

Docket No.	Project Name	Brief Description of Suggested Amendment	Who Suggested Amendment	Staff Lead	Staff Recommendation
15-12	KCC Title 15A	Amend review and decision procedures to authorize Hearing Examiner to make final land use decisions.	Commissioner O'Brien	CDS - planning	Approve

## Summary

Authorizing the Hearing Examiner to make final land use decisions in place of the Board of County Commissioners serves the purpose of having a professionally trained individual make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Making this amendment of the review and decision procedures will allow the Board of County Commissioners to better concentrate on policy-making and will reduce the local government liability exposure through what should be more consistent legally sustainable quasi-judicial decisions.

The Hearing Examiner is authorized in RCW 36.70.970 to hear and issue decisions on certain zoning matters, in RCW 58.17.330 for hearing and issuing recommendations or decisions on preliminary plats, and in RCW 43.21C.075 to conduct hearings on SEPA appeals.

## Draft of Amended Text

### Chapter 15A.01 ADMINISTRATION, PURPOSE AND OBJECTIVE

#### Sections

- 15A.01.010 Purpose and authority.
- 15A.01.020 Administrative and enforcement officers.
- 15A.01.030 Applicability.
- 15A.01.040 Roles and responsibilities.
- 15A.01.050 Severability.

#### **15A.01.010 Purpose and authority.**

It is the purpose of this title to effectively and efficiently administer applications for land use development activities by combining environmental review process, both procedural and substantive, with the procedure for review of project permits.

1. Each local government planning under RCW 36.70A.040 shall establish a permit review process that provides for the integrated and consolidated review and decision on two or more project permits relating to a proposed project action, including a single application review and approval process covering part of or all project permits requested by an applicant for all or part of a project action, and a designated permit coordinator.
2. When a project permit application is filed, the project review process should include land use, environmental, public, and governmental review so that documents prepared under different

requirements can be reviewed together by the public and other agencies, in one project review process. In the event of inconsistencies within county code pertaining to such processing, this title shall control. (Ord. 2000-07; Ord. 98-10, 1998)

#### **15A.01.020 Administrative and enforcement officers.**

1. It shall be the duty of the Community Development Services director or such other persons designated by the county commissioners to administer the provisions of this title.
2. The prosecuting attorney may institute any necessary legal proceedings to enforce the provisions of this title.
3. The county sheriff and his authorized representatives shall have the authority to enforce the provisions of this title. (Ord. 2007-22, 2007; Ord. 2000-07; Ord. 98-10, 1998)

#### **15A.01.030 Applicability.**

The provisions of this title shall apply to all land use permits under KCC Titles 15, 15A, 16, 17, and 17A, county shoreline master program, and to any related regulation or any other ordinance or law implementing these provisions. In the event of conflict with the current county code, this title shall control. (Ord. 2000-07; Ord. 98-10, 1998)

#### **15A.01.040 Roles and responsibilities.**

The regulation of land development is a cooperative activity including many different elected and appointed bodies and county staff. The specific responsibilities of these bodies is set forth below and outlined in Table A at the end of this title.

1. **Applicant.** An applicant is expected to read and understand the county comprehensive plan and code and be prepared to fulfill the obligations placed on the applicant. Pre-application conferences are available to anyone who wishes to discuss such obligations prior to submittal.
2. **Community Development Services Director.**
  - a. The Community Development Services Director (CDS Director) is responsible for the administration of portions of KCC Title 15, Environmental Policy, Title 15A, Project Permit Application Process, Title 16, Subdivisions, Title 17, Zoning, Title 17A, Critical Areas, and the shoreline master program.
  - b. Upon request or as determined necessary, the CDS Director shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.
  - c. Administrative land use decisions on certain zoning conditional uses, and variances from the standards and dimensional regulations of the zoning code, KCC Title 17, such as setback and yard restrictions.
3. **Board of County Commissioners.** In addition to its legislative responsibilities under KCC Title 15B, the board shall review and act on the following subjects pursuant to this title:
  - a. Recommendations of the ~~Hearing Examiner or~~ Planning Commission. Decision-making process by the board shall consist of a public meeting or meetings wherein the board reviews the written record transmitted from the ~~Hearing Examiner for Quasi-judicial matters and the~~ Planning Commission for Legislative matters and issues a written decision in resolution or ordinance form. During such meeting(s), appropriate county staff will present the record to the board, providing

information as necessary to ensure county code compliance. No new comment or information will be allowed by the board during the decision-making process.

- ~~b. Appeals of administrative SEPA actions regarding an action without an underlying permit.~~
- ~~c. Open record appeal of administrative SEPA actions when the board of county commissioners hears the appeal of the associated administrative permit decision.~~
- ~~d. Appeal of administrative determinations such as short plats, variances, and code interpretations.~~

#### 4. Hearing Examiner.

- a. The Hearing Examiner shall hear, review, and make a final decision for the purposes of appeal under KCC section 15A.07 on the following subjects pursuant to this title:
  - i. Development agreements.
  - ii. Shoreline permits, including shoreline substantial development permits, shoreline variances, and shoreline conditional uses pursuant to the Shoreline Master Program.
  - iii. Conditional use permits pursuant to the zoning code, KCC Title 17.
  - iv. Application for preliminary plats
  - v. Rezone applications
  - vi. Appeals of administrative SEPA actions regarding and action without an underlying permit.
  - vii. Open record appeal of administrative SEPA actions.
  - viii. Appeal of administrative determinations such as short plats, variances, and code interpretations.
  - ix. Other actions requested or remanded by the Board of County Commissioners

~~4. b. The Hearing Examiner shall review and make recommendations to the board of county commissioners on actions requested or remanded by the Board of County Commissioners. the following applications and subjects:~~

- ~~a. Applications for preliminary plats~~
- ~~b. Rezone applications.~~
  - ~~i. Other actions requested or remanded by the board of county commissioners.~~
- ~~c. Development agreements.~~
- ~~d. Conditional use permits pursuant to the zoning code, KCC Title 17~~
- ~~e. Shoreline permits, including variances, conditional uses, and shoreline substantial development permits pursuant to the shoreline master program.~~
- ~~f. In the case of an open record appeal of administrative SEPA actions when the Hearing Examiner makes a recommendation to the board of county commissioners on the underlying permit, the Hearing Examiner shall decide the SEPA appeal. (Ord. 2014-008, 2014;)~~

#### **15A.01.050 Severability.**

If any chapter, section, subsection, sentence, clause, phrase, part or portion of this title is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this title or the application of the provisions to other persons or circumstances. (Ord. 2000-07; Ord. 98-10, 1998)

Table A

	Step 1 Public Comment Period	Step 2 Open Record Hearing	Step 3 Decision	Step 4 Administrative Appeal	Step 5 Judicial Appeal*
Binding Site Plan:	15 days	None	Staff	<del>HE</del> <u>BGG</u>	Sup. Court
Zoning Variance:	15 days	None	Staff	<del>BGG</del> <u>HE</u>	Sup. Court
Permitted Administrative <del>Uses</del> <sup>5</sup> <u>Uses</u> <sup>4</sup> :	15 days	None	Staff	<del>BGG</del> <u>HE</u>	Sup. Court
Short Plats:	15 days	None	Staff	<del>BGG</del> <u>HE</u>	Sup. Court
Boundary Line Adjustments:	None	None	Staff	<del>BGG</del> <u>HE</u>	Sup. Court
Grade and Fill Permit:	None	None	Staff	<del>BGG</del> <u>HE</u>	Sup. Court
SEPA Actions: Appeals of threshold determinations:	15 days	None	Staff	HE	Sup. Court
SEPA Actions: The exercise of substantive SEPA authority and adequacy of an EIS <sup>1</sup> :	15 days	None	Staff	HE/ <del>BGG</del> <sup>2</sup>	Sup. Court
Independent administrative rulings:	None	None	Staff	<del>BGG</del> <sup>3</sup> <u>HE</u>	Sup. Court
Zoning Conditional Uses (Administrative):	15 days	None	Staff	<del>BGG</del> <u>HE</u>	Sup. Court
Zoning Conditional Uses (Hearing):	15 days	HE	<del>BGG</del> <u>HE</u>	None	Sup. Court
Long Plats:	15 days	HE	<del>BGG</del> <u>HE</u>	None	Sup. Court
Shorelines Substantial Development/Cnd. Use:	30 days	HE	<del>BGG</del> <u>HE</u>	None	Shorelines Board
Shorelines Setback Variance:	30 days	HE	<del>BGG</del> <u>HE</u>	None	Shorelines Board
Site-Specific Rezone to Zoning Map (Including PUD) <sup>43</sup> :	30 days	HE	<del>BGG</del> <u>HE</u>	None	Sup. Court
Development Agreement:	30 days	<del>BGG</del> <u>HE</u>	<del>BGG</del> <u>HE</u>	None	Sup. Court

(Ord. 2014-015, 2014; Ord. 2014-008, 2014; Ord. 2013-001, 2013; Ord. 2012-009, 2012; Ord. 2010-011, 2010; Ord. 2009-25, 2009; Ord. 2000-07; Ord. 98-10, 1998)

<sup>1</sup> See KCC 15A.01.040 for clarification of roles and responsibilities.

<sup>2</sup> Open record appeals of SEPA actions are heard by the hearing body making the decision on, or hearing the appeal of, the underlying application.

~~<sup>3</sup> Hearing Examiner for all actions associated with a project before him/her, all independent actions regarding KCC Title 17, Zoning; BCC for all actions associated with a project before them, and for independent actions regarding all county policies, codes, and standards not associated with KCC Title 17, Zoning.~~

~~<sup>4.3</sup> Unless the rezone requires a comprehensive plan amendment which would then follow the comprehensive plan amendment process as outlined in KCC Title 15B.~~

~~<sup>5.4</sup> In the event that a procedural appeal is filed pursuant to Chapter 15A.04 KCC, the HE shall consider and issue a final decision on both the administrative appeal and the underlying project permit application under a single consolidated open record hearing. In such an event, the HE's decision on the underlying application shall be quasi-judicial.~~

Legend:

BCC - Board of County Commissioners

HE - Hearing Examiner

Staff - County administration

NOTE: In the case of application requiring combined legislative and quasi-judicial actions, a development agreement may provide for appropriate review and hearing body.

\* Please review state revised and administrative code for appropriate judicial reviewing bodies.