
SENATE BILL 6543

State of Washington 54th Legislature 1996 Regular Session

By Senators Fraser, Haugen and Swecker

Read first time 01/17/96. Referred to Committee on Ecology & Parks.

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.130,
7 36.70B.150, 36.70B.170, 36.70B.180, 36.70B.200, 36.70B.210, 36.70C.040,
8 36.70C.080, 36.70C.090, 36.70C.120, 43.21C.031, 43.21C.075, 58.17.090,
9 58.17.095, 58.17.100, 58.17.140, 58.17.140, 90.58.140, 90.60.020, and
10 90.60.040; providing an effective date; providing an expiration date;
11 and 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. The report shall state any mitigation
2 required or proposed under the development regulations or the agency's
3 authority under RCW 43.21C.060. The report may be the local permit.
4 If a threshold determination (~~other than a determination of~~
5 ~~significance has not been issued previously by the local government~~)
6 is required under chapter 43.21C RCW, the report shall include or
7 append this determination;

8 (6)(a) A local government need not provide for the appeal of a
9 procedural or substantive decision under chapter 43.21C RCW or of a
10 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~~)
13 procedural or substantive decisions under chapter 43.21C RCW or of its
14 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) Any period during which an environmental impact statement is
19 being prepared following a determination of significance pursuant to
20 chapter 43.21C RCW, if the local government by ordinance or resolution
21 has established time periods for completion of environmental impact
22 statements, or if the local government and the applicant in writing
23 agree to a time period for completion of an environmental impact
24 statement;

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

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

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

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

1 (a) Requires a rezone or an amendment to the comprehensive plan or
2 a development regulation;

3 (b) Requires approval of a new fully contained community as
4 provided in RCW 36.70A.350, a master planned resort as provided in RCW
5 36.70A.360, or the siting of an essential public facility as provided
6 in RCW 36.70A.200; or

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

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

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

17 **Sec. 10.** RCW 36.70B.130 and 1995 c 347 s 417 are each amended to
18 read as follows:

19 A local government planning under RCW 36.70A.040 shall provide
20 ~~((a))~~ notice of its administrative decision ~~((that))~~ or recommendation
21 on a project permit. The notice shall also include~~((s))~~ a statement of
22 any threshold determination made under chapter 43.21C RCW and the
23 procedures for administrative appeal, if any. The notice of decision
24 may be a copy of the report or decision on the project permit
25 application. The notice shall be provided to the applicant and to any
26 person who, prior to the rendering of the decision, requested notice of
27 the decision or recommendation or submitted substantive comments on the
28 application. The local government shall also provide for public notice
29 of its decision ~~((as provided))~~ or recommendation by using one or more
30 of the methods listed in RCW 36.70B.110(4).

31 **Sec. 11.** RCW 36.70B.150 and 1995 c 347 s 419 are each amended to
32 read as follows:

33 A local government not planning under RCW 36.70A.040 may
34 incorporate some or all of the provisions of RCW 36.70B.060 through
35 ~~((36.70B.090 and 36.70B.110 through 36.70B.130))~~ 36.70B.140 into its
36 procedures for review of project permits or other project actions.

1 **Sec. 12.** RCW 36.70B.170 and 1995 c 347 s 502 are each amended to
2 read as follows:

3 (1) A local government may enter into a development agreement with
4 a person having ownership or control of real property within its
5 jurisdiction. A city may enter into a development agreement for real
6 property outside its boundaries as part of a proposed annexation or a
7 service agreement. A development agreement must set forth the
8 development standards and other provisions that shall apply to and
9 govern and vest the development, use, and mitigation of the development
10 of the real property for the duration specified in the agreement. A
11 development agreement shall be consistent with applicable development
12 regulations adopted by a local government planning under chapter 36.70A
13 RCW.

14 (2) RCW 36.70B.170 through (~~36.70B.190~~) 36.70B.210 and section
15 501, chapter 347, Laws of 1995 (~~do not~~) create authority that is in
16 addition to any other authority of a local government to enter into an
17 agreement with a person having ownership or control of real property.
18 Nothing in RCW 36.70B.170 through 36.70B.210 and section 501, chapter
19 347, Laws of 1995 shall apply to or affect the validity of a contract
20 rezone, concomitant agreement, annexation agreement, or other agreement
21 ((in existence on July 23, 1995, or adopted under separate authority,))
22 that includes some or all of the development standards provided in
23 subsection (3) of this section.

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

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

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

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

34 (d) Design standards such as maximum heights, setbacks, drainage
35 and water quality requirements, landscaping, and other development
36 features;

37 (e) Affordable housing;

38 (f) Parks and open space preservation;

39 (g) Phasing;

- 1 (h) Review procedures and standards for implementing decisions;
- 2 (i) A build-out or vesting period for applicable standards; and
- 3 (j) Any other appropriate development requirement or procedure.

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

10 (5) For purposes of RCW 36.70B.170 through 36.70B.210, "development
11 agreement" means an agreement authorized by RCW 36.70B.170 through
12 36.70B.210. A "development agreement" does not include an agreement
13 between the local government and the owner or person with control over
14 real property authorized by other provision of law.

15 **Sec. 13.** RCW 36.70B.180 and 1995 c 347 s 503 are each amended to
16 read as follows:

17 Unless amended or terminated as provided in the agreement, a
18 development agreement is enforceable during its term by a party to the
19 agreement. A development agreement and the development standards in
20 the agreement govern during the term of the agreement, or for all or
21 that part of the build-out period specified in the agreement, and may
22 not be subject to an amendment to a zoning ordinance or development
23 standard or regulation or a new zoning ordinance or development
24 standard or regulation adopted after the effective date of the
25 agreement. A permit or approval issued by the county or city after the
26 execution of the development agreement must be consistent with the
27 development agreement.

28 **Sec. 14.** RCW 36.70B.200 and 1995 c 347 s 505 are each amended to
29 read as follows:

30 A county or city shall (~~only~~) approve a development agreement
31 only by ordinance or resolution adopted after a public hearing. The
32 county or city legislative body or a planning commission, hearing
33 examiner, or other body designated by the legislative body to conduct
34 the public hearing may conduct the hearing. If the development
35 agreement relates to a project permit application, the provisions of
36 chapter 36.70C RCW shall apply to the appeal of the decision on the
37 development agreement.

1 **Sec. 15.** RCW 36.70B.210 and 1995 c 347 s 506 are each amended to
2 read as follows:

3 Nothing in RCW 36.70B.170 through 36.70B.200 and section 501,
4 chapter 347, Laws of 1995 is intended to authorize a local
5 government((s)) to impose impact fees, inspection fees, or dedications
6 or to require any other financial contributions or mitigation measures
7 except as expressly authorized by other applicable provisions of state
8 law. This section is not a limitation on the power of the parties to
9 a development agreement to contract with one another, and the parties
10 to a development agreement may provide in the agreement for financial
11 contributions or mitigation measures that the local government could
12 not require without agreement.

13 **Sec. 16.** RCW 36.70C.040 and 1995 c 347 s 705 are each amended to
14 read as follows:

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

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

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

24 (b) ~~((Each of the following persons))~~ If the person is not the
25 petitioner((+

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

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

32 ~~((+))~~ If no person is identified in a written decision as
33 provided in (b) and (c) of this subsection, each person identified by
34 name and address as a taxpayer for the property at issue in the records
35 of the county assessor, based upon the description of the property in
36 the application; and

37 (d)(i) Except as provided in (d)(ii) of this subsection, each
38 person named in the written decision who filed an appeal to a local

1 jurisdiction quasi-judicial decision maker regarding the land use
2 decision at issue(~~(, unless the)~~).

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

5 (A) A person who has abandoned the appeal or the person's claims
6 were dismissed before the quasi-judicial decision was rendered(~~(-)~~);

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

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

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

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

19 (a) Three days after a written decision is mailed by the local
20 jurisdiction or, if not mailed, the date on which the local
21 jurisdiction provides notice that a written decision is publicly
22 available;

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

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

28 (5) Service on the local jurisdiction must be by delivery of a copy
29 of the petition to the persons identified by or pursuant to RCW
30 4.28.080 to receive service of process. Service on other parties must
31 be in accordance with the superior court civil rules or by first class
32 mail to:

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

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

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

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

7 **Sec. 17.** RCW 36.70C.080 and 1995 c 347 s 709 are each amended to
8 read as follows:

9 (1) Within seven days after the petition is served on the parties
10 identified in RCW 36.70C.040(2), the petitioner shall note, according
11 to the local rules of superior court, an initial hearing on
12 jurisdictional and preliminary matters. This initial hearing shall be
13 set no sooner than thirty-five days and no later than fifty days after
14 the petition is served on the parties identified in RCW 36.70C.040(2).

15 (2) The parties shall note all motions on jurisdictional and
16 procedural issues for resolution at the initial hearing, except that a
17 motion to allow discovery may be brought sooner. Where confirmation of
18 motions is required, each party shall be responsible for confirming its
19 own motions.

20 (3) The defenses of lack of standing, untimely filing or service of
21 the petition, and failure to join persons needed for just adjudication
22 are waived if not raised by timely motion noted to be heard at the
23 initial hearing, unless the court allows discovery ~~((on))~~ that is
24 necessary for resolution of such issues.

25 (4) The petitioner shall move the court for an order at the initial
26 hearing that sets the date on which the record must be submitted, sets
27 a briefing schedule, sets a discovery schedule if discovery is to be
28 allowed, and sets a date for the hearing or trial on the merits.

29 (5) The parties may waive the initial hearing by scheduling with
30 the court a date for the hearing or trial on the merits and filing a
31 stipulated order that resolves the jurisdictional and procedural issues
32 raised by the petition, including the issues identified in subsections
33 (3) and (4) of this section.

34 (6) A party need not file an answer to the petition.

35 **Sec. 18.** RCW 36.70C.090 and 1995 c 347 s 710 are each amended to
36 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.031 and 1995 c 347 s 203 are each amended to
14 read as follows:

15 (1) An environmental impact statement (the detailed statement
16 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
17 legislation and other major actions having a probable significant,
18 adverse environmental impact. The environmental impact statement may
19 be combined with the recommendation or report on the proposal or issued
20 as a separate document. The substantive decisions or recommendations
21 shall be clearly identifiable in the combined document. Actions
22 categorically exempt under RCW 43.21C.110(1)(a) do not require
23 environmental review or the preparation of an environmental impact
24 statement under this chapter. In a county, city, or town planning
25 under RCW 36.70A.040, a planned action, as provided for in subsection
26 (2) of this section, does not require a threshold determination or the
27 preparation of an environmental impact statement under this chapter,
28 but is subject to environmental review and mitigation as provided in
29 this chapter.

30 An environmental impact statement is required to analyze only those
31 probable adverse environmental impacts which are significant.
32 Beneficial environmental impacts may be discussed. The responsible
33 official shall consult with agencies and the public to identify such
34 impacts and limit the scope of an environmental impact statement. The
35 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate
36 sections of an environmental impact statement. Discussions of
37 significant short-term and long-term environmental impacts, significant
38 irrevocable commitments of natural resources, significant alternatives

1 including mitigation measures, and significant environmental impacts
2 which cannot be mitigated should be consolidated or included, as
3 applicable, in those sections of an environmental impact statement
4 where the responsible official decides they logically belong.

5 (2)(a) For purposes of this section, a planned action means one or
6 more types of project action that:

7 (i) Are designated planned actions by an ordinance or resolution
8 adopted by a county, city, or town planning under RCW 36.70A.040;

9 (ii) Have had the significant impacts adequately addressed in an
10 environmental impact statement prepared in conjunction with (A) a
11 comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or
12 (B) a fully contained community, a master planned resort, a master
13 planned development, or a phased project;

14 (iii) Are subsequent or implementing projects for the proposals
15 listed in (a)(ii) of this subsection;

16 (iv) Are located within an urban growth area, as defined in RCW
17 36.70A.030;

18 (v) Are not essential public facilities, as defined in RCW
19 36.70A.200; and

20 (vi) Are consistent with a comprehensive plan adopted under chapter
21 36.70A RCW.

22 (b) A county, city, or town shall limit planned actions to certain
23 types of development or to specific geographical areas that are less
24 extensive than the jurisdictional boundaries of the county, city, or
25 town and may limit a planned action to a time period identified in the
26 environmental impact statement or the ordinance or resolution adopted
27 under this subsection.

28 (c) The determination by a county, city, or town under (a)(ii) of
29 this subsection that an environmental impact statement adequately
30 addresses significant environmental impacts of the planned action and
31 the implementing project actions that meet the criteria of (a)(iii)
32 through (vi) of this subsection shall be made as a part of the
33 ordinance or resolution designating the planned action and shall be
34 final unless appealed to superior court within twenty-one days after
35 the adoption of the ordinance or resolution.

36 **Sec. 21.** RCW 43.21C.075 and 1995 c 347 s 204 are each amended to
37 read as follows:

1 (1) Because a major purpose of this chapter is to combine
2 environmental considerations with public decisions, any appeal brought
3 under this chapter shall be linked to a specific governmental action.
4 The State Environmental Policy Act provides a basis for challenging
5 whether governmental action is in compliance with the substantive and
6 procedural provisions of this chapter. The State Environmental Policy
7 Act is not intended to create a cause of action unrelated to a specific
8 governmental action.

9 (2) Unless otherwise provided by this section:

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

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

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

17 (a) Shall (~~not~~) allow no more than one agency appeal proceeding
18 on a procedural determination (the adequacy of a determination of
19 significance/nonsignificance or of a final environmental impact
20 statement). The appeal proceeding on a determination of significance
21 or on the adequacy of a final environmental impact statement may occur
22 before the agency's final decision on a proposed action. The appeal
23 proceeding on a determination of nonsignificance may occur before the
24 agency's final decision on a proposed action only if:

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

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

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

30 Such appeals shall also be allowed for a determination of
31 significance/nonsignificance which may be issued by the agency after
32 supplemental review;

33 (b) Shall consolidate an appeal of procedural issues and of
34 substantive determinations made under this chapter (such as a decision
35 to require particular mitigation measures or to deny a proposal) with
36 a hearing or appeal on the underlying governmental action by providing
37 for a single simultaneous hearing before one hearing officer or body to
38 consider the agency decision on a proposal and any environmental
39 determinations made under this chapter, with the exception of the

1 appeal, if any, of a procedural determination (~~(of significance)~~) as
2 provided in (a) of this subsection or an appeal to the local
3 legislative authority under RCW 43.21C.060 or other applicable state
4 statutes;

5 (c) Shall provide for the preparation of a record for use in any
6 subsequent appeal proceedings, and shall provide for any subsequent
7 appeal proceedings to be conducted on the record, consistent with other
8 applicable law. An adequate record consists of findings and
9 conclusions, testimony under oath, and taped or written transcript. An
10 electronically recorded transcript will suffice for purposes of review
11 under this subsection; and

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

14 (4) If a person aggrieved by an agency action has the right to
15 judicial appeal and if an agency has an appeal procedure, such person
16 shall, prior to seeking any judicial review, use such agency procedure
17 if any such procedure is available, unless expressly provided otherwise
18 by state statute.

19 (5) Some statutes and ordinances contain time periods for
20 challenging governmental actions which are subject to review under this
21 chapter, such as various local land use approvals (the "underlying
22 governmental action"). RCW 43.21C.080 establishes an optional "notice
23 of action" procedure which, if used, imposes a time period for
24 appealing decisions under this chapter. This subsection does not
25 modify any such time periods. In this subsection, the term "appeal"
26 refers to a judicial appeal only.

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

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

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

38 (b) A taped or written transcript may be used. If a taped
39 transcript is to be reviewed, a record shall identify the location on

1 the taped transcript of testimony and evidence to be reviewed. Parties
2 are encouraged to designate only those portions of the testimony
3 necessary to present the issues raised on review, but if a party
4 alleges that a finding of fact is not supported by evidence, the party
5 should include in the record all evidence relevant to the disputed
6 finding. Any other party may designate additional portions of the
7 taped transcript relating to issues raised on review. A party may
8 provide a written transcript of portions of the testimony at the
9 party's own expense or apply to that court for an order requiring the
10 party seeking review to pay for additional portions of the written
11 transcript.

12 (c) Judicial review under this chapter shall without exception be
13 of the governmental action together with its accompanying environmental
14 determinations.

15 (7) Jurisdiction over the review of determinations under this
16 chapter in an appeal before an agency or superior court shall upon
17 consent of the parties be transferred in whole or part to the
18 shorelines hearings board. The shorelines hearings board shall hear
19 the matter and sign the final order expeditiously. The superior court
20 shall certify the final order of the shorelines hearings board and said
21 certified final order may only be appealed to an appellate court. In
22 the case of an appeal under this chapter regarding a project or other
23 matter that is also the subject of an appeal to the shorelines hearings
24 board under chapter 90.58 RCW, the shorelines hearings board shall have
25 sole jurisdiction over both the appeal under this section and the
26 appeal under chapter 90.58 RCW, shall consider them together, and shall
27 issue a final order within one hundred eighty days as provided in RCW
28 90.58.180.

29 (8) For purposes of this section and RCW 43.21C.080, the words
30 "action", "decision", and "determination" mean substantive agency
31 action including any accompanying procedural determinations under this
32 chapter (except where the word "action" means "appeal" in RCW
33 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080
34 does not mean a procedural determination by itself made under this
35 chapter. The word "determination" includes any environmental document
36 required by this chapter and state or local implementing rules. The
37 word "agency" refers to any state or local unit of government. Except
38 as provided in subsection (5) of this section, the word "appeal" refers
39 to administrative, legislative, or judicial appeals.

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

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

8 (1) (~~Open~~) Following receipt of an application for preliminary
9 plat approval the administrative officer charged by ordinance with
10 responsibility for administration of regulations pertaining to platting
11 and subdivisions shall provide public notice and set a date for ((a
12 public)) an open record hearing. Except as provided in RCW 36.70B.110,
13 at a minimum, notice of the open record hearing shall be given in the
14 following manner:

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

19 (b) Special notice of the open record hearing shall be given to
20 adjacent landowners by any other reasonable method local authorities
21 deem necessary. Adjacent landowners are the owners of real property,
22 as shown by the records of the county assessor, located within three
23 hundred feet of any portion of the boundary of the proposed
24 subdivision. If the owner of the real property which is proposed to be
25 subdivided owns another parcel or parcels of real property which lie
26 adjacent to the real property proposed to be subdivided, notice under
27 this subsection (1)(b) shall be given to owners of real property
28 located within three hundred feet of any portion of the boundaries of
29 such adjacently located parcels of real property owned by the owner of
30 the real property proposed to be subdivided.

31 (2) All open record hearings shall be public. All open record
32 hearing notices shall include a description of the location of the
33 proposed subdivision. The description may be in the form of either a
34 vicinity location sketch or a written description other than a legal
35 description.

36 **Sec. 23.** RCW 58.17.095 and 1986 c 233 s 1 are each amended to read
37 as follows:

1 (1) A county, city, or town may adopt an ordinance providing for
2 the administrative review of a preliminary plat without ~~((a public))~~ an
3 open record hearing by adopting an ordinance providing for such
4 administrative review. The ordinance may specify a threshold number of
5 lots in a subdivision above which ~~((a public))~~ an open record hearing
6 must be held, and may specify other factors which necessitate the
7 holding of a public hearing.

8 (2) The administrative review process shall include the following
9 minimum conditions:

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

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

14 (i) Publication shall be made within ten days of the filing of the
15 application~~((. Additionally,))~~; and

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

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

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

25 (c) The notice shall include notification that no public hearing
26 will be held on the application, except as provided by this section.
27 The notice shall set out the procedures and time limitations for
28 persons to require ~~((a public))~~ an open record hearing and make
29 comments.

30 ~~((2))~~ (3) Any person shall have a period of twenty days from the
31 date of the notice to comment upon the proposed preliminary plat. All
32 comments received shall be provided to the applicant. The applicant
33 has seven days from receipt of the comments to respond thereto.

34 ~~((3) A public))~~ (4) An open record hearing on the proposed
35 subdivision shall be held if any person files a request for a hearing
36 with the county, city, or town within twenty-one days of the publishing
37 of such notice. If ~~((such a))~~ an open record hearing is requested,
38 notice requirements for the ~~((public))~~ hearing shall be in conformance
39 with RCW 58.17.090, and the ~~((ninety-day))~~ period for approval or

1 disapproval of the proposed subdivision provided for in RCW 58.17.140
2 shall commence with the date of the filing of the request for ((a
3 public)) an open record hearing. Any hearing ordered under this
4 subsection shall be conducted by the planning commission or hearings
5 officer as required by county or city ordinance.

6 ((+4)) (5) On its own initiative within twenty-one days of the
7 filing of the request for approval of the subdivision, the governing
8 body, or a designated employee or official, of the county, city, or
9 town, shall be authorized to cause ((a public)) an open record hearing
10 to be held on the proposed subdivision within ninety days of the filing
11 of the request for the subdivision.

12 ((+5)) (6) If the ((public)) open record hearing is waived as
13 provided in this section, the planning commission or planning agency
14 shall complete the review of the proposed preliminary plat and transmit
15 its recommendation to the legislative body as provided in RCW
16 58.17.100.

17 **Sec. 24.** RCW 58.17.100 and 1995 c 347 s 428 are each amended to
18 read as follows:

19 (1)(a) If a city, town or county has established a planning
20 commission or planning agency in accordance with state law or local
21 charter, such commission or agency shall review all preliminary plats
22 and make recommendations thereon to the city, town or county
23 legislative body to assure conformance of the proposed subdivision to
24 the general purposes of the comprehensive plan and to planning
25 standards and specifications as adopted by the city, town or county.
26 Except as provided in (b) of this subsection, reports of the planning
27 commission or agency shall be advisory only((:—PROVIDED, That)).

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

34 ((Such)) (2) A recommendation made pursuant to subsection (1) of
35 this section shall be submitted to the legislative body not later than
36 fourteen days following action by the hearing body. Upon receipt of
37 the recommendation on any preliminary plat the legislative body shall
38 at its next public meeting set the date for the ((public meeting))

1 closed record appeal where it shall consider the recommendations of the
2 hearing body and may adopt or reject the recommendations of ~~((such))~~
3 the hearing body based on the record established at the ~~((public))~~ open
4 record hearing. If, after considering the matter ~~((at a public~~
5 ~~meeting))~~ in a closed record appeal, the legislative body deems a
6 change in the planning commission's or planning agency's recommendation
7 approving or disapproving any preliminary plat is necessary, the
8 legislative body shall adopt its own recommendations and approve or
9 disapprove the preliminary plat.

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

13 (4) A record of all ~~((public meetings and public hearings))~~ open
14 record hearings and closed record appeals shall be kept by the
15 appropriate city, town or county authority and shall be open to public
16 inspection.

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

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

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

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

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

37 (3) Subsections (1) and (2) of this section shall not apply to the
38 decision by a county, city, or town required to plan under RCW

1 36.70A.040 to approve, disapprove, or return a short plat if the
2 county, city, or town has established a permit review process pursuant
3 to RCW 36.70B.120.

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

11 **Sec. 26.** RCW 58.17.140 and 1995 c 68 s 1 are each amended to read
12 as follows:

13 (1)(a) Except as provided in (b) of this subsection, preliminary
14 plats of any proposed subdivision and dedication shall be approved,
15 disapproved, or returned to the applicant for modification or
16 correction within ninety days from date of filing thereof unless the
17 applicant consents to an extension of such time period or the ninety
18 day limitation is extended to include up to twenty-one days as
19 specified under RCW 58.17.095(3)((:—PROVIDED, That)).

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

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

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

35 **Sec. 27.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
36 read as follows:

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

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

8 A permit shall be granted:

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

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

17 (3) The local government shall establish a program, consistent with
18 rules adopted by the department, for the administration and enforcement
19 of the permit system provided in this section. The administration of
20 the system so established shall be performed exclusively by the local
21 government.

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

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

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

34 (c) Any other manner deemed appropriate by local authorities to
35 accomplish the objectives of reasonable notice to adjacent landowners
36 and the public.

37 The notices shall include a statement that any person desiring to
38 submit written comments concerning an application, or desiring to
39 receive notification of the final decision concerning an application as

1 expeditiously as possible after the issuance of the decision, may
2 submit the comments or requests for decisions to the local government
3 within thirty days of the (~~last~~) date the notice of application is
4 (~~to be published~~) issued pursuant to this subsection. The local
5 government shall forward, in a timely manner following the issuance of
6 a decision, a copy of the decision to each person who submits a request
7 for the decision.

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

11 (5) The system shall include provisions to assure that construction
12 pursuant to a permit will not begin or be authorized until twenty-one
13 days from the date the permit decision was filed as provided in
14 subsection (6) of this section; or until all review proceedings are
15 terminated if the proceedings were initiated within twenty-one days
16 from the date of filing as defined in subsection (6) of this section
17 except as follows:

18 (a) In the case of any permit issued to the state of Washington,
19 department of transportation, for the construction and modification of
20 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
21 begin after thirty days from the date of filing, and the permits are
22 valid until December 31, 1995;

23 (b) Construction may be commenced no sooner than thirty days after
24 the date of the appeal of the board's decision is filed if a permit is
25 granted by the local government and (i) the granting of the permit is
26 appealed to the shorelines hearings board within twenty-one days of the
27 date of filing, (ii) the hearings board approves the granting of the
28 permit by the local government or approves a portion of the substantial
29 development for which the local government issued the permit, and (iii)
30 an appeal for judicial review of the hearings board decision is filed
31 pursuant to chapter 34.05 RCW. The appellant may request, within ten
32 days of the filing of the appeal with the court, a hearing before the
33 court to determine whether construction pursuant to the permit approved
34 by the hearings board or to a revised permit issued pursuant to the
35 order of the hearings board should not commence. If, at the conclusion
36 of the hearing, the court finds that construction pursuant to such a
37 permit would involve a significant, irreversible damaging of the
38 environment, the court shall prohibit the permittee from commencing the
39 construction pursuant to the approved or revised permit until all

1 review proceedings are final. Construction pursuant to a permit
2 revised at the direction of the hearings board may begin only on that
3 portion of the substantial development for which the local government
4 had originally issued the permit, and construction pursuant to such a
5 revised permit on other portions of the substantial development may not
6 begin until after all review proceedings are terminated. In such a
7 hearing before the court, the burden of proving whether the
8 construction may involve significant irreversible damage to the
9 environment and demonstrating whether such construction would or would
10 not be appropriate is on the appellant;

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

16 If a permittee begins construction pursuant to subsections (a),
17 (b), or (c) of this subsection, the construction is begun at the
18 permittee's own risk. If, as a result of judicial review, the courts
19 order the removal of any portion of the construction or the restoration
20 of any portion of the environment involved or require the alteration of
21 any portion of a substantial development constructed pursuant to a
22 permit, the permittee is barred from recovering damages or costs
23 involved in adhering to such requirements from the local government
24 that granted the permit, the hearings board, or any appellant or
25 intervener.

26 (6) Any decision on an application for a permit under the authority
27 of this section, whether it is an approval or a denial, shall,
28 concurrently with the transmittal of the ruling to the applicant, be
29 filed with the department and the attorney general. With regard to a
30 permit other than a permit governed by subsection (10) of this section,
31 "date of filing" as used herein means the date of actual receipt by the
32 department. With regard to a permit for a variance or a conditional
33 use, "date of filing" means the date a decision of the department
34 rendered on the permit pursuant to subsection (10) of this section is
35 transmitted by the department to the local government. The department
36 shall notify in writing the local government and the applicant of the
37 date of filing.

38 (7) Applicants for permits under this section have the burden of
39 proving that a proposed substantial development is consistent with the

1 criteria that must be met before a permit is granted. In any review of
2 the granting or denial of an application for a permit as provided in
3 RCW 90.58.180 (1) and (2), the person requesting the review has the
4 burden of proof.

5 (8) Any permit may, after a hearing with adequate notice to the
6 permittee and the public, be rescinded by the issuing authority upon
7 the finding that a permittee has not complied with conditions of a
8 permit. If the department is of the opinion that noncompliance exists,
9 the department shall provide written notice to the local government and
10 the permittee. If the department is of the opinion that the
11 noncompliance continues to exist thirty days after the date of the
12 notice, and the local government has taken no action to rescind the
13 permit, the department may petition the hearings board for a rescission
14 of the permit upon written notice of the petition to the local
15 government and the permittee if the request by the department is made
16 to the hearings board within fifteen days of the termination of the
17 thirty-day notice to the local government.

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

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

24 (11)(a) An application for a substantial development permit for a
25 limited utility extension or for the construction of a bulkhead or
26 other measures to protect a single family residence and its appurtenant
27 structures from shoreline erosion shall be subject to the following
28 procedures:

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

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

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

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

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

6 (ii) Will serve an existing use in compliance with this chapter;
7 and

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

10 **Sec. 28.** RCW 90.60.020 and 1995 c 347 s 602 are each amended to
11 read as follows:

12 Unless the context clearly requires otherwise, the definitions in
13 this section apply throughout this chapter.

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

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

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

19 (4) "Participating permit agency" means a permit agency, other than
20 the coordinating permit agency, that is responsible for the issuance of
21 a permit for a project.

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

25 (6) "Permit agency" means:

26 (a) The department of ecology, an air pollution control authority,
27 the department of natural resources, the department of fish and
28 wildlife, and the department of health; and

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

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

34 **Sec. 29.** RCW 90.60.040 and 1995 c 347 s 604 are each amended to
35 read as follows:

36 (1) Not later than January 1, 1996, the center shall establish by

1 rule an administrative process for the designation of a coordinating
2 permit agency for a project.

3 (2) The administrative process shall consist of the establishment
4 of guidelines for designating the coordinating permit agency for a
5 project. If a permit agency is the lead agency for purposes of chapter
6 43.21C RCW, that permit agency shall either (a) be the coordinating
7 permit agency, or (b) request the center to designate another permit
8 agency as the coordinating permit agency. In other cases, the
9 guidelines shall require that at least the following factors be
10 considered in determining which permit agency has the greatest overall
11 jurisdiction over the project:

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

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

15 (c) The environmental medium that may be affected by the project,
16 the extent of those potential effects, and the environmental protection
17 measures that may be taken to prevent the occurrence of, or to
18 mitigate, those potential effects;

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

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

24 NEW SECTION. Sec. 30. (1) Except for section 26 of this act, this
25 act is necessary for the immediate preservation of the public peace,
26 health, or safety, or support of the state government and its existing
27 public institutions, and shall take effect immediately.

28 (2) Section 26 of this act shall take effect July 1, 1998.

29 NEW SECTION. Sec. 31. Sections 9 and 25 of this act shall expire
30 June 30, 1998.

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