



# Successfully Participating in Permitting Decisions in Washington

## What Stage Are You At?

Planning and permitting in Washington State has four key stages:

1. **Comprehensive Planning.** This is where decisions are made on the range of uses will be allowed community-wide and the general intensity of uses that will be allowed. The county comprehensive plan determines whether land will be urban or rural. The comprehensive plan for your community determines whether an area will be used for farms, houses, stores, offices, or factories. Policies may also be developed to guide the protection of critical areas and the design of new developments.

The comprehensive planning stage is where cities and counties have the most flexibility on changing what is allowed in an area. This is often the stage where community activists can have the greatest influence on the future of a city or county.

Comprehensive plans are appealed to one of three Growth Management Hearings Boards. For more information please see RCW 36.70A.250 through 36.70A.255 for the state laws that created and govern the boards and Chapter 242-02 WAC, the boards' rules of practice and procedure.

2. **Preparing Development Regulations (including Zoning).** Based on their comprehensive plans, cities and counties prepare and adopt development regulations that take the general citywide or countywide decisions in the comprehensive plan and apply them to specific parcels of land. The development regulations determine the zoning for each property, the allowed maximum density, and the public improvements that will generally be required for new developments. Specialized regulations, often referred to as critical areas ordinances or regulations, decide the specific protections that will be provided for wetlands, streams, wildlife habitats, flood prone areas, and geologically hazardous areas.

Like comprehensive plans, area wide zoning and development regulations are appealed to the Growth Management Hearings Boards. Site-specific rezones are appealed to Superior Court under the Land Use Petition Act, Chapter 36.70C RCW.

3. **Local Government Permit Review.** Here the comprehensive plan policies and development regulations are applied to a specific proposal to develop a specific parcel of land. This step focuses on whether the proposal is consistent with the policies and regulations adopted for the property. If it is consistent, it will be approved. If not, it will be conditioned or denied. As part of this review, medium to large developments will be analyzed for their environmental impact.

Conditional use permits are a request to approve a use in location where it can site if the applicant shows it will be compatible with other uses in the neighborhood. Planned unit developments (PUDs) and planned residential developments (PRDs) authorize changes from the standard regulations that apply to the property. Here again the applicant must show that a better development will result given the site specific conditions.

Most cities and counties allow a local appeal from the decision maker to a hearing examiner or the legislative body. After local appeals are exhausted, they can be appealed to Superior Court under the Land Use Petition Act, Chapter 36.70C RCW. Land Use Petition Act (LUPA) appeals must be filed with the Superior Court and served on the city or county making the decision, the applicants, the property owners, and any appellants before the city or county within 21 days of the issuance of the land use decision. See RCW 36.70C.040.

4. **State and Federal Permit Review.** Major developments may require state or federal approval. The four most common state and federal permits that have significant land use discretion are summarized below:
  - **Shoreline permits.** Cities and counties decide shoreline substantial development permits. Shoreline conditional use permits and variances must be approved by the Department of Ecology. The department can also condition those permits. These decisions are made by the Ecology regional offices. At Ecology's webpage <http://www.ecy.wa.gov/org.html> you can find out what region will review the permit. Ecology can sometimes be persuaded to add conditions or even deny a permit.
  - **Any work within the ordinary high water mark of a navigable river, lake, or stream requires a Hydraulic Project Permit (HPA).** Applications for HPAs are made through cities and counties, but are decided by the State of Washington Department of Fish and Wildlife. You can find more information at: <http://wdfw.wa.gov/hab/hpapage.htm>
  - **Wetlands fills, bridges, and structures or fills in navigable waters may require a Section 404 or Section 10 Permit from the U.S. Army Corps of Engineers.** The Seattle District's Regulatory Program website can tell you when a permit is needed, allow you to see if a project is in the permitting process, and allow you to make complaints. The website is at: [http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=Home\\_Page](http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=Home_Page)
  - **Wetland fills may also need approval by the Washington State Department of Ecology under the State of Washington Clean Water Act.** These reviews are typically conducted in conjunction with local government and U.S. Army Corps of Engineers reviews. Again, Ecology can sometimes be persuaded to add conditions or even deny approval. Contact the wetland specialist for your region, who can be found at: <http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm>

In some cases, state or federal regulations may preempt local regulation. For example, federal law preempts state or local regulation of railroads and hydropower facilities. State law preempts state agency and city and county permitting for major non-hydropower energy facilities and gives that permitting authority to the Energy Facility Siting Council (EFSEC). The actual decision on the permit is based on a recommendation from a board made up of state agencies and local governments that would otherwise have permitting authority. You can find out about the projects EFSEC is reviewing and other information at: <http://www.efsec.wa.gov/> Each EFSEC permit also has a Council for the Environment, a Deputy Attorney General that raises environmental concerns. Sometimes they can be helpful in addressing environmental issues. You can find out more at: <http://www.atg.wa.gov/CounselEnvironment/default.aspx>

## Tips on Participating in Permit Reviews

- Visit your city or county planning department and ask to see the staff report and any written decisions on the permit application or proposal that concerns you. These are public documents and will provide useful information about the application being considered. You may request copies, and there may be a charge for copying the documents.
- The approval criteria for the permit or proposal are critical. They will usually be identified in the staff report. If not, contact a member of the planning department staff.
- Determine the provisions of the city or county local comprehensive plan and development regulations, such as zoning, that apply to the land use application or issue you are concerned about. A staff report, if there is one, may list this information. Otherwise, consult a member of the planning department.
- Then get a copy of the relevant parts of your city or county plan and development regulations from the planning department or local public library. Copies may also be available from your city or county website.
- Find out if a Washington State Environmental Policy Act (SEPA) determination has been made for the proposal. This is an important decision and will usually be made by planning staff early in the permitting process. If it is shown that the proposal will result in probable adverse environmental impacts, an environmental impact statement (EIS) will be prepared or the project conditioned to lessen the impacts. A project can even be denied if the adverse environmental impacts are severe and cannot be mitigated, although that is rare. If you have information about adverse environmental impacts, make sure that the planning staff has this information. Cities and counties are required to adopt SEPA policies and procedures to guide SEPA determinations. The planning staff can get you a copy.
- Find out when the comment period and public hearings, if any, are scheduled on the permit or proposal. Your testimony should address the criteria in the local comprehensive plan and development regulations applicable to the approval being sought.

Open record public hearings are particularly important since only one is held on each permit and open record public hearings are where new information can be presented to the decision maker. Most permits are quasi-judicial, which means that the decision makers, such as hearing examiners, and city and county elected officials act like judges. To ensure fairness, these decision makers can only hear from proponents and opponents at public hearings or in writing. This makes public hearings even more important. Members of the public can talk to staff about planning or permitting matters at any time because the limits on communications during hearings or in writing does not apply to staff.

To maintain your right to appeal, you may have to participate orally or in writing during local hearings and to exhaust local administrative appeals. You should consult an attorney if you are considering a LUPA appeal.

- Find out if the project needs a state or federal permit.

## Key Phone Numbers and Websites

Clark County Community Development main telephone number, to file a land use code enforcement complaint: (360) 397-2375. You can also file a complaint on the Internet at: <http://www.co.clark.wa.us/commdev/code-enforcement/complaints/complaintformN.asp>

Island County's Department of Planning & Community Development requires a written and signed complaint to begin a code enforcement investigation. You can download the department's form at this webpage: <http://www.co.island.wa.us/Planning/enforcement.htm> Since the form includes a fax number; it may be possible to file it by fax at: (360) 679-7306.

King County land use code enforcement complaint number: (206) 296-6680, or toll free 1-888-437-4771, during normal business hours. If DDES offices are closed and the activity you want to complain about may cause environmental damage or create a safety concern, don't hesitate to call 1-888-437-4771 immediately. Someone is on-duty 24 hours a day to receive emergency complaints. You can also file a complaint on the Internet at: <http://www.kingcounty.gov/property/permits/ce/complaints/CEForm.aspx>

Pierce County response (code enforcement) hotline: 253-798-3737. You can also file a complaint on the Internet at: <http://www.co.pierce.wa.us/cfapps/pals/psr.cfm>

Skagit County's Planning and Development Services Department requires that a Request for Investigation form be filed to start a code enforcement investigation. You can download the form here: <http://www.skagitcounty.net/Common/Asp/Default.asp?d=PlanningAndPermit&tc=General&p=codeenforcementmain.htm> The Request for Investigation form can be faxed to 360-336-9416.

Snohomish County Planning and Development Services Code Enforcement Section telephone number: (425) 388-3650. Office hours are 8 a.m. to - 4:30 p.m. Monday through Friday. You can also file a complaint on the Internet at: <http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/InspectionServicesEnforcement/reportviolations.htm> Helpful information for filing complaints with other agencies can be found here: <http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/InspectionServicesEnforcement/codeenforcement.htm>

Spokane County's Department of Planning and Building allows complaints of unsafe or dangerous buildings to be filed by phone at: (509) 477-3675. For other code enforcement complaints, the department requires that the complaint be filed by a signed letter or using the department's downloadable complaint form. The department's code enforcement webpage can be found here: <http://www.spokanecounty.org/bp/content.aspx?c=2319> Since the form includes a fax number, it may be possible to file it by fax at: (509) 4774703. This webpage also includes helpful information for cities and other agencies.

Whatcom County Code Enforcement: (360) 676-6907 x 52454. You can also download a Code Violation Report (CVR) from:

<http://www.co.whatcom.wa.us/pds/compliance/reportviolation.jsp> Since the form includes a fax number; it may be possible to file it by fax at: 360-738-2525.

State of Washington Department of Ecology Online Incident Report Form website:

[http://www.ecy.wa.gov/programs/spills/forms/nerts\\_online/environmental\\_complaints.htm](http://www.ecy.wa.gov/programs/spills/forms/nerts_online/environmental_complaints.htm)

State of Washington Department of Fish and Wildlife Enforcement Web Page:

<http://wdfw.wa.gov/enforcement/>

U.S. Army Corps of Engineers Seattle District main line: (206) 764-3495. See their website at:

[http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=EnforceReporting\\_a\\_Violation](http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=EnforceReporting_a_Violation)

## For Additional Information

Futurewise: [www.futurewise.org](http://www.futurewise.org)

Washington's laws are compiled into the Revised Code of Washington (RCWs). The rules of Washington State agencies are compiled into the Washington Administrative Code (WAC). The RCWs, WACs, and other materials are available at the following website:

<http://slc.leg.wa.gov>

Copies of all Washington Supreme Court and Washington Court of Appeals decisions are available at the free site: <http://www.legalwa.org/> This site also includes links to many city and county codes, which are compendiums of county and city laws including land use laws.

The Seattle Audubon Society has produced the *Activist Toolkit - A Citizen's Guide to Protecting the Environment*. It was designed to assist citizen activists and describes how to target an audience, influence decision-makers, get media coverage, formulate a compelling message, and recruit and retain volunteers. It is available at their website:

<http://www.seattleaudubon.org/sas/WhatWeDo/Conservation/Resources/ActivistToolkit.aspx>

Community & Environmental Defense Services (CEDS)'s book *How to Win Land Development Issues* can be downloaded for free from their website:

<http://www.ceds.org/publications.html> The book details how to work with developers to get the kind of development the community wants.

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# Public Involvement in the Planning & Permitting Processes

