

Low Carbon Energy Project Siting Improvement Study

Interagency Policy Team

Environmental Review and Permitting
Appeal Processes Overview
Sep 14, 2022



Introduction & Disclaimer

- The intent of this presentation is to provide a general overview of appeal processes for the State Environmental Policy Act (SEPA), Energy Facility Siting Evaluation Council (EFSEC), and permitting
- It is NOT intended to serve as legal advice, act as agency guidance, nor does it include all aspects of appeals or processes
- Appeals are reviewed on a case-by-case basis, so the process may vary depending on the appeal
- This presentation includes information for appeals at the local and state level, not federal



Who may be involved

- Person appealing (applicant or public citizen)
- Local, state, or federal agency leading environmental review
- Local, state, or federal agency making a permit decision for a project (i.e., approval, denial)
- Courts
- Hearing boards
- Hearing examiners



Type of Appeal Actions

The court, hearing board, or hearing officer may:

- Affirm a decision
- Reverse (overrule) a decision
- Remand (send back)
- Modify a decision



What can be appealed

The subject of the appeal may be limited by law, regulation, or permit, but generally:

- Approval or denial decision
- Permit conditions
- Analysis used for decision
 - Sources of information
 - Adequacy of analysis
 - Findings
- Procedure



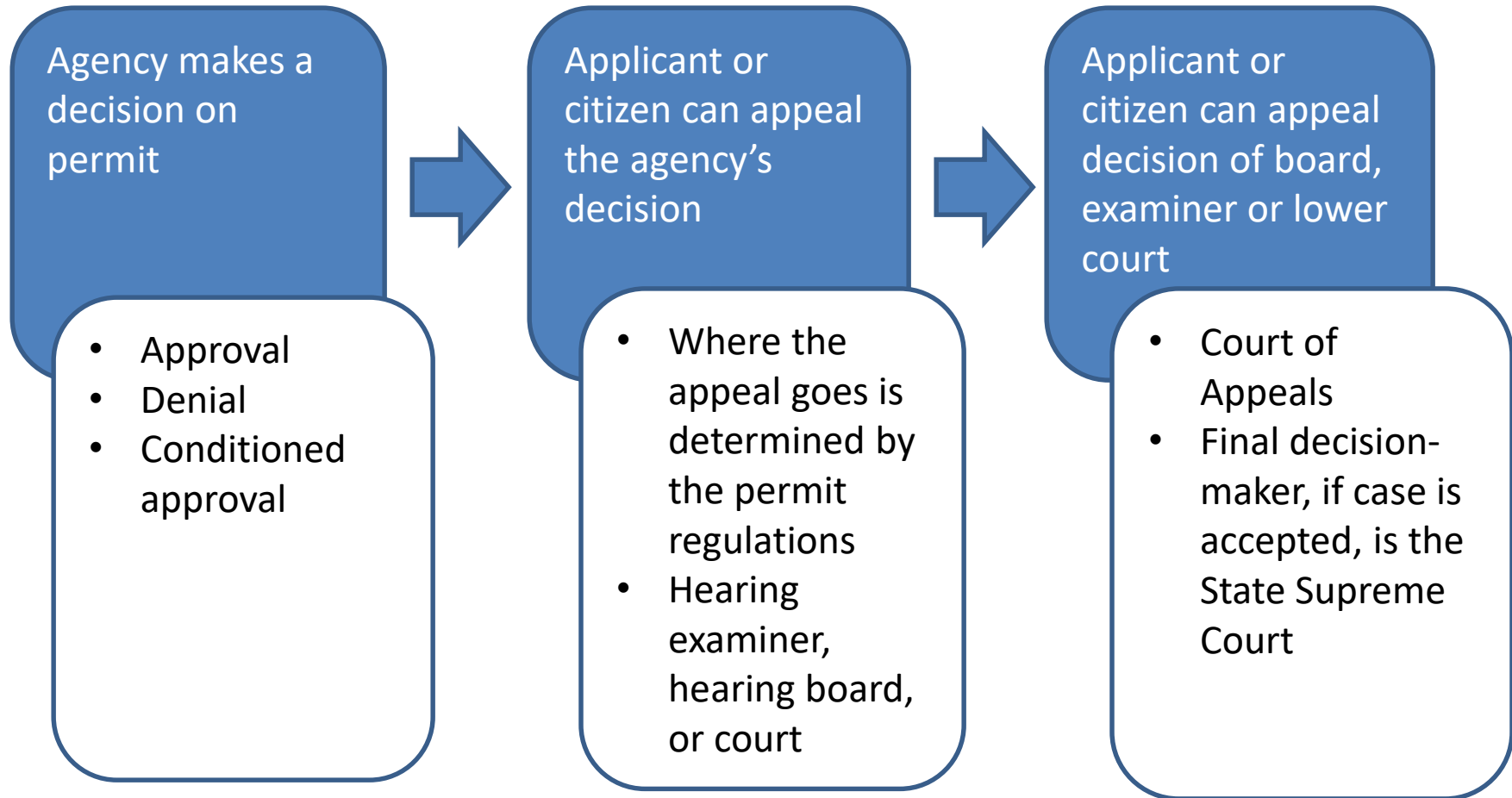
Courts

- Superior Courts
 - Multiple court districts in WA
- Washington Court of Appeals
 - Most cases appealed from superior courts go to Court of Appeals
 - All appeals filed are accepted
- Washington Supreme Court
 - Final rule-making authority for all of the state courts
 - Not all cases accepted

[Washington Courts](#)



General Process



SEPA Appeals

- Includes process for:
 - Procedural appeals
 - Substantive appeals
- Appeals may be heard at:
 - Administrative appeals, heard by agencies
 - Judicial appeals, heard by courts

[SEPA guidance](#)

[WAC 197-11-680](#)



SEPA Administrative Appeals

- For threshold determination, environmental impact study determination, or SEPA substantive decisions
- Single appeal
- Administrative appeals usually occur before judicial appeals
 - Must be included in ordinance, resolution, or rule
 - Not all agencies provide this process. If not provided, the first appeal is a judicial appeal.



SEPA Appeals

- Heard by hearing examiner, hearing boards, or courts
- Procedural and substantive SEPA appeals in most instances are combined with a hearing/appeal on the governmental action (such as approval or denial of a permit)



SEPA Appeals Timelines

- The permit appeal timeline applies
- If there is no time limit for the permit:
 - Can use a Notice of Action that establishes a 21-day appeal period
 - If no Notice of Action used, then there is no set time limit for judicial appeals



EFSEC Appeal Process

- Petition for Review filed in Thurston County Superior Court
- Thurston County Superior Court certifies the petition for review to the State Supreme Court
- Upon certification, the State Supreme Court assigns review at the earliest possible date

[RCW 80.50.140](#)



Permit Appeals

- Each permit uses its own regulatory authority
- Appeals use the permit's regulatory timeline and processes
- Information about permits and appeals is on [ORIA's permitting webpage](#) and on the permitting agency webpage



Hearing Examiner

- Counties and cities have statutory authority to establish hearing examiners
 - Determine qualifications for examiner and types of issues authorized to hear
 - Often for land use decisions and permits
 - Not all cities and counties have
- Hearing examiners are hired or contracted to conduct quasi-judicial hearings
 - Usually in place of planning commission, board of county commissioners, or city council
 - Professionally trained or qualified



Hearing Boards

Independent, quasi-judicial agencies that hear appeals:

- [Pollution Control Hearing Board \(PCHB\)](#)
- [Shorelines Hearing Board \(SHB\)](#)



General Appeal Timelines

Time to appeal a permit decision:

- Hearing examiner - varies
- PCHB – 30 days
- SHB – 21 days



Examples: Permits and First Appeal Authorities

	PCHB	EPA	SHB	Hearing Examiner	Superior Court
Air Operating Permit	X	X			
Air Notice of Construction Permit	X				
Hydraulic Project Approval	X				
Land Use Decision				If available	X
NPDES Industrial Stormwater Permit	X				
Prevention of Significant Deterioration Air Quality Permit	X				
Shoreline Conditional Use Permit			X	If available	
Shoreline Substantial Development Permit			X	If available	
Wastewater Discharge Permit	X				
Water Right Permit	X				





Thank you!