

2 **SSB 6543** - H COMM AMD **ADOPTED 3-1-96**
3 By Committee on Government Operations

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 36.70.810 and 1963 c 4 s 36.70.810 are each amended
8 to read as follows:

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

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

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

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

29 (b) that the granting of the variance will not be materially
30 detrimental to the public welfare or injurious to the property or
31 improvements in the vicinity and zone in which subject property is
32 situated.

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

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

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

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

11 In exercising the powers granted by RCW 36.70.810 and 36.70.820,
12 the board of adjustment may, in conformity with this chapter and
13 chapter 36.70B RCW, reverse or affirm, wholly or in part, or may modify
14 the order, requirement, decision or determination appealed from, and
15 may make such order, requirement, decision or determination as should
16 be made and, to that end, shall have all the powers of the officer from
17 whom the appeal is taken, insofar as the decision on the particular
18 issue is concerned.

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

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

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

30 The action by the board of adjustment on an application for a
31 conditional use permit or a variance, or on an appeal from the decision
32 of the zoning adjustor or an administrative officer shall be final and
33 conclusive unless ~~((within ten days from the date of said action the~~
34 ~~original applicant or an adverse party makes application to a court of~~
35 ~~competent jurisdiction for a writ of certiorari, a writ of prohibition~~

1 ~~or a writ of mandamus))~~ a land use petition is filed with superior
2 court as provided in chapter 36.70C RCW.

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

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Closed record appeal" means an administrative appeal (~~on the~~
8 ~~record~~) of a decision or recommendation on a project permit
9 application to a local government body or officer, including the local
10 legislative body, (~~following~~) or a decision by the body or officer,
11 that:

12 (a) Follows an open record hearing (~~on a project permit~~
13 application when the appeal) that resulted in the decision or
14 recommendation; and

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

17 A closed record appeal following an open record hearing and a
18 recommendation by a hearing body or officer shall be known as a "closed
19 record predecision appeal." A closed record appeal following an open
20 record hearing and a decision by a local government's hearing body or
21 officer shall be known as a "closed record postdecision appeal."

22 (2) For purposes of RCW 36.70B.170 through 36.70B.210, "development
23 agreement" means an agreement authorized by RCW 36.70B.170 through
24 36.70B.210. A "development agreement" does not include an agreement
25 between the local government and the owner or person with control over
26 real property authorized by other provision of law.

27 (3) For purposes of RCW 36.70B.170 through 36.70B.210, "development
28 standards" includes, but is not limited to:

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

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

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

1 (d) Design standards such as maximum heights, setbacks, drainage
2 and water quality requirements, landscaping, and other development
3 features;

4 (e) Affordable housing;

5 (f) Parks and open space preservation;

6 (g) Phasing;

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

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

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

10 (4) "Local government" means a county, city, or town.

11 ~~((+3+))~~ (5) "Open record hearing" means a hearing, conducted by a
12 single hearing body or officer authorized by the local government to
13 conduct such hearings, that creates the local government's record
14 through testimony and submission of evidence and information, under
15 procedures prescribed by the local government by ordinance or
16 resolution. An open record hearing may be held prior to a local
17 government's decision on a project permit to be known as an "open
18 record predecision hearing." An open record hearing may be held on an
19 appeal, to be known as an "open record appeal hearing," if no open
20 record predecision hearing has been held on the project permit.

21 ~~((+4+))~~ (6) "Project permit" or "project permit application" means
22 any land use or environmental permit or license required from a local
23 government for a project action, including but not limited to building
24 permits, subdivisions, binding site plans, planned unit developments,
25 conditional uses, shoreline substantial development permits, site plan
26 review, permits or approvals required by critical area ordinances,
27 site-specific rezones authorized by a comprehensive plan or subarea
28 plan, but excluding the adoption or amendment of a comprehensive plan,
29 subarea plan, or development regulations except as otherwise
30 specifically included in this subsection.

31 ~~((+5+))~~ (7) "Public meeting" means an informal meeting, a public
32 hearing, workshop, or other public gathering of people to obtain
33 comments from the public or other agencies on a proposed project permit
34 prior to the local government's decision. A public meeting may
35 include, but is not limited to, a design review or architectural
36 control board meeting, a special review district or community council
37 meeting, or a scoping meeting or a public hearing to accept comments on
38 a draft environmental impact statement. A public meeting does not
39 include an open record hearing. The proceedings at a public meeting

1 may be recorded and a report or recommendation may be included in the
2 local government s project permit application file.

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

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

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

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

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

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

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

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

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

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

1 (5) A single report stating all the decisions made as of the date
2 of the report on all project permits included in the consolidated
3 permit process (~~((that do not require an open record predecision hearing
4 and any recommendations on project permits that do not require an open
5 record predecision hearing))~~) as required by RCW 36.70B.130. The report
6 shall state any mitigation required or proposed under the development
7 regulations or the agency's authority under RCW 43.21C.060. The report
8 may be the local permit. If a threshold determination (~~((other than a
9 determination of significance has not been issued previously by the
10 local government))~~) is required under chapter 43.21C RCW, the report
11 shall include or append this determination;

12 (6)(a) A local government need not provide for the appeal of a SEPA
13 procedural or substantive determination under chapter 43.21C RCW or of
14 a project permit decision. Except ((for the appeal of a determination
15 of significance as provided in RCW 43.21C.075)) as otherwise provided
16 under RCW 43.21C.075(3), if a local government elects to provide an
17 appeal of its (~~((threshold determinations or))~~) SEPA procedural or
18 substantive determination under chapter 43.21C RCW or of its project
19 permit decisions, the local government shall provide for no more than
20 one consolidated open record appeal hearing (~~((on such appeal. The))~~).

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

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

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

31 (8) Completion of project review by the local government, including
32 environmental review and public review and any appeals to the local
33 government, within any applicable time periods under RCW 36.70B.090;
34 and

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

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

1 (1) Except as otherwise provided in subsection (2) of this section,
2 a local government planning under RCW 36.70A.040 shall issue its notice
3 of final decision on a project permit application within one hundred
4 twenty days after the local government notifies the applicant that the
5 application is complete, as provided in RCW 36.70B.070. In determining
6 the number of days that have elapsed after the local government has
7 notified the applicant that the application is complete, the following
8 periods shall be excluded:

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

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

22 (b) Following a determination of significance pursuant to chapter
23 43.21C RCW:

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

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

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

1 appeal. The parties to an appeal may agree to extend these time
2 periods; (~~and~~)

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

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

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

10 (a) Requires a rezone or an amendment to the comprehensive plan or
11 a development regulation;

12 (b) Requires approval of a new fully contained community as
13 provided in RCW 36.70A.350, a master planned resort as provided in RCW
14 36.70A.360, or the siting of an essential public facility as provided
15 in RCW 36.70A.200; or

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

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

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

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

28 (1) Not later than April 1, 1996, a local government planning under
29 RCW 36.70A.040 shall provide a notice of application to the public and
30 the departments and agencies with jurisdiction as provided in this
31 section. If a local government has made a determination of
32 significance under chapter 43.21C RCW concurrently with the notice of
33 application, the notice of application shall be combined with the
34 determination of significance and scoping notice. Nothing in this
35 section prevents a determination of significance and scoping notice
36 from being issued prior to the notice of application. Nothing in this
37 section prevents a lead agency from completing its review under chapter
38 43.21C RCW prior to the notice of application when the project decision

1 is made by the lead agency or other agency with jurisdiction prior to
2 applying for local permits.

3 (2) The notice of application shall be provided within fourteen
4 days after the determination of completeness as provided in RCW
5 36.70B.070 and include the following in whatever sequence or format the
6 local government deems appropriate:

7 (a) The date of application, the date of the notice of completion
8 for the application, and the date of the notice of application;

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

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

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

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

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

30 (g) A statement of the preliminary determination, if one has been
31 made at the time of notice, of those development regulations that will
32 be used for project mitigation and of consistency as provided in RCW
33 36.70B.040; and

34 (h) Any other information determined appropriate by the local
35 government.

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

1 (4) A local government shall use reasonable methods to give the
2 notice of application to the public and agencies with jurisdiction and
3 may use its existing notice procedures. A local government may use
4 different types of notice for different categories of project permits
5 or types of project actions. If a local government by resolution or
6 ordinance does not specify its method of public notice, the local
7 government shall use the methods provided for in (a) and (b) of this
8 subsection. Examples of reasonable methods to inform the public are:

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

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

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

18 (d) Notifying the news media;

19 (e) Placing notices in appropriate regional or neighborhood
20 newspapers or trade journals;

21 (f) Publishing notice in agency newsletters or sending notice to
22 agency mailing lists, either general lists or lists for specific
23 proposals or subject areas; and

24 (g) Mailing to neighboring property owners.

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

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

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

37 (b) If an open record predecision hearing is required and the local
38 government's threshold determination requires public notice under
39 chapter 43.21C RCW, the local government shall issue its threshold

1 determination at least fifteen days prior to the open record
2 predecision hearing.

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

4 (7) At the request of the applicant, a local government may combine
5 any hearing on a project permit with any hearing that may be held by
6 another local, state, regional, federal, or other agency (~~provided~~
7 ~~that~~), if:

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

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

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

23 (a) The agency is not expressly prohibited by statute from doing
24 so;

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

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

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

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

4 (11) Each local government planning under RCW 36.70A.040 shall
5 adopt procedures for administrative interpretation of its development
6 regulations.

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

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

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

23 A local government not planning under RCW 36.70A.040 may
24 incorporate some or all of the provisions of RCW 36.70B.060 through
25 ~~((36.70B.090 and 36.70B.110 through 36.70B.130))~~ 36.70B.140 into its
26 procedures for review of project permits or other project actions.

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

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

1 agreement. A development agreement shall be consistent with applicable
2 development regulations adopted by a local government planning under
3 chapter 36.70A RCW.

4 (2) RCW 36.70B.170 through ~~((36.70B.190))~~ 36.70B.210 and section
5 501, chapter 347, Laws of 1995 ~~((do not))~~ create authority that is in
6 addition to any other authority of a local government to enter into an
7 agreement with a person having ownership or control of real property.
8 Nothing in RCW 36.70B.170 through 36.70B.210 and section 501, chapter
9 347, Laws of 1995 shall apply to or affect the validity of a contract
10 rezone, concomitant agreement, annexation agreement, or other agreement
11 ((in existence on July 23, 1995, or adopted under separate authority,))
12 that includes some or all of the development standards provided in
13 ((subsection (3) of this section)) RCW 36.70B.020.

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

16 (a) ~~Project elements such as permitted uses, residential densities,~~
17 ~~and nonresidential densities and intensities or building sizes;~~

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

22 (c) ~~Mitigation measures, development conditions, and other~~
23 ~~requirements under chapter 43.21C RCW;~~

24 (d) ~~Design standards such as maximum heights, setbacks, drainage~~
25 ~~and water quality requirements, landscaping, and other development~~
26 ~~features;~~

27 (e) ~~Affordable housing;~~

28 (f) ~~Parks and open space preservation;~~

29 (g) ~~Phasing;~~

30 (h) ~~Review procedures and standards for implementing decisions;~~

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

32 (j) ~~Any other appropriate development requirement or procedure.~~

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

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

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

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

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

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

26 Nothing in RCW 36.70B.170 through 36.70B.200 and section 501,
27 chapter 347, Laws of 1995 is intended to authorize a local
28 government~~((s))~~ to impose impact fees, inspection fees, or dedications
29 or to require any other financial contributions or mitigation measures
30 except as expressly authorized by other applicable provisions of state
31 law. This section is not a limitation on the power of the parties to
32 a development agreement to contract with one another, and the parties
33 to a development agreement may provide in the agreement for financial
34 contributions or mitigation measures that the local government could
35 not require without agreement.

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

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

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

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

12 (b) ~~((Each of the following persons))~~ If the person is not the
13 petitioner(~~(+~~

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

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

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

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

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

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

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

36 (C) A person who provides the petitioner with an affidavit or
37 statement signed under penalty of perjury stating that person's
38 decision not to participate in judicial review of the land use decision

1 at issue. The petitioner shall attach a copy of the affidavit or
2 statement under penalty of perjury to the petition.

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

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

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

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

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

17 (5) Service on the local jurisdiction must be by delivery of a copy
18 of the petition to the persons identified by or pursuant to RCW
19 4.28.080 to receive service of process. Service on other parties must
20 be in accordance with the superior court civil rules or by first class
21 mail to:

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

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

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

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

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

35 The court shall provide expedited review of petitions filed under
36 this chapter. The matter must be set for hearing and the hearing must
37 commence within sixty days of the date set for submitting the local

1 jurisdiction's record, absent a showing of good cause for a different
2 date or a stipulation of the parties.

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

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

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

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

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

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

23 ~~((+3))~~ (2) For land use decisions other than those described in
24 subsection (1) of this section, the record for judicial review may be
25 supplemented by evidence of material facts that were not made part of
26 the local jurisdiction's record.

27 ~~((+4))~~ (3) The court may require or permit corrections of
28 ministerial errors or inadvertent omissions in the preparation of the
29 record.

30 ~~((+5))~~ (4) The parties may ~~((not))~~ conduct pretrial discovery
31 ~~((except))~~ only with the prior permission of the court, which may be
32 sought by motion at any time after service of the petition. The court
33 shall ~~((not))~~ grant permission ~~((unless))~~ for pretrial discovery only
34 if the party requesting it makes a prima facie showing of need. The
35 court shall strictly limit discovery to what is necessary for equitable
36 and timely review of the issues that are raised under subsections (1)
37 and (2) ~~((and (3)))~~ of this section.

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

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

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

21 (2) Unless otherwise provided by this section:

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

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

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

29 (a) Shall (~~not~~) allow no more than one agency appeal proceeding
30 on a procedural determination (the adequacy of a determination of
31 significance/nonsignificance or of a final environmental impact
32 statement). The appeal proceeding on a determination of significance
33 may occur before the agency's final decision on a proposed action. The
34 appeal proceeding on (~~a~~) any other procedural determination (~~of~~
35 ~~nonsignificance~~) may occur before the agency's final decision on a
36 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 NEW SECTION. **Sec. 21.** A new section is added to chapter 43.21C
22 RCW to read as follows:

23 The department of ecology shall adopt rules increasing categorical
24 exemptions for minor new construction and minor land use decisions
25 within urban growth areas designated under RCW 36.70A.110 beyond
26 categorical exemptions for minor new construction and minor land use
27 decisions in areas outside of those designated urban growth areas.

28 These rules shall provide for increased levels of minor new
29 construction and minor land use decisions that are categorically exempt
30 within an urban growth area and expand the authority of a county, city,
31 or town to raise the exemption level for minor new construction
32 activities and minor land use decisions occurring within an urban
33 growth area beyond the level specified by the department. At a
34 minimum, the increase in minor new construction and minor new land use
35 decisions that are categorically exempt within an urban growth area
36 shall include approvals of the: (1) Construction of or location of any
37 residential structures of ten or fewer dwelling units; (2) construction
38 of an office, school, commercial, recreational, service, or storage

1 building with eight thousand or fewer square feet of gross floor area,
2 and with associated parking facilities; (3) construction of a parking
3 lot designed for forty or fewer automobiles; and (4) division of land
4 into ten or fewer lots or parcels.

5 **Sec. 22.** RCW 58.17.020 and 1995 c 32 s 2 are each amended to read
6 as follows:

7 As used in this chapter, unless the context or subject matter
8 clearly requires otherwise, the words or phrases defined in this
9 section shall have the indicated meanings.

10 (1) "Subdivision" is the division or redivision of land into five
11 or more lots, tracts, parcels, sites or divisions for the purpose of
12 sale, lease, or transfer of ownership, except as provided in subsection
13 (6) of this section.

14 (2) "Plat" is a map or representation of a subdivision, showing
15 thereon the division of a tract or parcel of land into lots, blocks,
16 streets and alleys or other divisions and dedications.

17 (3) "Dedication" is the deliberate appropriation of land by an
18 owner for any general and public uses, reserving to himself no other
19 rights than such as are compatible with the full exercise and enjoyment
20 of the public uses to which the property has been devoted. The
21 intention to dedicate shall be evidenced by the owner by the
22 presentment for filing of a final plat or short plat showing the
23 dedication thereon; and, the acceptance by the public shall be
24 evidenced by the approval of such plat for filing by the appropriate
25 governmental unit.

26 A dedication of an area of less than two acres for use as a public
27 park may include a designation of a name for the park, in honor of a
28 deceased individual of good character.

29 (4) "Preliminary plat" is a neat and approximate drawing of a
30 proposed subdivision showing the general layout of streets and alleys,
31 lots, blocks, and other elements of a subdivision consistent with the
32 requirements of this chapter. The preliminary plat shall be the basis
33 for the approval or disapproval of the general layout of a subdivision.

34 (5) "Final plat" is the final drawing of the subdivision and
35 dedication prepared for filing for record with the county auditor and
36 containing all elements and requirements set forth in this chapter and
37 in local regulations adopted under this chapter.

1 (6) "Short subdivision" is the division or redivision of land into
2 (~~four~~):

3 (a) Nine or fewer lots, tracts, parcels, sites, or divisions for
4 the purpose of sale, lease, or transfer of ownership(~~(: PROVIDED, That~~
5 ~~the legislative authority of any city or town may by local ordinance~~
6 ~~increase the number of)~~) if the lots, tracts, or parcels (~~(to be~~
7 ~~regulated as short subdivisions to a maximum of nine)~~) are located
8 within the city, town, or urban growth area of the county; or

9 (b) Four or fewer lots, tracts, parcels, sites, or divisions for
10 the purpose of sale, lease, or transfer of ownership if the lots,
11 tracts, or parcels are located outside of the urban growth area of the
12 county.

13 (7) "Binding site plan" means a drawing to a scale specified by
14 local ordinance which: (a) Identifies and shows the areas and
15 locations of all streets, roads, improvements, utilities, open spaces,
16 and any other matters specified by local regulations; (b) contains
17 inscriptions or attachments setting forth such appropriate limitations
18 and conditions for the use of the land as are established by the local
19 government body having authority to approve the site plan; and (c)
20 contains provisions making any development be in conformity with the
21 site plan.

22 (8) "Short plat" is the map or representation of a short
23 subdivision.

24 (9) "Lot" is a fractional part of divided lands having fixed
25 boundaries, being of sufficient area and dimension to meet minimum
26 zoning requirements for width and area. The term shall include tracts
27 or parcels.

28 (10) "Block" is a group of lots, tracts, or parcels within well
29 defined and fixed boundaries.

30 (11) "County treasurer" shall be as defined in chapter 36.29 RCW or
31 the office or person assigned such duties under a county charter.

32 (12) "County auditor" shall be as defined in chapter 36.22 RCW or
33 the office or person assigned such duties under a county charter.

34 (13) "County road engineer" shall be as defined in chapter 36.40
35 RCW or the office or person assigned such duties under a county
36 charter.

37 (14) "Planning commission" means that body as defined in chapters
38 36.70, 35.63, or 35A.63 RCW as designated by the legislative body to

1 perform a planning function or that body assigned such duties and
2 responsibilities under a city or county charter.

3 (15) "County commissioner" shall be as defined in chapter 36.32 RCW
4 or the body assigned such duties under a county charter.

5 **Sec. 23.** RCW 58.17.090 and 1995 c 347 s 426 are each amended to
6 read as follows:

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

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

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

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

35 **Sec. 24.** RCW 58.17.095 and 1986 c 233 s 1 are each amended to read
36 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 or a
32 period of not less than fourteen nor more than thirty days for a city,
33 county, or town planning under RCW 36.70A.040. All comments received
34 shall be provided to the applicant. The applicant has seven days from
35 receipt of the comments to respond thereto.

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

1 notice requirements for the (~~public~~) hearing shall be in conformance
2 with RCW 58.17.090, and the (~~ninety-day~~) period for approval or
3 disapproval of the proposed subdivision provided for in RCW 58.17.140
4 shall commence with the date of the filing of the request for (~~a~~
5 ~~public~~) an open record hearing. Any hearing ordered under this
6 subsection shall be conducted by the planning commission or hearings
7 officer as required by county or city ordinance.

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

14 (~~(5)~~) (6) If the (~~public~~) open record hearing is waived as
15 provided in this section, the planning commission or planning agency
16 shall complete the review of the proposed preliminary plat and transmit
17 its recommendation to the legislative body as provided in RCW
18 58.17.100.

19 **Sec. 25.** RCW 58.17.100 and 1995 c 347 s 428 are each amended to
20 read as follows:

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

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

36 (~~(Such)~~) (2) A recommendation made pursuant to subsection (1) of
37 this section shall be submitted to the legislative body not later than
38 fourteen days following action by the hearing body. Upon receipt of

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

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

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

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

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

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

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

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

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

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

13 **Sec. 27.** RCW 58.17.140 and 1995 c 68 s 1 are each amended to read
14 as follows:

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

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

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

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

1 **Sec. 28.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
2 read as follows:

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

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

10 A permit shall be granted:

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

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

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

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

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

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

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

1 The notices shall include a statement that any person desiring to
2 submit written comments concerning an application, or desiring to
3 receive notification of the final decision concerning an application as
4 expeditiously as possible after the issuance of the decision, may
5 submit the comments or requests for decisions to the local government
6 within thirty days of the (~~last~~) date the notice of application is
7 (~~to be published~~) issued pursuant to this subsection. The local
8 government shall forward, in a timely manner following the issuance of
9 a decision, a copy of the decision to each person who submits a request
10 for the decision.

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

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

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

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

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

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

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

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

1 shall notify in writing the local government and the applicant of the
2 date of filing.

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

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

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

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

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

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

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

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

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

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

12 (ii) Will serve an existing use in compliance with this chapter;
13 and

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

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

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

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

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

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

25 (4) "Participating permit agency" means a permit agency, other than
26 the coordinating permit agency, that is responsible for the issuance of
27 a permit for a project.

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

31 (6) "Permit agency" means:

32 (a) The department of ecology, an air pollution control authority,
33 the department of natural resources, the department of fish and
34 wildlife, and the department of health; and

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

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

3 **Sec. 30.** RCW 90.60.040 and 1995 c 347 s 604 are each amended to
4 read as follows:

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

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

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

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

20 (c) The environmental medium that may be affected by the project,
21 the extent of those potential effects, and the environmental protection
22 measures that may be taken to prevent the occurrence of, or to
23 mitigate, those potential effects;

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

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

29 NEW SECTION. **Sec. 31.** A new section is added to chapter 43.05 RCW
30 to read as follows:

31 (1) For any project permit application that is filed with a state
32 agency on or after April 1, 1997, the state agency shall issue its
33 notice of final decision on the project permit application within one
34 hundred twenty days after the agency notifies the applicant that the
35 application is complete under the same conditions, requirements, and
36 exclusions for a county or city to issue project permit applications
37 under RCW 36.70B.090.

1 (2) This section expires June 30, 1999.

2 NEW SECTION. Sec. 32. (1) Except for section 27 of this act, this
3 act is necessary for the immediate preservation of the public peace,
4 health, or safety, or support of the state government and its existing
5 public institutions, and shall take effect immediately.

6 (2) Section 27 of this act shall take effect July 1, 1998.

7 **Sec. 33.** RCW 35A.63.110 and 1979 ex.s. c 18 s 34 are each amended
8 to read as follows:

9 A code city which pursuant to this chapter creates a planning
10 agency and which has twenty-five hundred or more inhabitants, by
11 ordinance, shall create a board of adjustment and provide for its
12 membership, terms of office, organization, jurisdiction. A code city
13 which pursuant to this chapter creates a planning agency and which has
14 a population of less than twenty-five hundred may, by ordinance,
15 similarly create a board of adjustment. In the event a code city with
16 a population of less than twenty-five hundred creates a planning
17 agency, but does not create a board of adjustment, the code city shall
18 provide that the city legislative authority shall itself hear and
19 decide the items listed in (~~(subdivisions)~~) subsections (1), (2), and
20 (3) of this section. The action of the board of adjustment shall be
21 final and conclusive, unless(~~(, within ten days from the date of the~~
22 ~~action, the original applicant or an adverse party makes application to~~
23 ~~the superior court for the county in which that city is located for a~~
24 ~~writ of certiorari, a writ of prohibition, or a writ of mandamus)) a~~
25 land use petition is filed with a superior court as provided in chapter
26 36.70C RCW. No member of the board of adjustment shall be a member of
27 the planning agency or the legislative body. Subject to conditions,
28 safeguards, and procedures provided by ordinance, the board of
29 adjustment may be empowered to hear and decide:

30 (1) Appeals from orders, recommendations, permits, decisions, or
31 determinations made by a code city official in the administration or
32 enforcement of the provisions of this chapter or any ordinances adopted
33 pursuant to it.

34 (2) Applications for variances from the terms of the zoning
35 ordinance, the official map ordinance or other land-use regulatory
36 ordinances under procedures and conditions prescribed by city

1 ordinance, which among other things shall provide that no application
2 for a variance shall be granted unless the board of adjustment finds:

3 (a) The variance shall not constitute a grant of special privilege
4 inconsistent with the limitation upon uses of other properties in the
5 vicinity and zone in which the property on behalf of which the
6 application was filed is located; and

7 (b) That such variance is necessary, because of special
8 circumstances relating to the size, shape, topography, location, or
9 surroundings of the subject property, to provide it with use rights and
10 privileges permitted to other properties in the vicinity and in the
11 zone in which the subject property is located; and

12 (c) That the granting of such variance will not be materially
13 detrimental to the public welfare or injurious to the property or
14 improvements in the vicinity and zone in which the subject property is
15 situated.

16 (3) Applications for conditional-use permits, unless such
17 applications are to be heard and decided by the planning agency. A
18 conditional use means a use listed among those classified in any given
19 zone but permitted to locate only after review as herein provided in
20 accordance with standards and criteria set forth in the zoning
21 ordinance.

22 (4) Such other quasi judicial and administrative determinations as
23 may be delegated by ordinance.

24 In deciding any of the matters referred to in subsections (1), (2),
25 (3), and (4) of this section, the board of adjustment shall issue a
26 written report giving the reasons for its decision. If a code city
27 provides for a hearing examiner and vests in him the authority to hear
28 and decide the items listed in (~~subdivisions~~) subsections (1), (2),
29 and (3) of this section pursuant to RCW 35A.63.170, then the provisions
30 of this section shall not apply to such a city.

31 NEW SECTION. Sec. 34. Sections 9 and 26 of this act shall expire
32 June 30, 1998."

33 **SSB 6543** - H COMM AMD
34 By Committee on Government Operations

35

36 On page 1, line 5 of the title, after "legislation;" strike the
37 remainder of the title and insert "amending RCW 36.70.810, 36.70.830,

1 36.70.860, 36.70.880, 36.70.890, 36.70B.020, 36.70B.050, 36.70B.060,
2 36.70B.090, 36.70B.110, 36.70B.130, 36.70B.150, 36.70B.170, 36.70B.180,
3 36.70B.200, 36.70B.210, 36.70C.040, 36.70C.090, 36.70C.120, 43.21C.075,
4 58.17.020, 58.17.090, 58.17.095, 58.17.100, 58.17.140, 58.17.140,
5 90.58.140, 90.60.020, 90.60.040, and 35A.63.110; adding a new section
6 to chapter 43.21C RCW; adding a new section to chapter 43.05 RCW;
7 providing an effective date; providing expiration dates; and declaring
8 an emergency."

--- END ---