

Docket No.	Project Name	Brief Description of Suggested Amendment	Who Suggested Amendment	Staff Lead	Staff Recommendation
15-11	KCC Title 15A	Establish vesting for land use permits to supplement vesting governed by RCW 58.17 and RCW 19.27.095.	Kittitas County Staff	CDS - planning	Approve

Summary

A 2014 state court of appeals decision (*Potala Village Kirkland, llc, v. City of Kirkland*) held that the statutory vested rights doctrine replaced, rather than supplemented, the common law (court-made) vested rights doctrine. Under this decision, vested rights apply only in the context of building permit applications, short subdivision and subdivision applications, and development agreements. This modified the way vested rights are viewed in the State of Washington where historically the vested rights doctrine referred generally to the notion that certain land use applications, under the proper conditions, were considered only under the land use statutes and ordinances in effect at the time of the application's submission. While this decision constricted vested rights at the state level city or county policies may grant broader vested rights.

The proposed vesting language will provide a measure of certainty to County regulators and developers and will protect a developer's expectations against fluctuating land use policy. The proposed additions to KCC Title 15A will vest the specified permit types to the land use regulations and ordinances in effect at the time a fully complete application has been submitted to the County. Vesting upon submittal of a complete application is consistent with the vesting of building permit applications governed by RCW 19.27.095, vesting of short subdivision and subdivision applications governed by RCW 58.17.033, and vesting of development agreements vested by RCW 36.70B.180.

Draft of Amended Text

Chapter 15A.02 DEFINITIONS

Sections

- 15A.02.010 Generally.
- 15A.02.020 Administrator.
- 15A.02.030 Repealed.
- 15A.02.040 Consistency.
- 15A.02.050 Land use decision.
- 15A.02.060 Open record hearing.
- 15A.02.070 Person.
- 15A.02.080 Project permit or project permit application.
- 15A.02.090 Public meeting.

15.02.100 Vesting

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“Vesting” means the establishment of a date that is used to determine which zoning and other land use control ordinances will apply to the review by the County of a complete project permit application.

Chapter 15A.03

PROJECT PERMIT APPLICATION REVIEW

Sections

- 15A.03.010 Complete application defined.
- 15A.03.020 Pre-application conference.
- 15A.03.030 Application and accompanying data.
- 15A.03.040 Determination of complete application.
- 15A.03.045 Permit processing time.
- 15A.03.050 Fee schedule.
- 15A.03.060 Notice of application.
- 15A.03.070 Specific procedures for permit review.
- 15A.03.080 Projects exempt from the provisions of notice of application.
- 15A.03.090 Review actions on project permit applications.
- 15A.03.100 Criteria for review of all project actions.
- 15A.03.110 Posting sites.

15A.03.120 Vesting.

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1. This section applies to complete project permit application, including and limited to conditional use permits, binding site plans, site development activity permits, and shoreline permits. Vesting of building permits are governed by RCW 19.27.095, vesting of short subdivision and subdivision applications are governed by RCW 58.17.033, and vesting of development agreements are governed by RCW 36.70B.180.
2. Vested project permit applications shall be reviewed under the development regulations in effect on the date a complete application has been submitted to the department. This date shall be considered the vesting date.
3. The vesting of an application does not:
 - a. Imply that the application will be approved or that the applicant has permission to proceed with development related to the vested application;
 - b. Vest any subsequently required or related permits, except as required by statute or case law, nor does it affect the requirements for the vesting of subsequent permits or approvals;
 - c. Restrict the ability of the department to impose conditions under Chapter 43.21C RCW; or
 - d. Restrict the ability of the department to impose new regulations necessary to protect the public health and safety, including, but not limited to, the requirements of the building, health, and fire codes.
- 1.4. The development regulations to which projects vest do not include regulations governing procedures, including the regulations in this chapter, or fees.

5. Determination of amendments to approved binding site plans shall be governed by Sections 16.05.060, Amendments and Rescindment; and determination of amendments to approved short plats shall be governed by 16.32.100, Alterations.
6. An applicant may voluntarily waive vested rights at any time during the processing of an application by submitting a written and signed waiver to the department stating that the applicant agrees to comply with all development regulations in effect on the date the waiver request is submitted. Any change to the application may require revised public notice and/or additional review fees.
7. Rights vested for a project permit application shall terminate upon the following:
 - a. Issuance of the permit;
 - b. Expiration of the permit application; or
 - ~~a-c.~~ Denial of the permit application.