean changing the Plan to allow the zoning change as another option.
- Additionally, Idaho Code 67-6518 "standards;" *Each governing board may adopt standards for such things as: building design; blocks, lots, and tracts of land; yards, courts, greenbelts, planting strips, parks, and other open spaces; trees; signs; parking spaces; roadways, streets, lanes, bicycleways, pedestrian walkways, rights-of-way, grades, alignments, and intersections; lighting; easements for public utilities; access to streams, lakes, and viewpoints; water systems; sewer systems; storm drainage systems; street numbers and names; house numbers; schools,*

hospitals, and other public and private development. Standards may be provided as part of zoning, subdivision, planned unit development, or separate ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code. Nothing in this standards section of Idaho Code requires that the standards comply with any portion of a Plan. Standards are specific, separate from the Plan's intended visionary purpose of establishing zoning districts and uses that occur within those zoning districts. Standards are created separately and not birthed in a Plan or required to comply with a Plan's goals or policies. Once again, the distinction is often blurred by those seeking to create land use code from a Plan. A Plan's purpose is for zoning districts and uses within those districts.

- The section addressing the purpose of hearing examiners details for what topics, the hearing examiner may reference or consider the Plan, 67-6520 "hearing examiners" *(1) Hearing examiners include professionally trained or licensed staff planners, attorneys, engineers, or architects. If authorized by local ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, hearing examiners may be appointed by a governing board or zoning or planning and zoning commission for hearing applications for subdivisions, special use permits, variances and requests for rezoning which are in accordance with the plan.* Thus, even hearing examiners are directed to consider the Plan, but only with respect to re-zoning. Hearing examiners are not directed to consider the Plan for standards or other items beyond Zoning districts.
- Idaho Code when read correctly: a Plan is for "planning," not dictating, and in accordance with: (a) zoning district establishment and (b) to be considered when a special use is brought forth.

2010 KC Comprehensive Plan *(161 pgs, adopted 12/2010)*

NWPOA considers the adopted Plan not representative of Kootenai County and flawed from several aspects that negate its intended purpose and usefulness. Please refer to the NWPOA.ORG position paper of the Comprehensive Plan to obtain an understanding of why the Plan is not representative of Kootenai County residents. The Plan needs a major revision of its goals and policies and this time in a more inclusive, balanced and representative manner.

- Shoreline is mentioned 62x in the Plan.
- **Glossary -9, Shorelines:** An area near the interface of land and water, which may include but is not limited to lakes, reservoirs, rivers, streams, and creeks etc.
- The mentions with regards to Plan goals and policies are as follows: *PR-1 E Pursue opportunities to acquire access to land in order to promote public access, especially along shorelines., NR-5 A NR-5 A. Develop and coordinate shoreline management plans for lakes, rivers, and streams with other regulatory agencies., NR-5 O Develop regulations, that requires developments to provide detailed information on construction methods within the shoreline environment., NR-7 D Develop regulations that provide protective setbacks for wetlands, shorelines and riparian areas, to protect fish and wildlife habitats and water quality., C-1 C. Allow development along shorelines that protects water quality and habitat areas., pg 14-36* ***GOAL 15:*** *Create and define a land use designation named "Shoreline" and map it on the County's Future Land Use Map. Policies and Implementation Strategies LU-15 A. Define "Shoreline" as the designation generally within 500' of waterfront. This designation will have a wide range of densities determined by many factors. It is along the lake shores and riverbanks throughout the unincorporated part of the County. Shoreline areas:* ***a.*** *Characterized by activities including, but not limited to, a mix of both dispersed and more intensely developed single-family homes, forest and open space;* ***b.*** *Characterized as being highly desirable areas for development.* ***c.*** *Characterized by having either soil conditions able to handle the cumulative long-term impacts of on-site sewage disposal without adverse impacts to ground and surface waters, or having severe soil limitations.* ***d.*** *Characterized by sometimes containing wetlands,*

sensitive areas, and areas of special flood hazard. ***e.*** *Characterized as being considered an important view shed.* ***f.*** *Development regulations should provide for maximum residential densities for the various designated Shoreline areas based on the predominant density of the built environment of the area, provided the land can physically support such development without requiring public sewer or water services, if not currently available., LU-15 B. Develop regulations for residential development in areas designated as Shoreline to protect water quality of adjacent water bodies, including but not limited to requiring applicable agency review and approval., LU-17 K. Villages located near shorelines should protect and preserve the natural beauty and habitat of shorelines and land abutting the river, stream or lake, established forest preserves, wildlife sanctuaries, and wildlife travel corridors. When reasonable possible, they should retain the floodway of shorelines in a natural state as a greenbelt, wildlife habitat area, and open space recreation area. They should protect shorelines floodplains, banks, related ponds, and canyon rims from incompatible development, as well as guide recreational use of those areas. Development located near shorelines should provide the continuation of shorelines greenbelt areas. Villages are encouraged to provide access points that are to the general public., LU-17 U , g, 4. Hydrology, drainage, watersheds, existing bodies of water, shorelines, wetlands, groundwater conditions, and irrigation delivery systems;, I-4 F g. Whether the proposed change would have a significant adverse impact on the natural environment, including wooded areas, wetlands, critical wildlife areas, shorelines, slopes, groundwater, and other significant natural resources that could not be mitigated;*

- The Plan seeks the creation of a zone described as follows: *(pg 2-4)* ***Shoreline.*** *Parcels within 500 feet of bodies of water. The purpose of this designation is to protect the water, prevent erosion, and maintain the natural environment, including views of the shoreline.* Another expanded definition is found in the land use section pg 14-21 ***Shoreline*** *- This mapped designation encompasses those lands generally within 500 feet of bodies of water that include land directly adjacent to shorelines and lands where a portion of the parcel is within the 500-foot boundary. The primary purpose of this designation is to guard against water quality degradation by managing erosion and surface water runoff, reducing impervious surfaces in developments, and implementing effective setbacks from shorelines and surface water corridors. Recognizing that development demand in these areas is high, additional measures must be in place to protect surface water quality. The secondary purpose of the Shoreline designation is to provide continued development in areas adjacent to the shoreline of a lake, river, or stream and to promote design standards that enhance natural shorelines and retain view sheds. This designation recognizes existing residential patterns of small-acreage parcels and encompasses larger parcels that are surrounded or adjacent to platted lands of the same. Cluster subdivisions and increased setbacks will be encouraged to ensure the preservation of views of the natural shoreline. Non-residential uses should be limited to services needed to support resource, seasonal, shoreline, and recreational uses.*
- In creating the KC Plan, the activist creators went well beyond the intended purpose defined in Idaho Code, ie to provide for the visionary establishment of zoning districts and uses within those districts.

Idaho Supreme Court Rulings *(Regarding Comp Plans)*

- *(2012, Opinion #111, Filed 7-6-12)* That a Comprehensive Plan may only be considered in zoning district changes; it is not to be viewed in any other regulatory fashion. *"A comprehensive plan is not a legally controlling zoning law, it serves <u>as a guide</u> to local government agencies charged with making zoning decisions. The in accordance with language of I.C. § 67-6511 <u>does not require zoning decisions to strictly conform to the land use designations of the comprehensive plan</u>".*

- Giltner Dairy, LLC v. Jerome County, 2008 WL 803001 (Idaho, 3/27/2008) …. In affirming the district court decision, the Idaho Supreme Court offered a good textbook description of the differences between planning and zoning. The Court quoted an earlier decision (Balser v. Kootenai County, 1986): *If the Zoning Ordinance itself or the zoning designation on a particular parcel of property must immediately conform to the Comprehensive Plan, then there appears to be an unnecessary duplication. A change in the Plan would then automatically change the zoning, and we would have a distinction without a difference. In fact, there is a substantial difference between planning and zoning. Planning is long range; zoning is immediate. Planning is general; zoning is specific. Planning involves political processes; zoning is a legislative function and an exercise of the police power. Planning is generally dynamic while zoning is more or less static. Planning often involves frequent changes; zoning designations should not. Planning has a speculative impact upon property values, while zoning may actually constitute a valuable property right. It seems clear, therefore, that while zoning designations should generally follow and be consistent with the long-range designations established in the Comprehensive Plan, there is no requirement that zoning immediately conform to the Plan. The Plan is a statement of long-range public intent; zoning is an exercise of power which, in the long run, should be consistent with that intent. Planning is a determination of public policy, and zoning, to be a legitimate exercise of police power should be in furtherance of that policy.*

There are a number of things we can glean from these Idaho Supreme Count rulings; a Plan is a guide, the county is not under any binding obligation to either immediately follow it *(the county may implement it over time)* or exactly follow it, and zoning may constitute a property right as well as affect property value. It seems logical that regulations requiring a property owner dedicate a portion of his/her property to be non-usable in some fashion could constitute a financial detriment or loss of use detriment to his/her property. This is more of a concern when a regulation dictates it be "undisturbed" as described in current ordinances related to shoreline protection.

Besides our Idaho State court rulings, there has also been a recent federal court ruling with regards to storm-water runoff, a frequently cited cause of concern around lakes and streams. While no one would disagree that rain does wash, then run down hill and thus carry debris and chemicals to low areas *(whether valleys, streams, or lakes),* the debate is whether water from a storm should be regulated, and who might be responsible for runoff. In January, 2013 a U.S. District Court from Virginia struck down the EPA's attempt to regulate stormwater. The EPA had argued that, *"its policy was not expressly prohibited by the Clean Water Act, so the agency was allowed to pursue it – reasoning that if we are not prohibited from regulating what ever we desire, we get to"*. (a paraphrase) The U.S. District Court disagreed and wrote in its Conclusion the following:

> *"…. Stormwater runoff is not a pollutant, so EPA is not authorized to regulate it via TMDL. Claiming that the stormwater maximum load is a surrogate for sediment, which is a pollutant and therefore regulable, does not bring stormwater within the ambit of EPA's TMDL authority"*

Current Kootenai County Ordinances

The concept of shoreline protection is developed and expounded in ordinance #453. It is not clear where the local data or research comes from supporting the theme that the shoreline needs protecting. Rather, it seems that the creators of "shoreline protection" are more focused on protecting water quality, by regulating shoreline in an attempt to accomplish this goal. It would be interesting to see local historical and current data to support this purpose.

- Shoreline is mentioned 30 times in our current ordinances. 4x in #301 *(adopted 2001)* Road Naming & Addressing Ordinance, 4x in #401 *(adopted May 2007)* Zoning Ordinance, 22x in #453 *(adopted May 2011)*, Site Disturbance. NOTE- Amend Site disturbance #445 *(adopted*

Aug 2010) has no references using the word shoreline. The site disturbance ordinance #453 is where the focus of imposed regulative shoreline direction occurs.

- Ordinance #445 contains 4 references to waterfront, section "11-2-8 Disturbance Restrictions, B Waterfront Lots" places restrictions on activity along shoreline as follows: *For lots with frontage on a recognized lake or the Coeur d'Alene or Spokane Rivers, an undisturbed natural vegetation buffer shall be retained at the waterfront. A stairway or walkway (which does not exceed 4 feet in width), stairway landings (which do not exceed 6 feet in width or length), or a tram shall be allowed to encroach within the buffer. The buffer shall be a minimum of 25 feet in slope distance from the high water mark of the water body. For purposes of this chapter, high water marks shall be considered to be the following elevations, (elevations left out)*. Note- Ordinance #453 contains similar "waterfront" language.

Coeur d' Alene Lake Management Plan *(186pg document dated 2009)*

- Shoreline is mentioned 18 times in the LMP. Pg # - **1**- #i, *Development along the lake's shoreline has been dramatic in recent years*, (no historical or data is provided), **2**-#vi table of contents title to a figure, **3**-#xi Glossary of terms under littoral zone, **4**- #1 *Development along the lake's shoreline has changed dramatically in recent years*, **5**- #4 title of figure, **6**- #5 described length of shoreline, **7**-#25 reference stream bank and shoreline stabilization mitigation, **8**-#45 table 5 title shoreline to 20 meters, **9**-#69 describing length of shoreline, **10**-#69 describing bays from shoreline to 20m depth, **11**-#71 a reference to estimate nutrient loads and where they might come from, **12**-#81 a reference where nutrient loading might come from, "*possibly by rising lake waters inundating shorelines that have been dry during winter months"*, **13**-#89 a reference go where localized impacts to bays might come from "*runoff from increasing land disturbance through development on the shorelines*", **14**-#104 reference to where DEQ might establish some shallow wells, **15&16**-#123 tbl C-4 reference to DEQ & Tribe doing a shoreline study to compare activity with KC Site Dist Ord 374, 17-#132 tbl c7 ref to bank stabilization, 18-#160 tbl E-1, reference to shoreline alteration.
- What we found interesting is any references to shoreline are not the result of any Coeur d' Alene Lake studies or peer reviewed data, rather more innocuous uses of the term. While it is clear that certain dogmatic interests want to regulate the shoreline of property owners, this document offers nothing from a technical standpoint establishing any of that perceived need.
- The executive summary contains the following statement - … *"water quality in the lake has generally improved since the mid-1970's…"* Other mentions about the lake water quality; pg8; *During the late 1980s and early 1990s, DEQ, the Tribe, and the United States Geological Survey (USGS) conducted studies of the lake and its surrounding watershed. These studies indicated that overall water quality in the lake was generally good and had improved compared to conditions reported in the mid-1970s by EPA*" Also page 15; *Water clarity throughout the lake improved between 1975 and 1991-92. Water clarity has remained the same since then.* All of these statements also lack supporting data although it is well established that Coeur d' Alene lake is in much better shape. We are doing a great job and that should be emphasized; where are the kudo's for what we've been doing well? Wouldn't an analysis expounding on what has worked for the last 40 years be pertinent? We think so.
- The stated goal of the LMP is as follows: Lake Management Plan (2009 LMP) with the goal: *to protect and improve lake water quality by limiting basin-wide nutrient inputs that impair lake water quality conditions, which in turn influence the solubility of mining-related metals contamination contained in lake sediments.*
- Yet that did not stop the authors from focusing on site disturbance around the lake as a need for some threat. The term "site disturbance" is mentioned 17 times, and all mentions occur in the

final pages of the document from page 121 and on, and are generally within tables of various action plans. These mentions do not establish any net connection *(above background natural cause/affect activity)* for the perceived threat or harm to lake water quality directly tied to shoreline protection. Lacking also were plans for detailed studies that would actually support or deny shoreline protection regulations as significantly effective.

This perspective paper is not meant in any manner to be an analytical or technical or an exhaustive work, it is meant to stimulate and broaden thought on the topic. We did not review other documents which some readers may feel important such as: the KendigKeast draft ULUC because it has not only been rejected by Kootenai County citizens as overly regulative, convoluted and without structure, but also because it was abandoned by the Kootenai County Commissioners and Planning Commission. We also choose not to examine Cda Tribe requirements for shoreline because the Tribe has sovereign rights to land under its jurisdiction, but no authority over lands outside its boundaries. Other resources that may be related to shoreline issues can be found with; Idaho DEQ, Panhandle SEEP, and Idaho Department of Lands.

Shoreline erosion control walls

The property owners of rural Kootenai County deserve a balanced review and update of the shoreline based regulations, uncorrupted by government staff, agencies and other groups with dogmatic agendas. Going forward we, along with other representative property owner groups, deserve to be the super majority in any revision and it needs to be done in balance with all provisions of Idaho Code. We fully support the input from all interested parties including governmental agencies, but we insist that the voice of the people who hold title to the land be foremost considered. If lakefront property owners are doing wrong, show them they are doing wrong do not ignore them, let them participate in finding solutions.

Sincerely

Board of Directors
North West Property Owners Alliance
www.nwpoa.org