2026 PAW Land Use Law Update

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Overview

Chandrruangphen v. City of Sammamish, Dismissed for Improper Service

Fall City Sustainable Growth v. King Cnt, Comprehensive Plan doesn't rule in permit review.

Cape George Land Company, LLC v. Jefferson County (unpublished), what to do with tiny, nonconforming lots.

Woodinville Water District v. King County(unpublished), don't have to repeat comments made by others to preserve an argument for judicial appeal

Adams v. Seattle, (unpublished), constitutional challenge to Seattles Mandatory Housing Affordability for Residential Development ordinance premature.

Fox v. City of Pacific Grove, denial of tree removal for two trees not a per se takings.

Gokey v. Black Diamond (unpublished), void for vagueness must be raised in local hearing if you want to raise it in judicial appeal.

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

Key Point

Courts Strictly Construe Appeal Filing/Service Requirements

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

Supremes Reverse Court of Appeals and Hold Appellant Served Wrong Person and Reverse Court of Appeals again to hold service untimely.

Facts:

May 3, 2023 Planner emails developer that her application is cancelled due to inactivity.

May 24, 2023 developer files judicial appeal and serves City office assistant.

May 24, 2023 City Clerk working from home learns of filing and drives to City Hall to initial receipt

June 1, 2023 appeal served upon City Manager

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

Properly Served? Court says No this time.

City claims that (1) service on City Clerk incorrect because Appellant served an office assistant working at the front desk of City Hall instead; and (2) that service on City Manager was untimely.

RCW 4.28.020 requires that lawsuits against cities must be served on "*the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.*"

RCW 36.70C.040(3) requires that LUPA petitions be filed within 21 days of the issuance of a land use decision.

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

City Clerk not properly served.

Office assistant was not “designated agent” for mayor or city manager.

Past case law requires strict compliance with 4.28.020, service statute for municipalities.

Court rejected “secondhand service” theory adopted by Court of Appeals because it was based upon a different service statute.

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

But Beware 2024 Amendment:

RCW 36.70C.040(5): *Service on the local jurisdiction must be by delivery of a copy of the petition to the ~~persons~~ office of a person identified by or pursuant to RCW 4.28.080 to receive service of process, or as otherwise designated by the local jurisdiction*

So service on office assistant under new statute may have been ok if office clerk worded in the office of the city manager or the mayor.

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

Issuance Date = Email delivery date. City Manager not timely served.

RCW 36.70C.040(4)(a) provides that the date of issuance (from which 21 day deadline accrues) is *"[t]hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available*."

June 1, date City Manager served, met service deadline if email was "issued" three days after sending. City argues email isn't same as mail.

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

Is an email “mailed”? No.

Court: *Our review of the relevant case law consistently shows that the term “mailed” refers only to “postal matter” ….*

In accordance with relevant case law and our civil court rules, we hold that the plain meaning of the term “mailed,” as used in RCW 36.70C.040(4)(a), does not include decisions sent solely by e-mail. Therefore, we further hold that the City's decision sent by e-mail was considered “not mailed.” As a result, LUPA's 21-day limitations period started running when the City “provided notice” to Chandrruangphen that the decision was “publicly available.”

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

Does email qualify as providing "notice that a written decision is publicly available" under RCW 36.70C.040(4)(a)? Yes

Court: *Chandrruangphen received the City's e-mail on May 8, 2023, with the attached written decision, and she was provided "notice" that a decision on her application was "publicly available" and that she had 21 days to file a LUPA petition and serve the City. Moreover, LUPA does not require that a municipality's decision be issued to the public at large.*

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

Takeaways

Email service of permitting decisions ok.

To be safe, clearly identify in filing requirements that failure to comply = dismissal. Also post decision on city website if feasible.

Chandrruangphen v. City of Sammamish, No. 85756-8-I (Wash. Ct. App. Oct. 7, 2024)

More recent example:

Mohamad Ezzeddine V. City Of Burien, No. 88598-7-I, 2026 WL 1069885 (Wash. Ct. App. Apr. 20, 2026)

Appellant judicial appeal dismissed for two attempts at service. First time service was timely, but was emailed (must be served personally). Second attempt was untimely because outside of 21 days from issuance. Local decision emailed and mailed. 21 days started three days after mailing.

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Key Point

Comprehensive Plan Doesn't Rule in permit review.

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Facts:

Taylor Development (TD) applies for three plats in Fall City area

Examiner approves plat despite finding that plats are not consistent with rural character as discouraged by comp plan due to increased densities facilitated by large on site septic systems

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Courts Say Comprehensive Plans are Just Guides:

Comprehensive plans serve as "guide[s]" or "blueprint[s] to be used in making land use decisions. Thus, a proposed land use decision must only generally conform, rather than strictly conform, to the comprehensive plan. A comprehensive plan does not directly regulate site-specific land use decisions. Instead, local development regulations, including zoning regulations, directly constrain individual land use decisions.

Citizens for Mount Vernon v. City of Mount Vernon, 133 Wash.2d 861, 873 (1997)

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Legislature Agrees Comprehensive Plans are Just Guides:

The legislature explained that where there are adopted development regulations, project consistency with the GMA is determined by the development regulations where they exist, and in their absence, the comprehensive plan. Under RCW 36.70B.030(1):

Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations, or in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

[type of land use, density, availability of public services in comprehensive plan – alternatives to these items “cannot be reexamined”]

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Legislature Agrees Comprehensive Plans are Just Guides:

RCW 36.70B.040:

(1) A proposed project's consistency with a local government's development regulations adopted under chapter 36.70A RCW, ***or, in the absence of applicable development regulations****, the appropriate elements of the comprehensive plan adopted under chapter 36.70A RCW shall be decided by the local government during project review by consideration of:*

(a) The type of land use;

(b) The level of development, such as units per acre or other measures of density;

(c) Infrastructure, including public facilities and services needed to serve the development; and

(d) The characteristics of the development, such as development standards.

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Consistency with Comprehensive Plan not Required in Subdivision Statute:

RCW 58.17.110:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Consistency with Comprehensive Plan Not Required by Hearing Examiner Statute:

Appellants point out hearing examiner statute requires conformity with comp plan:

RCW 36.70.970(3): *Each final decision of a hearing examiner shall be in writing and shall include findings .....Such findings and conclusions shall also set forth the manner in which the decision would carry out and* ***conform*** *to the county's comprehensive plan…*

Court: *As discussed above, in the 1995 Local Project Review Act, ch. 36.70B RCW, the legislature explained what "consistency" or "conformity" with a post-GMA comprehensive plan meant. The legislature stated that RCW 36.70B.030(1) and RCW 36.70B.040(1) were intended to "to establish a mechanism for implementing the provisions of [GMA] regarding compliance,* ***conformity****, and consistency of proposed projects with adopted comprehensive plans and development regulations." (emphasis added). The legislature explained that where there are adopted development regulations, project conformity with the GMA is determined by the development regulations where they exist, and the comprehensive plan only in the absence of applicable development regulations.*

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Reconciling 36.70B(Dev Regs Prevail) with 36.70.970(Examiner Findings Conform to Comp Plan):

Harmonize: When read together, the statutes require that you look to the development regulations first.

Most Recent: To the extent the statutes conflict, the 36.70B regulations prevail because they were adopted the most recently.

Superfluous: To read RCW 36.70B.970(3) as requiring consistency with a comprehensive plan under all circumstances would render superfluous or meaningless the portions of RCW 36.70B.030 and .040 which state that projects are reviewed for consistency with development regulations or, in the absence of such regulations, the comprehensive plan.

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Contrast Cingular Wireless, LLC v. Thurston County, 131 Wash. App. 756, 770 (2006):

To the extent a comprehensive plan prohibits a use that the zoning code permits, the use is permitted. But where, as here, the zoning code itself expressly requires that a proposed use comply with a comprehensive plan, the proposed use must satisfy both the zoning code and the comprehensive plan.

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Appellants attempted to identify seven local code provisions they argued required conformance to Comp Plan as in *Cingular*.

The closest they came to identifying any such provision was a couple that authorized conditions and a decision to be based upon the comprehensive plan. The Court found these authorizations to be discretionary and not mandating consistency with the comprehensive plan.

Fall City Sustainable Growth v. King Cnty (Wash. Ct. App. 2023)

Takeaways:

Beware local code "catch all" provisions that mandate consistency with Comprehensive Plan. They may have some favorable results such as in *Cingular,* but they will also put a City or County in a tough spot when faced with state mandates such as middle housing. Vagueness and inconsistency with state law become problems.

If Comp Plan is likely to prevent middle housing in all applications due to inconsistencies in residential character etc, then the comp plan will likely have to be found inconsistent with the middle housing amendments. The conflicting comp plan amendments will have to fall to the more recently adopted state mandated amendments.

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

Key Point:

Lot combination ordinances are an effective and valid means of addressing and eliminating substandard lots.

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

Facts:

Several developers apply for boundary line adjustments (BLA) to combine tiny lots in three plats created before 1937.

Plats were in residential zones with minimum density 1 unit/five acres. The proposed combined lots still didn't meet minimum density.

Applications for two of the three plats returned as incomplete.

Before applications refiled, County adopts moratorium on BLA and then adopts lot combination ordinance

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

Facts:

The one BLA application that wasn't returned as incomplete was accepted with a memo from the interim director opining that the plat with substandard lots was consistent with two Attorney General Opinions. The Director concluded that the lots could be combined and developed even though the combined lots still didn't conform to the 1 du/5 acre density.

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025)

Detour -- The Attorney General Opinions

AGO 1996 No. 5, "Effect of 1969 Platting Act on land platted before enactment

…we conclude, reaffirming AGLO 1974 No. 7, that land platted before enactment of the 1937 platting and subdivision act (chapter 58.16 RCW) is still subject to the requirements of current law (now chapter 58.17 RCW), at least to the extent that such land has not already been developed. There may be factual issues as to the extent to which land platted before 1937 has been sold into separate ownership to such an extent as to make the imposition of current subdivision law so inequitable or unjust that the courts would decline to apply current subdivision requirements to such land.

Plats before 1937 were simply recorded in the recorder's office of the county in which the land lay.

Counties should *"…clearly specify the extent to which it requires replatting of land platted under earlier laws, and to set up substantive standards and/or procedural options to handle the obstacles which may be encountered in dealing with partially sold/partially developed plats."*

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

Detour -- The Attorney General Opinions

AGO 1998 No. 4, "Effect of Growth Management Act on option of counties to require resubdivision of lands platted before 1937"

...we do not read the Act [Growth Management Act] as any absolute requirement that counties require resubdivision of all existing undeveloped or partially-developed plats which are inconsistent with the county's comprehensive plan.

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

Jefferson County's Lot Combination Ordinance:

A landowner must aggregate adjacent lots to the extent possible to bring the substandard lot to conforming status. An owner of continuous, substandard lots as of the effective date of this ordinance shall aggregate (combine) lots to meet the requirements of this chapter; and aggregation of substandard lots shall meet the underlying density if possible and be recorded as a boundary line adjustment pursuant to JCC 18.35.060 through 18.35.080. If the resulting aggregation of lots does not meet the zoning minimum lot size or underlying density, the lot must meet an exception in JCC 18.12.070(3), or the owner must apply for and receive a residential development exception pursuant to JCC 18.12.080 to be considered eligible for development.

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

The two BLA applications returned as incomplete were refiled as complete after adoption of the lot combination ordinance.

All three BLA applications were denied on the basis that the lots failed to meet zoning, health department and subdivision standards.

County determined that the BLA application accepted by memo was not vested and the memo was issued in error.

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

State boundary line adjustment standard – RCW 58.17.040:

The provisions of [chapter 58.17 RCW] shall not apply to:

...

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division ***nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.***

(emphasis added).

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

Question: Do Jefferson County's minimum lot standards apply to lots created prior to 1937?

Purpose of Jefferson County zoning RR 1:5 zoning district includes: "…*this district [RR 1:5] seeks to support and foster Jefferson County's existing rural residential landscape and character by restricting* ***new*** *land divisions to a base density of one unit per five acres*."
(emphasis added)

But: JCC 18.15.015: "*The maximum allowable residential density for* ***all parcels*** *is shown on the official maps of the Jefferson County Comprehensive Plan" (emphasis added)*

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

Answer: Lot combinations must comply with current minimum densities:

1. BLAs are not “new land divisions”
2. County BLA provision requires conformance with zoning chapter, which in turn adopts policies of GMA requiring rural densities.

Cape George Land Company, LLC V. Jefferson County
No. 59366-1-II, 2025 WL 3013768 (Wash. Ct. App. Oct. 28, 2025) (unpublished)

Takeaways:

Local codes should be clear on how to treat substandard lots

Lot combination ordinances are a common regulatory tool for reducing the number of substandard lots.

Codes can require variance/modification to permit development of substandard lots and can also set minimum buildable areas.

Be wary of constitutional takings challenges.

Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

KEY POINT

Standing to make arguments on judicial appeal can be based upon arguments made by other parties.

Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

Facts:

Property owners challenge Woodinville Water District determination that the District can provide water to them in a timely and reasonable manner. The owners wanted to use private wells instead.

Property owners appeal Woodinville Water District determination to King County Hearing Examiner. The District only attends the prehearing conference and makes no substantive arguments.

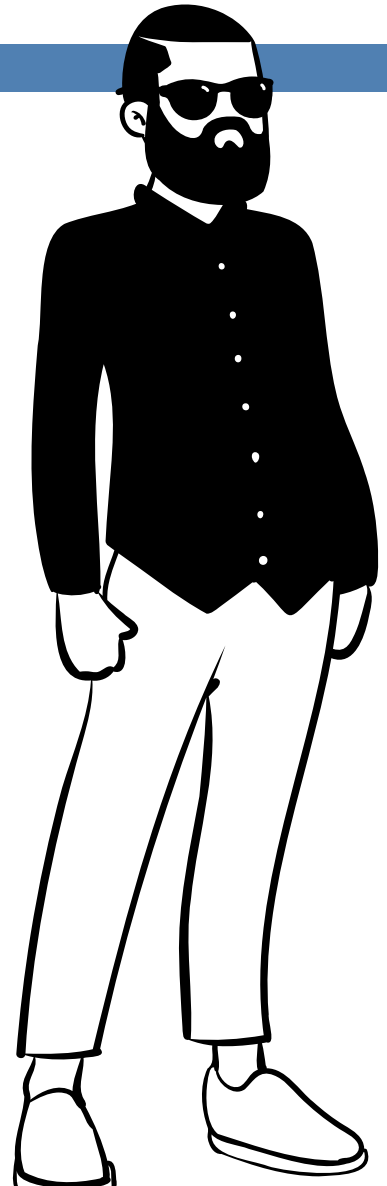
The property owners file a motion for summary judgment. The King County Department of Local Services (DLS) responded to the motion and lost. The Hearing Examiner ruled that the water issue should be remanded "*to Public Health to proceed as it would with any other building permit application where there is no 'reasonable' water service offer from a district*."

Water District appeals. Superior Court dismisses appeal because Water District lacked standing to raise its arguments, i.e. it failed to raise the arguments in front of the hearing examiner. Water District rebuts that DLS raised the arguments.

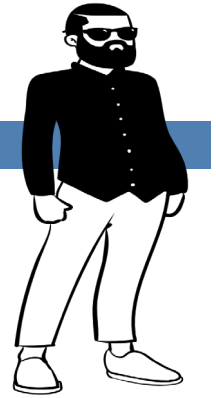
Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

What is standing?

Standing requires that persons must have been aggrieved by the decision they're appealing. Standing is a judicially created doctrine created by the US Supreme Court based upon Art. III of the federal constitution, which restricts judicial power to cases and controversies. *See, e.g. Ass'n of Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150, 152, 90 S. Ct. 827, 829, 25 L. Ed. 2d 184 (1970).



Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)



Standing Add-Ons in Land Use Petition Act (LUPA]

Standing to bring a land use petition under this chapter [LUPA] *is limited to the following persons:*

(1) The applicant and the owner of property to which the land use decision is directed;

(2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

(a) The land use decision has prejudiced or is likely to prejudice that person;

(b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;

(c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

(d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

RCW 36.70C.060

Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

Did the District exhaust its administrative remedies when it failed to present its judicial arguments to the hearing examiner?

The doctrine of exhaustion:

(1) ensures against premature interruption of the administrative process, (2) allows the agency to develop the necessary factual background on which to base a decision, (3) allows exercise of agency expertise in its area, (4) provides a more efficient process, and (5) protects the administrative agency's autonomy by allowing it to correct its own errors and ensuring that individuals do not ignore its procedures by resorting to the courts.

Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

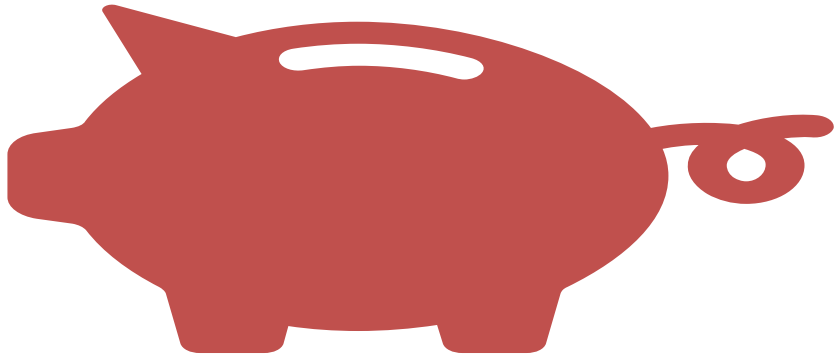
Court rules that District could rely upon arguments made by DLS to meet its obligation to present its arguments to the Examiner. Doing so still met all the policy reasons for requiring exhaustion.

Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

Detour:

Questionable whether standing can be required for administrative appeals absent a local adoption of standing requirements.

Standing prevents costly administrative appeals from being filed by self-appointed citizen code enforcement officers. The policy choice for the City/County Council is whether persons pursuing abstract policy interests should be limited in their efforts in the political arena as opposed to making the quasi-judicial arena available as well.



Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

Example of local standing requirement:

Renton Municipal Code 4-8-110B1: *Standing: Only the applicant, City or a person who has been made a party of record prior to the issuance of a decision may appeal the decision. In order to appeal, the person shall be aggrieved or affected by the decision pursuant to RCW 36.70C.060.*

[RCW 36.70C.060 contains all standing requirements listed for LUPA in a prior slide, including the requirement for exhaustion]

Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

Topical and ambiguous:

WAC 197-11-545:

(1) Consulted agencies. .... Any consulted agency that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with Part Four of these rules.

(2) Other agencies and the public. Lack of comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, shall be construed as lack of objection to the environmental analysis, if the requirements of WAC 197-11-510 are met.

Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

Topical and ambiguous:

Does failure to comment on a SEPA document bar someone from filing a SEPA appeal due to failure to exhaust?

Pollution Control Board, Shoreline Hearings Board and Growth Management Hearings Board all answer yes! Appeal dismissed.

One Seattle hearing examiner agrees to dismiss, another Seattle examiner, the Shoreline Hearings Examiner and the Bainbridge Island Examiner disagree.

Woodinville Water Dist. v. King Cnty., No. 86736-9-I (Wash. Ct. App)

Why difference of opinion?

Wording of 197-11-545 unclear. Regulation expressly says failure to comment deprives standing for agencies in DEIS appeals but only says failure to comment means failure to object for all other commenting opportunities.

Absent express adoption of standing requirements, it's unclear if cities and counties have implied authority to impose LUPA-type standing requirements.

Adams v. City of Seattle, Washington, No. 24-6505, 2025 WL 3081848 (9th Cir. Nov. 4, 2025)(unpublished)

Key Point

Have to exhaust administrative remedies prior to takings challenge.

Adams v. City of Seattle, Washington, No. 24-6505, 2025 WL 3081848 (9th Cir. Nov. 4, 2025)(unpublished)

Facts:

Adams seeks to building a four building accessory structure on her property for family and potential renters.

Adams property is in a zone subject to Seattle's Mandatory Housing Affordability for Residential Development ("MHA") ordinance.

Persons adding dwelling units in areas subject to the MHA must sell or rent a certain number of their new units at below-market rates to individuals earning less than median incomes. As an alternative, the property owner can make a cash contribution to the City.

Applicants may receive a modification or waiver from the MHA in their particular case if they can demonstrate that enforcement of the performance or payment options would cause a "*severe economic impact at such a level that a property owner's constitutional rights might be at risk*."

Adams v. City of Seattle, Washington, No. 24-6505, 2025 WL 3081848 (9th Cir. Nov. 4, 2025)(unpublished)

Facts:

Rather than apply for a waiver, Adams sues the City for a takings.

Adams sues as a both a facial challenge and an “as applied” challenge to ordinance.

Adams v. City of Seattle, Washington, No. 24-6505, 2025 WL 3081848 (9th Cir. Nov. 4, 2025)(unpublished)

Facial Challenge:

To succeed in facial challenge, Adams had to show that the "mere enactment of the MHA" constitutes a taking. That failed because Adams may have qualified for a waiver.

"As Applied" Challenge:

"As applied" challenge premature because based upon a speculative denial of a future waiver application. Essentially had to exhaust administrative remedies first.

Adams v. City of Seattle, Washington, No. 24-6505, 2025 WL 3081848 (9th Cir. Nov. 4, 2025)(unpublished)

Deja Vu

In 1987, a jury found that application of Seattle's Housing Preservation Ordinance qualified as a taking. The Ordinance required developers to either replace any low income housing they destroyed or pay a fee into a housing replacement fund.

See Sintra v. City of Seattle, 935 P.2d 555 (1997).

Don't be copying the MHA ordinance just yet!

Fox v. City of Pac. Grove, California, No. 24-CV-03686-EKL (N.D. Cal. Nov. 3, 2025)

Key Point

Requiring retention of a couple trees doesn’t constitute a per se taking

Fox v. City of Pac. Grove, California, No. 24-CV-03686-EKL (N.D. Cal. Nov. 3, 2025)

Facts:

Fox applies for a tree removal permit to remove two trees he claims are damaging his driveway and retaining wall.

City arborist denies tree removal permit.

Fox sues City for the "*appropriation of his property that is occupied by the trees at issue since June 8, 2021*."

Fox v. City of Pac. Grove, California, No. 24-CV-03686-EKL (N.D. Cal. Nov. 3, 2025)

Legal Analysis

Fox's takings claim was limited to a "per se" takings claim.

…when a land-use regulation completely deprives an owner of all economically beneficial use of her property, the regulatory taking also gives rise to a per se taking claim.

Fox v. City of Pac. Grove, California, No. 24-CV-03686-EKL (N.D. Cal. Nov. 3, 2025)

Legal Analysis – No Per Se Takings Found

The City's decision to deny Fox's permit application partially limits Fox's use of his property insofar as it prevents him from removing two unwanted trees. But this use restriction does not rise to the level of a per se taking. The City did not take title to any part of Fox's property, nor did it authorize the government or any other person or object to enter and occupy Fox's property. Absent an appropriation of or intrusion into his property by the government or a third party, Fox cannot plausibly allege a per se taking claim.

Gokey v. Black Diamond (Wash. Ct. App. 2025, No. 86814-4-I, Unpublished)

Key Point

Beware Vagueness – Avoid Restricting and Imposing Under Vague Standards

Gokey v. Black Diamond (Wash. Ct. App. 2025, No. 86814-4-I, Unpublished)

Property owner cited with Notice of Violation for unauthorized removal of ten significant trees.

Property owner appeals to hearing examiner.

Examiner upholds violation and $10,000 fine

Property owner takes it up to Court of Appeals. One of his claims is that tree ordinance is unconstitutionally vague.

Gokey v. Black Diamond (Wash. Ct. App. 2025, No. 86814-4-I, Unpublished)

Lake of Standing to File Claim:

Judicial appeal is filed by property owner under the Land Use Petition Act, Chapter 36.70C RCW (LUPA).

Standing (authorization to sue) under LUPA requires the appellant to exhaust administrative remedies. Exhaustion includes asserting all judicial claims in front of Hearing Examiner.

Court rules that since property owner didn't raise vagueness challenge to hearing examiner, owner failed to exhaust and therefore didn't have standing to file LUPA appeal.

Gokey v. Black Diamond (Wash. Ct. App. 2025, No. 86814-4-I, Unpublished)

Futility Exception Doesn't Apply:

City argues vagueness challenge is barred because appellant failed exhaust administrative remedies by raising issue with hearing examiner.

One exception to exhaustion is that it would be futile to try to exhaust.

Hearing Examiners in general don't have authority to invalidate ordinances.

But, void for vagueness claims are "as applied" challenges, meaning that the statute would only be considered vague if it qualifies as vague as applied to the property owner as opposed to just evaluating the ordinance on its face.

Court found no futility in raising vagueness challenge to Examiner because it would be evaluated "as applied."

Gokey v. Black Diamond (Wash. Ct. App. 2025, No. 86814-4-I, Unpublished)

Void for Vagueness:

An ordinance violates due process if its terms are so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application

Design review standards requiring projects to be “harmonious,” “interesting” and “compatible” held unconstitutionally vague

Anderson v. City of Issaquah, 70 Wash. App. 64 (1993)

Gokey v. Black Diamond (Wash. Ct. App. 2025, No. 86814-4-I, Unpublished)

Takeaways

Only apply vague ordinances in circumstances where persons of common intelligence would agree on their application.