

ORDINANCE NUMBER 142 - 02
AMENDMENTS TO THE MASON COUNTY DEVELOPMENT CODE

AN ORDINANCE amending the Mason County Development Code, Ord. No. 116-01, revising portions of ordinance text in Chapter 15.03 administration, Chapter 15.09 review and approval process, and Chapter 15.11 appeals, under the authority of Chapters 36.70 and 36.70A RCW.

WHEREAS, the Board of County Commissioners most recently adopted these Chapter standards and procedures in a public hearing in July 2002;

WHEREAS, the Board of County Commissioners requested that the Department of Community Development prepare a development permit review process that utilizes the county's Hearing Examiner;

WHEREAS, the Mason County Planning Advisory Commission formulated their recommendations after a public hearing on October 7, 2002;

WHEREAS, the Board of County Commissioners held a public hearing about the proposed revisions on October 22, 2002, to consider the recommendations of the Planning Advisory Commission, and the Mason County Department of Community Development and citizens' testimony on the proposed revisions;

WHEREAS, the Mason County Board of County Commissioners has approved findings of fact to support its decision as ATTACHMENT A;

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of County Commissioners of Mason County hereby approves and ADOPTS the amendments to the Mason County Development Code (regarding permit review decisions and appeals), as amended, as described by ATTACHMENT B.

DATED this 22nd day of October 2002.

Board of County Commissioners
Mason County, Washington



Wesley E. Johnson, Chair



Herb Baze, Commissioner



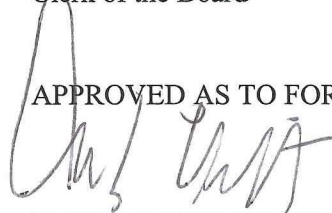
Bob Holter, Commissioner

ATTEST:



Clerk of the Board

APPROVED AS TO FORM:



Deputy Prosecuting Attorney

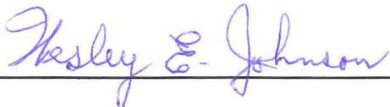
**AN ORDINANCE AMENDING
THE MASON COUNTY DEVELOPMENT CODE (Ord. No. 116-01)
REGARDING PERMIT REVIEW BY THE HEARING EXAMINER
AND THE HEARING OF APPEALS**

**MASON COUNTY BOARD OF COMMISSIONERS
October 22, 2002**

FINDINGS OF FACT

1. Under consideration is the proposed ordinance to shift permit review of certain permits from the County Commissioners to the Hearing Examiner and to set forth the type of appeals heard by the Board of County Commissioners.
2. The Mason County Development Code (Ord. No. 116-01) contains the application, review, approval, and enforcement processes for land development in Mason County. These standards provide the guidelines for a combined development and environmental review of a proposed activity and provide the guidelines for the enforcement of county regulations and standards of activities that need permits and/or approvals prior to taking place.
3. The Board has requested that the Department of Community Development staff prepare a development permit review process that utilizes the county's Hearing Examiner to evaluate and make decisions on certain permit requests or administrative decisions and still preserves the rights of appeal by all parties affected by decisions made.
4. At the October 7, 2002 Mason County Planning Commission meeting, the Department of Community Development proposed the changed ordinance text in Chapters 15.03 administration, 15.09 review and approval process, and 15.11 appeals. Following discussion that the revisions would speed up permit review and allow fair public review of project proposals, Planning Commission members approved a motion to support the proposed revisions and recommend the revisions be approved.
5. At the October 22, 2002 public hearing, the Board of County Commissioners heard the Department of Community Development staff report summary and considered the testimony from county staff and the public concerning the proposed revisions to the permit review and appeal sections of the Development Code, shifting permit review of certain permits from the County Commissioners to the Hearing Examiner and setting forth the type of appeals heard by the Board of County Commissioners.

FROM THE PRECEDING FINDINGS, the Mason County Board of Commissioners considered the ordinance revisions, staff report, and public testimony, and adopts a motion to approve the proposed revisions made by Department of Community Development staff in the proposed text of the Mason County Development Code (Ord. 116-01) in Chapter 15.03 administration, Chapter 15.09 review and approval process, and Chapter 15.11 appeals.

 Wesley E. Johnson 10/22/02

Chair, Mason County Board of Commissioners

Date

TITLE 15
MASON COUNTY DEVELOPMENT CODE
(IN EFFECT AS OF JULY 2, 2002)

Chapters:	Pages:
15.01 INTRODUCTION	2
15.03 ADMINISTRATION	4
15.05 CONSOLIDATED APPLICATION PROCESS	8
15.07 PUBLIC NOTICE REQUIREMENTS	10
15.09 REVIEW AND APPROVAL PROCESS	12
15.11 APPEALS	26
15.13 ENFORCEMENT	28
15.15 CONSOLIDATED APPLICATION REVIEW CHART	35

CHAPTER 15.01

INTRODUCTION

Sections:		Pages:
15.01.010	INTENT	2
15.01.020	DEFINITIONS	2

15.01.010 INTENT

The purpose of this Title is to combine and consolidate the application, review, enforcement, and approval processes for land development in Mason County in a manner that is clear, concise, and understandable. It is further intended to comply with RCW 36.70B, which provides the guidelines for integrating development review and environmental review of proposed development, in coordination with approved land use plans.

Established in this Title is the standard use of the Letter of Completeness, Notice of Application, and Notice of Decision. Final decision on development proposals shall be made within 120 days of the date of the Letter of Completeness, except as provided in Section 15.09.100.

15.01.020 DEFINITIONS

The following definitions shall apply to this Title:

Accessory Structure: As defined in the relevant code or ordinance.

Adjacent Property Owners: The persons who are owners of lots, as shown on the County Assessor records, within 300 feet, not including street rights-of-way, of the boundaries of the property which is the subject of the meeting or pending action.

Closed record public meeting: *a public meeting where the hearing body receives the record of past public hearings on the matter and evaluates the proposal based upon that established record of standards and issues brought up previously. Testimony is taken but the issues are limited to the topics of past public hearing review.*

Code: The Mason County Code or portion of that code.

Comprehensive Plan: The Mason County Comprehensive Plan, as amended.

Comprehensive Plan Amendment: An amendment or change to the text or maps of the Comprehensive Plan.

Completed Application: Per RCW 36.70B.070.

Date of Decision: The date on which final action occurs and from which the appeal period is calculated.

Density: As defined in the relevant code or ordinance.

Development: Any land use permit or action regulated by Titles 6, 7, 8, 14, 16, and 17 MCC, including but not limited to construction permits, conditional use permits, variances, or subdivisions.

Development Code: The Mason County Development Code. Title 15 of the Mason County Code.

Effective Date: The date a final decision becomes effective.

Final Decision: The final action by the review authority or Board of County Commissioners.

MCC: The Mason County Code.

Lot: As defined in the relevant code or ordinance.

Open Record Public Hearing: An open record hearing held by an authorized hearing body, at which evidence is presented, testimony is recorded, and decision is made, to form the local government record on the review and decision-making of the planned action.

Ordinance: Any or all of the adopted Mason County ordinances or resolutions.

Party of Record: Any person who has testified at a public hearing or has submitted a written statement related to a development action and who provides the County with a complete address.

Person: Any person, firm, business, corporation, partnership of other associations or organization, marital community, municipal corporation, or governmental agency.

Project: A proposal for development.

Project Permit: Per RCW 36.70B.020 (4)

Review Authority: The Director of Community Development, the Director of Health Services, the Fire Marshal, or the Building Official, depending on the responsibility as determined by the respective codes, ordinances, and regulations. Responsibilities of the Review Authority may be delegated when not contrary to law or ordinance.

Setback: As defined in the relevant code or ordinance.

Variance: As defined or used in the relevant code or ordinance.

Yard: As defined in the relevant code or ordinance.

CHAPTER 15.03

ADMINISTRATION

Sections:		Pages:
15.03.005	PURPOSE AND APPLICABILITY	4
15.03.010	ROLES AND RESPONSIBILITIES	4
15.03.015	APPLICATION TYPES AND CLASSIFICATION	4
15.03.020	ADMINISTRATIVE DIRECTION	5
15.03.030	BOARD OF COUNTY COMMISSIONERS	6
15.03.040	PLANNING ADVISORY COMMISSION	6
15.03.050	SHORELINE ADVISORY BOARD	6
15.03.060	HEARING EXAMINER	7

15.03.005 PURPOSE AND APPLICABILITY

This Chapter describes how the County will process enforcement actions and applications for development subject to review under the following Chapters of the Mason County Code and other ordinances and regulations of the county as listed below:

1. Title 6 (Sanitary Code), including the following Mason County Board of Health regulations, which may not be codified in Title 6: On-Site Sewage Regulation, Group B Water System Regulation, Solid Waste Regulation, and Water Adequacy Regulation
2. Title 7 (Shoreline Master Program)
3. Title 8 (Environmental Policy)
4. Title 14 (Construction)
5. Title 16 (Subdivision)
6. Title 8 (Resource Ordinance)
7. Development Regulations (Ordinance 82-96, as amended)
8. *Mason County Flood Damage Prevention Ordinance (as amended)*

15.03.010 ROLES AND RESPONSIBILITIES

- A. The regulation of land development is a cooperative activity including many different elected and appointed boards and County staff. The specific responsibilities of these bodies is set forth below.
- B. A developer is expected to read and understand the County Development Code and be prepared to fulfill the obligations placed on the developer by the Mason County Code and other ordinances and regulations of the county.

15.03.015 APPLICATION TYPES AND CLASSIFICATION

- A. Applications for review pursuant to Title 15 shall be subject to a Type I, Type II, Type III, or Type IV process.
- B. Unless otherwise required, where the County must approve more than one application for a given development, all applications required for the development may be submitted for review at one time. Where more than one application is submitted for a given development, and those applications are subject to different types of procedure, then all of

the applications are subject to the highest-number procedure that applies to any of the applications.

C. The review authority for the application in question shall classify the application as one of the four types of procedures.

1. The act of classifying an application shall be an administrative interpretation, if written and transmitted to the applicant.
2. Questions about what procedure is appropriate shall be resolved in favor of the type providing greatest notice and opportunity to participate.
3. The review authority shall consider the following guidelines when classifying the procedure type for an application:
 - a. A Type I (ministerial) process involves an application that is subject to clear, objective and nondiscretionary standards or standards that require an exercise of professional judgement about technical issues.
 - b. A Type II (administrative) process involves an application that is subject to objective and subjective standards that require the exercise of limited discretion about nontechnical issues and about which there may be a limited public interest.
 - c. A Type III (quasi-judicial) process involves an application for relatively few parcels and ownerships. It is subject to standards that require the exercise of substantial discretion and about which there may be a broad public interest.
 - d. A Type IV (legislative) process involves the creation, implementation, or amendment of policy or law by ordinance. The subject of a Type IV process involves a relatively large geographic area containing many property owners, and a Type IV application should follow the format detailed in Chap. 15.09.060.

D. ***Type I and Type II review – without notice –letter of completeness.*** Type I and Type II permit reviews, which are categorically exempt from environmental review under chapter 43.21C RCW, or for which environmental review has been completed in connection with other permits, shall be excluded from the notice of application and notice of decision provisions in this Title, except when specifically required for a particular category of project. Also a letter of completeness shall be at the option of the Review Authority, provided that, if no letter of completeness is prepared, the application is considered complete after 28 days from receiving a date stamped application and within the meaning of chapter 36.70B RCW.

15.03.020 ADMINISTRATIVE DIRECTION

Each Director or authorized official shall review and act on the following:

- A. **Review Authority:** The Director of Community Development, the Director of Health Services, the Fire Marshal, and the Building Official, are responsible for the administration of the respective titles of the Mason County Code and ordinances. The responsibilities of the Review Authority may be delegated when not contrary to law or ordinance.
- B. **Administrative Interpretation:** Upon request or as determined necessary, the review authority shall interpret the meaning or application of the provisions of said titles and

issue a written administrative interpretation within 30 days. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.

- C. **Administrative Decisions:** Administrative approval, approval with conditions, or denial of permit applications as set forth in Sections 15.09.020, 15.09.030, and 15.09.040.

15.03.030 BOARD OF COUNTY COMMISSIONERS

In addition to its legislative responsibility, the Board of County Commissioners shall review and act on the following subjects:

- A. ***Changes to the Mason County Comprehensive Plan and land use regulations.***
- B. ***Appeals of the Hearing Examiner permit decisions, not including:***
1. ***Enforcement decisions.***
 2. ***Decisions on appeal of the Building Official on the interpretation or application of the Building Code.***
 3. ***Decisions on appeal of the Fire Marshal on the interpretation or application of the Fire Code.***
- ~~A. Recommendations of the Planning Advisory Commission and Shoreline Advisory Board.~~
- ~~B. Applications for Substantial Development Permits, variances or conditional uses under the Mason County Shoreline Master Program.~~
- ~~C. Appeal of administrative interpretations and actions by the Department of Community Development on the Mason County Shoreline Master Program.~~
- ~~D. Appeal of administrative decisions by the Department of Community Development as set forth in Section 15.09.020, 15.09.030, and 15.09.040.~~
- ~~E. Appeal of a Determination of Significance under Title 8 (Environmental Policy).~~
- ~~F. Granting of variances or other permit decisions, when provided by the development code or ordinance.~~

15.03.040 PLANNING ADVISORY COMMISSION

The Planning *Advisory* Commission shall review and make recommendations on the following applications and subjects:

- A. Amendments to the Comprehensive Plan and development regulations per RCW 36.70A.030.
- B. *Subjects referred by ordinance.* Amendments to the Subdivision Code, Title 16.
- ~~C. Amendments to the Environmental Policy (Title 8) and Interim Resource Ordinance (Title 17).~~
- ~~D. Applications for Preliminary Plats.~~
- ~~E. Some Type III permit reviews as specified in Section 15.09.050 (2.0).~~
- ~~F. Other actions requested or remanded by the County Commissioners.~~

~~The review criteria for certain of the actions are contained in Section 15.09.050, MCC.~~

~~15.03.050 SHORELINE ADVISORY COMMISSION~~

~~The Shoreline Advisory Commission shall review and act on the following subjects:~~

- ~~A. Amendments to the Mason County Shoreline Master Program~~
- ~~B. Applications for Conditional Use and Variance per the Shoreline Master Program.~~
- ~~C. Other actions requested or remanded by the County Commissioners.~~

~~The review criteria and procedures for the Planning Advisory Commission are contained in Title 7, MCC, and Section 15.09.050 (1.0).~~

~~Amendments to the Mason County Shoreline Master Program or other actions requested by the County Commissioners, the Planning Advisory Commission.~~

15.03.060 15.03.050 HEARING EXAMINER

The Hearing Examiner shall review and act on the following subjects:

- A. Appeals of decisions of the Building Official on the interpretation or application of the Building Code.
- B. Revoking or modifying a permit or approval per Section 15.13.070.
- C. Appeals of enforcement actions under the codes, ordinances and regulations listed under 15.03.005. Enforcement actions include interpretations and decisions made as part of the enforcement actions under the authority of provisions in 15.03.005.
- D. Appeals of decisions of the Fire Marshal on interpretation or application of the Fire Code.
- E. Enforcement actions as provided in Chapter 15.13.
- F. *Applications for Preliminary Plats.*
- G. *Appeal of administrative decisions by the Department of Community Development as set forth in Section 15.09.020, 15.09.030, and 15.09.040.*
- H. *Appeal of threshold determination under Title 8 (Environmental Policy).*
- I. *Granting of variances or other permit decisions, when provided by the Development Code or other ordinance.*

CHAPTER 15.05

CONSOLIDATED APPLICATION PROCESS

Sections:		Pages:
15.05.010	APPLICATION	8
15.05.020	PREAPPLICATION ACTIVITIES	8
15.05.030	CONTENTS OF APPLICATIONS	8
15.05.040	LETTER OF COMPLETENESS	8

15.05.010 APPLICATION

- A. The County shall consolidate development applications consistent with RCW 36.70B and review in order to integrate the development permit and environmental review process, while avoiding duplication of the review processes.
- B. All applications for development permits, conditional uses, variances, and other County approvals under the Development Code shall be submitted on forms provided by the review authority. All applications shall be acknowledged by the property owner or their agent.

15.05.020 PREAPPLICATION ACTIVITIES

- A. **Informal.** Applicants for development are encouraged to participate in an informal discussion prior to the formal preapplication meeting. The purpose of the meeting is to discuss, in general terms, the proposed development, County development standards, and required permits and approval process.
- B. **Formal.** Every person proposing a development in the County, with exception of Type I permits and decisions and some Type II permits and decisions, shall attend a preapplication meeting. The purpose of the meeting is to discuss the nature of the proposed development, application and permit requirements, fees, review process and schedule, applicable plans, policies and regulations. In order to expedite development review, the County shall invite all affected departments, agencies and/or special districts to the preapplication meeting, at the discretion of the review authority.

15.05.030 CONTENT OF APPLICATIONS

- A. All applications for approval under Titles 6, 7, 8, 14, 16, and other applicable ordinances shall include the information specified therein. The review authority may require such additional information as reasonably necessary to fully evaluate the proposal.
- B. The applicant shall apply for all permits identified in the preapplication meeting.

15.05.040 LETTER OF COMPLETENESS OF APPLICATION

- A. Within twenty-eight (28) days of receiving a date stamped application, the County shall review the application and as set forth below, provide applicants with a written determination that the application is complete or incomplete.

- B. A project application shall be declared complete only when it contains all of the following materials:
1. A fully completed, signed, and acknowledged development application and all applicable review fees.
 2. A fully completed, signed, and acknowledged environmental checklist for projects subject to review under the State Environmental Policy Act (Title 8).
 3. The information specified for the desired project in the appropriate chapters of the Mason County Code and as identified in Section 15.05.030.
 4. Any supplemental information or special studies identified by the review authority.
- C. For applications determined to be incomplete, the County shall identify, in writing, the specific requirements or information necessary to constitute a complete application. Upon submittal of the additional information, the County shall, within fourteen (14) days, issue a letter of completeness or identify what additional information is required. *If additional information is requested that is necessary to process a permit request and such information is not provided to the County within 180 days of the request, the application shall expire and no further action on the proposed development shall take place.*
- D. The County may require any preliminary permits, including but not limited to , special use permits, shoreline substantial development permits, variances, and reasonable use exceptions, prior to the submission of an application for a building permit.

CHAPTER 15.07

PUBLIC NOTICE REQUIREMENTS

Sections:		Pages:
15.07.010	NOTICE OF DEVELOPMENT APPLICATION	10
15.07.020	NOTICE OF ADMINISTRATIVE DECISIONS	10
15.07.030	NOTICE OF PUBLIC MEETINGS AND HEARINGS	10
15.07.040	NOTICE OF APPEAL HEARINGS	11
15.07.050	NOTICE OF FINAL DECISION	11

15.07.010 NOTICE OF DEVELOPMENT APPLICATION

A. Within fourteen (14) days of issuing a letter of completeness under Chapter 15.05, the County shall issue a Notice of Development Application for Type III permits and Type II permits, which are not excluded as provided in section 15.03.015 of this Title. The notice shall include, but not be limited to, the following:

1. The name of the applicant.
2. Date of application.
3. The date of the letter of completeness.
4. The location of the project.
5. A project description.
6. The requested approvals, actions, and/or required studies.
7. A public comment period not less than fourteen (14) nor more than thirty (30) days.
8. Identification of existing environmental documents.
9. A County staff contact and phone number.
10. The date, time, and place of a public meeting, or public hearing if one has been scheduled.
11. A statement that the decision on the application will be made within 120 days of the date of the letter of completeness.

B. The Notice of Development Application shall be posted on the subject property and sent to adjacent property owners.

C. The Notice of Development Application may be combined with any required notice of a public meeting or open record public hearing.

D. The Notice of Development Application may be combined with the threshold determination and scoping notice for a determination of significance.

15.07.020 NOTICE OF ADMINISTRATIVE DECISIONS

When notice of administrative approvals or denials is required, such notice shall be made as provided in Section 15.07.050.

15.07.030 NOTICE OF PUBLIC MEETINGS AND PUBLIC HEARINGS

Notice of a public meeting or public hearing for all development applications and appeals shall be given as follows:

- A. Time of Notices: Except as otherwise required, public notification of meetings, and hearings, and on pending actions shall be made by:
 - 1. Publication at least ten (10) days before the date of a public meeting, hearing, or pending action in the official newspaper if one has been designated or a newspaper of general circulation in the County; and
 - 2. Mailing at least ten (10) days before the date of a public meeting, or public hearing to all adjacent property owners of the boundaries of the property that is the subject of the meeting or pending action. Addressed, pre-stamped envelopes shall be provided by the applicant; and
 - 3. Posting at least ten (10) days before the meeting, hearing, or pending action in one public place (for example, a post office) and at least two notices on the subject property.
 - 4. Provided that, if the notice is for the purpose of an open record pre-decision hearing, the notice of application shall be provided at least fifteen (15) days prior to the open record hearing.
 - 5. Provided that, if a SEPA threshold determination has been made, that determination shall be issued at least 15 days prior to the hearing date.
- B. Content of Notice: The public notice shall include a general description of the proposed project, action to be taken, a non-legal description of the property or a vicinity map or sketch, the time, date and place of the public hearing and the place where further information may be obtained.
- C. Continuations: If for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and no further notice under this section is required.

15.07.040 NOTICE OF APPEAL HEARINGS

In addition to the posting and publication requirements of Section 15.07.030, for notice of appeals of administrative decisions, notice shall be mailed to parties of record from the permit review.

15.07.050 NOTICE OF FINAL DECISION

- A. When a notice is required for a final decision, such notice shall be sent to the applicant, all parties of record, all parties who requested to be notified, and the County Assessor's Office.
- B. This notice shall include the statement of threshold determination (RCW 43.21C), information on requesting assessed valuation changes by affected property owners, and the procedures of administrative appeal, if any.
- C. This notice may be combined with the transmittal requirements of other codes, state statutes, or ordinances, as appropriate.
- D. Notice of administrative decisions shall be the responsibility of the issuing county department. Notice of County Commission final decision on a project permit or an appeal shall be the responsibility of the County Commissioners Office.

CHAPTER 15.09

REVIEW AND APPROVAL PROCESS

Sections:		Page:
15.09.010	CONSOLIDATED PERMIT REVIEW	12
15.09.020	ENVIRONMENTAL REVIEW	12
15.09.030	TYPE I AND TYPE II REVIEW - WITHOUT NOTICE	12
15.09.040	TYPE II REVIEW - WITH NOTICE	13
15.09.050	TYPE III REVIEW	13
15.09.055	<i>TYPE III REVIEW – SHORELINE MASTER PROGRAM</i>	15
15.09.060	TYPE IV REVIEW	21
15.09.070	COUNTY COMMISSIONERS ACTION <i>HEARING EXAMINER DECISIONS</i>	23
15.09.080	PROCEDURES FOR PUBLIC HEARINGS OPEN RECORD <i>PUBLIC HEARING BEFORE THE HEARING EXAMINER</i>	24
15.09.090	REMAND	24
15.09.100	FINAL DECISION	25

15.09.010 CONSOLIDATED PERMIT REVIEW

When a proposed action involves two or more project permits (for example, a Shoreline Conditional Use Permit, Mason Environmental Permit, and commercial project review), the applicant may choose to have all or a portion of the proposal reviewed under the consolidated permit review process. When the consolidated permit review is selected, county staff shall include all project permits under review when issuing the determination of application completeness, notice of application, notice of one open record public hearing (when needed), and notice of final decision. Classification of such review is as provided in 15.03.015 B, MCC.

15.09.020 ENVIRONMENTAL REVIEW

A. Developments 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 8, MCC.

B. SEPA review shall be conducted concurrently with development project review. The following are exempt from concurrent review:

1. Projects categorically exempt from SEPA or for which SEPA has already been completed.
2. Components of previously completed planned actions, to the extent permitted by law and consistent with the EIS for the planned action.

15.09.030 TYPE I AND TYPE II REVIEW - WITHOUT NOTICE

A. After the determination of a complete application, the review authority may approve, approve with conditions, or deny the following without notice, unless notice is otherwise required (for example, short subdivision applications):

1. Type I decisions.
2. Extension of time for approval.

3. Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units, or density or (iii) decrease the quality or amount of open space.
4. Adjustment to yard setbacks.
5. Type II decisions, which are excluded as provided in section 15.03.010 of this title

B. The review authority's decisions under this section shall be final on the date issued.

15.09.040 TYPE II REVIEW - WITH NOTICE

- A. After a determination of completeness for an application, after providing a notice of application, and after the end of the specified comment period, the review authority may grant approval or approval with conditions, or may deny Type II decisions (such as Short Subdivisions), subject to the notice of decision and appeal requirements of this title.
- B. Final Administrative Approvals: Approvals under this section shall become effective subject to the following:
 1. If no appeal is submitted, the approval becomes effective at the expiration of the 14 day appeal period.
 2. If a written notice of appeal is received within the specified time, the matter will be referred to the ~~County Commissioners~~ *Hearing Examiner* as an appeal for an open record public hearing, and shall not become effective until approved on appeal or until the appeal contesting an approval is dismissed.
- C. Administrative Denials: Denials under this section shall become effective immediately.
- D. Notice of the administrative final decision shall be provided in this title, section 15.07.020.

15.09.050 TYPE III REVIEW

After a determination of completeness for an application, Type III permit applications shall be reviewed as follows:

- ~~1.0 Mason County Shoreline Master Program.~~
- ~~A. The review process for shoreline conditional use, variance and substantial development permits shall comply with the notice requirements of 15.07.010, 15.07.030 A-5, and 15.07.050, and the decision requirements of 15.09.100.~~
 - ~~B. Additional public notice requirements and review procedures are specified in the Shoreline Master Program.~~
 - ~~C. Conditional use and variance permits shall be reviewed according to the guidelines in 15.09.050 (2.0), except that:

 - ~~1. The Shoreline Advisory Board shall replace the Planning Advisory Commission as the review body;~~
 - ~~2. The policies, regulations and criteria of the Mason County Shoreline Master Program shall be emphasized in the review, and~~
 - ~~3. Public notice requirements shall be stated in (1.0)A and B.~~~~

~~D. Substantial development permits shall be reviewed by the County Commissioner as provided in sections 15.09.070 through 15.09.100, other sections of this Title, and the Shoreline Master Program.~~

~~2.0 Other Type III decisions.~~

- A. Staff Report. The review authority shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of County departments, affected agencies and special districts, and evaluating the development's consistency with the County's Development Code, adopted plans and regulations. The staff report shall include findings, conclusions and proposed recommendations for disposition of the development application.
- B. Public Meeting. ~~The Hearing Examiner Planning Commission~~ shall conduct a public meeting on development proposals for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the County's Development Code, adopted plans and regulations. ~~The meeting shall identify issues upon which the County Commissioners shall hear at their decision-making public hearing.~~ Notice of the ~~Planning Commission Hearing Examiner~~ meeting shall be in accordance with Section 15.07.030.
- C. Required Review: ~~The Planning Commission Hearing Examiner~~ shall review a proposed development according to the following criteria:
1. The development does not conflict with the Comprehensive Plan and meets the requirements and intent of the Mason County Code, especially Title 6, 8, and 16.
 2. The development does not impact the public health, safety and welfare and is in the public interest.
 3. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan. If the development results in a level of service lower than those set forth in the Comprehensive Plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development. For the purpose of this section, "concurrent with the development" is defined as the required improvements or strategies in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six (6) years of approval of the development.
- ~~D. Findings. Upon reviewing a development proposal or action, the Planning Advisory Commission shall prepare and adopt a motion setting forth its findings of issues to be addressed in the public hearing and promptly forward it to the County Commissioners for consideration, as required by the time lines stated in the relevant Title of the Mason County Code.~~
- ~~E. Review by the County Commissioners. Upon the close of the public hearing receiving the Planning Advisory Commission recommendation, the County Commissioners shall continue the review as provided in sections 15.09.070 through 15.09.100, and other sections of this Title.~~

15.09.055 TYPE III REVIEW – SHORELINE MASTER PROGRAM

A. Applicability to Substantial Development. Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the Administrator for a Substantial Development Permit or a Statement of Exemption. Whenever a development falls within the exemption criteria outlined below and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the Administrator shall prepare a Statement of Exemption, and transmit a copy to the applicant and the Washington State Department of Ecology. The following exempt developments shall not require a Substantial Development Permit, but may require a Conditional Use Permit, Variance and/or a Statement of Exemption. Exemptions shall be construed narrowly. All developments must be consistent with the Shoreline Master Program and Shoreline Management Act.

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed ~~\$2,500~~ \$5,000, if such development does not materially interfere with the normal public use of the water or shorelines of the state.
2. Normal maintenance or the repair of existing structures or developments, including damage by accident, fire or elements.
3. Construction of the normal protective bulkhead common to a single-family residence.
4. Emergency construction necessary to protect property from damage by the elements.
5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, and the construction of a barn or similar agricultural structure, and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels; PROVIDED that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities.
A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.
6. Construction or modification of navigational aids such as channel markers and anchor buoys.
7. Construction on wetlands by an owner, lessee or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof.

8. *Construction of a dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract purchaser of a single-family residence, for which the cost or fair market value, whichever is higher, does not exceed \$2,500. This exception applies if either: (A) in salt waters, the fair market value of the dock does not exceed five thousand dollars (\$5,000); or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding five thousand dollars (\$5,000) occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development.*
9. *Operation, maintenance or construction of canals, waterways, drains, reservoirs or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands.*
10. *The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with the normal public use of the surface of the water.*
11. *Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.*
12. *Any project with a certification from the governor pursuant to RCW Chapter 80.50.*

Before determining that a proposal is exempt, the Administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the Master Program and the Shoreline Management Act.

B. Applicability to Nonconforming Development. *"Nonconforming development" means a shoreline use or structure which was lawfully constructed or established prior to the effective date of the Act or the Master Program, or amendments thereto, but which does not conform to present regulations or standards of the Program or policies of the Act. Nonconforming developments may continue to be utilized for the same purpose established on the date of the statute. If a change in use is proposed for such development, any new use must obtain a permit by applicable regulations; PROVIDED that a proposed new use for such development that does not conform to Master Program policies may be considered as a Conditional Use.*

Normal maintenance and repair of nonconforming developments shall be allowed.

"Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable time period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or

environment WAC 173-27-040(2)(b)). A reasonable period of time for repair shall be up to one year after decay or partial destruction, except for bulkhead replacement which shall be allowed up to five years. Total replacement which is common practice includes but is not limited to floats, bulkheads and structures damaged by accidents, fire and the elements.

This program shall not restrict the reconstruction within two years of the date of damage of any existing single-family residence which is damaged or destroyed by fire, accident or the elements, PROVIDED that nonconformance with the standards and regulations of this program shall not be increased by such reconstruction. Reconstruction of any development other than single-family residences and their appurtenant structures shall be done in accordance with the requirements for new development.

Expansion of a nonconforming development is prohibited.

Nonconforming development may be continued provided that it is not enlarged, intensified or increased or altered in any way which increases its nonconformity: PROVIDED significant environmental damage does not result. Expansion of a development which is nonconforming by reason of substandard lot dimensions, setback requirements or lot area, but which is not a nonconforming use may be allowed as a Variance.

Lots created prior to the adoption of this ordinance which do not meet the minimum lot size may be used for a single family residence without a Variance Permit PROVIDED both of the following criteria can be met:

- a. A permit for on-site sewage disposal system which meets all current codes for setbacks and sizing, has been granted by the Mason County Health Services.*
- b. All side yard and shore yard setbacks can be met.*

Residential development on lots which do not meet these bulk, dimensional or Performance Standards criteria may be allowed as a Variance PROVIDED approval has been granted by the Mason County Health Services.

C. Criteria for Granting Permits. *Upon the effective date of this Program, a Permit or a Statement of Exemption shall be granted only when the proposed development is consistent with:*

- 1. Policies and regulations of the Mason County Shoreline Master Program and applicable policies enumerated in Chapter 90.58 RCW in regard to shorelines of the state and of statewide significance; and*
- 2. Regulations adopted by the Department of Ecology pursuant to Chapter 173-27 WAC.*

The burden of proving that the proposed development is consistent with these criteria shall be on the applicant.

D. Fees. *A filing fee in an amount established by the Board of County Commissioners shall be paid to the Department of Community Development at the time of application.*

E. Permit Application. *The Administrator shall provide the necessary application forms for the Substantial Development Permits, Conditional Use Permit and Variance Permit. In addition to the information requested on the application, the applicant shall*

provide, at a minimum, the following information:

1. SITE PLAN - drawn to scale and including:

- a. site boundary;*
- b. property dimensions in vicinity of project;*
- c. ordinary high water mark;*
- d. typical cross section or sections showing:
1) existing ground elevation; 2) proposed ground elevation;
3) height of existing structures; 4) height of proposed structures;*
- e. where appropriate, proposed land contours using five-foot intervals in water area and ten-foot intervals on areas landward of ordinary high water mark, if development involves grading, cutting, filling, or other alteration of land contours;*
- f. dimensions and location of existing structures which will be maintained;*
- g. dimensions and locations of proposed structures; parking and landscaping;*
- h. identify source, composition, and volume of fill material;*
- i. identify composition and volume of any extracted materials, and proposed disposal area;*
- j. location of proposed utilities, such as sewer, septic tanks and drain fields, water, gas and electricity;*
- k. if the development proposes septic tanks, does proposed development comply with local and state health regulations?*
- l. Shoreline designation according to Shoreline Master Program.*
- m. Show which areas are shorelines and which are shorelines of statewide significance.*

2. VICINITY MAP

- a. indicate site location using natural points of reference (roads, state highways, prominent landmarks, etc.).*
- b. if the development involves the removal of any soils by dredging or otherwise, identify the proposed disposal site on the map. If disposal site is beyond the confines of the vicinity map, provide another vicinity map showing the precise location of the disposal site and its distance to nearest city or town.*
- c. give brief narrative description of the general nature of the improvements and land use within 1,000 feet in all directions from development site.*

3. ADJACENT LANDOWNERS. Provide names and addresses of all real property owners within 300 feet of property where development is proposed. When adjacent property widths exceed 100 feet, at least three (3) adjacent property owners' names and addresses shall be provided.

Completed application and documents shall be submitted to the Administrator for

processing and review. Any deficiencies in the application or documents shall be corrected by the applicant prior to further processing.

F. Permit Process. When a complete application and associated information have been received by the Administrator, the Administrator shall mail notice of proposed project to all property owners named on the list as supplied by the applicant, and shall post notice in a conspicuous manner on the property upon which the project is to be constructed. The Administrator shall also be responsible for delivering legal notice to the newspaper, to be published at least once a week on the same day of the week for two consecutive weeks in a newspaper of general circulation within the area in which the development is proposed. Advertising costs will be the responsibility of the applicant. The Administrator shall schedule a public hearing before the Hearing Examiner in the case of a Conditional Use Permit, Variance Permit, or a Substantial Development Permit. For the purpose of scheduling a public hearing, the date of submittal of a complete application shall be considered the date of application. The minimum allowable time required from the date of application to Hearing Examiner hearing date shall be 45 days. Any interested person may submit his written views upon the application to the County within 30 days of application or notify the County of his desire to receive a copy of the action taken upon the application. All persons who so submit their views shall be notified in a timely manner of the action taken upon the application.

1. Application Review. ~~The Hearing Examiner Board, the Planning Advisory Commission~~ and Administrator shall make recommendations and decisions regarding permits, based upon:
 - a. The policies and procedures of the Act;
 - b. The Shoreline Master Program for Mason County, as amended.
2. Review by the Hearing Examiner
 - a. Upon receipt of the recommendation from the Administrator, the Hearing Examiner shall either approve, conditionally approve, deny the application, or postpone for further information.
 - b. The Hearing Examiner shall review the permit application at the first regularly scheduled public meeting of the Board following the expiration of the 30-day period required in Section 15.09.055 F.
 - c. The Hearing Examiner shall review the application and make decisions regarding permits based upon:
 - 1) The Shoreline Master Program for Mason County;
 - 2) Policies and Procedures of Chapter 90.58 RCW, the Shoreline Management Act;
 - 3) Written and oral comments from interested persons;
 - 4) The comments and findings of the Administrator.
 - d. A written notice of the public meeting, at which the Hearing Examiner considers the application, shall be mailed or delivered to the applicant a minimum of five days prior to hearing.
 - e. The decisions of the Hearing Examiner shall be the final decision of the County on all applications and the Hearing Examiner shall

render a written decision including findings, conclusions, and a final order, and transmit copies of the decision within five days of the Hearing Examiner's final decision to the following:

- 1) The applicant.
- 2) The Department of Ecology.
- 3) Washington Attorney General.

3. Appeal to the Board of County Commissioners. Appeal of Hearing Examiner decisions on proposed development covered by the Shoreline Master Program shall follow the standards of Section 15.11.020.
4. Washington State Department of Ecology Review. Development pursuant to a Substantial Development Permit, Conditional Use or Variance shall not begin and is not authorized until ~~30~~ 21 days from the date the ~~Board~~ Administrator files the ~~approved~~ permit decision with the Department of Ecology and the Attorney General, in the case of a Substantial Development Permit, or up to 60 days in the case of Variance or Conditional Use Permit PROVIDED all review and appeal proceedings initiated within ~~30~~ 21 days of the date of such filing of a Substantial Development Permit or ~~30~~ 21 days of final approval by the Washington State Department of Ecology for a Conditional Use Permit or Variance have been terminated.
5. Time Limit for Action. No permit or exemption authorizing construction shall extend for a term of more than five years. If actual construction of a development for which a permit has been granted has not begun within two years after the approval, the ~~Board~~ Hearing Examiner (or Administrator, in the case of an exemption) shall, review the permit and upon a showing of good cause, may extend the initial two-year period by permit for one year. Otherwise the permit terminates; PROVIDED, that no permit shall be extended unless the applicant has requested such review and extension before the Hearing Examiner prior to the last regular meeting of the Board coming before the expiration date.

G. Appeal to State Shorelines Hearings Board. Any person aggrieved by the granting, denying, rescission or modification of a Shoreline Permit may seek review from the State Shoreline Hearings Board by filing an original and one copy of request for the same with the Hearings Board within ~~30~~ 21 days of receipt of the final decision by the Hearing Examiner or Board. Said request shall be in the form required by the rules for practice and procedure before the Hearings Board. Concurrent with the filing of request for review with the Hearings Board, the person seeking review shall file a copy of the request for review with the Department of Ecology, the Attorney General and the State Shorelines Hearings Board. Hearing Board regulations are contained in Chapter 461-08 WAC.

H. Permit Revisions/Rescission. A person operating under a current Shoreline Permit may apply to the Administrator for modification to the permit, or the Hearing Examiner ~~Board~~ or Administrator may rescind a permit if there is evidence of noncompliance with the existing

permit. In either case, the following procedure shall apply:

- a. The Administrator shall determine if the revision is within the scope and intent of the original permit set forth under WAC 173-27-100, as amended.
- b. If said revision is determined to be outside the scope and intent of the original permit, a new and complete permit application shall be made in compliance with the Act and this Program.
- c. If said revision is determined to be within the scope and intent of the original permit, the Hearing Examiner ~~Board~~ may approve the revision. The revised permit shall become effective immediately. The approved revision along with copies of the revised site plan and text, shall be submitted by certified mail to the Department of Ecology Regional Office, the Attorney General, and to persons who have previously notified the County relative to the original application. If the revision to the original permit involves a Conditional Use or Variance which was conditioned by the Department of Ecology, local government shall submit the revision to the Department of Ecology for the WDOE's approval, approval with conditions, or denial. The revision shall indicate that it is being submitted under the requirements of WAC 173-27-100(5). The WDOE shall render and transmit to local government and the applicant its final decision within 15 days of the date of the department's receipt of the submittal from local government. Local government shall notify the parties of record of the department's final decision. The revised permit is effective immediately upon final action by local government, or, when appropriate under WAC 173-27-100(5).
- d. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within 30 days from receipt of local action by WDOE as per WAC 173-27-100. The party seeking review shall have the burden of proving the revision granted was not within the scope and intent of the original permit.
- e. If the Administrator or Hearing Examiner ~~Board~~ determines that there exists noncompliance with a shoreline permit and/or any conditions attached thereto or any revisions and modifications, then the Administrator or Hearing Examiner ~~Board~~ shall issue notice of noncompliance to the permittee and to parties of record and move to rescind the shoreline permit after a hearing.

15.09.060 TYPE IV DECISION REVIEW

- A. The process for amending the Mason County Comprehensive Plan and implementing development regulations (hereinafter annual amendment process) shall follow the steps below. Generally, the county will consider both the plan and regulation amendments together, and it will consider them only one time each year.
 1. Publish notice of the deadline for proposed plan or development regulation amendment which will be placed on the docket for consideration. Amendments must be considered at least annually. Comprehensive plan amendments can not be adopted more than once a year.
 2. The Department of Community Development (DCD) prepares a Comprehensive Plan Amendment Report for presentation to the Planning Advisory Commission. The report will include all proposals received, the initial analysis and cumulative impact review, and the initial SEPA determination.

3. The County transmits the proposals to the State Office of Community Development and other state agencies.
4. After presentation of the report to the Planning Advisory Commission, the Commission schedules a public hearing and may schedule workshops. (In the case of amendments of special interest to one part of the county, a workshop or hearing should be scheduled in that area.) The public hearing should be not less than 60 days after the official transmittal is provided to the state.
5. The DCD, acting for the Commission, releases public notice of workshops and hearings.
6. Planning Advisory Commission holds public hearing and optional workshops, and formulate and transmit its findings and recommendations to the Board of Commissioners.
7. The Board schedules and releases notice of public hearings and workshops as desired.
8. Workshops and public hearings held by the Board of Commissioners.
9. The Board meets to consider and take appropriate action on the amendments.
10. Any resulting amendments are transmitted to the State Office of Community Development and other state agencies, and public notice of adoption is published.

B. Exceptions to the annual amendment process. In some cases amendments can be made to the Comprehensive Plan outside of the annual amendment process described herein:

1. When an emergency exists, the annual amendment process will not be followed. The process for the planning review is established in RCW 36.70A.390. The review process for SEPA (WAC 197-11-880) has already been adopted by the county in Ordinance 99-84, section 9.1.
2. When the amendments are intended to resolve an appeal to the Growth Management Hearings Board, then the amendment is not limited to one time a year and will need to be abbreviated because the time allowed in Hearings Board cases is very limited. The process will be adjusted as necessary within the constraints of the Growth Management Act and SEPA.
3. The initial adoption of a sub-area plan is not required to be part of the annual amendment process and is not limited to once per year. The process will be the same as required for the annual plan amendment, except that the first step will be as follows:
 1. Establish a sub-area committee or a series of sub-area workshops. Public notice will be published of the workshops or meetings of the committee in order to encourage public participation and comment.
4. The adoption of a shoreline master program amendment shall not follow the annual amendment process, but shall be done under the procedures of Chapter 90.58 RCW.
5. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county budget.
6. Amendments can be made more than once a year if they are restricted to changes in the development regulations consistent with the existing comprehensive plan. The process for amendment is the same as specified for the annual amendment process.

15.09.070 COUNTY COMMISSIONERS ACTIONS

A. ~~Actions.~~ Upon receiving a recommendation from the Planning Advisory Commission, Shoreline Advisory Board, or notice of any other matter requiring the County Commissioners' attention, the County Commissioners shall hold an open record public hearing and make a decision on the following matters:

- i. ~~Make a decision on a Shoreline Advisory Board or Planning Advisory Commission recommendation.~~
- ii. ~~Appeal of administrative interpretations.~~
- iii. ~~Appeal of administrative decisions of type I and II permits.~~
- iv. ~~Appeal of determinations of significance.~~
- v. ~~Other matters not prohibited by law.~~

B. ~~Decisions.~~ The County Commissioners shall make its decision by motion, resolution, or ordinance, as appropriate, following an open record public hearing and shall include one of the following actions:

- i. ~~Approve as recommended.~~
- ii. ~~Approve with additional conditions.~~
- iii. ~~Modify, with or without the applicant's concurrence, provided that the modifications do not:~~
 - a. ~~Enlarge the area or scope of the project.~~
 - b. ~~Increase the density or proposed building size.~~
 - c. ~~Significantly increase adverse environmental impacts as determined by the responsible official.~~
- iv. ~~Deny (reapplication or re-submittal is permitted).~~
- v. ~~Deny with prejudice (reapplication or re-submittal is not allowed for one year).~~
- vi. ~~Remand for further proceedings and/or evidentiary hearing in accordance with Section 15.09.090.~~

2. ~~A County Commissioners' decision following an open record appeal hearing shall include one of the following actions:~~

- i. ~~Grant the appeal, in whole or in part.~~
- ii. ~~Grant the appeal with conditions, in whole or in part.~~
- iii. ~~Deny the appeal, in whole or in part.~~
- iv. ~~Remand for further proceedings and/or evidentiary hearing in accordance with Section 15.09.090.~~

15.09.070 HEARING EXAMINER DECISIONS

The Hearing Examiner shall make his or her decision following an open record public hearing and shall include one of the following actions:

- i. *Approve.*
- ii. *Approve with conditions.*
- iii. *Deny (reapplication or resubmittal is permitted).*
- iv. *Deny with prejudice (reapplication or resubmittal is not allowed for one year).*
- v. *Remand for further proceedings and/or evidentiary hearing in accordance with Section 15.09.090.*

~~15.09.080 PROCEDURES FOR OPEN RECORD PUBLIC HEARINGS BEFORE THE BOARD OF COUNTY COMMISSIONERS~~

~~Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. The Board of County Commissioners Chair shall open the public hearing and, in general, observe the following sequence of events:~~

- ~~A. Staff presentation, including submittal of any administrative reports. The Members of the hearing body may ask questions of the staff.~~
- ~~B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.~~
- ~~C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed by the Chair at its discretion.~~
- ~~D. Rebuttal, response or clarifying statements by the staff and the applicant.~~
- ~~E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.~~
- ~~F. The hearing body shall present a written statement of findings and conclusions upon issuing its decision.~~

15.09.080 PROCEDURES FOR OPEN RECORD PUBLIC HEARINGS BEFORE THE HEARING EXAMINER

Public hearings shall be conducted in accordance with the Hearing Examiner's rules of procedure and shall serve to create or supplement an evidentiary record upon which the decision will be based. The Hearing Examiner shall open the public hearing and, in general, observe the following sequence of events:

- A. Staff presentation, including submittal of any administrative reports. The Hearing Examiner may ask questions of the staff.*
- B. Applicant presentation, including submittal of any materials. The Hearing Examiner may ask questions of the applicant.*
- C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed by the Hearing Examiner at his or her discretion.*
- D. Rebuttal, response or clarifying statements by the staff and the applicant.*
- E. The evidentiary portion of the public hearing shall be closed.*
- F. The Hearing Examiner shall present a written statement of findings and conclusions upon issuing its decision.*
- H. The Hearing Examiner shall have the authority to hear motions for reconsideration of his or her decision.*

15.09.090 REMAND

In the event the *Hearing Examiner County Commissioners* determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the *Hearing Examiner Commissioners* may remand the matter back to the hearing body or administrative department to correct the deficiencies. The *Hearing Examiner Commissioners* shall specify the items or issues to be considered, the time frame for completing the additional work, and the date of the continuation of the open record public hearing.

15.09.100 FINAL DECISION

- A. **Time.** The final decision on a development proposal shall be made within 120 days from the date of the letter of completeness. The days pending the effectiveness of an administrative approval per section 15.09.040, MCC, are also within the 120 days. Exceptions to the 120 day requirement include:
1. If the project permit requires an amendment to the Comprehensive Plan or a development regulation.
 2. Any time required to correct plans, perform studies or provide additional information, provided that within 14 days of receiving the requested additional information, the Review Authority shall determine whether the information is adequate to resume the project review.
 3. Substantial project revisions made or requested by an applicant, in which case the 120 days will be calculated from the time that the County determines the revised application to be complete.
 4. All time required for the administrative appeal of a Determination of Significance or an appeal of an administrative decision.
 5. All time required for the preparation and review of an environmental impact statement, as agreed upon by the County and the applicant.
 6. Projects involving the siting of an essential public facility.
 7. An extension of time mutually agreed upon by the County and the applicant.
 8. All time required to obtain a variance.
 9. Any remand to the hearing body.
- B. **Effective Date.** The final decision of the *Hearing Examiner* ~~County Commissioners~~ shall be effective on the date stated in the decision, motion, resolution, or ordinance, provided that the date from which appeal periods shall be calculated shall be the date the *Hearing Examiner issues the decision*. ~~County Commissioners takes action on the motion, resolution, or ordinance.~~

CHAPTER 15.11

APPEALS

Sections:		Pages:
15.11.010	APPEAL OF ADMINISTRATIVE INTERPRETATIONS AND DECISIONS	26
15.11.020	APPEAL TO THE HEARING EXAMINER OR COUNTY COMMISSIONERS	26
15.11.030	APPEAL TO STATE REVIEW BOARDS	27
15.11.040	JUDICIAL APPEAL	27

15.11.010 APPEAL OF ADMINISTRATIVE INTERPRETATIONS AND DECISIONS

A. Administrative interpretations and administrative decisions may be appealed, by applicants or parties of record, to the following hearing body, based upon the relevant code or ordinance as follows:

Hearing Examiner: Title 6 (Sanitary Code) and other regulations listed in part 1 of section 15.03.005, Titles 7 (*Shoreline Master Program*), 8 (*Environmental Policy and Resource*), Title 14 (Construction), 16 (*Subdivision*), and the *Development Regulations*, provided that appeals of the Building Official’s notice and order shall be in accordance with section 401 of the Uniform Code of Abatement (hereafter section 401) *and, except that the appeals shall be to the Hearing Examiner as specified in this chapter.*

County Commissioners: *Appeals of Hearing Examiner permit decisions, not including: enforcement decisions; decisions on appeal of the Building Official on the interpretation and application of the Building Code; decisions on appeal of the Fire Marshal on the interpretation and application of the Fire Code Title 7 (Shoreline Master Program), and Titles 8 (Environmental Policy), 16 (Subdivision), and 8 (Interim Resource) and the Development Regulations, provided that enforcement actions reviewed by the Hearing Examiner are not appealable to the County Commissioners.*

B. The appeal shall be considered and decided within ninety (90) days of receipt of a date stamped application, provided that the parties to an appeal may agree to extend these time periods, and provided that a shorter time period is not specified in the applicable code or regulation.

15.11.020 APPEAL TO THE HEARING EXAMINER OR COUNTY COMMISSIONERS

A. **Filing.** Every appeal to the Hearing Examiner or County Commissioners shall be filed with the Clerk of the Board within fourteen (14) days after the date of the decision being appealed. The date of the decision and the date from which appeal periods shall be calculated shall be the date on which the written action was either mailed or transmitted by hand, whichever is done and whichever is earliest, to all parties for which transmittal is required for said action. This appeal period shall replace all other previously adopted appeal periods specified in the applicable ordinances.

B. **Contents.** The application of appeal shall contain a concise statement identifying:

1. The decision being appealed.
2. The name and address of the appellant and his/her interest(s) in the matter.
3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.

4. The desired outcome or changes to the decision.
 5. The appeals fee as provided for in the applicable ordinance.
- C. **Procedure.** The appeal to the Board of County Commissioners shall be held ~~as an open~~ *during a closed record public meeting* ~~hearing and comply with the standards of Sec. 15.09.080.~~ An appeal before the Hearing Examiner shall be by procedures established by the Hearing Examiner consistent with RCW 36.70B.

15.11.030 APPEAL TO STATE REVIEW BOARDS

The appeal of the final decision of the Hearing Examiner or County Commissioners may be filed to the appropriate state review board and is subject to the appeal processes of the review board (notification, review, hearing, and decision). The State Environmental Hearings Office processes appeals of shoreline permits, conditional uses, and variances; the State Department of Health processes appeals of public health and air-water quality issues.

15.11.040 JUDICIAL APPEAL

- A. Appeals from the final decision of the County Commissioners or Hearing Examiner involving those codes and ordinances to which this title applies, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Mason County Superior Court within twenty-one (21) days of the date the decision or action became final, unless preempted by state law.
- B. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the Clerk of the Board of County Commissioners and Prosecuting Attorney within the applicable time period. This requirement is jurisdictional.
- C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

CHAPTER 15.13

ENFORCEMENT

Sections:		Pages:
15.13.005	SEVERABILITY	28
15.13.010	ENFORCING OFFICIAL; AUTHORITY	28
15.13.020	PENALTY	28
15.13.030	APPLICATION	29
15.13.035	WARNING NOTICE	30
15.13.040	NOTICE OF CIVIL VIOLATION	30
15.13.045	HEARING BEFORE THE HEARING EXAMINER	30
15.13.050	CIVIL FINES	32
15.13.055	COST RECOVERY	33
15.13.060	REVIEW OF APPROVED PERMITS	34
15.13.070	REVOCATION OR MODIFICATION OF PERMITS AND APPROVALS	34

15.13.005 SEVERABILITY

This Ordinance shall be governed by the laws of the State of Washington. In the event that any portion or section of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected and shall remain in full force and effect.

15.13.010 ENFORCING OFFICIAL; AUTHORITY

The review authority shall be responsible for enforcing those codes and ordinances to which this title applies, and may adopt administrative rules to meet that responsibility. The review authority may delegate enforcement responsibility, as appropriate. An employee of one review authority department may commence an enforcement action of violations of codes and regulations of other departments.

15.13.020 PENALTY

A. Non-conforming structures and other non-conforming land modifications shall be a continuing violation. Every day of violation shall be a separate violation. It shall be a violation to own, use, control, maintain, or possess a portion of any premises which has been constructed, equipped, maintained, controlled, or used in violation of any of the applicable provisions, MCC 15.03.005, in this Title. Structures or activities which were made or conducted without a permit, when a permit was required at the time of first action, do not vest and require current permits. Any person, firm, or corporation who violates or who solicits, aids, or attempts a violation are accountable under this Chapter and are subject to the penalty provision as well as the Hearing Examiner process.

B. Compliance with the requirements of those codes and regulations listed under MCC 15.03.005 shall be mandatory, and violations of those codes are within the purview of this Chapter.

- B. Any private party who intentionally, recklessly, or negligently violates any of the applicable codes, regulations and ordinances is guilty of a misdemeanor. This includes, but is not limited to, a violation of notice and order, a violation of notice of civil violation, a violation of a warning notice, a violation of a stop work order, violation of a do not occupy order, and failure to comply with orders of the hearings examiner. Any person convicted of a misdemeanor under this section shall be punished by a fine of not more than five hundred dollars, or by imprisonment not to exceed ninety days, or by both, unless otherwise required by state laws. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any of the applicable provisions is committed, continued, permitted, or aided by any such person.
- C. Notwithstanding the provisions of any other code, the Review Authority is authorized to issue civil infractions for violations of any provision of any code or regulation listed under Title 15.03.005. The enforcement officer may issue a civil infraction ticket of up to \$250 for the first violation and up to \$500 for the second and subsequent violations. Second and subsequent violations refer to any violation of any provision of Title 15.03.005 within two years of the first violation. A violator is 1) one who owns the property and knows the violation is occurring, and fails to take action to abate it; 2) one who causes the violation to occur or solicits, commissions, requests, or aids the violation; 3) one who has a virtual exclusive right to possess the land, as in a tenant, equitable title owner, or trust beneficiary, and who aids, abets, commissions, solicits, requests, or knowingly allows a violation to occur on the land; or 4) to the maximum extent allowed under Washington law, any company whose employee or employees violates any provision of Title 15. Proof in District Court shall be by a preponderance of the evidence. To the extent that there is no conflict with this regulation, all such civil infractions under this regulation shall be governed by the standards and procedures set forth in Revised Code of Washington 7.80 (Civil Infractions). Each day of the violation shall be considered a separate offense.

15.13.030 APPLICATION

- A. Actions under this chapter may be taken in any order deemed necessary or desirable by the review authority to achieve the purpose of this chapter or of the Development Code.
- B. Proof of a violation of a development permit shall constitute prima facie evidence that the violation is that of the applicant and/or owner of the property upon which the violation exists. An enforcement action under this chapter against the owner and/or applicant shall not relieve or prevent enforcement under this chapter or other ordinance against any other responsible person, which, to the extent allowed by state law, includes an officer or agent of a business or nonprofit organization who, while violating the applicable provisions, is acting on behalf of, or in representation of, the organization.
- C. *Where property has been subjected to an activity in violation of this Chapter, the County may bring an action against the owner of such land or the operator who performed the violation. In addition, in the event of intentional or knowing violation of this Chapter, the Court may, upon the County's request, deny authorization of any permit or development approval on said property for a period up to ten (10) years from the date of unauthorized clearing or grading. While a case is pending in Court, the County shall not authorize or grant any permit or approval of development on said property.*

- D. Nothing in this chapter shall be construed to prevent the application of other procedures, penalties or remedies as provided in the applicable code or ordinance

15.13.035 WARNING NOTICE

Prior to other enforcement action, and at the option of the review authority, a warning notice may be issued. This notification is to inform parties of practices which constitute or will constitute a violation of the development code or other development regulation as incorporated by reference and may specify corrective action. This warning notice may be sent by certified/registered mail, posted on site or delivered by other means. The parties shall respond to the county within 20 days of the postmark, posting on site, or delivery of the notice

15.13.040 NOTICE OF CIVIL VIOLATION

- A. **Authority.** A notice of civil violation may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the applicable codes under Section 15.03.005. A landowner, tenant, or contractor may each be held separately and joint and severally responsible for violations of the applicable codes and regulations.
- B. **Notice.** A notice of civil violation shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any person at the location and/or mailed first class to the owner or other person having responsibility for the location and not returned.
- C. **Content.** A notice of civil violation shall set forth:
1. The name and address of the person to whom it is directed.
 2. The location and specific description of the violation.
 3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed.
 4. An order that the violation immediately cease, or that the potential violation be avoided.
 5. An order that the person stop work until correction and/or remediation of the violation as specified in the order.
 6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions.
 7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.
 8. A notice of the date, time and place of appearance before the Hearing Examiner as provided in section 15.13.045.
- D. **Remedial Action.** The review authority may require any action reasonably calculated to correct or abate the violation, including but not limited to replacement, repair, supplementation, revegetation, or restoration.

15.13.045 HEARING BEFORE THE HEARING EXAMINER

- A. A person to whom a notice of a civil violation is issued will be scheduled to appear before the Hearings Examiner after the notice of civil violation is issued. Extensions may be granted at the discretion of the appropriate Review Authority.

- B. Correction of Violation. The hearing will be canceled if the applicable Review Authority determines that the required corrective action has been completed or is on schedule for completion as set by the Review Authority at least 48 hours prior to the scheduled hearing.
- C. Procedure. The Hearings Examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the Hearings Examiner. The applicable Review Authority and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The county shall have the burden of proof to demonstrate by a preponderance of evidence that a violation has occurred or imminently may occur and that the required corrective action will correct the violation. A Hearing Examiner's order may prohibit future action, and violations of that order may lead to penalties under this ordinance. The determination of the applicable Review Authority shall be accorded substantial weight by the Hearings Examiner in determining the reasonableness of the required corrective action.
- D. Decisions of the Hearings Examiner.
 - 1. The Hearing Examiner shall determine whether the county has established by a preponderance of the evidence that a violation has occurred and that the required correction will correct the violations and shall affirm, vacate, or modify the county's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.
 - 2. The Hearing Examiner shall issue an order to the person responsible for the violation which contains the following information:
 - a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
 - b. The required corrective action;
 - c. The date and time by which the correction must be completed;
 - d. The civil fines assessed based on the criteria in subsection (D)(3) of this section;
 - e. The date and time by which the correction must be completed;
 - 3. Civil fines assessed by the Hearing Examiner shall be in accordance with the civil fine in Section 15.13.050.
 - a. The Hearing Examiner shall have the following options in assessing civil fines:
 - i. Assess was issued and thereafter; or
 - ii. Assess civil fines beginning on the correction date set by the applicable Review Authority or alternate correction date set by the Hearings Examiner and thereafter; or
 - iii. Assess less than the established civil fine set forth in Section 15.13.050 based on the criteria of subsection (D)(3)(b) of this section; or
 - iv. Assess no civil fines.
 - b. In determining the civil fine assessment, the Hearing Examiner shall consider the following factors:
 - i. Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
 - ii. Whether the person failed to appear at the hearing;

- iii. Whether the violation was a repeat violation or if the person has previously violated the applicable codes, regulations, and ordinances;
 - iv. Whether the person showed due diligence and/or substantial progress in correcting the violation;
 - v. Whether a genuine code interpretation issue exists; and
 - vi. Any other relevant factors.
 - c. The Hearing Examiner may double the civil fine schedule if the violation was a repeat violation or the person has previous violations of the applicable codes, regulations, or ordinances. In determining the amount of the civil fine for repeat violations the Hearing Examiner shall consider the factors set forth in subsection (D)(3)(b) of this section.
- 4. Notice of Decision. Upon receipt of the Hearing Examiner's decision, the Review Authority shall send by first class mail and by certified mail return receipt requested a copy of the decision to the person to whom the notice of a civil violation was issued. The decision of the Hearing Examiner shall be rendered within 10 working days of the hearing.
- E. Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the Hearing Examiner will enter a default order with findings pursuant to subsection (D)(2) of this section and assess the appropriate civil fine pursuant to subsection (D)(3) of this section. The county will enforce the Hearing Examiner's order and any civil fine from that person.
- F. Appeal to Superior Court. See Section 15.11.040 Judicial Appeal

15.13.050 CIVIL FINES

- A. **Authority.** A person who violates any provision of the Development Code, or who fails to obtain any necessary permit, who fails to comply with the conditions of a permit, or who fails to comply with a notice of civil violation shall be subject to a civil fine.
- B. **Amount.** The civil fine assessed shall not exceed one thousand dollars (\$1,000.00) for each violation, except where the hearings examiner is authorized under this ordinance to double the fine. Each separate day, event, action or occurrence shall constitute a separate violation.
- C. **Notice.** A civil fine shall be imposed by an order of the Hearings Examiner, and shall be effective when served or posted as set forth in 15.13.040(B).
- D. **Collection.**
 - 1. Civil fines shall be immediately due and payable upon issuance and receipt of order of the Hearings Examiner. The review authority may issue a stop work order until such fine is paid.
 - 2. If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision.
 - 3. If a fine remains unpaid 30 days after it becomes due and payable, the review authority may take actions necessary to recover the fine. Civil fines shall be paid into the County's general fund unless otherwise provided by ordinance. The review authority, in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not to exceed three equal annual installments. The payments shall bear interest equal to that charged on delinquent taxes under

RCW 84.56.020. Such an account in good standing shall not be considered as delinquent unpaid fines as provided in (D4) in this section.

4. Unpaid fines shall be assessed against the property and be recorded on the assessment role, and thereafter said assessment shall constitute a special assessment against and a lien upon the property, provided that fines in excess of the assessed value shall be a personal obligation of the property owner, and fines assessed against persons who are not the property owner shall be personal obligations of those persons.
- E. Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.
- F. All such assessments remaining unpaid after 30 days from the date of recording on the assessment roll shall become delinquent and shall bear interest at such rates and in such manner as provided for in RCW 84.56.020, as now or hereafter amended, for delinquent taxes.
- G. If the county assessor and the county treasurer assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the county treasurer. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year.
- H. The amount of the assessment lien shall be billed annually by the Treasurer's Office on the date of the assessment lien until paid and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment. Notwithstanding the previous provisions, the foreclosure process and sale process may be commenced within a year of the creation of a lien when the Review Authority or the County Commissioners make a written request to the Treasurer's Office to commence the process.

15.13.055 COST RECOVERY

- A. **Authority.** Notwithstanding any other code provision, a person who violates any provision of any code or regulation under MCC 15.03.005, or who fails to obtain any necessary permit, or who fails to comply with a notice of civil violation shall be subject to enforcement, Hearings Examiner, and abatement costs. Costs in year 2002 shall be \$52.30 per hour for any employee of Mason County, except that department heads and managers, elected officials, and deputy prosecutor time shall be \$75.00 per hour. For every year after 2002, the rate may be adjusted according to the Consumer Price Index.
- B. **Amount.** The Review Authority shall keep an itemized account of the time spent by employees of the county in the enforcement or abatement of any code or any regulation under Title 15.03.005. The Review Authority may request costs be ordered by the Hearings Examiner. The Hearing Examiner may order costs.

- C. **Notice.** Upon completion of the work for which cost recovery is proposed, the Review Authority shall provide notice by certified mail return receipt requested to the property owner or other person on whose behalf the costs were incurred.
- D. **Collection.** Costs may be collected as provided in MCC 15.13.050 (D) through (H) inclusive.
- E. Civil fines and funds collected shall be deposited as provided in the respective county regulation or, if no other provision is made, shall be deposited in the general fund of the county. However, departmental directors may, in their discretion, direct that costs be placed in a special abatement fund. If the director decides to close the fund, the remaining fund balance shall revert back to the general fund.

15.13.060 REVIEW OF APPROVED PERMITS

- A. **Review:** Any approval or permit issued under the authority of the Development Code may be reviewed for compliance with the requirements of the Development Code, or to determine if the action is creating a nuisance or hazard, has been abandoned, or the approval or permit was obtained by fraud or deception.
- B. **Review Authority Investigation:** Upon receipt of information indicating the need for, or upon receiving a request for review of permit or approval, the review authority shall investigate the matter and take one or more of the following actions:
 1. Notify the property owner or permit holder of the investigation; and/or
 2. Issue a notice of civil violation and/or civil fine and/or recommend revocation or modification of the permit or approval; and/or
 3. Refer the matter to the County Prosecutor; and/or
 4. Revoke or modify the permit or approval, if so authorized in the applicable code or ordinance; and/or
 5. Refer the matter to the Hearing Examiner with a recommendation for action.

15.13.070 REVOCATION OR MODIFICATION OF PERMITS AND APPROVALS

[[HANDLED BY APPROPRIATE DEPARTMENTS]]

- A. Upon receiving a review authority's recommendation for revocation or modification of a permit or approval, the Hearing Examiner shall review the matter at a public hearing, subject to the notice of public hearing requirements (Sec. 15.07.030). Upon a finding that the activity does not comply with the conditions of approval or the provisions of the Development Code, or creates a nuisance or hazard, the Hearing Examiner may delete, modify or impose such conditions on the permit or approval it deems sufficient to remedy the deficiencies. If the Hearing Examiner find no reasonable conditions which would remedy the deficiencies, the permit or approval shall be revoked and the activity allowed by the permit or approval shall cease.
- B. **Building Permits.** The Building Official, not the Hearing Examiner has the authority to revoke or modify building permits.
- C. **Reapplication.** If a permit or approval is revoked for fraud or deception, no similar application shall be accepted for a period of one year from the date of final action and appeal, if any. If a permit or approval is revoked for any other reason, another application may be submitted subject to all of the requirements of the Development Code.

CONSOLIDATED APPLICATION REVIEW CHARTS

GUIDELINE TO DEVELOPMENT CODE DECISIONS AND PERMITS

PERMIT ENTRY POINT	DECISION TYPE			
	TYPE I ministerial	TYPE II administrative	TYPE III quasi-judicial	TYPE IV legislative
BUILDING III (building dept., fire marshal, and environmental health dept.)	building permit w/o SEPA building variance land modification permit w/o SEPA fire protection certificate septic system permit w/o MEP water adequacy well construction	SEPA environmental review for building permit and land modification permit MEP review for septic system permit	appeal of type I/II decisions	
BUILDING I (community development)	declaration of parcel combination / separation boundary line adjustment	commercial/industrial development Mason Environmental Permit short plat large lot subdivision	appeal of type I/II decisions preliminary plat final plat large lot subdivision Mason Conditional Environmental Permit <i>Resource Ordinance variance</i> <i>Reasonable Use Exception</i> Shoreline development permit mobile home - RV park permit	county comprehensive plan development regulations <i>rezone</i>