
SUBSTITUTE SENATE BILL 6543

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser, Haugen and Swecker)

Read first time 02/02/96.

1 AN ACT Relating to making technical corrections to the omnibus 1995
2 legislation that integrates growth management planning and
3 environmental review, and conforming the terminology and provisions of
4 subdivision, zoning, and other laws to the provisions of such
5 legislation; amending RCW 36.70.810, 36.70.830, 36.70.860, 36.70.880,
6 36.70.890, 36.70B.020, 36.70B.050, 36.70B.060, 36.70B.090, 36.70B.110,
7 36.70B.130, 36.70B.150, 36.70B.170, 36.70B.180, 36.70B.200, 36.70B.210,
8 36.70C.040, 36.70C.090, 36.70C.120, 43.21C.075, 58.17.090, 58.17.095,
9 58.17.100, 58.17.140, 58.17.140, 90.58.140, 90.60.020, and 90.60.040;
10 providing an effective date; providing an expiration date; and
11 declaring an emergency.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

13 **Sec. 1.** RCW 36.70.810 and 1963 c 4 s 36.70.810 are each amended to
14 read as follows:

15 The board of adjustment, subject to chapter 36.70B RCW and to
16 appropriate conditions and safeguards as provided by the zoning
17 ordinance or the ordinance establishing the board of adjustment, if
18 there be such, (~~shall~~) may hear and decide:

1 (1) Applications for conditional uses or other permits when the
2 zoning ordinance sets forth the specific uses to be made subject to
3 conditional use permits and establishes criteria for determining the
4 conditions to be imposed;

5 (2) Application for variances from the terms of the zoning
6 ordinance: PROVIDED, That any variance granted shall be subject to
7 such conditions as will assure that the adjustment thereby authorized
8 shall not constitute a grant of special privilege inconsistent with the
9 limitations upon other properties in the vicinity and zone in which
10 subject property is situated, and that the following circumstances are
11 found to apply;

12 (a) because of special circumstances applicable to subject
13 property, including size, shape, topography, location or surroundings,
14 the strict application of the zoning ordinance is found to deprive
15 subject property of rights and privileges enjoyed by other properties
16 in the vicinity and under identical zone classification;

17 (b) that the granting of the variance will not be materially
18 detrimental to the public welfare or injurious to the property or
19 improvements in the vicinity and zone in which subject property is
20 situated.

21 (3) Appeals, where it is alleged by the applicant that there is
22 error in any order, requirement, permit, decision, or determination
23 made by an administrative official in the administration or enforcement
24 of this chapter or any ordinance adopted pursuant to it.

25 **Sec. 2.** RCW 36.70.830 and 1963 c 4 s 36.70.830 are each amended to
26 read as follows:

27 Except as otherwise provided in chapter 36.70B RCW, appeals may be
28 taken to the board of adjustment by any person aggrieved, or by any
29 officer, department, board or bureau of the county affected by any
30 decision of an administrative official. Such appeals shall be filed in
31 writing in duplicate with the board of adjustment within (~~twenty~~)
32 fourteen days of the date of the action being appealed.

33 **Sec. 3.** RCW 36.70.860 and 1963 c 4 s 36.70.860 are each amended to
34 read as follows:

35 In exercising the powers granted by RCW 36.70.810 and 36.70.820,
36 the board of adjustment may, in conformity with this chapter and
37 chapter 36.70B RCW, reverse or affirm, wholly or in part, or may modify

1 the order, requirement, decision or determination appealed from, and
2 may make such order, requirement, decision or determination as should
3 be made and, to that end, shall have all the powers of the officer from
4 whom the appeal is taken, insofar as the decision on the particular
5 issue is concerned.

6 **Sec. 4.** RCW 36.70.880 and 1963 c 4 s 36.70.880 are each amended to
7 read as follows:

8 Except as otherwise provided in chapter 36.70B RCW, the action by
9 the zoning adjustor on all matters coming before him shall be final and
10 conclusive unless within ((ten)) fourteen days after the zoning
11 adjustor has made his order, requirement, decision or determination, an
12 appeal in writing is filed with the board of adjustment. Such an
13 appeal may be taken by the original applicant, or by opponents of
14 record in the case.

15 **Sec. 5.** RCW 36.70.890 and 1963 c 4 s 36.70.890 are each amended to
16 read as follows:

17 The action by the board of adjustment on an application for a
18 conditional use permit or a variance, or on an appeal from the decision
19 of the zoning adjustor or an administrative officer shall be final and
20 conclusive unless ((within ten days from the date of said action the
21 original applicant or an adverse party makes application to a court of
22 competent jurisdiction for a writ of certiorari, a writ of prohibition
23 or a writ of mandamus)) a land use petition is filed with superior
24 court as provided in chapter 36.70C RCW.

25 **Sec. 6.** RCW 36.70B.020 and 1995 c 347 s 402 are each amended to
26 read as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Closed record appeal" means an administrative appeal ((on the
30 record)) of a decision or recommendation on a project permit
31 application to a local government body or officer, including the local
32 legislative body, ((following)) or a decision by the body or officer,
33 that:

34 (a) Follows an open record hearing ((on a project permit
35 application when the appeal)) that resulted in the decision or
36 recommendation; and

1 (b) Is on the record with no or limited new evidence or information
2 allowed to be submitted and only appeal argument allowed.

3 A closed record appeal following an open record hearing and a
4 recommendation by a hearing body or officer shall be known as a "closed
5 record predecision appeal." A closed record appeal following an open
6 record hearing and a decision by a local government's hearing body or
7 officer shall be known as a "closed record postdecision appeal."

8 (2) "Local government" means a county, city, or town.

9 (3) "Open record hearing" means a hearing, conducted by a single
10 hearing body or officer authorized by the local government to conduct
11 such hearings, that creates the local government's record through
12 testimony and submission of evidence and information, under procedures
13 prescribed by the local government by ordinance or resolution. An open
14 record hearing may be held prior to a local government's decision on a
15 project permit to be known as an "open record predecision hearing." An
16 open record hearing may be held on an appeal, to be known as an "open
17 record appeal hearing," if no open record predecision hearing has been
18 held on the project permit.

19 (4) "Project permit" or "project permit application" means any land
20 use or environmental permit or license required from a local government
21 for a project action, including but not limited to building permits,
22 subdivisions, binding site plans, planned unit developments,
23 conditional uses, shoreline substantial development permits, site plan
24 review, permits or approvals required by critical area ordinances,
25 site-specific rezones authorized by a comprehensive plan or subarea
26 plan, but excluding the adoption or amendment of a comprehensive plan,
27 subarea plan, or development regulations except as otherwise
28 specifically included in this subsection.

29 (5) "Public meeting" means an informal meeting, a public hearing,
30 workshop, or other public gathering of people to obtain comments from
31 the public or other agencies on a proposed project permit prior to the
32 local government s decision. A public meeting may include, but is not
33 limited to, a design review or architectural control board meeting, a
34 special review district or community council meeting, or a scoping
35 meeting or a public hearing to accept comments on a draft environmental
36 impact statement. A public meeting does not include an open record
37 hearing. The proceedings at a public meeting may be recorded and a
38 report or recommendation may be included in the local government s
39 project permit application file.

1 **Sec. 7.** RCW 36.70B.050 and 1995 c 347 s 406 are each amended to
2 read as follows:

3 Not later than (~~March 31~~) April 1, 1996, each local government
4 shall provide by ordinance or resolution for review of project permit
5 applications to achieve the following objectives:

6 (1) Combine the environmental review process, both procedural and
7 substantive, with the procedure for review of project permits; and

8 (2) Except for the appeal of a determination of significance as
9 provided in RCW 43.21C.075, provide for no more than one open record
10 hearing and one closed record appeal.

11 **Sec. 8.** RCW 36.70B.060 and 1995 c 347 s 407 are each amended to
12 read as follows:

13 Not later than (~~March 31~~) April 1, 1996, each local government
14 planning under RCW 36.70A.040 shall establish by ordinance or
15 resolution an integrated and consolidated project permit process that
16 may be included in its development regulations. In addition to the
17 elements required by RCW 36.70B.050, the process shall include the
18 following elements:

19 (1) A determination of completeness to the applicant as required by
20 RCW 36.70B.070;

21 (2) A notice of application to the public and agencies with
22 jurisdiction as required by RCW 36.70B.110;

23 (3) Except as provided in RCW 36.70B.140, an optional consolidated
24 project permit review process as provided in RCW 36.70B.120. The
25 review process shall provide for no more than one consolidated open
26 record hearing and one closed record appeal. If an open record
27 predecision hearing is provided prior to the decision on a project
28 permit, the process shall not allow a subsequent open record appeal
29 hearing;

30 (4) Provision allowing for any public meeting or required open
31 record hearing to be combined with any public meeting or open record
32 hearing that may be held on the project by another local, state,
33 regional, federal, or other agency, in accordance with provisions of
34 RCW 36.70B.090 and 36.70B.110;

35 (5) A single report stating all the decisions made as of the date
36 of the report on all project permits included in the consolidated
37 permit process (~~that do not require an open record predecision hearing~~
38 ~~and any recommendations on project permits that do not require an open~~

1 ~~record predecision hearing~~) as required by RCW 36.70B.130. The report
2 shall state any mitigation required or proposed under the development
3 regulations or the agency's authority under RCW 43.21C.060. The report
4 may be the local permit. If a threshold determination (~~other than a~~
5 ~~determination of significance has not been issued previously by the~~
6 ~~local government~~) is required under chapter 43.21C RCW, the report
7 shall include or append this determination;

8 (6)(a) A local government need not provide for the appeal of a SEPA
9 procedural or substantive determination under chapter 43.21C RCW or of
10 a project permit decision. Except for the appeal of a determination of
11 significance as provided in RCW 43.21C.075, if a local government
12 elects to provide an appeal of its (~~threshold determinations or~~) SEPA
13 procedural or substantive determination under chapter 43.21C RCW or of
14 its project permit decisions, the local government shall provide for no
15 more than one consolidated open record appeal hearing (~~on such appeal.~~
16 ~~The~~)).

17 (b) Consistent with RCW 43.21C.075(3), a local government shall not
18 provide for a closed record appeal of a procedural determination under
19 chapter 43.21C RCW.

20 (c) A local government (~~need not provide for any further appeal~~
21 ~~and~~) may provide an appeal for some but not all project permit
22 decisions. If an appeal is provided after the open record hearing, it
23 shall be a closed record appeal before a single decision-making body or
24 officer;

25 (7) A notice of decision as required by RCW 36.70B.130 and issued
26 within the time period provided in RCW 36.70B.080 and 36.70B.090;

27 (8) Completion of project review by the local government, including
28 environmental review and public review and any appeals to the local
29 government, within any applicable time periods under RCW 36.70B.090;
30 and

31 (9) Any other provisions not inconsistent with the requirements of
32 this chapter or chapter 43.21C RCW.

33 **Sec. 9.** RCW 36.70B.090 and 1995 c 347 s 413 are each amended to
34 read as follows:

35 (1) Except as otherwise provided in subsection (2) of this section,
36 a local government planning under RCW 36.70A.040 shall issue its notice
37 of final decision on a project permit application within one hundred
38 twenty days after the local government notifies the applicant that the

1 application is complete, as provided in RCW 36.70B.070. In determining
2 the number of days that have elapsed after the local government has
3 notified the applicant that the application is complete, the following
4 periods shall be excluded:

5 (a)(i) Any period during which the applicant has been requested by
6 the local government to correct plans, perform required studies, or
7 provide additional required information. The period shall be
8 calculated from the date the local government notifies the applicant of
9 the need for additional information until the earlier of the date the
10 local government determines whether the additional information
11 satisfies the request for information or fourteen days after the date
12 the information has been provided to the local government.

13 (ii) If the local government determines that the information
14 submitted by the applicant under (a)(i) of this subsection is
15 insufficient, it shall notify the applicant of the deficiencies and the
16 procedures under (a)(i) of this subsection shall apply as if a new
17 request for studies had been made;

18 (b) Following a determination of significance pursuant to chapter
19 43.21C RCW:

20 (i) Any period during which an environmental impact statement is
21 being prepared (~~following a determination of significance pursuant to~~
22 ~~chapter 43.21C RCW)), if the local government by ordinance or~~
23 ~~resolution has established time periods for completion of environmental~~
24 ~~impact statements, or if the local government and the applicant in~~
25 ~~writing agree to a time period for completion of an environmental~~
26 ~~impact statement; and~~

27 (ii) Any period during which the determination of significance is
28 on appeal before the local government or in court;

29 (c) Any period for administrative appeals of project permits, if an
30 open record appeal hearing or a closed record postdecision appeal, or
31 both, are allowed. The local government by ordinance or resolution
32 shall establish a time period to consider and decide such appeals. The
33 time period shall not exceed: (i) Ninety days for an open record
34 appeal hearing; and (ii) sixty days for a closed record postdecision
35 appeal. The parties to an appeal may agree to extend these time
36 periods; (~~and~~))

37 (d) Any period of time during which an applicant fails to post the
38 property, if required by the local government's notice of application
39 requirements; and

1 (e) Any extension of time mutually agreed upon by the applicant and
2 the local government.

3 (2) The time limits established by subsection (1) of this section
4 do not apply if a project permit application:

5 (a) Requires a rezone or an amendment to the comprehensive plan or
6 a development regulation;

7 (b) Requires approval of a new fully contained community as
8 provided in RCW 36.70A.350, a master planned resort as provided in RCW
9 36.70A.360, or the siting of an essential public facility as provided
10 in RCW 36.70A.200; or

11 (c) Is substantially revised by the applicant, in which case the
12 time period shall start from the date at which the revised project
13 application is determined to be complete under RCW 36.70B.070.

14 (3) If the local government is unable to issue its final decision
15 within the time limits provided for in this section, it shall provide
16 written notice of this fact to the project applicant. The notice shall
17 include a statement of reasons why the time limits have not been met
18 and an estimated date for issuance of the notice of final decision.

19 (4) This section shall apply to project permit applications filed
20 on or after April 1, 1996.

21 **Sec. 10.** RCW 36.70B.110 and 1995 c 347 s 415 are each amended to
22 read as follows:

23 (1) Not later than April 1, 1996, a local government planning under
24 RCW 36.70A.040 shall provide a notice of application to the public and
25 the departments and agencies with jurisdiction as provided in this
26 section. If a local government has made a determination of
27 significance under chapter 43.21C RCW concurrently with the notice of
28 application, the notice of application shall be combined with the
29 determination of significance and scoping notice. Nothing in this
30 section prevents a determination of significance and scoping notice
31 from being issued prior to the notice of application. Nothing in this
32 section prevents a lead agency from completing its review under chapter
33 43.21C RCW prior to the notice of application when the project decision
34 is made by the lead agency or other agency with jurisdiction prior to
35 applying for local permits.

36 (2) The notice of application shall be provided within fourteen
37 days after the determination of completeness as provided in RCW

1 36.70B.070 and include the following in whatever sequence or format the
2 local government deems appropriate:

3 (a) The date of application, the date of the notice of completion
4 for the application, and the date of the notice of application;

5 (b) A description of the proposed project action and a list of the
6 project permits included in the application and, if applicable, a list
7 of any studies requested under RCW 36.70B.070 or 36.70B.090;

8 (c) The identification of other permits not included in the
9 application to the extent known by the local government;

10 (d) The identification of existing environmental documents that
11 evaluate the proposed project, and, if not otherwise stated on the
12 document providing the notice of application, such as a city land use
13 bulletin, the location where the application and any studies can be
14 reviewed;

15 (e) A statement of the public comment period, which shall be not
16 less than fourteen nor more than thirty days following the date of
17 notice of application, and statements of the right of any person to
18 comment on the application, receive notice of and participate in any
19 hearings, request a copy of the decision once made, and any appeal
20 rights. A local government may accept public comments at any time
21 prior to the closing of the record of an open record predecision
22 hearing, if any, or, if no open record predecision hearing is provided,
23 prior to the decision on the project permit;

24 (f) The date, time, place, and type of hearing, if applicable and
25 scheduled at the date of notice of the application;

26 (g) A statement of the preliminary determination, if one has been
27 made at the time of notice, of those development regulations that will
28 be used for project mitigation and of consistency as provided in RCW
29 36.70B.040; and

30 (h) Any other information determined appropriate by the local
31 government.

32 (3) If an open record predecision hearing is required for the
33 requested project permits, the notice of application shall be provided
34 at least fifteen days prior to the open record hearing.

35 (4) A local government shall use reasonable methods to give the
36 notice of application to the public and agencies with jurisdiction and
37 may use its existing notice procedures. A local government may use
38 different types of notice for different categories of project permits
39 or types of project actions. If a local government by resolution or

1 ordinance does not specify its method of public notice, the local
2 government shall use the methods provided for in (a) and (b) of this
3 subsection. Examples of reasonable methods to inform the public are:

4 (a) Posting the property for site-specific proposals;

5 (b) Publishing notice, including at least the project location,
6 description, type of permit(s) required, comment period dates, and
7 location where the full notice of application and the complete
8 application may be reviewed, in the newspaper of general circulation in
9 the general area where the proposal is located or in a local land use
10 newsletter published by the local government;

11 (c) Notifying public or private groups with known interest in a
12 certain proposal or in the type of proposal being considered;

13 (d) Notifying the news media;

14 (e) Placing notices in appropriate regional or neighborhood
15 newspapers or trade journals;

16 (f) Publishing notice in agency newsletters or sending notice to
17 agency mailing lists, either general lists or lists for specific
18 proposals or subject areas; and

19 (g) Mailing to neighboring property owners.

20 (5) A notice of application shall not be required for project
21 permits that are categorically exempt under chapter 43.21C RCW, unless
22 a public comment period or an open record predecision hearing is
23 required.

24 (6) A local government shall integrate the permit procedures in
25 this section with environmental review under chapter 43.21C RCW as
26 follows:

27 (a) Except for a determination of significance, or prior review
28 under chapter 43.21C RCW by a lead agency, the local government may not
29 issue its threshold determination, or issue a decision or a
30 recommendation on a project permit until the expiration of the public
31 comment period on the notice of application.

32 (b) If an open record predecision hearing is required and the local
33 government's threshold determination requires public notice under
34 chapter 43.21C RCW, the local government shall issue its threshold
35 determination at least fifteen days prior to the open record
36 predecision hearing.

37 (c) Comments shall be as specific as possible.

38 (7) At the request of the applicant, a local government may combine
39 any hearing on a project permit with any hearing that may be held by

1 another local, state, regional, federal, or other agency (~~provided~~
2 ~~that~~)), if:

3 (a) The hearing is held within the geographic boundary of the local
4 government(~~(. Hearings shall be combined if requested by an applicant,~~
5 ~~as long as)~~); and

6 (b) The joint hearing can be held within the time periods specified
7 in RCW 36.70B.090 or the applicant agrees to the schedule in the event
8 that additional time is needed in order to combine the hearings. All
9 agencies of the state of Washington, including municipal corporations
10 and counties participating in a combined hearing, are hereby authorized
11 to issue joint hearing notices and develop a joint format, select a
12 mutually acceptable hearing body or officer, and take such other
13 actions as may be necessary to hold joint hearings consistent with each
14 of their respective statutory obligations.

15 (8) All state and local agencies shall cooperate to the fullest
16 extent possible with the local government in holding a joint hearing if
17 requested to do so, as long as:

18 (a) The agency is not expressly prohibited by statute from doing
19 so;

20 (b) Sufficient notice of the hearing is given to meet each of the
21 agencies' adopted notice requirements as set forth in statute,
22 ordinance, or rule; and

23 (c) The agency has received the necessary information about the
24 proposed project from the applicant to hold its hearing at the same
25 time as the local government hearing.

26 (9) A local government is not required to provide for
27 administrative appeals. If provided, an administrative appeal of the
28 project decision, combined with any environmental determinations, shall
29 be filed within fourteen days after the notice of the decision or after
30 other notice that the decision has been made and is appealable. The
31 local government shall extend the appeal period for an additional seven
32 days, if state or local rules adopted pursuant to chapter 43.21C RCW
33 allow public comment on a determination of nonsignificance issued as
34 part of the appealable project permit decision.

35 (10) The applicant for a project permit is deemed to be a
36 participant in any comment period, open record hearing, or closed
37 record appeal.

1 (11) Each local government planning under RCW 36.70A.040 shall
2 adopt procedures for administrative interpretation of its development
3 regulations.

4 **Sec. 11.** RCW 36.70B.130 and 1995 c 347 s 417 are each amended to
5 read as follows:

6 A local government planning under RCW 36.70A.040 shall provide
7 ~~((a))~~ notice of its administrative decision ~~((that))~~ or recommendation
8 on a project permit. The notice shall also include~~((s))~~ a statement of
9 any threshold determination made under chapter 43.21C RCW and the
10 procedures for administrative appeal, if any. The notice of decision
11 may be a copy of the report or decision on the project permit
12 application. The notice shall be provided to the applicant and to any
13 person who, prior to the rendering of the decision, requested notice of
14 the decision or recommendation or submitted substantive comments on the
15 application. The local government shall also provide for public notice
16 of its decision ~~((as provided))~~ or recommendation by using one or more
17 of the methods listed in RCW 36.70B.110(4).

18 **Sec. 12.** RCW 36.70B.150 and 1995 c 347 s 419 are each amended to
19 read as follows:

20 A local government not planning under RCW 36.70A.040 may
21 incorporate some or all of the provisions of RCW 36.70B.060 through
22 ~~((36.70B.090 and 36.70B.110 through 36.70B.130))~~ 36.70B.140 into its
23 procedures for review of project permits or other project actions.

24 **Sec. 13.** RCW 36.70B.170 and 1995 c 347 s 502 are each amended to
25 read as follows:

26 (1) A local government may enter into a development agreement with
27 a person having ownership or control of real property within its
28 jurisdiction. A city may enter into a development agreement for real
29 property outside its boundaries as part of a proposed annexation or a
30 service agreement. A development agreement must set forth the
31 development standards and other provisions that shall apply to and
32 govern and vest the development, use, and mitigation of the development
33 of the real property for the duration specified in the agreement. A
34 development agreement shall be consistent with applicable development
35 regulations adopted by a local government planning under chapter 36.70A
36 RCW.

1 (2) RCW 36.70B.170 through (~~36.70B.190~~) 36.70B.210 and section
2 501, chapter 347, Laws of 1995 (~~do not~~) create authority that is in
3 addition to any other authority of a local government to enter into an
4 agreement with a person having ownership or control of real property.
5 Nothing in RCW 36.70B.170 through 36.70B.210 and section 501, chapter
6 347, Laws of 1995 shall apply to or affect the validity of a contract
7 rezone, concomitant agreement, annexation agreement, or other agreement
8 (in existence on July 23, 1995, or adopted under separate authority,)
9 that includes some or all of the development standards provided in
10 subsection (3) of this section.

11 (3) For the purposes of this section, "development standards"
12 includes, but is not limited to:

13 (a) Project elements such as permitted uses, residential densities,
14 and nonresidential densities and intensities or building sizes;

15 (b) The amount and payment of impact fees imposed or agreed to in
16 accordance with any applicable provisions of state law, any
17 reimbursement provisions, other financial contributions by the property
18 owner, inspection fees, or dedications;

19 (c) Mitigation measures, development conditions, and other
20 requirements under chapter 43.21C RCW;

21 (d) Design standards such as maximum heights, setbacks, drainage
22 and water quality requirements, landscaping, and other development
23 features;

24 (e) Affordable housing;

25 (f) Parks and open space preservation;

26 (g) Phasing;

27 (h) Review procedures and standards for implementing decisions;

28 (i) A build-out or vesting period for applicable standards; and

29 (j) Any other appropriate development requirement or procedure.

30 (4) The execution of a development agreement is a proper exercise
31 of county and city police power and contract authority. A development
32 agreement may obligate a party to fund or provide services,
33 infrastructure, or other facilities. A development agreement shall
34 reserve authority to impose new or different regulations to the extent
35 required by a serious threat to public health and safety.

36 (5) For purposes of RCW 36.70B.170 through 36.70B.210, "development
37 agreement" means an agreement authorized by RCW 36.70B.170 through
38 36.70B.210. A "development agreement" does not include an agreement

1 between the local government and the owner or person with control over
2 real property authorized by other provision of law.

3 **Sec. 14.** RCW 36.70B.180 and 1995 c 347 s 503 are each amended to
4 read as follows:

5 Unless amended or terminated as provided in the agreement, a
6 development agreement is enforceable during its term by a party to the
7 agreement. A development agreement and the development standards in
8 the agreement govern during the term of the agreement, or for all or
9 that part of the build-out period specified in the agreement, and may
10 not be subject to an amendment to a zoning ordinance or development
11 standard or regulation or a new zoning ordinance or development
12 standard or regulation adopted after the effective date of the
13 agreement. A permit or approval issued by the county or city after the
14 execution of the development agreement must be consistent with the
15 development agreement.

16 **Sec. 15.** RCW 36.70B.200 and 1995 c 347 s 505 are each amended to
17 read as follows:

18 A county or city shall ~~((only))~~ approve a development agreement
19 only by ordinance or resolution adopted after a public hearing. The
20 county or city legislative body or a planning commission, hearing
21 examiner, or other body designated by the legislative body to conduct
22 the public hearing may conduct the hearing. If the development
23 agreement relates to a project permit application, the provisions of
24 chapter 36.70C RCW shall apply to the appeal of the decision on the
25 development agreement.

26 **Sec. 16.** RCW 36.70B.210 and 1995 c 347 s 506 are each amended to
27 read as follows:

28 Nothing in RCW 36.70B.170 through 36.70B.200 and section 501,
29 chapter 347, Laws of 1995 is intended to authorize a local
30 government~~((s))~~ to impose impact fees, inspection fees, or dedications
31 or to require any other financial contributions or mitigation measures
32 except as expressly authorized by other applicable provisions of state
33 law. This section is not a limitation on the power of the parties to
34 a development agreement to contract with one another, and the parties
35 to a development agreement may provide in the agreement for financial

1 contributions or mitigation measures that the local government could
2 not require without agreement.

3 **Sec. 17.** RCW 36.70C.040 and 1995 c 347 s 705 are each amended to
4 read as follows:

5 (1) Proceedings for review under this chapter shall be commenced by
6 filing a land use petition in superior court.

7 (2) A land use petition is barred, and the court may not grant
8 review, unless the petition is timely filed with the court and timely
9 served on the following persons who shall be parties to the review of
10 the land use petition:

11 (a) The local jurisdiction, which for purposes of the petition
12 shall be the jurisdiction's corporate entity and not an individual
13 decision maker or department;

14 (b) ~~((Each of the following persons))~~ If the person is not the
15 petitioner(~~(+~~

16 ~~(i))~~), each person identified by name and address in the local
17 jurisdiction's written decision as an applicant for the permit or
18 approval at issue; ~~((and~~

19 ~~(ii))~~ (c) If the person is not the petitioner, each person
20 identified by name and address in the local jurisdiction's written
21 decision as an owner of the property at issue(~~(+)~~).

22 ~~((e))~~ If no person is identified in a written decision as
23 provided in (b) and (c) of this subsection, each person identified by
24 name and address as a taxpayer for the property at issue in the records
25 of the county assessor, based upon the description of the property in
26 the application; and

27 (d)(i) Except as provided in (d)(ii) of this subsection, each
28 person named in the written decision who filed an appeal to a local
29 jurisdiction quasi-judicial decision maker regarding the land use
30 decision at issue(~~(, unless the))~~).

31 (ii) The following persons need not be served to commence a
32 proceeding under this chapter:

33 (A) A person who has abandoned the appeal or ~~((the person's))~~ a
34 person whose claims were dismissed before the quasi-judicial decision
35 was rendered(~~(-))~~;

36 (B) A person(~~(s))~~ who later intervened or joined in the appeal
37 ~~((are not required to be made parties under this subsection.))~~;

1 (C) A person who provides the petitioner with an affidavit or
2 statement signed under penalty of perjury stating that person's
3 decision not to participate in judicial review of the land use decision
4 at issue. The petitioner shall attach a copy of the affidavit or
5 statement under penalty of perjury to the petition.

6 (3) The petition is timely if it is filed and served on all parties
7 listed in subsection (2) of this section within twenty-one days of the
8 issuance of the land use decision.

9 (4) For the purposes of this section, the date on which a land use
10 decision is issued is:

11 (a) Three days after a written decision is mailed by the local
12 jurisdiction or, if not mailed, the date on which the local
13 jurisdiction provides notice that a written decision is publicly
14 available;

15 (b) If the land use decision is made by ordinance or resolution by
16 a legislative body sitting in a quasi-judicial capacity, the date the
17 body passes the ordinance or resolution; or

18 (c) If neither (a) nor (b) of this subsection applies, the date the
19 decision is entered into the public record.

20 (5) Service on the local jurisdiction must be by delivery of a copy
21 of the petition to the persons identified by or pursuant to RCW
22 4.28.080 to receive service of process. Service on other parties must
23 be in accordance with the superior court civil rules or by first class
24 mail to:

25 (a) The address stated in the written decision of the local
26 jurisdiction for each person made a party under subsection (2)(b) of
27 this section;

28 (b) The address stated in the records of the county assessor for
29 each person made a party under subsection (2)(c) of this section; and

30 (c) The address stated in the appeal to the quasi-judicial decision
31 maker for each person made a party under subsection (2)(d) of this
32 section.

33 (6) Service by mail is effective on the date of mailing and proof
34 of service shall be by affidavit or declaration under penalty of
35 perjury.

36 **Sec. 18.** RCW 36.70C.090 and 1995 c 347 s 710 are each amended to
37 read as follows:

1 The court shall provide expedited review of petitions filed under
2 this chapter. The matter must be set for hearing and the hearing must
3 commence within sixty days of the date set for submitting the local
4 jurisdiction's record, absent a showing of good cause for a different
5 date or a stipulation of the parties.

6 **Sec. 19.** RCW 36.70C.120 and 1995 c 347 s 713 are each amended to
7 read as follows:

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

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

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

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

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

26 ((+3)) (2) For land use decisions other than those described in
27 subsection (1) of this section, the record for judicial review may be
28 supplemented by evidence of material facts that were not made part of
29 the local jurisdiction's record.

30 ((+4)) (3) The court may require or permit corrections of
31 ministerial errors or inadvertent omissions in the preparation of the
32 record.

33 ((+5)) (4) The parties may ((not)) conduct pretrial discovery
34 ((except)) only with the prior permission of the court, which may be
35 sought by motion at any time after service of the petition. The court
36 shall ((not)) grant permission ((unless)) for pretrial discovery only
37 if the party requesting it makes a prima facie showing of need. The
38 court shall strictly limit discovery to what is necessary for equitable

1 and timely review of the issues that are raised under subsections (1)
2 and (2) (~~and (3)~~) of this section.

3 (5) If the court allows the record to be supplemented under
4 subsection (1) of this section or a party intends to supplement the
5 record under subsection (2) of this section, the court shall require
6 the parties to disclose before the hearing or trial on the merits the
7 specific evidence they intend to offer. If any party, or anyone acting
8 on behalf of any party, requests records under chapter 42.17 RCW
9 relating to the matters at issue, a copy of the request shall
10 simultaneously be given to all other parties and the court shall take
11 such request into account in fashioning an equitable discovery order
12 under this section.

13 **Sec. 20.** RCW 43.21C.075 and 1995 c 347 s 204 are each amended to
14 read as follows:

15 (1) Because a major purpose of this chapter is to combine
16 environmental considerations with public decisions, any appeal brought
17 under this chapter shall be linked to a specific governmental action.
18 The State Environmental Policy Act provides a basis for challenging
19 whether governmental action is in compliance with the substantive and
20 procedural provisions of this chapter. The State Environmental Policy
21 Act is not intended to create a cause of action unrelated to a specific
22 governmental action.

23 (2) Unless otherwise provided by this section:

24 (a) Appeals under this chapter shall be of the governmental action
25 together with its accompanying environmental determinations.

26 (b) Appeals of environmental determinations made (or lacking) under
27 this chapter shall be commenced within the time required to appeal the
28 governmental action which is subject to environmental review.

29 (3) If an agency has a procedure for appeals of agency
30 environmental determinations made under this chapter, such procedure:

31 (a) Shall (~~not~~) allow no more than one agency appeal proceeding
32 on a procedural determination (the adequacy of a determination of
33 significance/nonsignificance or of a final environmental impact
34 statement). The appeal proceeding on a determination of significance
35 may occur before the agency's final decision on a proposed action. The
36 appeal proceeding on ((a)) any other procedural determination (~~of~~
37 ~~nonsignificance~~) may occur before the agency's final decision on a
38 proposed action only if:

1 (i) The appeal is heard at a proceeding where the hearing body or
2 officer will render a final recommendation or decision on the proposed
3 underlying governmental action;

4 (ii) The appeal is of a public project; or

5 (iii) The appeal is of a nonproject action.

6 Such appeals shall also be allowed for a determination of
7 significance/nonsignificance which may be issued by the agency after
8 supplemental review;

9 (b) Shall consolidate an appeal of procedural issues and of
10 substantive determinations made under this chapter (such as a decision
11 to require particular mitigation measures or to deny a proposal) with
12 a hearing or appeal on the underlying governmental action by providing
13 for a single simultaneous hearing before one hearing officer or body to
14 consider the agency decision on a proposal and any environmental
15 determinations made under this chapter, with the exception of the
16 appeal, if any, of a procedural determination (~~(of significance)~~) as
17 provided in (a) of this subsection or an appeal to the local
18 legislative authority under RCW 43.21C.060 or other applicable state
19 statutes;

20 (c) Shall provide for the preparation of a record for use in any
21 subsequent appeal proceedings, and shall provide for any subsequent
22 appeal proceedings to be conducted on the record, consistent with other
23 applicable law. An adequate record consists of findings and
24 conclusions, testimony under oath, and taped or written transcript. An
25 electronically recorded transcript will suffice for purposes of review
26 under this subsection; and

27 (d) Shall provide that procedural determinations made by the
28 responsible official shall be entitled to substantial weight.

29 (4) If a person aggrieved by an agency action has the right to
30 judicial appeal and if an agency has an administrative appeal
31 procedure, such person shall, prior to seeking any judicial review, use
32 such agency procedure if any such procedure is available, unless
33 expressly provided otherwise by state statute.

34 (5) Some statutes and ordinances contain time periods for
35 challenging governmental actions which are subject to review under this
36 chapter, such as various local land use approvals (the "underlying
37 governmental action"). RCW 43.21C.080 establishes an optional "notice
38 of action" procedure which, if used, imposes a time period for
39 appealing decisions under this chapter. This subsection does not

1 modify any such time periods. In this subsection, the term "appeal"
2 refers to a judicial appeal only.

3 (a) If there is a time period for appealing the underlying
4 governmental action, appeals under this chapter shall be commenced
5 within such time period. The agency shall give official notice stating
6 the date and place for commencing an appeal.

7 (b) If there is no time period for appealing the underlying
8 governmental action, and a notice of action under RCW 43.21C.080 is
9 used, appeals shall be commenced within the time period specified by
10 RCW 43.21C.080.

11 (6)(a) Judicial review under subsection (5) of this section of an
12 appeal decision made by an agency under subsection (3) of this section
13 shall be on the record, consistent with other applicable law.

14 (b) A taped or written transcript may be used. If a taped
15 transcript is to be reviewed, a record shall identify the location on
16 the taped transcript of testimony and evidence to be reviewed. Parties
17 are encouraged to designate only those portions of the testimony
18 necessary to present the issues raised on review, but if a party
19 alleges that a finding of fact is not supported by evidence, the party
20 should include in the record all evidence relevant to the disputed
21 finding. Any other party may designate additional portions of the
22 taped transcript relating to issues raised on review. A party may
23 provide a written transcript of portions of the testimony at the
24 party's own expense or apply to that court for an order requiring the
25 party seeking review to pay for additional portions of the written
26 transcript.

27 (c) Judicial review under this chapter shall without exception be
28 of the governmental action together with its accompanying environmental
29 determinations.

30 (7) Jurisdiction over the review of determinations under this
31 chapter in an appeal before an agency or superior court shall upon
32 consent of the parties be transferred in whole or part to the
33 shorelines hearings board. The shorelines hearings board shall hear
34 the matter and sign the final order expeditiously. The superior court
35 shall certify the final order of the shorelines hearings board and said
36 certified final order may only be appealed to an appellate court. In
37 the case of an appeal under this chapter regarding a project or other
38 matter that is also the subject of an appeal to the shorelines hearings
39 board under chapter 90.58 RCW, the shorelines hearings board shall have

1 sole jurisdiction over both the appeal under this section and the
2 appeal under chapter 90.58 RCW, shall consider them together, and shall
3 issue a final order within one hundred eighty days as provided in RCW
4 90.58.180.

5 (8) For purposes of this section and RCW 43.21C.080, the words
6 "action", "decision", and "determination" mean substantive agency
7 action including any accompanying procedural determinations under this
8 chapter (except where the word "action" means "appeal" in RCW
9 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080
10 does not mean a procedural determination by itself made under this
11 chapter. The word "determination" includes any environmental document
12 required by this chapter and state or local implementing rules. The
13 word "agency" refers to any state or local unit of government. Except
14 as provided in subsection (5) of this section, the word "appeal" refers
15 to administrative, legislative, or judicial appeals.

16 (9) The court in its discretion may award reasonable attorney's
17 fees of up to one thousand dollars in the aggregate to the prevailing
18 party, including a governmental agency, on issues arising out of this
19 chapter if the court makes specific findings that the legal position of
20 a party is frivolous and without reasonable basis.

21 **Sec. 21.** RCW 58.17.090 and 1995 c 347 s 426 are each amended to
22 read as follows:

23 (1) (~~Upon~~) Following receipt of an application for preliminary
24 plat approval the administrative officer charged by ordinance with
25 responsibility for administration of regulations pertaining to platting
26 and subdivisions shall provide public notice and set a date for ((a
27 public)) an open record hearing. Except as provided in RCW 36.70B.110,
28 at a minimum, notice of the open record hearing shall be given in the
29 following manner:

30 (a) Notice shall be published not less than ten days prior to the
31 open record hearing in a newspaper of general circulation within the
32 county and a newspaper of general circulation in the area where the
33 real property which is proposed to be subdivided is located; and

34 (b) Special notice of the open record hearing shall be given to
35 adjacent landowners by any other reasonable method local authorities
36 deem necessary. Adjacent landowners are the owners of real property,
37 as shown by the records of the county assessor, located within three
38 hundred feet of any portion of the boundary of the proposed

1 subdivision. If the owner of the real property which is proposed to be
2 subdivided owns another parcel or parcels of real property which lie
3 adjacent to the real property proposed to be subdivided, notice under
4 this subsection (1)(b) shall be given to owners of real property
5 located within three hundred feet of any portion of the boundaries of
6 such adjacently located parcels of real property owned by the owner of
7 the real property proposed to be subdivided.

8 (2) All open record hearings shall be public. All open record
9 hearing notices shall include a description of the location of the
10 proposed subdivision. The description may be in the form of either a
11 vicinity location sketch or a written description other than a legal
12 description.

13 **Sec. 22.** RCW 58.17.095 and 1986 c 233 s 1 are each amended to read
14 as follows:

15 (1) A county, city, or town may adopt an ordinance providing for
16 the administrative review of a preliminary plat without ~~((a public))~~ an
17 open record hearing by adopting an ordinance providing for such
18 administrative review. The ordinance may specify a threshold number of
19 lots in a subdivision above which ~~((a public))~~ an open record hearing
20 must be held, and may specify other factors which necessitate the
21 holding of a public hearing.

22 (2) The administrative review process shall include the following
23 minimum conditions:

24 ~~((1))~~ (a) Except as otherwise provided in this subsection, the
25 notice requirements of RCW 36.70B.110 and 58.17.090 shall be
26 followed~~((, except that the))~~.

27 (b) In a county, city, or town not planning under RCW 36.70A.040:

28 (i) Publication shall be made within ten days of the filing of the
29 application~~((— Additionally,))~~; and

30 (ii) At least ten days after the filing of the application notice
31 both shall be:

32 ~~((a))~~ (A) Posted on or around the land proposed to be subdivided
33 in at least five conspicuous places designed to attract public
34 awareness of the proposal; and

35 ~~((b))~~ (B) Mailed to the owner of each lot or parcel of property
36 located within at least three hundred feet of the site. The applicant
37 shall provide the county, city, or town with a list of such property
38 owners and their addresses.

1 (c) The notice shall include notification that no public hearing
2 will be held on the application, except as provided by this section.
3 The notice shall set out the procedures and time limitations for
4 persons to require ~~((a-public))~~ an open record hearing and make
5 comments.

6 ~~((+2))~~ (3) Any person shall have a period of twenty days from the
7 date of the notice to comment upon the proposed preliminary plat or a
8 period of not less than fourteen nor more than thirty days for a city,
9 county, or town planning under RCW 36.70A.040. All comments received
10 shall be provided to the applicant. The applicant has seven days from
11 receipt of the comments to respond thereto.

12 ~~((+3) A-public)~~ (4) An open record hearing on the proposed
13 subdivision shall be held if any person files a request for a hearing
14 with the county, city, or town within twenty-one days of the publishing
15 of such notice. If ~~((such-a))~~ an open record hearing is requested,
16 notice requirements for the ~~((public))~~ hearing shall be in conformance
17 with RCW 58.17.090, and the ~~((ninety-day))~~ period for approval or
18 disapproval of the proposed subdivision provided for in RCW 58.17.140
19 shall commence with the date of the filing of the request for ~~((a~~
20 ~~public))~~ an open record hearing. Any hearing ordered under this
21 subsection shall be conducted by the planning commission or hearings
22 officer as required by county or city ordinance.

23 ~~((+4))~~ (5) On its own initiative within twenty-one days of the
24 filing of the request for approval of the subdivision, the governing
25 body, or a designated employee or official, of the county, city, or
26 town, shall be authorized to cause ~~((a-public))~~ an open record hearing
27 to be held on the proposed subdivision within ninety days of the filing
28 of the request for the subdivision.

29 ~~((+5))~~ (6) If the ~~((public))~~ open record hearing is waived as
30 provided in this section, the planning commission or planning agency
31 shall complete the review of the proposed preliminary plat and transmit
32 its recommendation to the legislative body as provided in RCW
33 58.17.100.

34 **Sec. 23.** RCW 58.17.100 and 1995 c 347 s 428 are each amended to
35 read as follows:

36 (1)(a) If a city, town or county has established a planning
37 commission or planning agency in accordance with state law or local
38 charter, such commission or agency shall review all preliminary plats

1 and make recommendations thereon to the city, town or county
2 legislative body to assure conformance of the proposed subdivision to
3 the general purposes of the comprehensive plan and to planning
4 standards and specifications as adopted by the city, town or county.
5 Except as provided in (b) of this subsection, reports of the planning
6 commission or agency shall be advisory only~~((:—PROVIDED, That))~~.

7 (b) The legislative body of the city, town or county may, by
8 ordinance, assign to such commission or agency, or any department
9 official or group of officials, such administrative functions, powers
10 and duties as may be appropriate, including the holding of open record
11 hearings, and recommendations for approval or disapproval of
12 preliminary plats of proposed subdivisions.

13 ~~((Such))~~ (2) A recommendation made pursuant to subsection (1) of
14 this section shall be submitted to the legislative body not later than
15 fourteen days following action by the hearing body. Upon receipt of
16 the recommendation on any preliminary plat the legislative body shall
17 at its next public meeting set the date for the~~((public meeting))
18 closed record appeal where it shall consider the recommendations of the
19 hearing body and may adopt or reject the recommendations of ~~((such))~~
20 the hearing body based on the record established at the~~((public)) open~~
21 record hearing. If, after considering the matter~~((at a public~~
22 meeting))~~ in a closed record appeal, the legislative body deems a
23 change in the planning commission's or planning agency's recommendation
24 approving or disapproving any preliminary plat is necessary, the
25 legislative body shall adopt its own recommendations and approve or
26 disapprove the preliminary plat.

27 (3) Every decision or recommendation made under this section shall
28 be in writing and shall include findings of fact and conclusions to
29 support the decision or recommendation.

30 (4) A record of all~~((public meetings and public hearings)) open~~
31 record hearings and closed record appeals shall be kept by the
32 appropriate city, town or county authority and shall be open to public
33 inspection.

34 (5) Sole authority~~((to approve final plats, and))~~ to adopt or
35 amend platting ordinances shall reside in the legislative bodies.

36 **Sec. 24.** RCW 58.17.140 and 1995 c 68 s 1 are each amended to read
37 as follows:

1 (1)(a) Except as provided in (b) of this subsection and subsection
2 (3) of this section, preliminary plats of any proposed subdivision and
3 dedication shall be approved, disapproved, or returned to the applicant
4 for modification or correction within ninety days from date of filing
5 thereof unless the applicant consents to an extension of such time
6 period or the ninety day limitation is extended to include up to
7 twenty-one days as specified under RCW 58.17.095(3)(~~PROVIDED,~~
8 That)).

9 (b) If an environmental impact statement is required as provided in
10 RCW 43.21C.030, the ninety day period shall not include the time spent
11 preparing and circulating the environmental impact statement by the
12 local government agency.

13 (2) Except as provided in subsection (3) of this section, final
14 plats and short plats shall be approved, disapproved, or returned to
15 the applicant within thirty days from the date of filing thereof,
16 unless the applicant consents to an extension of such time period.

17 (3) Subsections (1) and (2) of this section shall not apply to the
18 decision by a county, city, or town required to plan under RCW
19 36.70A.040 to approve, disapprove, or return a short plat if the
20 county, city, or town has established a permit review process pursuant
21 to RCW 36.70B.120.

22 (4) A final plat meeting all requirements of this chapter shall be
23 submitted to the legislative body of the city, town, or county for
24 approval within five years of the date of preliminary plat approval.
25 Nothing contained in this section shall act to prevent any city, town,
26 or county from adopting by ordinance procedures which would allow
27 extensions of time that may or may not contain additional or altered
28 conditions and requirements.

29 **Sec. 25.** RCW 58.17.140 and 1995 c 68 s 1 are each amended to read
30 as follows:

31 (1)(a) Except as provided in (b) of this subsection, preliminary
32 plats of any proposed subdivision and dedication shall be approved,
33 disapproved, or returned to the applicant for modification or
34 correction within ninety days from date of filing thereof unless the
35 applicant consents to an extension of such time period or the ninety
36 day limitation is extended to include up to twenty-one days as
37 specified under RCW 58.17.095(3)(~~PROVIDED, That)).~~

1 (b) If an environmental impact statement is required as provided in
2 RCW 43.21C.030, the ninety day period shall not include the time spent
3 preparing and circulating the environmental impact statement by the
4 local government agency.

5 (2) Final plats and short plats shall be approved, disapproved, or
6 returned to the applicant within thirty days from the date of filing
7 thereof, unless the applicant consents to an extension of such time
8 period.

9 (3) A final plat meeting all requirements of this chapter shall be
10 submitted to the legislative body of the city, town, or county for
11 approval within five years of the date of preliminary plat approval.
12 Nothing contained in this section shall act to prevent any city, town,
13 or county from adopting by ordinance procedures which would allow
14 extensions of time that may or may not contain additional or altered
15 conditions and requirements.

16 **Sec. 26.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
17 read as follows:

18 (1) A development shall not be undertaken on the shorelines of the
19 state unless it is consistent with the policy of this chapter and,
20 after adoption or approval, as appropriate, the applicable guidelines,
21 rules, or master program.

22 (2) A substantial development shall not be undertaken on shorelines
23 of the state without first obtaining a permit from the government
24 entity having administrative jurisdiction under this chapter.

25 A permit shall be granted:

26 (a) From June 1, 1971, until such time as an applicable master
27 program has become effective, only when the development proposed is
28 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their
29 adoption, the guidelines and rules of the department; and (iii) so far
30 as can be ascertained, the master program being developed for the area;

31 (b) After adoption or approval, as appropriate, by the department
32 of an applicable master program, only when the development proposed is
33 consistent with the applicable master program and this chapter.

34 (3) The local government shall establish a program, consistent with
35 rules adopted by the department, for the administration and enforcement
36 of the permit system provided in this section. The administration of
37 the system so established shall be performed exclusively by the local
38 government.

1 (4) Except as otherwise specifically provided in subsection (11) of
2 this section, the local government shall require notification of the
3 public of all applications for permits governed by any permit system
4 established pursuant to subsection (3) of this section by ensuring that
5 notice of the application is given by at least one of the following
6 methods:

7 (a) Mailing of the notice to the latest recorded real property
8 owners as shown by the records of the county assessor within at least
9 three hundred feet of the boundary of the property upon which the
10 substantial development is proposed;

11 (b) Posting of the notice in a conspicuous manner on the property
12 upon which the project is to be constructed; or

13 (c) Any other manner deemed appropriate by local authorities to
14 accomplish the objectives of reasonable notice to adjacent landowners
15 and the public.

16 The notices shall include a statement that any person desiring to
17 submit written comments concerning an application, or desiring to
18 receive notification of the final decision concerning an application as
19 expeditiously as possible after the issuance of the decision, may
20 submit the comments or requests for decisions to the local government
21 within thirty days of the (~~last~~) date the notice of application is
22 (~~to be published~~) issued pursuant to this subsection. The local
23 government shall forward, in a timely manner following the issuance of
24 a decision, a copy of the decision to each person who submits a request
25 for the decision.

26 If a hearing is to be held on an application, notices of such a
27 hearing shall include a statement that any person may submit oral or
28 written comments on an application at the hearing.

29 (5) The system shall include provisions to assure that construction
30 pursuant to a permit will not begin or be authorized until twenty-one
31 days from the date the permit decision was filed as provided in
32 subsection (6) of this section; or until all review proceedings are
33 terminated if the proceedings were initiated within twenty-one days
34 from the date of filing as defined in subsection (6) of this section
35 except as follows:

36 (a) In the case of any permit issued to the state of Washington,
37 department of transportation, for the construction and modification of
38 SR 90 (I-90) on or adjacent to Lake Washington, the construction may

1 begin after thirty days from the date of filing, and the permits are
2 valid until December 31, 1995;

3 (b) Construction may be commenced no sooner than thirty days after
4 the date of the appeal of the board's decision is filed if a permit is
5 granted by the local government and (i) the granting of the permit is
6 appealed to the shorelines hearings board within twenty-one days of the
7 date of filing, (ii) the hearings board approves the granting of the
8 permit by the local government or approves a portion of the substantial
9 development for which the local government issued the permit, and (iii)
10 an appeal for judicial review of the hearings board decision is filed
11 pursuant to chapter 34.05 RCW. The appellant may request, within ten
12 days of the filing of the appeal with the court, a hearing before the
13 court to determine whether construction pursuant to the permit approved
14 by the hearings board or to a revised permit issued pursuant to the
15 order of the hearings board should not commence. If, at the conclusion
16 of the hearing, the court finds that construction pursuant to such a
17 permit would involve a significant, irreversible damaging of the
18 environment, the court shall prohibit the permittee from commencing the
19 construction pursuant to the approved or revised permit until all
20 review proceedings are final. Construction pursuant to a permit
21 revised at the direction of the hearings board may begin only on that
22 portion of the substantial development for which the local government
23 had originally issued the permit, and construction pursuant to such a
24 revised permit on other portions of the substantial development may not
25 begin until after all review proceedings are terminated. In such a
26 hearing before the court, the burden of proving whether the
27 construction may involve significant irreversible damage to the
28 environment and demonstrating whether such construction would or would
29 not be appropriate is on the appellant;

30 (c) If the permit is for a substantial development meeting the
31 requirements of subsection (11) of this section, construction pursuant
32 to that permit may not begin or be authorized until twenty-one days
33 from the date the permit decision was filed as provided in subsection
34 (6) of this section.

35 If a permittee begins construction pursuant to subsections (a),
36 (b), or (c) of this subsection, the construction is begun at the
37 permittee's own risk. If, as a result of judicial review, the courts
38 order the removal of any portion of the construction or the restoration
39 of any portion of the environment involved or require the alteration of

1 any portion of a substantial development constructed pursuant to a
2 permit, the permittee is barred from recovering damages or costs
3 involved in adhering to such requirements from the local government
4 that granted the permit, the hearings board, or any appellant or
5 intervener.

6 (6) Any decision on an application for a permit under the authority
7 of this section, whether it is an approval or a denial, shall,
8 concurrently with the transmittal of the ruling to the applicant, be
9 filed with the department and the attorney general. With regard to a
10 permit other than a permit governed by subsection (10) of this section,
11 "date of filing" as used herein means the date of actual receipt by the
12 department. With regard to a permit for a variance or a conditional
13 use, "date of filing" means the date a decision of the department
14 rendered on the permit pursuant to subsection (10) of this section is
15 transmitted by the department to the local government. The department
16 shall notify in writing the local government and the applicant of the
17 date of filing.

18 (7) Applicants for permits under this section have the burden of
19 proving that a proposed substantial development is consistent with the
20 criteria that must be met before a permit is granted. In any review of
21 the granting or denial of an application for a permit as provided in
22 RCW 90.58.180 (1) and (2), the person requesting the review has the
23 burden of proof.

24 (8) Any permit may, after a hearing with adequate notice to the
25 permittee and the public, be rescinded by the issuing authority upon
26 the finding that a permittee has not complied with conditions of a
27 permit. If the department is of the opinion that noncompliance exists,
28 the department shall provide written notice to the local government and
29 the permittee. If the department is of the opinion that the
30 noncompliance continues to exist thirty days after the date of the
31 notice, and the local government has taken no action to rescind the
32 permit, the department may petition the hearings board for a rescission
33 of the permit upon written notice of the petition to the local
34 government and the permittee if the request by the department is made
35 to the hearings board within fifteen days of the termination of the
36 thirty-day notice to the local government.

37 (9) The holder of a certification from the governor pursuant to
38 chapter 80.50 RCW shall not be required to obtain a permit under this
39 section.

1 (10) Any permit for a variance or a conditional use by local
2 government under approved master programs must be submitted to the
3 department for its approval or disapproval.

4 (11)(a) An application for a substantial development permit for a
5 limited utility extension or for the construction of a bulkhead or
6 other measures to protect a single family residence and its appurtenant
7 structures from shoreline erosion shall be subject to the following
8 procedures:

9 (i) The public comment period under subsection (4) of this section
10 shall be twenty days. The notice provided under subsection (4) of this
11 section shall state the manner in which the public may obtain a copy of
12 the local government decision on the application no later than two days
13 following its issuance;

14 (ii) The local government shall issue its decision to grant or deny
15 the permit within twenty-one days of the last day of the comment period
16 specified in (i) of this subsection; and

17 (iii) If there is an appeal of the decision to grant or deny the
18 permit to the local government legislative authority, the appeal shall
19 be finally determined by the legislative authority within thirty days.

20 (b) For purposes of this section, a limited utility extension means
21 the extension of a utility service that:

22 (i) Is categorically exempt under chapter 43.21C RCW for one or
23 more of the following: Natural gas, electricity, telephone, water, or
24 sewer;

25 (ii) Will serve an existing use in compliance with this chapter;
26 and

27 (iii) Will not extend more than twenty-five hundred linear feet
28 within the shorelines of the state.

29 **Sec. 27.** RCW 90.60.020 and 1995 c 347 s 602 are each amended to
30 read as follows:

31 Unless the context clearly requires otherwise, the definitions in
32 this section apply throughout this chapter.

33 (1) "Center" means the permit assistance center established in the
34 (~~commission~~ ~~[department]~~) department by RCW 90.60.030.

35 (2) "Coordinating permit agency" means the permit agency that has
36 the greatest overall jurisdiction over a project.

37 (3) "Department" means the department of ecology.

1 (4) "Participating permit agency" means a permit agency, other than
2 the coordinating permit agency, that is responsible for the issuance of
3 a permit for a project.

4 (5) "Permit" means any license, certificate, registration, permit,
5 or other form of authorization required by a permit agency to engage in
6 a particular activity.

7 (6) "Permit agency" means:

8 (a) The department of ecology, an air pollution control authority,
9 the department of natural resources, the department of fish and
10 wildlife, and the department of health; and

11 (b) Any other state or federal agency or county, city, or town that
12 participates at the request of the permit applicant and upon the
13 agency's agreement to be subject to this chapter.

14 (7) "Project" means an activity, the conduct of which requires
15 permits from one or more permit agencies.

16 **Sec. 28.** RCW 90.60.040 and 1995 c 347 s 604 are each amended to
17 read as follows:

18 (1) Not later than January 1, 1996, the center shall establish by
19 rule an administrative process for the designation of a coordinating
20 permit agency for a project.

21 (2) The administrative process shall consist of the establishment
22 of guidelines for designating the coordinating permit agency for a
23 project. If a permit agency is the lead agency for purposes of chapter
24 43.21C RCW, that permit agency shall either (a) be the coordinating
25 permit agency, or (b) request the center to designate another permit
26 agency as the coordinating permit agency. In other cases, the
27 guidelines shall require that at least the following factors be
28 considered in determining which permit agency has the greatest overall
29 jurisdiction over the project:

30 (a) The types of facilities or activities that make up the project;

31 (b) The types of public health and safety and environmental
32 concerns that should be considered in issuing permits for the project;

33 (c) The environmental medium that may be affected by the project,
34 the extent of those potential effects, and the environmental protection
35 measures that may be taken to prevent the occurrence of, or to
36 mitigate, those potential effects;

1 (d) The regulatory activity that is of greatest importance in
2 preventing or mitigating the effects that the project may have on
3 public health and safety or the environment; and

4 (e) The statutory and regulatory requirements that apply to the
5 project and the complexity of those requirements.

6 NEW SECTION. **Sec. 29.** (1) Except for section 25 of this act, this
7 act is necessary for the immediate preservation of the public peace,
8 health, or safety, or support of the state government and its existing
9 public institutions, and shall take effect immediately.

10 (2) Section 25 of this act shall take effect July 1, 1998.

11 NEW SECTION. **Sec. 30.** Sections 9 and 24 of this act shall expire
12 June 30, 1998.

--- END ---