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# CHAPTER 1

## 1.000 Development Permit Procedures and Administration

### 1.010 Purpose and Applicability

- A. The purpose of this chapter of the City of Lacey Development Guidelines and Public Works Standards is to enact the processes and timelines for local land development permitting. The objectives of this chapter are to encourage the preparation of appropriate information and/or materials early in the permitting process, to process permit applications in a timely manner, to provide the general public with an adequate opportunity for review and comment, and to provide the development community with a standardized process and predictability.
- B. This Chapter shall apply to permit applications for land development under the following Titles of the Lacey Municipal Code:  
  
Title 14 -- Buildings and Construction  
Title 15 -- Subdivisions  
Title 16 -- Zoning
- C. Other laws, ordinances, regulations and plans have a direct impact on the development of land. These include, but are not limited to, the City of Lacey Development Guidelines and Public Works Standards, City of Lacey Environmental Protection and Resource Conservation Plan, City of Lacey Transportation Plan, Shoreline Master Program for Thurston Region, City of Lacey and Thurston County Land Use Plan for the Lacey Urban Growth Area, and the laws, ordinances, regulations and plans of federal, state and local agencies.

### 1.020 Right to Enter

In the performance of their functions and duties, duly authorized members of a committee, commission, or review staff of the City of Lacey may enter upon any land and make examinations and surveys. Provided such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof.

### 1.030 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Title:

- A. "Application" means a request for any land use permit required from the City of Lacey for proposed development or action, including without limitation: building permits, conditional use permits, shoreline substantial development permits, binding site plans, planned developments, subdivisions, short subdivisions, variances, site plan reviews, permits or approvals required by critical area ordinances, and site specific rezones.
- B. "Closed record appeal" means an appeal on the record with no new evidence or information allowed to be submitted and only appeal argument allowed.
- C. "Day" refers to calendar day including weekends and City-recognized holidays; "working day" refers to a day that the City of Lacey conducts official business from Monday through Friday excluding City-recognized holidays. Should a statutory deadline end on a weekend or City-recognized holiday, the deadline shall be extended to 5:00 p.m. the next working day.
- D. "Department" means City of Lacey Community Development Department.
- E. "Full administrative review" is used when the proposed development is subject to objective and subjective standards requiring the exercise of limited discretion about non-technical issues and about which there may be limited public interest. The proposed development may or may not be subject to SEPA review. Included under this type of review are binding site plans, short subdivisions, site plan review applications, certain wetland development permits, as prescribed in LMC 14.28.120, land clearing permits and other similar applications.
- F. "Limited administrative review" is used when the proposed development is subject to clear, objective and non-discretionary standards requiring the exercise of professional judgment about technical issues and the proposed development is exempt from the State Environmental Policy Act (SEPA). Included under this type of review are interpretation of codes and ordinances, single family building permits, design review, exempt tree removal

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requests, accessory dwelling units and other similar applications.

- G. "Legislative review" is used when the proposed development involves the creation, implementation or amendment of city policy or law. In contrast to the other procedure types, legislative review usually applies to a relatively large geographic area containing several property owners. Included under this type of review are comprehensive plan, sub-area plan, zoning and/or development code review, amendments and updates, site-specific zoning district reclassifications and other similar applications.
- H. "Open record hearing," means a hearing that creates the record through testimony and submission of evidence and information. An open record hearing may be held on an appeal if no open record hearing has previously been held on the application.
- I. "Party of record" means an applicant, individual, agency or department who commented in writing on the project during the public comment period for the Notice of Application, Environmental Review or provided testimony at the Public Hearing.
- J. "Permit Assistance Staff" means the staff designated by the City to handle all permit assistance questions and duties. The City has designated the Permit Technician, the Planners within the Community Development Department and the Public Works Development Review Staff as the permit assistance staff.
- K. "Public meeting" means an informal meeting, workshop, or other public gathering to obtain comments from the public or other agencies on an application. A public meeting does not constitute an open record hearing.
- L. "Quasi-judicial review" is used when the development or use proposed under the application requires a public hearing before a hearing examiner. Included within this type of review shall be subdivisions, conditional use permits, planned residential developments, variances, certain wetland development permits, as prescribed in LMC14.28.110, shoreline substantial development permits administrative appeals, master plans and other similar applications.

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## 1A APPLICATION FORMS

### 1A.010 Application Forms

- A. An application shall be made using the appropriate form adopted by the department.
- B. Each adopted application form shall, at a minimum, include the following information:
  1. The application form be filled out legibly, in blue or black ink, either hand printed or typewritten.
  2. The name, mailing address and telephone number of each applicant.
  3. The name, mailing address and telephone number of the applicant's representative, if any.
  4. The name, mailing address and telephone number of each owner of the subject property, if different than the applicant(s).
  5. The name, mailing address, telephone number and contractor registration number of the applicant's prime contractor and City of Lacey business registration number, if applicable.
  6. The parcel number, legal description and assessor's parcel map for each parcel which is the subject of the proposed development.
  7. The signature of each applicant or the applicant's authorized representative and each property owner if different than the applicant(s).
  8. Any other information, documents or materials as determined by the department, which may be required in the body of the form or by an attachment to the form.
  9. Mailing addresses for parcels within a minimum of 300-feet for projects requiring a public hearing. Village Center projects require addresses for parcels within a minimum of 1,000-feet of the subject property. The mailing list shall be

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prepared by a Title Company and in the form of labels and a paper copy. The addresses shall be the actual mailing address for the parcel.

- C. Each application form shall require designation of a single person or entity to receive determinations and notices required under this Chapter, the Lacey Municipal Code or by RCW Chapter 36.70B. Where a determination or notice to the “applicant” is required by this Chapter, Lacey Municipal Code or RCW Chapter 36.70B, “applicant” shall mean the person or entity so designated.
- D. Each application shall contain the following statements: An application shall become vested on the date a determination of completeness is made pursuant to Section 1B.050 of the City of Lacey Development Guidelines and Public Works Standards. Thereafter, the application shall be reviewed under the codes, regulations and other laws in effect on the date of vesting. In the event an applicant substantially changes the proposed development after a determination of completeness, as determined by the department the application shall not be considered vested until a new determination of completeness on the changes is made pursuant to Section 1B.050 of the City of Lacey Development Guidelines and Public Works Standards. In the performance of their functions and duties, authorized members of a committee, commission or review staff of the City of Lacey may enter upon any land and make examinations as part of the review of a land use application.

## **1B Application Process**

### 1B.010 Application Process

The application process shall consist of the following components:

- Pre-submission Meetings
- Application Submittal Review
- Determination of Completeness
- Notice of Application
- Comment Period
- Application Review
- Public Hearing (if applicable)
- Public Meeting (if applicable)
- Notice of Final Decision

### 1B.020 Pre-submission Meetings

- A. All prospective applicants shall participate in a Pre-submission Meeting. The department may waive the requirement of a Pre-submission Meeting where proposed development is subject to Limited Administrative Review.
- B. The purpose of the Pre-submission Meeting is to provide the applicant with the best available information regarding the development proposal and application processing requirements, and to assure the availability of complete and accurate information necessary for review prior to the applicant's expenditure of application fees and the scheduling of the application review process.
- C. The Pre-submission Meeting provides an opportunity for the applicant, staff and other agencies to informally discuss and review the proposed development, the application and permit requirements, fees, the review process and schedule, and applicable development standards, plans, policies, and laws.
- D. The Pre-submission Meeting shall take place at the department's office, unless the department and the applicant agree upon another location. The length of the Presubmission Meeting shall be determined by the complexity of the development proposed by the applicant.
- E. An applicant may request additional Pre-submission Meetings if the proposed development changes based on information received at the previous meeting. The additional meetings shall be subject to the same procedures as the initial Pre-submission Meeting.
- F. Application forms shall be made available to the applicant following a Presubmission Meeting.

### 1B.030 Consolidated Application Process

When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time.

- A. Applications for proposed development and planned actions subject to the provisions of the State Environmental Policy Act

(SEPA) shall be reviewed concurrently and in accordance with state and local laws, regulations and ordinances.

- B. When more than one application is submitted under a consolidated review and the applications are subject to different types of review procedures, all of the applications for the proposed development shall be subject to the most stringent level of review procedure which applies to any of the applications.
- C. If an applicant elects a consolidated application process, the Determination of Completeness, the Notice of Application, and the Notice of Final Decision must include all applications being reviewed.

#### 1B.040 Application Submittal Review

- A. A review of the submitted application shall be conducted to determine if the application is complete. The application submittal review shall determine if adequate information is provided in or with the application in order to begin processing the application and all required information and materials have been supplied in sufficient detail to begin the application review process. All information and materials required by the application form and from the Pre-submission Meeting must be submitted. All studies supporting the application or addressing projected impacts of the proposed development must be submitted.
- B. The purpose of the Application Submittal Review is to ensure adequate information is contained in the application materials to demonstrate consistency with applicable comprehensive plans, development regulations and other applicable city codes. Department staff will coordinate the involvement of agencies responsible for the review of setbacks, landscaping, parking, drainage, access, roads, traffic, signage, utilities and any other applicable requirements.

#### 1B.050 Determination of Completeness

- A. Within twenty-eight (28) days after receiving an application, the department shall complete the Application Submittal Review and provide the applicant a written determination that the application is complete or incomplete.

- B. An application shall be determined complete only when it contains all of the following information and materials:
1. A fully completed and signed application.
  2. Applicable review fees as prescribed by the City of Lacey fee schedule.
  3. All information and materials described on the applicable application form.
  4. A fully completed and signed environmental checklist for projects subject to review under the State Environmental Policy Act.
  5. A scaleable plot plan prepared by a licensed engineer, surveyor or certified planner, disclosing all existing and proposed structures and features applicable to the desired development; for example, parking, landscaping, preliminary drainage plans with supporting calculations, signage, setbacks, etc.
  6. Any additional information and materials identified at the Pre-submission Meeting or required by applicable development standards, plans, policies or any other federal, state or local laws.
  7. Any supplemental information or special studies identified by the department.
- C. For applications determined to be incomplete, the department shall identify, in writing, the specific requirements, information or materials necessary to constitute a complete application. Within fourteen (14) days after its receipt of the requested requirements, information or materials, the department shall issue a Determination of Completeness or identify the additional requirements, information, or materials still necessary for completeness.
- D. A Determination of Completeness shall identify, to the extent known, other local, state or federal agencies that may have jurisdiction over some aspect of the application.
- E. A Determination of Completeness shall not preclude the department from requesting additional information or studies, if

additional information is required or a change in the proposed development occurs.

#### 1B.060 Application Vesting

An application shall become vested on the date a determination of completeness is made under this Title. Thereafter, the application shall be reviewed under the codes, regulations and other laws in effect on the date of vesting. In the event an applicant substantially changes the proposed development after a determination of completeness, as determined by the department, the application shall not be considered vested until a new determination of completeness on the changes is made under this Title.

#### 1B.070 Notice of Application

- A. Within fourteen days after issuing a determination of completeness, the department shall issue a notice of application. However, a notice of application shall not be required for project permits that are categorically exempt under chapter 43.21 RCW, unless an open record public hearing is required or an open record appeal hearing is allowed on the project permit decision. The notice shall include, but not be limited to the following:
1. The date of application, the date of the Determination of Completeness, and the date of the Notice of Application.
  2. A description of the proposed project action, a list of permits required for the application, and if applicable a list of any studies requested.
  3. The identification of other required permits not included in the application, to the extent known by the department.
  4. The identification of existing environmental documents which evaluate the proposed development and the location where the application and any studies can be reviewed.
  5. A statement of the public comment period, which shall be fourteen days following the date of the Notice of Application, and a statement of the right of any person to comment on the application, receive notice of and participate in any hearings,

request a copy of the decision once made, and receive a statement of any appeal rights.

6. When applicable, the date, time, location and type of hearing, if scheduled at the date of the Notice of Application.
7. A statement of the preliminary determination, if one has been made at the time of Notice of Application, of those development regulations that will be used for project mitigation and of consistency with the type of land use of the proposed site, the density and intensity of proposed development, infrastructure necessary to serve the development, and the character of the development.
8. Any other information determined by the department to be appropriate.

#### B. Informing the Public

1. No notice shall be required for limited administrative review.
2. Notice shall be provided for land use applications subject to the full administrative review procedures outlined in Section 1C.030 in the following manner, except for short subdivision applications, which shall be subject to the notification requirements of subsection (3) below:
  - a. Publishing the Notice of Application. The notice of application shall be published in the official newspaper of the City of Lacey and include at a minimum the following information: the project location, description, type of permit required, comment period dates and location where the complete application may be reviewed.
3. Notice shall be provided for land use applications subject to the quasi-judicial or legislative review procedures outlined in Sections 1C.050 and 1C.060 and short subdivisions in the following manner:
  - a. Posting the Notice of Application. The Notice of Application shall be posted on the subject property for the duration of the public comment period and at a minimum include the following information: the project location, description, type of permit required, comment period dates and location where the complete application may be reviewed.

The Notice of Application shall be posted in a manner that is highly visible to the general public from the public right-of-way adjacent to the site.

- b. Publishing a Notice of Application. The notice of application shall be published in the official newspaper of the City of Lacey , and include at a minimum the following information: the project location, description, type of permit required, comment period dates and location where the complete application may be reviewed.
- C. The Notice of Application is not a substitute for any required notice of a public hearing.

## **1C Application Review**

### 1C.010 Application Review Criteria

Review of an application and proposed development shall be governed by and be consistent with the fundamental land use planning policies and decisions which have been made in adopted comprehensive plans and development regulations. The review process shall consider the type of land use permitted at the proposed site, the density and intensity of the proposed development, the infrastructure available and needed to serve the development, the character of the development and its consistency with development regulations. In the absence of applicable development regulations, the applicable development criteria in the comprehensive plan or sub-area plan adopted under RCW 36.70A shall be determinative.

### 1C.020 Application Review Classification

- A. Following the issuance of a Determination of Completeness and a Notice of Application, an application shall be reviewed at one of four levels: Limited Administrative Review, Full Administrative Review, Quasi-Judicial Review, or Legislative Review.
- B. If this Chapter or the Lacey Municipal Code provides that a proposed development is subject to a specific type of review, or a different review procedure is required by law, then the application for such development shall be processed and reviewed accordingly. If this Title does not provide for a specific type of review and/or if a different review procedure is not required by law, then the department shall determine the type of review to be used for the type and intensity of the proposed development.

- C. Any public meeting or required open hearing may be combined by the department with any public meeting or open record hearing that may be held on the proposed development by another local, state, federal or other agency. Hearings shall be combined if requested by the applicant. However, joint hearings must be held within the City of Lacey and within the time limits of this title and RCW Chapter 36.70B.

#### 1C.030 Limited Administrative Review of Applications

The department may approve, approve with conditions, or deny applications subject to administrative review after the date the application is accepted as complete, without public notice.

#### 1C.040 Full Administrative Review of Applications

The review procedure under Full Administrative Review shall be as follows:

- A. If the proposed development is subject to the State Environmental Policy Act (SEPA), the threshold determination shall be made after the closing of the public comment period associated with the Notice of Application.
- B. The community development department shall distribute copies of the complete application to agencies and departments affected by the proposal or with review authority. The community development department shall set a date for return of findings and recommendations from each commenting agency or department.
- C. Upon the completion of the application comment period and the issuance of an environmental determination, if applicable, the department may approve, approve with conditions, or deny the application. The department shall mail the notice of decision to the applicant and all parties of record. The decision shall include:
  - 1. A statement of the applicable criteria and standards in the development codes and other applicable law.
  - 2. A statement of the findings of the review authority, stating the application's compliance or non-compliance with applicable criteria, and assurance of compliance with applicable standards.

3. The decision to approve or deny the application and, if approved, conditions of approval necessary to ensure the proposed development will comply with all applicable law.
4. A statement that the decision is final unless appealed as provided in Section 1D “Appeals” to the City of Lacey Hearing Examiner within fourteen (14) calendar days after the date the notice of decision is mailed. The appeal closing date shall be listed. The statement shall describe how a party may appeal the decision, including applicable fees and the elements of a notice of appeal.
5. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list the place, days and times when the case file is available for review and the name and telephone number of the department’s representative to contact to arrange for a review.

#### 1C.050 Quasi-Judicial Review of Applications

The review procedure under Quasi-Judicial Review shall be as follows:

- A. If the proposed development is subject to the State Environmental Policy Act (SEPA), the threshold determination shall be made after the closing of the public comment period associated with the Notice of Application.
- B. The community development department shall distribute copies of the complete application to agencies and departments affected by the proposal or with review authority. The community development department shall set a date for return of findings and recommendations from each commenting agency or department.
- C. Upon the completion of the application comment period, , the issuance of an environmental determination and of the environmental appeal period, the department shall schedule a hearing with the City of Lacey Hearing Examiner, when applicable.
- D. At least ten (10) days before the date of a public hearing the department shall issue public notice of the date, time, location and purpose of the hearing by posting the subject site and the nearest intersection, posting at city hall, publishing notice in the official city newspaper and mailing notice to property owners of

record located within a minimum of 300 feet of the subject property<sup>1</sup>. If the applicant owns adjoining land, the distance of notification shall be measured from outside of the applicant's ownership. Failure to receive a public hearing notice shall not invalidate the hearing.

- E. At least ten (10) days before the date of the public hearing, the department shall issue a written staff report, integrating the SEPA review and threshold determination and recommendation regarding the application(s), shall make available to the public a copy of the staff report for review and inspection, and shall mail a copy of the staff report and recommendation to the applicant or the applicant's designated representative. The department shall make available a copy of the staff report, subject to payment of a reasonable charge, to other parties who request it.
- F. Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing examiner. A public hearing shall be recorded on either audio or audio-visual tape. If for any reason the hearing cannot be completed on the date set in the public notice, it may be continued during the public hearing to a specified date, time and location without further public notice required.
- G. Within ten (10) working days after the date the public record closes, the hearing examiner shall issue a written recommendation to the city council regarding the application(s).
- H. The hearing examiner may recommend approval, approval with conditions or denial of the application to the Lacey City Council and shall provide written notice of its recommendation to the council, department, applicant, the applicant's designated representative, the property owner(s), and any other parties of record. The decision shall include:
  - 1. A statement of the applicable criteria, standards and law;
  - 2. A statement of the findings the hearing examiner made showing the proposal does or does not comply with applicable approval criteria and assurance of compliance with applicable standards;
  - 3. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list the place, days and times when the case file is available for review and the name and telephone

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number of the department representative to contact to arrange for a review.

- I. Following the public hearing and in accordance with RCW 36.70A.035, the recommendation of the Hearing Examiner shall be forwarded to the City Council. Upon receiving the recommendation of the Hearing Examiner, the City Council shall set a public meeting to consider the proposal. This meeting shall take place no later than 30 days from the date of the Hearing Examiner decision. The Council may accept, modify or reject the recommendation. 1 Village Center projects require mailings to property owners within 1000-feet of the subject project.
- J. The City Council may accept , modify or deny the project.
- K. The final decision of the City Council shall be in writing and include:
  1. A statement of applicable criteria and law;
  2. A statement of the findings indicating the application's or proposed development's compliance or non-compliance with each applicable approval criteria;
  3. A statement that the decision is final unless appealed, pursuant to Section 1D "Appeals", to Superior Court within twenty-one days of the issuance of the decision. The appeal closing date shall be listed.
  4. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for inspection. The notice shall state the place, days and times when the case file is available for inspection and the name and telephone number of the department's representative to contact to arrange inspection.

#### 1C.060 Legislative Review of Applications

Legislative Review requires at least one public hearing before the City of Lacey Planning Commission and one public meeting before the Lacey City Council. Legislative Review shall be conducted as follows:

- A. If the proposed development is subject to the State Environmental Policy Act (SEPA), the threshold determination shall be made after the closing of the public comment period.

- B. Upon the completion of the comment period required by SEPA and the issuance of an environmental determination if applicable, the department shall schedule an open record hearing with the City of Lacey Planning Commission.
- C. At least ten (10) days before the date of the Planning Commission open record hearing the department shall issue public notice of the date, time, location and purpose of the hearing by posting at city hall and publishing notice in the official city newspaper. The notice shall include notice of the SEPA threshold determination issued by the department. If the project is site specific, in addition to the abovementioned notifications, the subject site shall be posted and notice shall be mailed to property owners of record located within a minimum of 300-feet of the subject site.
- D. At least ten (10) days prior to the open record hearing, the department shall issue a written staff report regarding the application(s), shall make available to the public a copy of the staff report for review and shall mail a copy of the staff report and recommendation to the applicant or the applicant's designated representative, and Planning Commission members. The department shall make available a copy of the staff report, subject to payment of a reasonable charge, to other parties who request it.
- E. Following the public hearing, in accordance with RCW 36.70A.035, the recommendation of the Planning Commission shall be forwarded to the City Council. Upon receiving the recommendation from the Planning Commission, the City Council shall set a public meeting to consider the proposal, at which the Council may accept, modify or reject the recommendation.
- F. The City Council may accept , modify , deny or remand the proposal back to the Planning Commission for further review. The approval of comprehensive plan amendments and zoning changes by the City Council shall be adopted by ordinance.
- G. The final decision of the City Council shall be in writing and include:
  - 1. A statement of the applicable criteria and law;
  - 2. A statement of the findings indicating the application's or proposed development's compliance or non-compliance with each applicable approval criterion;

3. If denied, a statement that the decision is final unless appealed, pursuant to Section 1D "Appeals", to Superior Court within twenty-one (21) days of the issuance of the decision, as determined pursuant to RCW 36.70A.280. The appeal closing date shall be listed.
4. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for inspection. The notice shall state the place, days and times when the case file is available for inspection and the name and telephone number of the department representative to contact to arrange inspection.

#### 1C.070 Notice of Final Decision\*

- A. A Notice of Final Decision on an application shall be issued within one hundred twenty (120) days after the date a Determination of Completeness is made. In determining the number of days that have elapsed, the following periods shall be excluded:

1. Any period during which the applicant has been requested by the department to correct plans, perform required studies, or provide additional information or materials. The period shall be calculated starting from the date the department issues the request to the applicant, to the earlier of either the date the department determines whether the additional information satisfies its request of fourteen (14) days after the date the information has been received by the department. *If the City determines the information submitted by the applicant under this subsection is insufficient, it shall again notify the applicant of deficiencies and the procedures under this subsection shall apply to the request for information;*

\* Notice of Final Decision does not apply to Legislative Review of applications.

2. Any period during which an environmental impact statement (EIS) is being prepared following a determination of significance pursuant to RCW 43.21C.
3. Any period for administrative appeals, which shall not exceed ninety (90) days for open record appeals and sixty (60) days for closed record appeals.

4. Any extension of time mutually agreed upon by the applicant and the department.
- B. The time limit by which the City must issue a Notice of Final Decision does not apply if an application:
    1. Requires an amendment to a comprehensive plan or development regulation.
    2. Is substantially revised by the applicant after a Determination of Completeness has been issued, in which case the time period shall start from the date on which the revised project application is determined to be complete.
  - C. If the City is unable to issue its final decision within the time limits provided for in this section, it shall provide written notice of this fact to the applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the Notice of Final Decision.
  - D. In accordance with state law, the City is not liable for damages which may result from the failure to issue a timely Notice of Final Decision.

## **1D Appeals**

### 1D.010 Appeals

- A. An administrative appeal of a decision of the department after Limited and Full Administrative Review shall be filed with the department by the applicant or any party of record pursuant to Section 1D.030. The Hearing Examiner at a public hearing shall hear the administrative appeal as an open record appeal.
- B. An appeal of a quasi-judicial decision by the Hearing Examiner shall be timely filed with the department, by the applicant or any party of record pursuant to Section 1D.060. The appeal shall be heard as a closed record appeal by the City Council.
- C. An appeal of a final decision of the City Council shall be timely filed as a judicial appeal pursuant to Section 1D.070.
- D. The City shall have no obligation to the applicant or to any party to defend an appeal of a decision of the department, Hearing Examiner or the City Council.

- E. An aggrieved person, agency or department with standing may appeal a decision made by the City of Lacey. A person, agency or department with standing is one who is a party of record, as defined in Section 1D.030.

#### 1D.020 Stays

All proceedings on appealed action stayed unless an imminent peril. The filing of an appeal shall stay all proceedings and furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the land use hearings examiner after the notice of the appeal is filed, that by reason of facts stated in the certificate, a stay would, in the opinion of such official, cause imminent peril to life and property. In such case the proceedings shall not be stayed unless the land use hearings examiner specifically orders such a stay.

#### 1D.030 Appeals to hearing examiner

- A. Appellant. Appeals may be taken to the Hearing Examiner only by a party of record or by any officer, department, board, council or commission of the City affected by any order, requirement, permit, decision or determination made by an administrative official in the administration or enforcement of this title or any amendment thereto. Such appeals shall be filed in writing with the Department on forms provided by the Department within fourteen (14) days after the date of decision and shall be accompanied by the required fee. The Department shall promptly forward a copy of such appeal to the Examiner.
- B. Basis of Appeal and Relief Sought. Every appeal shall state in writing:
  - 1. The decision being appealed.
  - 2. The name and address of the appellant and his/her interest(s) in the application or proposed development.
  - 3. The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous.

4. The specific relief sought by the appellant.
- C. Dismissal. Failure to state specific grounds of the appeal and relief sought may result in dismissal of such appeal. The city staff or any party may request dismissal of an appeal at any time with notice to all parties. Upon finding that the appeal fails to state cause to reverse or modify the decision or that the Examiner lacks jurisdiction to grant relief, the Examiner may dismiss such appeal without hearing. The Examiner shall state in writing whether such dismissal is with or without prejudice.
  - D. Notice and Record. Upon the finding that an appeal has sufficient merit the Hearing Examiner shall set the time and place at which the matter will be heard. At least a ten (10) day notice of the time and place of such open record appeal hearing shall be given to the parties of record and to the official whose decision is being appealed. The Department shall transmit to the Hearing Examiner a copy of all of the records pertaining to the decision being appealed, together with written reports as the Hearing Examiner deems pertinent.
  - E. Waiver of Hearing. By agreement of all parties thereto, the appeal hearing may be waived. Such appeal may be decided by the Examiner on the basis of written briefs or memoranda.
  - F. Standard of Review. The Examiner shall only grant the relief requested by an appellant upon finding that the appellant has established that:
    1. The staff failed to follow a prescribed administrative procedure related to the underlying action;
    2. The staff's decision was an erroneous interpretation of the law;
    3. The decision is not supported by substantial evidence within the context of the whole record;
    4. The decision is a clearly erroneous application of the law to the facts;
    5. The decision is outside the authority or jurisdiction of the decision-maker;
    6. The decision violates the constitutional rights of the party seeking relief, or

7. The decision is clearly in conflict with the City's adopted plans, policies or ordinances.

G. Decision. The decision of the Examiner shall be limited to those issues timely raised on appeal. The Examiner may not reconsider or modify aspects of a project previously considered and settled by another final decision of the City. In exercising the powers granted herein, the Hearing Examiner may, in conformity with this title, reverse or affirm, wholly or in part, or may modify the order, requirements, decision or determination appealed.

H. Building Code Appeals. All appeals filed in accordance with LMC 14.18.030 shall be heard by the Hearing Examiner. Such appeals shall follow the procedures contained herein except that the decision of the Hearing Examiner shall be final pursuant to LMC 2.30.090 (C).

#### 1D.040 Reconsideration of hearing examiner decision

Decisions or recommendations of the hearing examiner may be reconsidered. Further, prior to issuing a decision, the Examiner may reconvene any hearing or continue any other proceeding in such manner as the Examiner deems appropriate to ensure a fair, timely, and reasoned decision.

A. After issuance of a final decision or recommendation any party, including the Department of Community Development, may file a motion for reconsideration on an appeal to the Hearing Examiner in accordance with subsection (B) of this Section. Such motion must be filed within fourteen days of service of the final decision or recommendation. The original of the motion for reconsideration shall be filed at the Community Development Department with a copy to the City Attorney's Office. At the same time, copies shall be served on all parties of record. Within five days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration. The Hearing Examiner may require other parties to supply an answer. All answers to motions for reconsideration shall be served on all parties of record.

B. A motion for reconsideration shall be based on at least one of the following grounds:

1. Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;

2. Irregularity in the hearing before the Hearing Examiner by which such party was prevented from having a fair hearing; or
  3. Clerical mistakes in the final decision and order.
- C. In response to a motion for reconsideration, the Hearing Examiner may deny the motion, modify its decision or recommendation, or reopen the hearing. A motion is deemed denied unless the Hearing Examiner takes action within 20 days of the filing of the motion for reconsideration. A Hearing Examiner order on a motion for reconsideration is not subject to a motion for reconsideration.
- D. A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be served on each party or the party's attorney or other authorized representative of record, unless the decision is deemed denied following the 20-day time frame set forth in Subsection C of this Section.
- E. The time for an appeal does not commence until disposition of the motion for reconsideration. If the Hearing Examiner takes no action under subsection (3) of this Section, the motion for reconsideration is deemed disposed at the end of the 20-day period. The filing of a motion for reconsideration is not a prerequisite for seeking judicial review.

#### 1D.050 Clarification of hearing examiner decision

- A. Any interested party believing that a decision or recommendation of the Hearing Examiner is ambiguous, vague, or internally inconsistent may request clarification of the decision by the Examiner. Such a request shall be submitted to the Department with the applicable fee and shall set forth the specific provision requiring additional clarity. The Department shall forward such request to the Examiner. Upon receipt of such a request, the Hearing Examiner may take action as the Examiner deems appropriate to the circumstances.
- B. A request for clarification shall not provide an opportunity for reconsideration of a decision nor for introduction of new evidence. Except as ordered by the Examiner, the filing of a request for clarification shall not alter any appeal period or delay issuance of any permit.

- C. When the Examiner determines that a clarification is in order, the Examiner may issue a supplemental or clarified decision or recommendation. As deemed appropriate by the Examiner, the Examiner may order that the supplemental or clarified decision or recommendation be subject to appropriate notice and an opportunity for appeal.

#### 1D.060 Appeals to City Council

- A. All decisions of the Hearing Examiner which have been timely appealed pursuant to this chapter and Section 2.30.160 shall come before the City Council for consideration in an open public meeting no longer than thirty days from the date an appeal is filed. The City Council shall consider the matter based upon the written record before the Examiner, the Examiner's decision and the written appeal. The written appeal shall contain the information required in 1D.030(B) and shall be accompanied by the appropriate fee submitted to the Department.
- B. The City Council may accept, modify or reject the Examiner's decision, or any findings or conclusions therein. A decision by the City Council to modify or reject shall be supported by findings and conclusions. The Council's decision shall be rendered within twenty-one days after consideration in open public meeting unless all parties affected agree to an extension of such date.
- C. The action of the Council approving, modifying, or rejecting a decision of the Hearing Examiner shall be conclusive, unless within twenty-one (21) calendar days from the date of the final Council action an aggrieved party or person files a land use petition with the Superior Court of Washington for Thurston County for the purpose of review of the action taken.

#### 1D.070 Judicial Appeals of City Council Decisions

- A. Appeals of an action of the City, with respect to an application for which all administrative appeals specifically authorized have been timely exhausted, shall be filed in the Thurston County Superior Court and served on all necessary parties within twenty-one (21) days after the date of issuance of the Notice of Final Decision, as determined pursuant to RCW 36.70C.040.
- B. Notice of the appeal and any other pleadings required to be filed with the Superior Court shall be served on the City Manager, the

City Attorney, and the Director of Community Development within the twenty-one (21) day time period.

- C. The appellant may arrange for transcription of any hearings held on the application and copies from the file. All costs of transcribing the record, copying the file, and preparing the record on appeal shall be paid by the appellant. The appellant shall, prior to the department's preparation of the record, pay an advance deposit to the department in an amount determined by the department's fee schedule for copying materials. The fee schedule shall represent the department's reasonable costs of duplicating the record. Any excess advance deposit shall be promptly refunded to the appellant.
- D. The action of the City Council approving Comprehensive Plan amendments shall be final and conclusive, unless appealed to the Growth Management Hearings Board as provided under the Revised Code of Washington. The cost of preparing and certifying the transcript of records ordered by the Board shall be borne by appellant.
- E. Appeals of a decision to grant, deny or rescind a shoreline permit shall be governed by the provisions of Chapter 90.58 of the Revised Code of Washington.

#### 1D.080 SEPA Appeals

- A. Any appeal brought under the State Environmental Policy Act (SEPA) shall be linked to a specific governmental action. SEPA provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of RCW Chapter 43.21C, WAC Chapter 197-11 and Title 14 of the Lacey Municipal Code. It is not intended to create an independent cause of action unrelated to a specific governmental action.
- B. Appeals of environmental determinations made (or lacking) under SEPA shall be commenced within fourteen calendar days from the date the environmental determination is made. The environmental appeal hearing shall be consolidated into the public hearing for the underlying permit application for applications subject to quasi-judicial review. Appeals of an environmental determination associated with an application subject to full administrative review or legislative review defined as a non-project action under SEPA shall be scheduled for a public hearing before the City of Lacey Hearings Examiner.

- C. Any SEPA appeal hearing associated with full administrative review shall not occur until after the underlying administrative decision has been issued.
- D. Quasi-judicial hearings shall not occur sooner than 10 days from expiration of a SEPA appeal deadline.
- E. A person aggrieved by a City action or failure to act has the right to a judicial appeal pursuant to RCW Chapter 43.21C, RCW Chapter 36.70C and WAC Chapter 197-11.