

Topic: Alternative Dispute Resolution
Resource Type: Regulations
State: Washington
Jurisdiction Type: Municipal
Municipality: County of Kitsap
Year (adopted, written, etc.): 1984-2009
Community Type – applicable to: Urban; Suburban; Rural
Title: County of Kitsap Hearing Examiner –
Alternative Dispute Resolution Provision
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Abstract

The County Commissioners gave the hearing examiner the authority to include pre- and post-hearing mediations. Hearing examiners conduct quasi-judicial proceedings to resolve land-use disputes.

Resource

Kitsap County, Washington
§ 2.10.120

“The hearing examiner has the authority to include provisions for pre-hearing and post-hearing mediation and for reconsideration of the examiner’s final decisions in such rules.”

(Ord. 428 (2009) § 1, 2009)

Kitsap County Code

Title 2. Government

Chapter
HEARING EXAMINER

2.10

Sections:

2.10.010 Adoption of system.

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2.10.080 Freedom from improper influence.

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2.10.100 Removal of examiner.

2.10.110 Duties of chief examiner.

2.10.120 Rules.

2.10.010 Adoption of system.

Kitsap County hereby adopts a land use hearing examiner system.

(Ord. 101 (1984) § 1, 1984)

2.10.020 Purpose.

The land use hearing examiner system is intended to provide an expeditious adjudicatory process in the land use arena which affords procedural due process and fundamental fairness.

(Ord. 101 (1984) § 2, 1984)

2.10.030 Board of adjustment eliminated.

The board of adjustment is eliminated.

(Ord. 101 (1984) § 3, 1984)

2.10.040 Appointment of examiners.

The county, through its board of county commissioners, shall appoint a chief hearing examiner and such other deputy examiners or *pro tempore* examiners as are necessary to perform the duties assigned. Such appointments shall be upon mutually acceptable terms.

(Ord. 101 (1984) § 4, 1984)

2.10.050 Term of office.

The chief examiner and every deputy examiner shall be appointed for an initial term of one year. Thereafter, upon reappointment, the term of office shall be for four years. *Pro tempore* examiners shall serve as specified in each appointment.

(Ord. 101 (1984) § 5, 1984)

2.10.060 Qualifications.

An examiner shall be appointed based solely upon his or her qualifications and shall have such previous training and experience as will qualify the examiner to fairly conduct administrative and quasi-judicial hearings upon land use matters.

(Ord. 101 (1984) § 6, 1984)

2.10.070 Duties.

Examiners shall perform those duties designated by ordinance or statute.

(Ord. 101 (1984) § 7, 1984)

2.10.080 Freedom from improper influence.

No person, including county officials and employees, shall attempt to influence an examiner upon any matter pending or likely to be brought before such examiner except at a public hearing at which the matter is to be considered; provided, if requested by an examiner, the prosecuting attorney may provide advice on questions of law.

(Ord. 101 (1984) § 8, 1984)

2.10.090 Disqualification.

An examiner shall not hear and shall disqualify himself or herself in a proceeding in which his or her impartiality could reasonably be questioned. In applying the foregoing standard an examiner shall adhere to the guidelines contained in Canon 3c of the Code of Judicial Conduct. In the event of a disqualification the disqualified examiner shall transfer the proceeding to another examiner or, if there is no other qualified examiner, to the Kitsap County planning commission.

(Ord. 101 (1984) § 9, 1984)

2.10.100 Removal of examiner.

An examiner may be removed from office for good cause by the board of county commissioners.

(Ord. 101 (1984) § 10, 1984)

2.10.110 Duties of chief examiner.

The chief hearing examiner shall have the following additional duties:

- (a) Administrative responsibility over deputy and *pro tempore* hearing examiners which shall include the assignment of cases;
- (b) The promulgation of rules as provided in Section [2.10.120](#);
- (c) Annually, the chief examiner shall produce a written report which shall contain:
 - (1) A summary of decisions made within the hearing examiner system;
 - (2) Recommendations for improving the hearing examiner system;
 - (3) Other observations and recommendations pertaining to land use policies or legislation.

(Ord. 101 (1984) § 11, 1984)

2.10.120 Rules.

The chief hearing examiner shall promulgate procedural rules which govern the conduct of proceedings within and operation of the hearing examiner system; provided, such rules shall become effective only if approved by the board of county commissioners; and provided further, such rules shall not conflict with any ordinance or statute. The hearing examiner has the authority to include provisions for pre-hearing and post-hearing mediation and for reconsideration of the examiner's final decisions in such rules.

(Ord. 428 (2009) § 1, 2009; Ord. 101 (1984) § 12, 1984)

The procedural sections below illustrate the role of the Hearing Examiner in the process:

Chapter 21.04

LAND USE AND DEVELOPMENT PROCEDURES*

Sections:

21.04.010 Purpose – Applicability – General process – Administrative Code interpretation.

21.04.020 Definitions.

21.04.030 Type classification of development activities, permits and regulations.

21.04.035 Consolidation of project permit applications.

- 21.04.040 Preapplication meeting.
- 21.04.045 Submittal requirements.
- 21.04.050 Application completeness.
- 21.04.060 Type I – Ministerial decision.
- 21.04.070 Type II – Administrative decision.
- 21.04.080 Type III – Quasi-judicial decision.
- 21.04.090 Type IV – Legislative decision.
- 21.04.100 Public notice.
- 21.04.105 Integration of SEPA review with project permit review.
- 21.04.110 Timelines and duration of approval.
- 21.04.120 Appeals.

* Editor’s Note: As adopted, the ordinance codified in this chapter was entitled the “Kitsap County Land Use and Development Procedures Ordinance.” It is familiarly known as the “procedures ordinance.”

21.04.010 Purpose – Applicability – General process – Administrative Code interpretation.

(A) Purpose and Applicability.

The purpose of the ordinance codified in this chapter is to provide timely and predictable procedures and an integrated project review process for applications for development under the following ordinances and chapters of the Kitsap County Code:

1. Subdivisions (Chapters 16.04 through 16.44);
2. Short Subdivisions (Chapter 16.48);
3. Large Lot Subdivisions (Chapter 16.52);
4. Binding Site Plans (Chapter 16.56);
5. Zoning (Title 17);
6. Road Vacations;

7. Critical Areas (Title 19);
8. SEPA (Chapter 18.04);
9. Shorelines (Title 22);
10. Timber Harvest Permits (Chapter 18.16);
11. Storm Water Management (Chapters 12.04 through 12.32); and
12. Concurrency (Chapter 20.04);

(B) Conflicts. In the event of conflicts between any provision of this chapter and the ordinances listed in subsection (A) above, the procedures contained in this chapter shall govern.

(C) Process. Generally, the process for review of project applications shall consist of the following stages:

1. Preapplication meeting.
2. County summary of requirements for processing.
3. Application.
4. Application type classification by county.
5. County completeness determination(s).
6. County initiation of appropriate public involvement process.
7. Decision by appropriate official or body.
8. Appeal period.

D. Code Interpretations. The director or other county staff shall provide administrative code interpretations of its development regulations to the public as follows:

1. Upon written request directed to the appropriate county official, the official shall provide a formal written interpretation of specific development regulations. Code interpretations shall be provided by the following county officials:

- a. Director – Subdivisions, Zoning, SEPA, Shorelines, Forest Practices, Erosion Control, Drainage, Clearing.
- b. County Engineer – Road Vacations, Concurrency

c. Kitsap County Building Official – Kitsap County Building Code.

2. Code interpretations are Type I actions, subject to the appeal provisions of this chapter.

(Ord. 290 (2002) § 14, 2002: Ord. 219 (1998) (Exh. 1, § 010), 1998)

21.04.020 Definitions.

(A) “Board” or “board of commissioners” means the Kitsap County board of county commissioners.

(B) “Closed record appeal” means an administrative appeal on the record to the board of commissioners following an open record hearing on a project permit application on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

(C) “Day(s)” means calendar days.

(D) “Director” means the director of the Kitsap County department of community development, or the director’s designee.

(E) “Open record hearing” means a hearing, conducted by a single hearing body or officer authorized by Kitsap County to conduct such hearings, that creates Kitsap County’s public record through testimony and submission of evidence and information, under procedures prescribed by Kitsap County by ordinance or resolution. On appeal, an open record hearing may only be held only if no open record pre-decision hearing was held on a project permit. All other appeals will be closed record appeals.

(F) “Open record pre-decision hearing” means a hearing held prior to Kitsap County’s decision on a project permit.

(G) “Project permit” or “project permit application” means any land use or environmental permit or license required from Kitsap County for a project action, including, but not limited to, building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, permits or approvals required by critical area ordinances, and site-specific rezones authorized by the Kitsap County Comprehensive Plan (the “Plan”) or a subarea plan, but excluding the adoption or amendment of the Plan, a subarea plan, or development regulations except as otherwise specifically included in this chapter.

(H) “Public meeting” means an information meeting, hearing, workshop, or other gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to Kitsap County’s decision. A public meeting may include a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing.

The proceedings at a public meeting may be, but are not required to be, recorded and a report or recommendation may be included in the Kitsap County project permit application file.

(I) “Review authority” means the director, or other county official or their designee, processing and making land use and development decisions.

(Ord. 369 (2006) § 5, 2006: Ord. 219 (1998) (Exh. 1, § 020), 1998)

21.04.030 Type classification of development activities, permits and regulations.

(A) Upon presentation, all development applications shall be classified by the county as either Type I, Type II, Type III or Type IV. The classification shall be in accordance with Table 21.04.030 below and shall determine the process, which will govern the review of the application for approval.

(B) If this chapter expressly provides that an application is subject to one of the four types of procedures or another procedure, then the application shall be processed accordingly. If this chapter does not expressly provide for review using one of the four types of procedures, and another specific procedure is not required by law, the review authority for the application in question shall classify the application as one of the four procedural types and it will be processed accordingly.

1. The act of classifying an application shall be a Type I action. Classification of an application shall be subject to reconsideration and appeal at the same time and in the same way as the merits of the application in question.

2. Questions about what procedure is appropriate shall be resolved in favor of the type providing the greatest public notice and opportunity to participate.

Table 21.04.030

PERMIT/ACTIVITY/DECISION	Review Authority	CLASSIFICATION				
		Exempt	Type I	Type II	Type III	Type IV
Amendments — Comprehensive Plan (Legislative)	BC					X
Amendments — Regulations (Legislative)	BC					X
Appeals	HE/BC				X	X
Binding Site Plan	HE				X	
Building Code Interpretation	BO		X			
Building Permit	D	X				

Conditional Use Permit — Administrative	D			X		
Conditional Use Permit — Hearing Examiner	HE				X	
Conditional Use Permits — Minor Revisions	D		X			
Conditional Use Permits — Vacation	D		X			
Construction Standards, Amendment	BC					X
Critical Areas Variance	HE				X	
Concurrency Certificates	CE		X			
Determination of Zone Boundaries	D		X			
Discretionary Administrative Determinations	D		X			
Development Standard Modifications or Waivers — Mixed Use Development	D/HE			X	X	
Final Plat	BC			X		
Height Increase — 10% or less	D			X		
Height Increase — more than 10%	HE				X	
Landscape Plan Approval	D		X			
Large Lot Subdivision	CE			X		
Master Plan Approval	D/HE			X1	X2	
Master Plan Scoping	D			X		
Plan Interpretations	D		X			
Performance Based Development	HE				X	
Preliminary Plat	HE				X	
Rezone — With Annual Comprehensive Plan Amendment	BC					X
Rezone — Authorized by Comprehensive Plan	BC					X
Road Vacation	BC				X	
Rural Wooded Incentive Program — Preliminary Plat	HE				X	
Rural Wooded Incentive Program — Release of Subsequent Phases	D			X		

Subdivision	HE				X	
SEPA Threshold Determination	D			X		
Shorelines Substantial Development, Conditional Use, Variance Permit	HE				X	
Short Subdivision	D/HE			X		
Site Development Activity Permit (grading, clearing, drainage)	CE			X		
Temporary Use	D		X			
Timber Harvest Permit	D		X			
Transfer of Development Right — Certification	D		X			
Transfer of Development Right — Permit	D/HE/BC	X	X	X	X	X
Variance	HE				X	
Zoning Interpretations	D		X			
D= Director	CE = County Engineer	BO = Building Official	HE= Hearing Examiner	BC= Board of Commissioners		

1. Approval process for master plans within the South Kitsap Industrial Area (except those for the Industrial Multi-Purpose Recreational Area designation (see Section 17.322.030).

2. Approval process for master plans within the ULID #6 Sub-Area.

(Ord. 369 (2006) § 6, 2006: Ord. 311 (2003) [Attachment 5 [§ 11], 2003: Ord. 290 (2002) § 15, 2002: Ord. 219 (1998) (Exh. 1, § 030), 1998)

21.04.035 Consolidation of project permit applications.

(A) The county shall consolidate project permit applications and review in order to integrate the project permit and environmental review process and avoid duplication of the review processes. Consolidated permit processing shall follow the review and approval process of the highest numbered permit type represented among the required permits. For non-legislative actions, Type III is considered the highest and Type I is considered the lowest.

(B) The applicant may determine whether the multiple permit applications shall be processed concurrently or independently, except that the director has the discretion to require a variance, height increase, development standards modification or waiver to be processed concurrently with the associated project permit application.

(C) For applications that are processed individually, the highest numbered permit type shall be acted upon prior to processing the lower numbered permit type, unless the higher numbered permit type is dependent on first obtaining a favorable Type I or Type II decision.

(Ord. 369 (2006) § 7, 2006)

21.04.040 Preapplication meeting.

(A) **Predevelopment Meeting.** Applicants may request and participate in an informal meeting prior to the formal preapplication meeting, although such predevelopment meetings are not required. The purpose of the meeting is to discuss in general terms the proposed development, application requirements, design standards, design alternatives, other required permits and the approval process.

(B) **Preapplication Meeting.** The purposes of the preapplication meeting and review are:

1. To provide the county with sufficient information about a proposed project to enable county staff to classify the project and inform the applicant of approval requirements;

2. To acquaint the applicant with the requirements of this chapter and other applicable law. County staff shall inform applicants that they should not consider the meeting and review as providing an exhaustive review of all the potential issues that a given application could raise and that applicants should seek independent advice if they have questions or concerns of any kind. Preapplication review shall not prevent the county from applying all relevant laws to the application; and

3. To provide an opportunity for other agency staff and the public to become acquainted with the proposed application and applicable law. Members of the public may attend a preapplication meeting, but it is not a public hearing, and there is no obligation to receive public input.

(C) Unless waived by the director, a preapplication meeting is required for Type II or III applications. A preapplication meeting should be waived by the director only if the reviewing authority determines that the application is relatively simple. A preapplication meeting should be waived by the director only under one of the following conditions:

1. The applicant submits a completed written form provided by the reviewing authority requesting waiver of a preapplication meeting and review. The form shall state that waiver of a preapplication meeting could increase the maximum time for review for complete status and increases the risk that the application will be rejected and that processing could be delayed; or

2. This chapter or the director expressly exempts the application(s) in question from preapplication review.

(D) To initiate preapplication review, an applicant shall submit a completed form provided by the reviewing authority for that purpose, the required fee, and all information required by the relevant section(s) of this chapter. Information not provided on the form shall be provided on attachments such as drawings, required checklists or other documents approved by the director. The director may modify requirements for preapplication materials and may conduct a preapplication review with less than all of the required information so long as modification does not prevent the director from identifying all applicable issues and still allows the most effective preapplication review.

(E) The director shall designate a staff member who shall coordinate the involvement of county staff responsible for planning, development review, roads, drainage, parks and other subjects, as appropriate, in the preapplication review process. Preapplication review will include discussion of requirements for application completeness, permit or approval requirements, fees, review process and schedule, and responding to questions from the applicant. Responsible staff shall either attend the preapplication meeting or take other steps to fulfill the purposes of preapplication review.

(F) The preapplication meeting shall be scheduled at least five days after the notice is mailed but not more than twenty-eight days after the county accepts the application for preapplication review. If the applicant or applicant's representative cannot or does not attend the first scheduled meeting, the county review authority shall reschedule the meeting and give new notice, in which event, the time passing prior to the date the preapplication meeting is held shall not be included in any other time calculation referred to in this chapter.

(G) Within twenty-one days after the date of a preapplication meeting, the review authority shall mail to the applicant and to other interested parties a written summary of the preapplication review. Such information will be based upon the level of detail submitted by the applicant with the preapplication request. The preapplication summary shall include a description of the project, all required fees for development permits and project issues regarding critical areas, stormwater, public facilities, roadways and other development limitations.

(H) An applicant may submit a written request for a second preapplication meeting within one calendar year after an initial preapplication meeting. There shall be no additional fee for a second meeting if the proposed development is substantially similar to the one reviewed in the first preapplication meeting or if it reflects changes based on information received at the first preapplication meeting.

(Ord. 369 (2006) § 8, 2006: Ord. 219 (1998) (Exh. 1, § 040), 1998)

21.04.045 Submittal requirements.

(A) Except as provided elsewhere in this code, the department shall establish and may revise written submittal requirements for each type of project permit application required by this title. The requirements shall clearly describe the material that must be submitted for

an application to be considered complete. The department shall provide public notice of changes thirty days prior to their effective date.

(B) Submittal requirements shall not be waived, except that the department may determine in writing that a particular requirement is not applicable upon a clear showing by the applicant that the requirement is not relevant to the proposed project permit and is not necessary to demonstrate compliance with the applicable requirements.

(C) Additional materials may be required by the department as it determines necessary for review of the application.

(Ord. 369 (2006) § 9, 2006)

21.04.050 Application completeness.

(A) The review authority shall determine whether the application is complete upon its submittal according to the following timetable:

1. Within twenty-eight days after the initial submittal; or
2. Within fourteen days after the application has been resubmitted to the county if the application has been returned to the applicant as being incomplete.

(B) Notwithstanding subsection (A) of this section, if the review authority establishes a given day of the week as the day on which to begin review for completeness for a certain kind of application (for example, a subdivision), the time for making a decision regarding the completeness of that kind of application shall begin to run on the day designated by the review authority.

(C) The decision determining an application complete and imposition of any requirements for engineering, traffic or other studies shall be based on the criteria set forth in this chapter and implementing measures timely adopted by the review authority. An application is complete if it includes the following:

1. A completed original application form(s) signed by (a) the owner(s) of the property which is the subject of the application; or (b) a representative authorized to do so by written instrument executed by the owner(s) and filed with the application. An application subject to Type IV review may be filed by the director, the planning commission or the board of commissioners without the signature or consent of the property owner(s);
2. A legal description supplied by a title company, surveyor licensed in the state of Washington, or other party approved by the review authority;
3. A current Kitsap County assessor map(s) showing the property(ies) subject to the application;

4. A copy of the preapplication meeting summary, unless waived by the director or not timely prepared as required by subsection (H) of Section 21.04.040;

5. The applicable fee(s) adopted by the board of commissioners for the application(s) in question;

6. All of the information required in the relevant sections of this chapter;

7. Any necessary SEPA document, typewritten or in ink, and signed; and

8. Any additional information identified by the director following the preapplication meeting as necessary to provide the county with sufficient information about the proposed project.

(D) If appropriate because of the nature of the site, the proposed development, or other factors, the review authority may waive or modify, in writing with supporting reasons, application requirements that are clearly not necessary to show a proposal complies with relevant criteria and standards of this chapter.

(E) Once a project meets the procedural submission requirements, at the sole discretion of the reviewing authority, it may be deemed sufficiently complete for continued processing and a notice of completeness may issue even though additional information is required or project modifications may be undertaken subsequently. In such circumstances, the determination of completeness shall not preclude the reviewing authority from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

(F) If the review authority decides an application is not complete, within the time provided in subsection A of this section, the review authority shall send the applicant a written statement rejecting the application and specify what is required to complete the application, including:

1. A specific date by which the required missing information must be provided to restart the completion review process pursuant to subsection (A)(3) of this section, with an explanation of how to apply for a deadline extension; and

2. If appropriate, recommendations for any additional information that, although not necessary to make the application complete, would be recommended to address relevant issues.

(G) If the review authority has not extended the date, and the required information has not been submitted by the date specified, within seven days following the submittal deadline, the review authority shall take the action in subsections (F)(1) or (F)(2) of this section. If the required information is submitted by the specified date, the review authority shall decide

within fourteen days whether the application is complete and, if not, the review authority shall either:

1. Reject and return the application and seventy-five percent of the application fee with the written statement described in subsection (F) of this section;
2. Issue a decision denying the application, based on a lack of information provided; or
3. Allow the applicant to restart the completion review process anew by providing the required missing information before a date specified by the review authority, in which case the review authority may retain the application and fees pending expiration of the new date or technical review of the amended application.

(H) When the review authority determines that an application is complete, within fourteen days of making this determination the review authority shall:

1. Forward the application(s) to the county staff member responsible for processing it and, if a Type III application, schedule it for a public hearing;
2. Send a written notice of completeness to the applicant acknowledging acceptance, listing the name and telephone number of a contact person at the review authority, and describing the expected review schedule, including the date of a hearing for a Type III process; and
3. If the application is for a Type II or III process, provide a copy of the notice of application provided to the public under Section 21.04.100.

(I) A Type II or III application shall be deemed complete if a written determination has not been mailed to the applicant within twenty-eight days of the date the application is submitted.

(J) Postponement of Application Processing. An applicant may request in writing that processing of an application be postponed, in which event, the county will take no further action until the application is re-activated by the applicant. All applicable timelines and deadlines will be stayed in the interim. Applications which have not been re-activated at the end of six months after the date of postponement shall be returned to the applicant together with seventy-five percent of any fees paid and deemed to have been voluntarily withdrawn. Withdrawn applications must be resubmitted as new applications with full fees.

(Ord. 369 (2006) §§ 10, 11, 2006: Ord. 219 (1998) (Exh. 1, § 050), 1998)

21.04.060 Type I – Ministerial decision.

(A) For a Type I application, the review authority shall approve, approve with conditions, or deny the application within twenty-one days after the date the application was accepted as complete; provided, an applicant may agree in writing to extend the time in which the review authority shall issue a decision. The review authority may consider new information the applicant submits with or after such a written agreement.

(B) Written notice of a Type I application decision shall be mailed to the applicant and the applicant's representative. The applicant may appeal the decision in accordance with Section 21.04.120 or may apply for post-decision changes in accordance with subsection (J) of Section 21.04.050.

(Ord. 219 (1998) (Exh. 1, § 060), 1998)

21.04.070 Type II – Administrative decision.

(A) Within fourteen days after the date a Type II application is deemed complete, the review authority shall issue a public notice of the application pending review in accordance with the requirements of Section 21.04.100.

(B) The review authority shall mail the applicant a copy of comments timely received in response to the notice together with a statement that the applicant may respond to the comments within fourteen days from the date the comments are mailed. The review authority shall consider the comments and the applicant's reply, so long as timely received. The review authority may consider comments and responses received after the deadline for filing.

(C) A decision shall be made within the timelines specified by Section 21.04.110, and shall include:

1. A statement of the applicable criteria and standards in this chapter and other applicable law;
2. A statement of the facts relevant to the decision;
3. The basis for a conclusion to approve or deny; and
4. The decision to deny or approve the application and, if approved, any conditions of approval necessary to ensure that the proposed development will comply with applicable law.

(D) Within seven days of the decision, the review authority shall mail a notice of decision to the applicant, the applicant's representative, any known neighborhood association in whose area the property in question is situated, and all parties who have requested such notice regarding the application. The notice of decision shall include the following information:

1. A statement that the decision and SEPA determination are final, but may be appealed as provided in Section 21.04.120 to the Kitsap County hearing examiner within fourteen days after the notice of decision, with the appeal closing date in boldface type. The statement shall describe basic appeal requirements, including applicable fees and the elements of an appeal statement; and

2. A statement that the complete case file, including findings, conclusions and any conditions of approval is available for review. The notice shall list the place, days and times when the case file is available and the name and telephone number of the county representative to contact about reviewing the file.

(Ord. 219 (1998) (Exh. 1, § 070), 1998)

21.04.080 Type III – Quasi-judicial decision.

(A) A Type III review process requires one open record public hearing before the hearing examiner. The public hearing must be held within seventy-eight days after the date the review authority issues the determination that the application is complete, and not less than fifteen days following any SEPA threshold determination.

(B) At least fifteen days before the date of a hearing for a Type III application, the review authority shall issue a public notice of the hearing in accordance with the requirements in Section 21.04.100.

(C) At least seven days before the date of the hearing, the director shall issue a written staff report and recommendation regarding the application(s). The director shall make the staff report and recommendation available for public review and inspection and shall mail a copy without charge to the applicant and applicant's representative. The director shall mail or provide a copy of the staff report at reasonable charge, as determined by the review authority, to all other parties who request it.

(D) Public hearings shall be conducted in accordance with applicable rules of procedure, except to the extent waived by the review authority, and recorded on audio or audiovisual tape.

1. At the beginning of a hearing or agenda of hearings, the hearing examiner shall:

a. State that testimony will be received only if it is relevant to the applicable approval criteria and development standards and is not unduly repetitious;

b. State that the hearing examiner will consider any party's request that the hearing be continued or that the record be kept open for a period of time and may grant or deny that request;

c. State that the hearing examiner must be impartial and whether the hearing examiner has had any ex parte contact or has any personal or business interest in the application, and

provide parties an opportunity to challenge the impartiality of the examiner prior to commencement of the hearing;

d. State whether the hearing examiner has visited the site;

e. State that persons who want to receive notice of the decision may sign a list for that purpose at the hearing and where that list is kept; and

f. Summarize the conduct of the hearing.

2. At the conclusion of the hearing on each application, the hearing examiner shall announce one of the following:

a. That the hearing is continued. If the hearing is continued to a place, date and time certain, additional notice of the continued hearing is not required to be mailed, published or posted. If the hearing is not continued to a place, date and time certain, notice of the continued hearing shall be given as though it was the initial hearing. The hearing examiner shall adopt guidelines for reviewing requests for continuances;

b. That the public record is held open to a date and time certain. The hearing examiner shall state where additional written evidence and testimony can be sent, and shall announce any limits on the nature of the evidence that will be received after the hearing. The hearing examiner may adopt guidelines for reviewing requests to hold open the record;

c. That the application(s) is/are taken under advisement, and a final order will be issued as provided in subsection (F) of this section; or

d. That the application(s) is/are denied, approved or approved with conditions, together with a brief summary of the basis for the decision, and that a final order will be issued as provided in subsection (E) of this section.

(E) The hearing examiner shall issue a written decision regarding the application(s) within fourteen days after the date the record closes. The decision shall include:

1. A statement of the applicable criteria and standards in this chapter and other applicable law;

2. A statement of the facts that the review authority found showed the application does or does not comply with each applicable approval criterion and standards;

3. The basis for conclusions to approve, deny or impose conditions; and

4. The decision to deny or approve the application and, if approved, any conditions of approval necessary to ensure that the proposed development will comply with applicable criteria and standards.

F. Within seven days from the date of the decision, the director shall mail the notice of decision to the applicant and applicant's representative, and all parties of record. The mailing shall include a notice which includes the following information:

1. A statement that the decision is final, but may be appealed as provided in Section 21.04.120 to the Kitsap County board of commissioners within fourteen days after the date the notice is mailed. The appeal closing date shall be listed in boldface type. The statement shall describe how a party must appeal the decision, including the applicable fee and the basic elements of a petition for review; and

2. A statement that the complete case file is available for review, listing the place, days and times where the case file is available and the name and telephone number of the county representative to contact for information about the case.

(Ord. 219 (1998) (Exh. 1, § 080), 1998)

21.04.090 Type IV – Legislative decision.

(A) A Type IV procedure may require one or more hearings before the Kitsap County planning commission and does require one or more hearings before the Kitsap County board of commissioners. All Comprehensive Plan amendments shall be considered concurrently and cumulatively, not more than once per year, with the exceptions of the capital facilities element, subarea plans, and shoreline master program.

(B) At least fifteen days before the date of the first planning commission hearing for an application subject to Type IV review, the director shall:

1. Prepare a notice of application that includes the following information:

a. The case file number(s);

b. A description and map of the area that will be affected by the application, if approved, which is reasonably sufficient to inform the reader of the location;

c. A summary of the proposal described in the application(s);

d. The place, days and times where information about the application may be examined and the name and telephone number of a county representative to contact about the application;

e. A statement that the notice is intended to inform potentially interested parties about the hearing and to invite interested parties to appear orally or by written statement at the hearing;

f. Designation of the review authority, the date, time and place of the hearing, and a statement that the hearing will be conducted in accordance with the rules of procedure adopted by the review authority;

g. A statement that a staff report and, whenever possible, a consolidated SEPA review or integrated growth management document, will be available for inspection at no cost at least fifteen days before the hearing and that a copy will be provided at reasonable cost; and

h. A general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings;

2. Mail a copy of the notice prepared under subsection (B) of this section to parties who request such notice;

3. Publish in a newspaper of general circulation a summary of the notice, including the date, time and place of the hearing and a summary of the subject of the Type IV process; and

4. Provide additional notice deemed appropriate and necessary by the director based on the subject of the Type IV process.

(C) At least seven days before the date of the first hearing on a Type IV application(s), the director shall issue a written staff report and a SEPA evaluation and recommendation regarding the application(s). The director shall make a copy of the staff report and SEPA evaluation available to the public for review and inspection, mail a copy of the consolidated report and recommendation to the review authority, and mail or provide copies at reasonable charge to other parties who request it.

(D) Public hearings shall be conducted in accordance with the rules of procedure as determined by the review authority and except to the extent waived by the review authority. A public hearing shall be recorded on audio or audiovisual tape.

(E) At the conclusion of a planning commission hearing on a Type IV application, the planning commission shall announce one of the following actions, which may not be appealed:

1. That the hearing is continued. If the hearing is continued to a place, date and time certain, then additional notice of the continued hearing is not required to be mailed, published or posted. If the hearing is not continued to a place, date and time certain, then notice of the continued hearing shall be given as though it was the initial hearing before the planning commission; or

2. That the planning commission recommends against or in favor of approval of the application(s) with or without specified changes, or that the planning commission will recommend neither against nor for approval of the application(s), together with a brief summary of the basis for the recommendation.

(F) At least seven days before the date of the first board of commissioners hearing for an application subject to Type IV review, the director shall:

1. Prepare a notice that includes the information listed in subsection (B)(1) of this section except the notice may be modified as needed to:

a. Reflect any changes made in the application(s) during the planning commission review;

b. Reflect that the board of commissioners will conduct the hearing and the place, date and time of the board of commissioners hearing; or

c. State that the planning commission recommendation, staff report, and SEPA evaluation are available for inspection at no cost and copies will be provided at reasonable cost;

2. Mail a copy of that notice to the parties identified in subsection (B)(2) of this section and to parties who request it in writing;

3. Publish in a newspaper of general circulation a summary of the notice, including the date, time and place of the hearing and a summary of the subject of the Type IV process; and

4. Provide additional notice deemed appropriate and necessary by the director based on the subject of the Type IV process.

(G) At the conclusion of its hearing regarding a Type IV application, the board of commissioners may continue the hearing or may adopt, modify or give further consideration to the application or recommendations. If the hearing is continued to a place, date and time certain, then additional notice of the continued hearing is not required to be provided. If the hearing is not continued to a place, date and time certain, then notice of the continued hearing shall be given as though it was the initial hearing before the board of commissioners.

(Ord. 219 (1998) (Exh. 1, § 090), 1998)

21.04.100 Public notice.

(A) Notices of Application. A notice of the application shall include the following information, to the extent known:

1. The case file number(s), the date of application(s), the date the application(s) was deemed complete, and the date of the notice of completeness;

2. A description of the proposal with a list of any project permit requests included with the application(s) and, if applicable, a list of any further studies required by the review authority;

3. Identification of other necessary permits not included in the application, to the extent known by county staff;
4. Identification of existing environmental documents evaluating the proposal;
5. Specific dates for the public comment period, a statement that the public has the right to comment on the application, receive notice of and participate in any hearings, and request a copy of the decision once made. The statement shall describe any appeal rights and make it clear that only written comments received by the county within fifteen days from the date of the notice will be considered;
6. The deadline for submitting a SEPA appeal;
7. The date, time, place and type of hearing, if applicable; provided, that any necessary threshold determination has been made under SEPA. If a necessary threshold determination has not yet been made at the time the notice of application is sent, the hearing date shall be set later, for a date no sooner than fifteen days following the SEPA determination, and a separate notice of hearing shall be mailed to the applicant, the applicant's representative and all other parties who have requested such notice;
8. If one has been made, a statement of the preliminary determination of what development regulations will be used for project mitigation. The statement shall indicate which regulations the application appears to comply with;
9. A statement that a consolidated staff report and, if applicable, that the SEPA review document will be available for inspection at no cost at least fifteen days before the administrative decision or public hearing;
10. The deadline for submitting written comments;
11. The name of the applicant or applicant's representative and the name, address and telephone number of the contact person for the applicant, if any;
12. A description of the site which is reasonably sufficient to inform the reader of its location and zoning, including current zoning designation and the nearest road intersections;
13. The date, place and times where information about the application may be examined and the name and telephone number of the county representative to contact about the application;
14. The designation of the review authority, and a statement that the hearing will be conducted in accordance with the rules of procedure adopted by the review authority; and
15. Any additional information determined appropriate by the reviewing authority.

(B) Separate Notice of Public Hearing. For Type III applications, where the notice of application under subsection (A) of this section does not include a notice of hearing, a separate notice of the hearing date shall be distributed in accordance with subsection (C) of this section.

(C) Distribution of Notices.

1. Within the time period specified for public notice of applications in this chapter, the director shall mail a copy of notices of application and hearings, or a summary postcard as provided in subsection (C)(4) of this section, to:

- a. The applicant and the applicant's representative;
- b. Any neighborhood association known to the director and in whose area the property in question is situated;
- c. Owners of property within a radius of four hundred feet of the property which is the subject of the application:

(i) The records of the Kitsap County assessor shall be used to determine the property owner of record. The failure of a property owner to receive notice shall not affect the decision if the notice was sent in accordance with this subsection. A sworn certificate of mailing executed by the person who did the mailing shall be evidence that notice was properly mailed to parties listed or referenced in the certificate; and

(ii) If the applicant owns property adjoining or across a right-of-way or easement from the property that is the subject of the application, notice shall be mailed to owners of property within a four-hundred-foot radius, as provided in this subsection, of the edge of the property owned by the applicant adjoining or across a right-of-way or easement from the property that is the subject of the application;

- d. Agencies with jurisdiction; and
- e. Other people who request such notice in writing.

2. For Type III review, the county shall publish in a newspaper of general circulation a summary of the notice, including the date, time and place of the hearing, the nature and location of the proposal and instructions for obtaining further information.

3. For Type III review, the county shall post the notice in a conspicuous place visible to the public at least fifteen days before the hearing. The applicant shall remove and properly dispose of the notices within seven days after the hearing.

a. The notice shall state the date, time and place of the hearing; the nature and location of the proposal; and instructions for obtaining further information.

b. At least two days before the hearing, the responsible county staff member shall execute and submit an affidavit to the review authority certifying where and when the notices were posted.

4. For notices that are required to be mailed pursuant to this chapter, the county may substitute a postcard notification that includes a short summary of information and provides the recipient with instructions regarding obtaining complete notice either electronically or in person.

(Ord. 427 (2009) § 1, 2009: Ord. 219 (1998) (Exh. 1, § 100), 1998)

21.04.105 Integration of SEPA review with project permit review.

(A) Project permit applications and planned actions subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed in accordance with the policies and procedures contained in Chapter 18.04 of this code and WAC 197-11.

(B) SEPA and the review of project permit applications shall be combined and integrated in all project permits that are not categorically exempt from SEPA or for which environmental review has not already been completed in the following manner:

1. SEPA review, if required, should be analyzed in one project permit review process that includes land use, environmental, public and governmental review as established by this chapter. If applicable development regulations already require studies that adequately analyze a project's specific probable adverse impacts, then additional or redundant studies shall not be required under SEPA.

2. Documents or studies prepared in the project permit review process under the requirements of SEPA or specific development regulations shall be prepared so that they can be reviewed by the public, the county and other agencies during the applicable comment periods.

3. A SEPA threshold determination and/or a scoping notice may be issued with a notice of application; provided, that a final threshold determination of nonsignificance may not be issued until after the expiration of the public comment period on the notice of application unless the requirements of the optional DNS process (WAC 197-11-355 and Section [18.04.120](#) of this code) are followed. A final determination of significance and a SEPA scoping notice may be issued with the notice of application and prior to the expiration of the public comment period on the notice of application.

4. Any appeal of a determination of significance as described in Section [18.04.210](#)(1)(c) may proceed in advance of any hearings or appeals of the underlying project permit application.

(Ord. 369 (2006) § 12, 2006)

21.04.110 Timelines and duration of approval.

(A) Decisions. Decisions on Type I, II, and III applications shall be issued not more than seventy-eight days after the date of the determination of completeness.

1. If a determination of significance (DS) is issued, the decision shall not issue sooner than seven days after a final environmental impact statement is issued.

2. An applicant may agree in writing to extend the time in which the review authority shall issue a decision. The review authority may consider new evidence the applicant introduces with or after such a written request.

3. If the county determines that the information submitted by the applicant under Section 21.04.050(C) is insufficient, it shall notify the applicant of the deficiencies and the procedures under Section 21.04.050 shall apply as if a new request for studies had been made.

4. In determining the number of days that have elapsed after Kitsap County has notified the applicant that the application is complete, the following periods shall be excluded:

a. Any period during which the applicant has been required by the county to correct plans, perform studies, or provide additional information. The period shall be calculated from the date the county notifies the applicant of the need for additional information to the earlier of either: (1) the date the county determines whether the additional information provided satisfies the request for information; or (2) fourteen days after the date the information has been provided to the county;

b. Any period of time during which an environmental impact statement is being prepared, which shall not exceed one year from the issuance of the determination of significance unless the county and applicant have otherwise agreed in writing to a longer period of time. If no mutual written agreement is completed, then the application shall become null and void after the one-year period unless the director determines that delay in completion is due to factors beyond the control of the applicant;

c. Any period during which the applicant has requested additional time to supplement the application or has otherwise requested that processing be delayed; and

d. Any period during which the application has been postponed at the request of the applicant in accordance with subsection (J) of Section 21.04.050.

B. Duration of Development Approval. Preliminary approval of land divisions, site plan review, approval of uses permitted subject to director review, approval of conditional use permits, approval of performance based developments, and approval of variances, shall be valid for a period of three years after approval, during which time a complete application for final plat approval (in the case of preliminary land division approval) or a building permit

(for all other listed approvals) meeting all the legal requirements and conditions of approval shall be made.

C. Extensions – Phased Developments.

1. Applications specifically approved for phased development may receive one two-year extension in accordance with the criteria below, so long as at least one phase was finally approved within two years prior to each such subsequent extension request. Subsequent extensions will be subject to a Type III process.

a. An extension request must be filed in writing with the director at least thirty days prior to the expiration of the approval period or any subsequent approved extension.

b. The applicant must demonstrate to the director tangible progress toward the next phase of the application.

c. The applicant must demonstrate to the director that there are no significant changes in conditions which would render approval of the extension contrary to the public health, safety or general welfare.

2. The director may take either of the following actions upon receipt of a timely extension request:

a. Approve the extension if no significant issues are presented under the criteria set forth in this section;

b. Conditionally approve the extension if any significant issues presented are substantially mitigated by minor revisions to the original approval; or

c. Deny the extension if any significant issues presented cannot be substantially mitigated by minor revisions to the approved plan.

3. A request for extension shall be processed as a Type I action. Appeal and post-decision review of a Type I action is permitted as provided in this chapter.

D. Developer Agreements. Notwithstanding the foregoing, the board may approve a developer agreement under RCW 36.70B.170 et seq., providing for a longer approval duration. The hearing examiner is delegated authority to conduct hearings and make recommendations for developer agreements, but final approval thereof is reserved to the board.

(Ord. 219 (1998) (Exh. 1, § 110), 1998)

21.04.120 Appeals.

(A) Final decisions regarding applications (including preliminary short and long plats) subject to a Type I, II or III procedure may be appealed only if, within fourteen days after written notice of the decision is mailed, a written appeal of the decision is filed with the following bodies:

1. Type I or Type II – Director.
2. Type III – Board of commissioners.

(B) If state or county rules are adopted pursuant to Chapter 43.21C RCW which allow public comment on a determination of nonsignificance issued as part of an appealable project permit decision, the appeal period shall be extended for an additional seven days.

(C) The appeal shall contain the following information:

1. The case number designated by the county and the name of the applicant;
2. The name and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate one party as the contact representative for all contact with the director. All contact with the director regarding the appeal, including notice, shall be with this contact representative;
3. The specific aspect(s) of the decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error; and
4. The appeal fee adopted by the board of commissioners.

(D) The hearing examiner shall hear appeals of Type I and II decisions in a de novo hearing. Notice of an appeal hearing shall be mailed to parties entitled to notice of the decision, but need not be posted or published. A staff report shall be prepared, a hearing shall be conducted, and a decision shall be made and noticed and can be appealed as for a Type III process.

(E) The board of commissioners shall hear appeals of Type III decisions on the established record, including all materials received in evidence at any previous stage of the review, an audio or audio/visual tape of the prior hearing(s) or transcript of the hearing(s), the final order being appealed, and argument by the parties.

1. Board of commissioners' consideration of an appeal shall be noticed as provided for in subsection (C) of Section 21.04.100. The board may either decide the appeal at the designated meeting or continue the matter to a limited hearing for receipt of oral argument. If so continued, the board shall:

a. Designate the parties or their representatives to present argument, and the permissible length thereof, in a manner calculated to afford a fair hearing of the issues specified by the board; and

b. At least fifteen days before such hearing, provide notice to all parties entitled under this chapter to such notice. The notice shall indicate that the limited hearing is not a new public hearing and that only legal argument from designated parties will be heard.

2. At the conclusion of a closed record appeal hearing, the board of commissioners may affirm, reverse, modify or remand an appealed decision.

a. A decision to remand a matter is not appealable. Appeal from a new staff decision made on remand shall be treated as any other decision.

b. If the board affirms an appealed decision, the board shall adopt a final order that contains the conclusions the board reached regarding the specific grounds for appeal and the reasons for those conclusions. The board may adopt the decision of the lower review authority as its decision to the extent that the decision addresses the merits of the appeal or the board may alter that decision.

c. If the board reverses or modifies an appealed decision, the board shall adopt a final order that contains:

(i) A statement of the applicable criteria and standards in this chapter and other applicable law relevant to the appeal;

(ii) A statement of the facts that the board finds which show that the appealed decision does not comply with applicable approval criteria or development standards;

(iii) The reasons for a conclusion to modify or reverse the decision; and

(iv) The decision to modify or reverse the appealed decision and, if approved, any conditions of approval necessary to ensure that the proposed development will comply with applicable criteria and standards.

3. The board of commissioners' office shall mail notice of a board of commissioners' decision on the merits of an appeal to parties entitled to notice as provided in this chapter and other parties who appeared orally or in writing before the board regarding the appeal. The notice shall include identification of the case by number, the applicant's name and a summary of the board's decision. The notice shall also include a statement that the board's decision can be appealed to Superior Court within twenty-one days and, where applicable, shall comply with the official notice provisions of RCW 43.21C.075.

(Ord. 219 (1998) (Exh. 1, § 120), 1998)