

RESOLUTION NO. _____

A RESOLUTION ADOPTING AN AMENDMENT TO THE HEARING EXAMINER RULES OF PROCEDURE TO ADD "SECTION 1.21 MEDIATION" TO ALLOW PARTIES IN A PROCEEDING BEFORE THE HEARING EXAMINER TO VOLUNTARILY PARTICIPATE IN MEDIATION WHEN THE HEARING EXAMINER DEEMS IT APPROPRIATE

WHEREAS SCC 14.02.070 authorizes the Skagit County Hearing Examiner to interpret, review and implement regulations as provided in Title 14 of the Skagit County Code, and to conduct public hearings on land use matters, including administrative appeals and pre-decision hearings; and

WHEREAS SCC 14.02.070(8) authorizes the Hearing Examiner to adopt procedural rules as are reasonably necessary to carry out the duties and responsibilities of the office which take effect upon review and approval of the Skagit County Board of County Commissioners; and

WHEREAS on June 27, 2006, the Skagit County Board of County Commissioners approved the Hearing Examiner Rules of Procedure through Resolution # R20060215, recognizing the need for clarity and consistency in procedures used in the conduct of public hearings; and

WHEREAS the Hearing Examiner has proposed an amendment to the adopted Hearing Examiner Rules of Procedure pursuant to SCC 14.02.070(8) to provide the option for parties to voluntarily participate in mediation when the Hearing Examiner deems it appropriate in an effort to resolve land use disputes; and

WHEREAS the Skagit County Board of County Commissioners was presented with the proposed amendment in public session on October 7, 2008; and

WHEREAS the Hearing Examiner, the Director of Planning and Development Services, and the Director of Skagit County Mediation and Facilitation Services are in full support of the proposed amendment to the Hearing Examiner Rules of Procedure to allow and encourage mediation where appropriate; and

WHEREAS the Skagit County Board of County Commissioners recognizes the high value of mediation as an option to achieve amicable resolutions to land use disputes; and

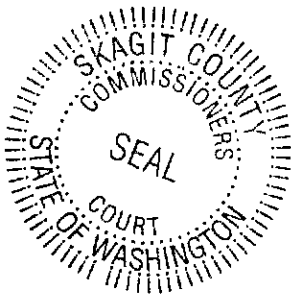
WHEREAS the Skagit County Board of County Commissioners has reviewed the proposed amendment to the Hearing Examiner Rules of Procedure that would add "Section 1.21 Mediation", which is attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the Skagit County Board of County Commissioners hereby adopts the attached amendment, Exhibit A, to the Hearing Examiner Rules of Procedure; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Skagit County Board of County Commissioners hereby adopts the Hearing Examiner Rules of Procedure, with the Exhibit A amendment as incorporated into Exhibit B, to be effective immediately upon this adoption.

WITNESS our hands and official seal this 25th day of November, 2008.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



Don Munks
Don Munks, Chairman

Kenneth A. Dahlstedt
Kenneth A. Dahlstedt, Commissioner

Sharon D. Dillon
Sharon D. Dillon, Commissioner

ATTEST:

JoAnne Giesbrecht
JoAnne Giesbrecht, Clerk of the Board

APPROVED AS TO FORM:

Jill M. Olson
Jill M. Olson, Civil Deputy
Skagit County Prosecutor's Office

APPROVED AS TO CONTENT:

Gary R. Christensen
Gary R. Christensen, AICP, Director
Planning and Development Services

EXHIBIT A

1.21 Mediation

(1) Whenever, during any proceeding before the Hearing Examiner, the Hearing Examiner is persuaded that the resolution of any issue might best be achieved by settlement, he/she may refer the known non-governmental parties to mediation of the matter. Mediation shall be undertaken only if such parties agree to pursue it.

(2) When agreed to, mediation shall be performed by qualified mediators of Skagit County Mediation Services. Attorneys may be present at mediation sessions, but negotiations through the assigned mediator shall be carried out directly by the parties.

(3) If a mediated result is successfully obtained, the Hearing Examiner shall convene a hearing session to place the result on the record and to obtain comments from the County. If the mediation was held in the context of a pre-decision hearing, the session shall also include an opportunity for comment by any members of the public who were not parties to the mediation, consistent with Subsection 2.02 of these Rules.

(4) Before making his/her final decision or recommendation, the Hearing Examiner shall evaluate the legality of the mediated result and consider any comments from the County and others. In his/her discretion, the Examiner may incorporate any lawful mediated result into the final decision or may decline to do so.

EXHIBIT B

SKAGIT COUNTY

OFFICE OF THE HEARING EXAMINER

RULES OF PROCEDURE

FOR HEARINGS

Promulgated Pursuant to SCC 14.06.240(8)

Hearing Examiner's Office
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TABLE OF CONTENTS

Introduction

Section 1 - Generally Applicable Rules

- 1.01 Powers of Hearing Examiner
- 1.02 Ex Parte Communications
- 1.03 Disqualification of Hearing Examiner
- 1.04 Computation of Time
- 1.05 Filing and Service of Documents
- 1.06 Official File
- 1.07 Consolidation
- 1.08 Parties
- 1.09 Motions
- 1.10 Hearing Date/ Continuance
- 1.11 Evidence
- 1.12 Exhibits
- 1.13 Testimony
- 1.14 Continuation or Reopening Hearing/ Leaving Record Open
- 1.15 Site Visits
- 1.16 Criteria for Decision
- 1.17 Termination of Jurisdiction
- 1.18 Recording
- 1.19 Reconsideration
- 1.20 Conflicts with Code
- 1.21 Mediation

Section 2 - Rules for Pre-Decision Hearings

- 2.01 Pre-decision Hearings before the *Examiner*
- 2.02 Public Participation
- 2.03 Parties of Record
- 2.04 Prehearing Conference
- 2.05 Staff Report
- 2.06 Format of Hearing
- 2.07 Testimony for Organizations
- 2.08 Cross Examination
- 2.09 Burden of Proof
- 2.10 Hearing Examiner's *Recommendation or Decision*
- 2.11 Further Hearings
- 2.12 Content of the Record
- 2.13 Costs of Producing Record

Section 3 - Rules for Appeal Hearings

- 3.01 Appeals before the Examiner
- 3.02 *Notice of Appeal*
- 3.03 Filing Fee
- 3.04 Who May Appeal (Standing)
- 3.05 *Clarification or Amendment of Notice of Appeal*
- 3.06 Parties to the Appeal
- 3.07 Intervention

- 3.08 Representative of Party
- 3.09 Dismissal Prior to Hearing
- 3.10 Default/Withdrawal of Appeal/Withdrawal of Decision
- 3.11 Prehearing Conference
- 3.12 Staff Report
- 3.13 Informal Settlement
- 3.14 Limited Public Participation
- 3.15 Cross Examination
- 3.16 Format of Hearing
- 3.17 Burden of Proof
- 3.18 Expert Testimony
- 3.19 Hearing on Written Submissions
- 3.20 Hearing Examiner's Decision
- 3.21 Further Administrative Review
- 3.22 Content of Record
- 3.23 Costs of Producing Record

INTRODUCTION

These Rules of Procedure are established pursuant to *Skagit County Code* 14.06.240(8), to help secure the fair and efficient conduct of matters subject to the County's administrative hearing system. The underlying concern is to ensure that the essentials of due process are an integral part of every hearing conducted.

A. Hearing Examiner Hearings. The Hearing Examiner has jurisdiction over a variety of specific matters identified in Chapter 14.06 SCC. From the standpoint of procedure, these fall into two major categories: (1) Pre-Decision Hearings and (2) Appeals.

(1) Pre-Decision Hearings are conducted as a means for assembling information, including public testimony, to be used as the basis for making the County's decision. They are to two generic types: (a) those matters for which the Hearing Examiner's decision is final unless appealed to the Board of County Commissioners; and (b) those matters for which the Hearing Examiner makes a recommendation with the final decision being made by the Board of County Commissioners.

The first of these types relates to Level II applications under SCC 14.06.050(1) (b) which include specified land use variances, certain special use permits and forest practices act waivers. The Hearing Examiner also conducts pre-decision hearings and makes decisions on shorelines development permits, pursuant to the *Skagit County Shoreline Management Master Program*.

The second type relates to Level III applications under SCC 14.06.050(1) (c). These include review of preliminary long subdivisions, certain binding site plans and development agreements, and specified variances. The Hearing Examiner also conducts pre-decision hearings and makes recommendations on applications filed with the County Assessor's Office for open space current use classification of land.

(2) Appeals are proceedings which seek to overturn or change a decision the County already has made. Decisions on many land use applications are made administratively by a County official. Such decisions, enumerated as Level I procedures under SCC 14.06.050(1) (a), are final unless appealed to the Hearing Examiner. Examples are boundary line adjustments, preliminary short plats, and threshold determinations under the State Environmental Policy Act (SEPA).

Appeals to the Hearing Examiner of Level I administrative decisions are open record appeals, meaning that evidence and testimony (in addition to that provided for the administrative decision level) may be presented at the Hearing Examiner hearing.

Because of the inherently different functions performed by Pre-Decision Hearings and Appeals, the procedures for the two differ. The major difference is in the level of public involvement. In Pre-Decision Hearings, testimony from the general public is sought. A feature of each hearing is to solicit the views of any citizens who wish to be heard.

Appeal hearings, by contrast, are contests between specific identified parties: normally, the appellant, the County and the applicant (if different from the appellant). In appeal hearings, each party is responsible for his or her case and those testifying are usually only those persons called as witnesses by one of the parties. The public is invited to attend, but normally public testimony is not taken.

B. County Commissioner Hearings. The Board of County Commissioners have jurisdiction to conduct further hearings on most matters that come before the Hearing Examiner. These include: (1) appeals of Hearing Examiner decisions and (2) decisions on Hearing Examiner recommendations.

The hearings the Board of County Commissioners conduct on such matters are closed record hearings. This means that they are limited to a review of the record that was made before the Hearing Examiner. New evidence and testimony is generally not allowed.

The rules that follow apply solely to *Hearing Examiner hearings*.

Section 1

GENERALLY APPLICABLE RULES

1.01 Powers of Hearing Examiner

The Hearing Examiner shall have the powers necessary to conduct orderly, efficient and fair hearings. The Hearing Examiner's powers shall include, but not necessarily be limited to the authority:

- (a) to administer oaths and affirmations;
- (b) to require parties to make discovery;
- (c) to rule on all procedural matters, objections and motions;
- (d) to admit and exclude evidence;
- (e) to limit testimony, by time or subject;
- (f) to question witnesses and request additional information;
- (g) to regulate the course of hearings and the conduct of participants;
- (h) to hold prehearing conferences and issue prehearing orders governing the conduct of specific hearings;
- (i) to conduct site inspections, either before or after hearings;
- (j) to make orders, recommendations and decisions, including the imposition of reasonable conditions of approval.

1.02 Ex Parte Communications

Any communication between any participant in a hearing and the Examiner that occurs outside of the hearing and in the absence of the other participants is an ex parte communication.

- (a) No interested person or representative shall communicate ex parte directly or indirectly with the Examiner, nor shall the Examiner communicate ex parte directly or indirectly with any interested person or representative, concerning the merits or facts of any matter being heard before the Examiner.
- (b) This rule does not prohibit ex parte communications about procedural topics, nor does it apply to written submissions made for the record and available to all participants.

(c) If prohibited ex parte communication is made directly or indirectly to the Examiner, such communication shall be disclosed on the public record. Within 10 days after notice thereof, any interested party desiring to rebut the communication shall be allowed to place a written rebuttal in the record.

1.03 Disqualification of Hearing Examiner

Any person acting as Hearing Examiner is subject to disqualification for bias, prejudice, conflict of interest, or any other cause for which a judge can be disqualified.

(a) Whenever the Examiner believes that his relationship to participants or financial interest in the subject of a hearing create the appearance that the proceedings will not be fair, the Examiner shall either: (1) voluntarily step down from the case, or (2) disclose, the relationship or interest on the record, stating a bona fide conviction that the interest or relationship will not interfere with the rendering of an impartial decision.

(b) Any party or interested person may petition for the disqualification of an Examiner promptly after receipt of notice that the individual will preside or, if later, promptly upon discovering grounds for disqualification. The Examiner for whom the disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

1.04 Computation of Time

In the computation of any period of time prescribed or allowed in any matter before the Hearing Examiner, the day from which the time period begins to run shall not be included. When the last day of the period falls on a weekend or legal holiday, the period shall run until the next working day.

1.05 Filing and Service of Documents

(a) Applications, public correspondence and appeals shall be filed with the Department of Planning and Development Services. Motions, legal briefs and other documents related to the hearing process shall be filed with the Hearing Examiner's Office. Filing shall be complete only upon receipt. Receipt of email is acceptable, but shall be followed by submission of a hard copy.

(b) Documents required to be served on other participants may be delivered personally, transmitted by facsimile, transmitted by email, or sent by regular mail. In the latter case, service shall be deemed complete upon deposit in the mail.

(c) Service on the representative of a party shall constitute service upon the party, except for decisions or recommendations of the Examiner, or petitions for review to court. Such decisions, recommendations or appeals shall be served on the parties themselves.

1.06 Official File

All written submissions shall be maintained in the official file. The official file shall be available for public inspection and copying during normal business hours, except for any portions thereof which the Examiner has ordered to be treated as confidential.

1.07 Consolidation

(a) Multiple appeals of the same decision and multiple appeals concerning different aspects of a single project shall be consolidated for hearing.

(b) Multiple permits for a single project shall be consolidated for pre-decision hearing unless the applicant requests otherwise.

(c) Except where a Determination of Significance was issued, review of compliance with State Environmental Policy Act procedures shall be consolidated with any hearing on the underlying proposal.

(d) The Examiner shall have discretion to consolidate related matters for hearing whenever the interests of justice and efficient procedure will be served by such action. This shall include the discretion to consolidate the appeal of a non-SEPA administrative decision with the pre-decision hearing on the same project.

(e) When the consolidated matters involve both a pre-decision hearing and an appeal hearing, the pre-decision hearing portion of the proceeding shall normally be held first. This allows members of the public to testify without a protracted wait. In such cases, the Examiner may determine that evidence given in either portion of the proceeding applies to the decision in the other portion.

1.08 Parties

(a) In appeals, the parties shall be the appellant(s), the County, the applicant(s), if different from the appellant(s), and any intervenor(s).

(b) In pre-decision hearings, the parties shall be those persons who qualify as parties of record as defined in SCC 14.04.020. At a minimum these shall include the applicant(s) and the County. Any individual or organization that participates in the hearing by oral testimony or written submission or who has requested in writing to be kept informed shall become a party of record, provided that any such person must have provided a complete and correct mailing address.

1.09 Motions

Any application to the Examiner for an order shall be by motion. Unless otherwise agreed by the parties or made during a hearing, a motion shall be in writing.

(a) Written motions shall be filed at least eight days in advance of hearing, and copies thereof shall be served on other parties. Such motions shall state the reasons for the request and specify the relief sought.

(b) Parties shall have an opportunity to respond to written motions no later than five days after receipt or at the outset of the hearing, whichever time period is shorter.

1.10 Hearing Date/Continuance

Hearings shall normally be held at the time and place specified in the notice thereof. A scheduled hearing may be continued by the Examiner on his or her own motion or, for good cause, on motion of a party of record. Good cause may be found when a party has not complied with the time requirements for filing a motion or where an oral motion that in fairness requires time to prepare a response is made during a hearing.

1.11 Evidence

(a) Evidence, including hearsay evidence, is admissible if in the judgment of the Examiner it is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, or unduly repetitious.

(c) The Examiner shall exclude evidence that is privileged or excludable on constitutional or statutory grounds.

(d) The Examiner may take official notice of enacted provisions of law, of codes or standards adopted by a recognized organization, of matters within his specialized expertise and of notorious or commonly understood facts.

1.12 Exhibits

(a) Documents, photographs, drawings and physical evidence may be offered as exhibits and each will be assigned an exhibit number. Exhibits offered will be retained until after a decision is rendered and all appeal proceedings, if any, have been concluded.

(b) The Staff Report and all documents submitted by staff from the official file shall be admitted.

(c) Documentary evidence may be received in the form of copies or excerpts.

(d) The Examiner may order that an exhibit be kept confidential. Any such exhibit shall not be subject to examination, except as the Examiner may permit.

(e) Reports, declarations or affidavits of experts that an applicant or intervenor has prepared for a specific hearing shall not be admitted over objection unless the expert is made available for cross examination.

1.13 Testimony

(a) All oral testimony shall be taken under oath or affirmation

(b) The Examiner may impose reasonable limitations on the nature and length of testimony. In so doing the Examiner shall give consideration to: (1) the expeditious completion of the hearing; (2) the need to provide parties of record a fair opportunity to present their cases; (3) accommodating the desires of members of the public to be heard when public testimony is taken.

(c) Where the rights of the participants will not be prejudiced, testimony of a witness may be taken by deposition or by electronic means, such as telephone or television.

(d) Upon a showing of good cause, the Examiner may exclude a witness from observing parts of the hearing in which the witness is not a participant.

1.14 Continuation or Reopening Hearing/Leaving Record Open

(a) Every effort shall be made to complete the hearing on the scheduled date(s). If, however, testimony cannot be presented in the time available, the hearing may be continued for completion to another date. When in open hearing the Examiner specifies the date, time and place of the continuation of the hearing, no further notice is required.

(b) The Examiner may hold the record open for the receipt of additional requested information, for legal briefing, or in order to allow participants to respond to matters raised.

(c) After closing the record, the Examiner may reopen the record for good cause at any time prior to the end of the appeal period or prior to the scheduling of a further hearing on the matter before the Board of County Commissioners, whichever is later.

1.15 Site Visits

The Examiner may visit the site before or after a hearing. If the Examiner conducts a post-hearing site inspection, the hearing record will not close until the inspection is completed. However, the observations made at such an inspection are not evidence. The purpose of a site visit is to assist the Examiner in understanding the evidence presented at hearing.

1.16 Criteria for Decision

The applicable legal standards shall be the basis for every decision or recommendation by the Examiner.

1.17 Termination of Jurisdiction/Corrections

The jurisdiction of the Examiner terminates upon the end of the appeal period or on the date an appeal is filed before the Board of County Commissioners is scheduled, whichever comes later. Until that time, corrections in the decision or recommendation may be made by the Examiner on his or her own motion or on motion of a party of record.

1.18 Recording

All proceedings before the Examiner shall be electronically recorded and the recordings shall be made a part of the record. Copies of the recordings shall be made available on request and upon payment of the costs of reproduction. The preparation of a written transcript shall be the responsibility of the person desiring the transcript.

1.19 Reconsideration

(a) Any party feeling that an Examiner's decision is based on errors of procedure, fact or law may file a written request for reconsideration with Planning and Development Services. This request shall set forth the alleged errors. Unless the Examiner directs otherwise, a request for reconsideration shall be considered without public comment or argument by the party filing the request.

(b) Reconsideration of a decision shall be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision. If the request is granted, the Hearing Examiner may revise and reissue the decision or may call for argument.

(c) When a permitted request for reconsideration is timely filed, the time for seeking further review of the decision shall not commence until the date the Examiner's ruling on the request for reconsideration is transmitted to the parties.

(d) Except for Shoreline permits decisions, all requests for reconsideration shall be filed within 10 calendar days of the issuance of the decision. A request for reconsideration of a Shoreline permit decision shall be filed within 5 working days of the date of the Examiner's decision.

1.20 Conflicts with Code

If any provision of these rules is determined to conflict with any provision of the Skagit County Code, the Code shall govern.

1.21 Mediation

(1) Whenever, during any proceeding before the Hearing Examiner, the Hearing Examiner is persuaded that the resolution of any issue might best be achieved by settlement, he/she may refer the known non-governmental parties to mediation of the matter. Mediation shall be undertaken only if such parties agree to pursue it.

(2) When agreed to, mediation shall be performed by qualified mediators of Skagit County Mediation Services. Attorneys may be present at mediation sessions, but negotiations through the assigned mediator shall be carried out directly by the parties.

(3) If a mediated result is successfully obtained, the Hearing Examiner shall convene a hearing session to place the result on the record and to obtain comments from the County. If the mediation was held in the context of a pre-decision hearing, the session shall also include an opportunity for comment by any members of the public who were not parties to the mediation, consistent with Subsection 2.02 of these Rules.

(4) Before making his/her final decision or recommendation, the Hearing Examiner shall evaluate the legality of the mediated result and consider any comments from the County and others. In his/her discretion, the Examiner may incorporate any lawful mediated result into the final decision or may decline to do so.

Section 2

RULES FOR PRE-DECISION HEARINGS

2.01 Pre-decision Hearings before the Examiner

Pre-decision hearings shall be held before the Examiner in all matters identified as requiring such hearings in the Skagit County code.

2.02 Public Participation

At pre-decision hearings members of the public are invited to express their views and to offer factual testimony and exhibits. Public testimony may be presented orally, in writing, or both. Written public testimony may be submitted either in advance or at the hearing. When additional time to respond to any public testimony is reasonably required, the Examiner shall have the discretion to provide an opportunity for such response in writing after the hearing.

2.03 Parties of Record

The initial parties of record are the applicant(s) and the County. Persons or organizations who wish to participate as parties of record may enter their appearance as such in advance of hearing. Any person who in fact participates in the hearing by oral testimony or written submission and who provides a complete and correct mailing address shall become a party of record. Any person who has asked in writing to be kept informed and who provides a complete and correct mailing address shall be a party of record.

2.04 Prehearing Conference

(a) When it will assist the orderly and efficient conduct of a pre-decision hearing, the Examiner may schedule and hold a prehearing conference among the identified parties of record. Among other things, a prehearing conference may consider:

- (1) Simplification, definition, or limitation of issues;
- (2) The possibility of obtaining stipulations relating to undisputed facts, the admission of documents, or other matters that will avoid unnecessary proof;
- (3) Identification of witnesses and of documentary or other evidence to be presented at hearing;
- (4) The conduct of reasonable discovery prior to hearing;
- (5) *Procedural matters.*

(b) Prehearing conferences may be held by telephone conference call;

(c) Based on the discussion and agreements at the prehearing conference, the Examiner shall issue a Prehearing Order which shall govern subsequent proceedings.

2.05 Staff Report

At least seven days prior to the hearing the Planning and Development Services or other appropriate office of the County shall make its Staff Report to the Examiner. The Report shall coordinate and assemble the comments and recommendations of other County departments, other governmental agencies and utility providers having an interest in the matter and shall summarize the factors involved and make a recommendation for approval, approval with conditions, or denial. The author of the Report shall be identified.

2.06 Format of Hearing

The pre-decision hearing shall be informal in nature, but organized so that testimony and evidence can be presented efficiently. The hearing shall include at least the following elements:

- (a) An introductory outline of the procedure by the Examiner;
- (b) Presentation by the County summarizing the Staff Report and providing any additional exhibits or testimony the staff believes should be brought to the Examiner's attention.
- (c) Testimony by the applicant and its witnesses.
- (d) Testimony from the public, including any questions for staff, the applicant or witnesses for the staff or applicant(s). Any public participant may make all or part of his or her presentation through witnesses.
- (e) Questions by the Examiner
- (f) Responsive testimony by the County and the applicant, including rebuttal witnesses.

2.07 Testimony for Organizations

Whenever the views of any formal or informal organization are to be presented, the organization shall designate a representative with authority to coordinate the presentation and to speak for the group. Any communications with the organization by the Examiner or any party of record shall be through the designated representative.

2.08 Cross Examination

Expert witnesses and County staff are subject to cross examination. Cross examination of other participants shall be allowed only at the discretion of the Examiner. Members of the public shall not be subject to cross examination, unless a person testifying expressly consents.

2.09 Burden of Proof

The burden of proof shall be on the applicant to establish by a preponderance of the evidence that the request is consistent with applicable legal standards.

2.10 Hearing Examiner's Recommendation or Decision

(a) The Examiner's recommendation or decision shall be in writing and shall contain findings of fact and conclusions of law supporting the result reached. A copy thereof shall be provided to each party of record.

(b) The Examiner's recommendation or decision may approve the application or petition with or without conditions, remand the matter to the County for further investigation, or deny the proposal.

2.11 Further Hearings

(a) Any final decision of the Examiner may be appealed to the Board of County Commissioners. Except for Shorelines permits, such appeals shall be made within 14 days of the Hearing Examiner decision, or the decision on reconsideration, if applicable.

(b) For Shorelines permits, the time for appeal is within 5 working days of the date of decision, or the decision for reconsideration, if applicable.

(c) When the Examiner makes a recommendation for decision, any party of record may participate orally or in writing in the closed record hearing before the County Commissioners.

2.12 Content of the Record

The record of a pre-decision hearing shall include at least the following:

(a) The application or petition;

(b) The Staff Report and any attachments;

(c) All documentary and physical evidence received and admitted;

(d) All pleadings, briefs, or memoranda submitted by a party of record;

(e) The electronic recording of the proceedings;

(f) The Examiner's findings and conclusions and the recommendation or decision made, together with any other rulings made in the matter.

2.13 Costs of Producing Record

Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.

Section 3

RULES FOR APPEAL HEARINGS

3.01 Appeal Hearings before the Examiner

Appeal hearings shall be held on all matters within the appeals jurisdiction of the Hearing Examiner. Such hearings shall be open record hearings, open to the public.

3.02 Notice of Appeal

An appeal to the Hearing Examiner is initiated by filing a Notice of Appeal with Planning and Development Services. The notice must be in writing and shall be a concise statement identifying:

- (1) The decision being appealed.
- (2) The name and address of the appellant and his interest(s) in the matter.
- (3) The specific reasons why the appellant believes the decision to be wrong.
- (4) The desired outcome or changes to the decision
- (5) Any Skagit County code Section(s) the appellant deems relevant.

3.03 Filing Fee

The Notice of Appeal shall be accompanied by any filing fee required by law. Filing of the appeal shall not be complete until both the Notice of Appeal and any required filing fee have been received. For an appeal to be timely, filing must be complete before the appeal period has run.

3.04 Who May Appeal (Standing)

Only the applicant or parties who have commented on the proposal shall have standing to file appeals

3.05 Clarification or Amendment of Notice of Appeal

(a) If the Notice of Appeal is unclear or does not sufficiently explain the basis for the appeal, the Examiner may require that the appellant clarify or amend the appeal.

(b) After the initial filing, a Notice of Appeal may be amended to add new grounds, so long as the opportunity of other parties for a fair hearing is not prejudiced by the amendment.

3.06 Parties to an Appeal

The parties to an appeal are the appellant(s), the County, the applicant(s) if different from the appellant(s), and any intervenor(s). The County and all parties resisting the appeal shall be designated as respondents. All parties, including the County, may be represented by counsel.

3.07 Intervention

Upon a showing of a significant interest not otherwise adequately represented, the Examiner may permit an individual or entity who has not filed a timely appeal to intervene, either as an appellant or as a respondent. In ruling on an intervention request the Examiner shall ensure that the intervention will not interfere with the orderly and prompt conduct of the proceedings or otherwise prejudice the rights of any of the original parties. Conditions may be imposed upon the intervenor's participation, including precluding the intervenor from expanding the issues in the appeal.

3.08 Representative of Party

(a) An individual may represent himself or herself. An individual or legal entity may be represented by any agent who is fully informed in the matter, whether or not a member of the bar.

(b) Where the party is other than an individual, a representative shall be designated. The representative shall speak for and otherwise exercise the rights of the party. Any authorized person may serve as a representative for an association, corporation or other collective entity.

3.09 Dismissal Prior to Hearing

An appeal may be dismissed prior to hearing if the Examiner determines that:

- (a) The appeal was not timely filed.
- (b) The appeal is based on grounds or seeks relief outside the authority of the Examiner.
- (c) The appellant lacks standing to bring the appeal. (See Rule 3.04.)
- (d) The appeal is without merit on its face, patently frivolous, or brought merely for purposes of delay.

3.10 Default/ Withdrawal of Appeal/Withdrawal of Decision

(a) If an appellant fails to appear at a regularly scheduled prehearing conference or hearing, an order may be entered dismissing the appeal for default. A default order shall be final unless, within seven days of service, good cause to vacate the order is shown by the party against whom it was entered.

(b) An appellant may request withdrawal of the appeal. Such a request shall be granted if made before the appellant has completed presentation of his or her case. Thereafter, the granting of the request is discretionary.

(c) When the decision or action being appealed is withdrawn by the County, the appeal shall be dismissed as moot and the appellant(s) shall be entitled to return of any filing fee paid.

3.11 Prehearing Conference

(a) When it will assist the orderly and efficient disposition of the appeal, the Examiner may schedule and hold a prehearing conference of the parties. Among other things, a prehearing conference may consider:

- (1) Settlement of the appeal;
- (2) Simplification, definition or limitation of issues;
- (3) The possibility of obtaining stipulations relating to undisputed facts, the admission of documents or other matters which will avoid unnecessary proof;
- (4) Identification of witnesses and documentary or other evidence to be presented at hearing;
- (5) The conduct of reasonable discovery prior to hearing;
- (6) Procedural matters.

(b) Prehearing conferences may be held by telephone conference call.

(c) Based on the discussion and agreements at the prehearing conference, the Examiner shall issue a Prehearing Order which shall govern subsequent proceedings. If the case is settled at such a conference, the Examiner shall enter an Order reciting the terms of the settlement and dismissing the appeal.

3.12 Staff Report

At least seven days prior to the hearing Planning and Development Services or other appropriate office of the County shall make its Staff Report to the Examiner. The Report shall provide the County's response to the appeal, and shall identify such items from the official record as the Staff feels are needed for inclusion in the appeal record. The author of the Report shall be identified. The Staff Report and all documents offered from the official file shall be admitted.

3.13 Informal Settlement

Nothing in these rules shall be construed to limit the right of any party to attempt informal settlement of an appeal at any time.

3.14 Limited Public Participation

Appeal hearings are open to the public. However, testimony or other evidence is generally not allowed from individuals or entities that are not parties, unless they are called as witnesses by a party or by the Examiner. Appellants have the right to organize their appeals as they see fit, including the selection of the witnesses they wish to present.

3.15 Cross Examination

Witnesses presented by the parties are subject to cross examination.

3.16 Format of Hearing

The appeal hearing will be informal in nature, but organized so that testimony and other evidence can be presented efficiently. An appeal hearing shall include at least the following:

- (a) An introductory outline of the procedure by the Examiner;
- (b) Any preliminary matters;
- (c) Opportunity for opening statements;
- (d) Presentation of the appellant(s), including any witnesses;
- (e) Opportunity for cross-examination of appellant(s) and witnesses;
- (f) Presentation of the County, including any witnesses;
- (g) Opportunity for cross-examination of County staff and witnesses;
- (h) Presentation by the other respondent(s), including any witnesses.
- (i) Opportunity for cross-examination of respondent(s) and witnesses;
- (j) Questions by the Examiner;
- (k) Rebuttal evidence, if any.
- (l) Closing arguments;

The Examiner may change the order of presentation at his or her discretion.

3.17 Burden of Proof

Unless otherwise provided by law, the appellant(s) have the burden to establish by a preponderance of the evidence, that the decision is clearly erroneous.

3.18 Expert Testimony

With the exception of expert opinions submitted as part of the official file, expert opinions prepared for a specific case shall be received only from witnesses appearing in person and available for cross examination. Unless the parties otherwise agree, affidavits, declarations or letters containing such opinion shall be excluded.

3.19 Hearing on Written Submissions

When the parties so agree, an appeal may be submitted entirely on written submissions. If this option is selected, the Examiner shall establish a schedule for initial and responsive submissions. The record shall close when this schedule is completed.

3.20 Hearing Examiner's Decision

- (a) The Examiner shall issue a written decision and provide a copy thereof to each party.
- (b) The Examiner's decision may affirm, modify, remand or reverse the administrative decision(s) being reviewed. When an administrative decision is modified, the Examiner may attach reasonable conditions found necessary to make the action consistent with applicable approval criteria.

3.21 Further Administrative Review

The Hearing Examiner's decision after an appeal hearing maybe appealed to the Board of County Commissioners within 14 days of the date of the Examiner's decision, or decision on reconsideration, if applicable.

3.22 Content of Record

The record of an appeal hearing conducted by the Examiner shall include at least the following:

- (a) All Notices of Appeal and any amendments;
- (b) The Staff Report and all accompanying documents;
- (c) All pleadings, briefs and memoranda of the parties;
- (d) All documentary or physical evidence admitted;

(e) The electronic recording of the proceedings;

(f) The Hearing Examiner's findings, conclusion and decision(s), together with any other rulings made in the matter.

3.23 Costs of Producing Record

Any person who desires a copy of the electronic recordings of the proceedings must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.