Snohomish County Hearing Examiner
Rules of Procedure

Issued Pursuant to Chapter 2.02 SCC

These Rules supplement and shall be read together with Chapter 2.02 of the Snohomish County Code.

EFFECTIVE DATE:
August 15, 2023

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CONTENTS

RULE 1.0 GENERAL REQUIREMENTS 4
1.1 Definitions 4
1.2 Jurisdiction and Authority of Hearing Examiner 5
1.3 Appearance of Fairness Considerations – Settlement Discussions or Mediation 5
1.4 *Ex Parte* Communication 5
1.5 Disqualification and Recusal of Examiner 6
1.6 Disclosure and Availability of Records 6
1.7 Exceptions to Rules 7
1.8 Notice Requirements 7
1.9 Site Visits 7
1.10 Applicability of these Rules 7
RULE 2.0 SCHEDULING OF HEARINGS 8
2.1 Scheduling 8
2.2 Notice of Hearings 9
2.3 Hearing Agendas 9
RULE 3.0 PRE-HEARING PROCEDURES 9
3.1 Pre-Hearing Conference 9
3.2 Subpoenas 10
3.3 Motions 11
RULE 4.0 PRE-HEARING SUBMITTAL REQUIREMENTS 13
4.1 Departmental Reports 13
4.2 Contents of the Department Report 13
4.3 Preparation of the Record – Land Use Matters 15
4.4 Preparation of the Record – All Other Matters 16
4.5 Initial Exhibit List 17
4.6 Parties of Record Register 17
4.7 Mandatory Pre-filing of Evidence in Appeals 17
4.8 Exhibits Offered During a Hearing 18
4.9 Official Case Record 18
RULE 5.0 CONDUCT OF HEARINGS 19
5.1 Requests for Public Accommodation and Accessibility 19
5.2 Parties of Record 19
5.3 Rights of Parties 20

5.4 Expected Conduct 21
5.5 Format of Hearings 21
5.6 Evidence 22
5.7 Closing Statements 24
RULE 6.0 POST-HEARING PROCEDURES 24
6.1 Examiner Decision – Distribution 24
6.2 Petition for Reconsideration 25
6.3 Re-Opening a Hearing 25
6.4 Case Record - Disposition 25
RULE 7.0 WITHDRAWAL OF APPLICATIONS 26
7.1 Procedure to Withdraw 26
7.2 Effect of Withdrawal 27
RULE 8.0 FULFILLMENT OF LAND USE APPROVAL PRECONDITIONS 27
8.1 Applicability 27
8.2 Effect of Precondition on Decision 27
8.3 Fulfillment Procedures 27

RULE 1.0 GENERAL REQUIREMENTS

1.1 Definitions

The following definitions shall apply throughout these Rules unless context or subject matter clearly indicates that another meaning is required:

a) "Administrative appeal" means any appeal for which jurisdiction is assigned to the Examiner under Snohomish County Code.

b) "Appellant" means the person or organization who has filed an appeal before the Examiner, or who has filed an appeal of the Examiner's decision to the Council or Superior Court, depending upon the context.

c) "Applicant" means the person or organization, or authorized representative of either, seeking county approval of one or more permits over which the Examiner has jurisdiction.

d) "Clerk" means the Clerk of the Hearing Examiner.

e) "Council" means the County Council of Snohomish County.

f) "Day(s)" means calendar days unless specifically stated otherwise in these Rules.

g) "Department" means the applicable department of county government designated in the County Code.

h) "Director" means the Director of the Department or her/his designee.

i) *"Ex Parte* communication" means any communication between any participant in a hearing and the Hearing Examiner that occurs outside of the hearing, in the absence of the other participants.

j) "Examiner" or "Hearing Examiner" means an administrative law judge who conducts the quasi-judicial hearing and issues a decision or recommendation as authorized by the Snohomish County Code. As used in these Rules, the terms refer to the Hearing Examiner, Deputy Hearing Examiner(s) and/or Hearing Examiner *Pro Tem* appointed by the Council, as the context requires.

k) "Party," and "Party (or Parties) of Record" means a person or entity that meets the definition found in SCC 2.02.165(1). A Party of Record may appear through legal counsel. When a party consists of more than one individual and constitutes a group, association, nonprofit organization, corporation or other entity, the party shall designate one individual member of such group, association, corporation or organization to act as the "representative" for purposes of receiving any required legal notice(s) and for participation in the hearing.

l) "Principal Parties" means and is limited to the Applicant(s), the Appellant(s) and Respondent(s) in a matter pending before the Examiner or the County Council.

m) “Representative” means a person who is a member in good standing of a group, association, nonprofit organization, corporation or other legal entity who has been duly authorized to act as the agent and spokesperson for such organization in a matter before the Hearing Examiner. Provided, further, no third party may appear in an appeal to represent an appellant, regardless of whether or not a fee is charged, unless such person is duly licensed to practice law in the State of Washington.

n) "SCC" means the Snohomish County Code.

o) "Submittals" means original and revised applications, site development plans, preliminary plat maps, concomitant agreements, traffic studies, mitigation offers, preliminary drainage plans, environmental checklists, technical and/or scientific evidence, maps, aerial photographs, landscaping plans, site-specific studies prepared by a consulting expert(s) in response to an identified issue; SEPA checklists, and other materials submitted by an Applicant or received by the Department from the Applicant or a third party in response to a request for comment on an application.

p) “Third party” means an individual or business that is not a member in good standing of a group, association, nonprofit organization, corporation or other legal entity.

1.2 Jurisdiction and Authority of Hearing Examiner

The Hearing Examiner's authority is set forth in Chapter 2.02 of the Snohomish County Code. The Hearing Examiner's jurisdiction is limited to those matters specifically identified in the Snohomish County Code, or assigned to the Examiner by the Snohomish County Council.

1.3 Appearance of Fairness Considerations – Settlement Discussions or Mediation

The Examiner who is scheduled to hear a case shall not serve as a mediator or settlement facilitator, nor participate in any way in a settlement conference. The mediator or settlement facilitator may reveal the final outcome of the conference only to indicate whether the matter has reached a settlement or whether there remains a need for the hearing. No other information shall be transmitted to the Examiner who is scheduled to hear the case. In particular, substantive position statements and offers made by or on behalf of any principal party at a mediation or settlement conference shall not be communicated unless they are part of an executed settlement agreement that becomes part of the official record in the case at the request of the parties.

1.4 *Ex Parte* Communication

a) Proceedings before the Examiner are subject to the provisions of Chapter 2.50 SCC, Code of Ethics, and SCC 2.02.060 and .070 which prohibit *ex parte* communication.

b) No person shall communicate or attempt to communicate *ex parte* directly or indirectly with the Examiner concerning the merits or facts of any matter assigned to or under consideration by the Examiner.

c) This rule does not prohibit *ex parte* communications about procedural matters including but not limited to scheduling matters and obtaining copies of public records.

d) If a substantive *ex parte* communication is made to or by the Examiner or any employee of the Hearing Examiner's Office relating to a matter pending before the Hearing Examiner, such communication shall be disclosed to the parties of record.

1.5 Disqualification and Recusal of Examiner

a) When the Examiner deems her/himself disqualified to preside in a particular proceeding, she/he shall withdraw by written Order or notice on the record as soon as the need for recusal becomes known/apparent to the Examiner.

b) Any person may request recusal of the Examiner assigned to a particular case. Such a request must be raised as soon as the basis for disqualification is known to the person and prior to the hearing or it shall be deemed waived. Such a request for recusal shall state the grounds for the request with as much specificity as possible.

c) The Examiner's decision on a recusal request shall be documented in writing and placed in the relevant case file (preferably as a marked exhibit whenever possible) or delivered orally during the hearing.

d) If, after considering the merits of a recusal request, the Examiner determines not to recuse her/himself, the raising of such request shall in no way be considered by the Examiner in making a decision in the proceeding at issue.

1.6 Disclosure and Availability of Records

a) The decision of the Examiner, once issued, is a public record and will be made available for public review. The Examiner’s working notes and draft decisions are exempt from public disclosure.

b) Except to the extent necessary to prevent excessive interference with the normal functions of the Examiner's Office, the written case record, while in the possession of the Examiner's Office, and the recording of each hearing shall be available to the public during normal business hours for inspection. Copies may be obtained upon payment of reproduction costs.

c) The Clerk is authorized to certify or authenticate those documents accepted into the record on any matter before the Hearing Examiner.

1.7 Exceptions to Rules

These Rules are designed to address most normal circumstances that arise when dealing with matters before the Hearing Examiner. However, in the event that an unanticipated situation arises which does not lend itself to the full, literal compliance with a Rule, the Examiner reserves the right to exercise discretion to address such circumstances.

1.8 Notice Requirements

Whenever an action of a Party of Record or principal party requires notice to other Party of Record or principal party, notice shall be made according to the procedures specified in the Snohomish County Code. If no procedure is specified, notice shall be sent by: (a) electronic mail (unless the receiving party previously filed an objection to receiving notices by electronic mail with the Office of Hearings Administration); (b) first class regular mail; or (c) by personal service. A declaration of service or other proof of service shall be filed with the Office of Hearings Administration. A list of Parties of Record or principal parties may be obtained from the Clerk. Attachments to electronic mail must be in a common standard file format that can be opened and reviewed by the recipient without purchasing software, such as the portable document format (PDF).

1.9 Site Visits

When necessary to obtain a full understanding of the case, an Examiner may visit or view the site prior to, during, or subsequent to the hearing. Provided, however, the Examiner will not conduct a visit of an impounded animal and will not enter private property without the permission of the landowner. Unless a site visit is made as part of a public hearing, where notice is provided and the parties are asked to testify, an Examiner shall not discuss the property or any issue about the pending case with anyone. Failure to conduct a visit shall not affect the validity of the Examiner's decision.

1.10 Applicability of these Rules

These Rules shall govern the procedures to be used in quasi-judicial proceedings before the Hearing Examiner, except where otherwise provided in the Snohomish County Code. For land use matters (including Type 1 appeals under Chapter 30.71 SCC, Type 2 proceedings under Chapter 30.72 SCC and code enforcement matters under Chapter 30.85 SCC), the applicable administrative procedures specified in Title 30 SCC shall govern. Where those regulations are silent as to administrative procedures, these Rules shall apply to supplement the administrative procedures set forth in Title 30 SCC.

RULE 2.0 SCHEDULING OF HEARINGS

2.1 Scheduling

a) General Rule. The Office of the Hearing Examiner shall have sole authority over the scheduling of hearings within its jurisdiction. Departments requesting initial hearing dates shall send a request to the Clerk, who will confirm requests. If a hearing date is rejected, the Clerk will provide the Department with additional hearing dates. More than one case may be scheduled for hearing at a particular time, if, in the opinion of the Examiner, it is reasonable to expect that two or more cases could be heard during a given hour or hour-and-a-half.

The Department shall notify the Hearing Examiner's Office if it anticipates a large volume of cases, or cases requiring multiple hearing dates, that will be scheduled in the coming months so that adequate resources can be dedicated to such cases. No more than 12 cases shall be scheduled in any week without prior approval of the Examiner. Where several Petitions for Reconsideration are received at any one time by the Examiner, the Examiner may reduce the number of scheduled cases to be heard each week in order to allow adequate time to timely respond to such petitions.

b) Land Use Matters. Hearings for land use permits or approvals subject to the 120-day timeline required by Chapter 36.70B RCW shall be scheduled by the Department of Planning and Development Services so as not to exceed the required time, unless a waiver has been obtained from the Applicant. Consistent with SCC 30.72.060(1), the Department shall forward a hearing date request to the Examiner no later than the 80th day of the 120-day timeline.

c) Animal Control Matters – Expedited Hearings for Impounded Animals. Where an animal has been impounded by the Licensing Division or any other law enforcement agency pursuant to Chapter 9.12 SCC or other laws or regulations, and an appeal has been timely filed by the animal's owner challenging either the impoundment, a finding of dangerousness, or other violation of Title 9 SCC, the Hearing Examiner's Office will make every effort to hold an expedited hearing within 72 hours (excluding weekends) after the appeal is properly filed with the Examiner. Provided, however, where the Appellant or the Licensing Division requests a later date, the Hearing Examiner may schedule the hearing for a later date, but in no case more than 10 days after impoundment of the animal.

d) Continuation or Postponement of Hearing. Any principal party may request continuation or postponement of a hearing based on a showing of good cause. The request shall be in the form of a written motion, which shall be served on all other principal parties. The Examiner may continue or postpone a hearing for any good cause that she/he deems appropriate.

i) Where a hearing is continued or postponed by the Examiner prior to the hearing, notice of the new hearing date will be sent via regular and certified mail to all parties of record by the Clerk. If additional notice is required in a land use matter pursuant

to Section 30.70.045 SCC and/or Table 30.70.050(5) SCC, the Department or the Applicant shall provide such notice as required.

ii) Where the Examiner determines that a matter should be continued after the start of the hearing and continues the hearing to a specified date(s) and time(s), which information is stated on the record, no further notice is required.

2.2 Notice of Hearings

Notice of hearings shall be provided as required by the applicable provisions of the Snohomish County Code.

2.3 Hearing Agendas

a) The Department shall prepare an agenda for each hearing before the Examiner, listing the date and place of the hearing, the time that each case is scheduled to be heard, an indication of the nature of each matter to be considered and a concise description of the location of the property affected.

b) The agenda shall be distributed to the Hearing Examiner and interested news media and shall be posted in the Department's offices and/or website for public review not later than 9:00 a.m., seven (7) days prior to the hearing date, unless otherwise provided in the Snohomish County Code.

RULE 3.0 PRE-HEARING PROCEDURES

3.1 Pre-Hearing Conference

a) Purpose. Section 2.02.100(7) SCC grants the Examiner the discretion to hold a pre-hearing conference in any matter arising before the Hearing Examiner. Pre-hearing conferences are designed to promote efficient case management of complex cases by providing an informal process for early identification of issues, limitation of issues, and resolution of procedural matters.

b) Time. Where a pre-hearing conference is requested by one or more principal parties, or where the Examiner finds a pre-hearing conference is necessary, the Examiner will establish the date, time and place for the pre-hearing conference in consultation with the parties. Where a principal Party of Record requests a pre-hearing conference, the request should be made to the Examiner in writing as soon as the need is recognized, but not less than 20 days prior to the scheduled hearing date. The request should include the reasons why a pre-hearing conference is necessary and identify any issues or motions that the Examiner will be asked to resolve prior to the hearing. Notice of the pre-hearing conference shall be sent to the principal parties by the Clerk.

c) Scope of the Pre-hearing Conference. At the pre-hearing conference, the Examiner will:

- Identify, clarify, limit, or simplify the issues;
- Hear and consider timely filed motions according to Rule 3.2;
- Establish the hearing schedule;
- Clarify the identity of parties and representatives for groups or organizations;
- Identify expert witnesses;
- Determine the order of and limits upon testimony, if any;
- Establish a schedule for the filing of legal briefs, if needed;
- Authorize the issuance of subpoenas or subpoenas *duces tecum;*
- Obtain stipulations as to fact(s) and/or law;
- Consider and act upon any other matter which may assure an efficient and orderly hearing.
- If mediation or settlement discussions are desired by the parties with the aid of an Examiner, the party or parties shall notify the Examiner in advance, so that a Hearing Examiner *Pro Tem* may be made available to the parties.

d) Order on Pre-Hearing Conference. Following a pre-hearing conference the Examiner shall issue an Order specifying all items agreed to or decided upon. The Order shall be binding upon all principal parties.

3.2 Subpoenas

a) Authority. As provided by SCC 2.02.090, the Hearing Examiner is authorized to issue subpoenas to compel the attendance of a witness at the hearing, and the production of documents or materials subject to the limitations set forth in Rule 3.2(b). This Rule governs the issuance and use of subpoenas.

b) Limitations. Subpoenas are not available to any party in a SEPA appeal, in an appeal of a Type 1 decision issued under Chapter 30.71 SCC, or in any Type 2 proceeding brought under Chapter 30.72 SCC. Subpoenas may only be requested by principal parties and/or the Hearing Examiner.

c) Time for Filing; Contents. A request for a subpoena shall be submitted to the Hearing Examiner no later than fourteen (14) days prior to the hearing date. The request for a subpoena for a person shall include the person's name and address, show the relevance of that person's testimony, and demonstrate the reasonableness of the scope of the subpoena sought. The request for a subpoena for documents or other physical evidence (a subpoena

duces tecum), shall include the name and address of the person who is to produce the documents or other physical evidence, specify the materials to be produced, indicate the relevance of the materials subpoenaed to the issue on appeal, and demonstrate the reasonableness of the scope of the materials sought. The processing of a request for a subpoena normally requires at least two (2) business days for the Office of the Hearing Examiner, and parties seeking subpoenas should plan accordingly.

d) Service of Process. The party requesting a subpoena shall be responsible for serving it as provided herein. An affidavit or declaration of personal service or mailing by certified mail, return receipt requested, shall be filed with the Hearing Examiner and a copy served on all other principal parties or their attorney(s) of record, if any.

e) Time to Compel Appearance or Production. Unless otherwise allowed by the Examiner, subpoenas shall be served no later than seven (7) days prior to the date the appearance or production of documents is ordered.

f) Issuance by Attorney of Record. Once an Order authorizing the issuance of a subpoena has been signed by the Hearing Examiner, a subpoena may be issued with like effect by an attorney of record in the proceeding. The issuing attorney shall sign the subpoena and it shall comply with the requirements of this Rule, or the subpoena shall be null and void.

g) Motion to Quash Subpoena; Protective Order – Time for Filing; Contents. Any person who is the subject of a subpoena or subpoena *duces tecum,* may seek an Order quashing said subpoena, or for a Protective Order against the production or disclosure of information sought, by filing a motion before the Hearing Examiner. The motion shall specify the grounds for which the motion is sought, the desired remedy, and shall demonstrate that the scope of the subpoena is unreasonable, or has been obtained in an attempt to harass, intimidate or embarrass the person subjected to it, or has been sought for some other improper purpose; or that the information sought is protected from disclosure by some provision of state or federal law. The motion shall be served on the party seeking the subpoena or subpoena *duces tecum*. Unless otherwise allowed by the Hearing Examiner, any motion to limit or quash a subpoena shall be filed with the Hearing Examiner no later than five (5) days after the date the subpoena was served upon such party.

3.3 Motions

a) Dispositive Motions. Principal parties to an appeal may file a motion to dismiss all or part of an appeal. A motion to dismiss and any supporting affidavits, memoranda of law, or other documentation shall be filed with the Office of Hearings Administration and served on all other principal parties not later than 30 calendar days before the open record hearing on the appeal. The adverse party may file and serve its opposition, response, opposing affidavits, memoranda of law or other documentation not later than 14 calendar days after the moving party files its motion to dismiss. The moving party may file and serve any rebuttal documents not later than 21 calendar days after it files its motion. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it

shall be filed and served not later than the next business day. The Hearing Examiner will take the motion under advisement and in his discretion either set a hearing on the motion or issue a written decision on the motion. An order such as a scheduling order in an individual matter may establish different dates and supersedes the schedule established by this rule. All dispositive motions shall contain the following table (or substantially similar table) at the beginning of the motion:

	Date Due
Motion filed and served on all principal parties	[Insert date of filing and service]
Response Due	[Insert the date of the first business day on or after 14 calendar days after filing and service of motion]
Reply Due	[Insert the date of the first business day on or after 21 calendar days after filing and service of motion]

b) Other Pre-Hearing Motions. Except as otherwise provided in these Rules or a scheduling order, non-dispositive pre-hearing motions may be filed in writing by any principal party up until the tenth (10^{th}) business day prior to the hearing. Motions shall be concurrently served on all principal parties as provided by Rule 1.8 (notice). Absent a showing of good cause, any motion made after the time required in this Rule shall be denied as untimely. Failure to provide notice of a motion to all other parties of record as required by these Rules may be grounds for denial of the motion. A motion to limit the introduction of testimony or other evidence (motion *in limine)* shall be filed within the time limits established in this Rule. This rule does not preclude principal parties from objecting to evidence or testimony offered during the hearing.

c) Contents. A motion shall provide a concise statement of the relief sought and the factual and legal basis for the motion. The motion may be accompanied by a supporting legal brief. A motion and accompanying brief shall not exceed 10 pages in length without the prior permission of the Hearing Examiner upon a showing of good cause.

d) Response to a Motion. Any response by a principal party opposing the motion is due five (5) business days after service of the motion, which response shall be served on the moving party and any other principal parties as provided in Rule 1.8 (notice). For good cause shown upon request, the Hearing Examiner may allow additional time for response. A response shall provide a concise statement setting forth the factual and legal basis as to why the motion should not be granted and may be in the form of a legal brief. Responses shall not exceed 10 pages in length without prior permission of the Hearing Examiner upon a showing of good cause. Failure to timely respond to a motion shall constitute a waiver of any objection to the motion.

e) Reply. The moving party may reply no later than three (3) business days after service of the response which reply shall be served on the responding party and any other principal

parties as provided in Rule 1.8 (notice). Replies shall not exceed five pages in length without prior permission of the Hearing Examiner upon a showing of good cause.

f) Decision. Motions will be decided without oral argument, unless specifically requested by the Hearing Examiner. The Examiner will make every effort to rule on each motion by issuance of a written Order prior to the start of the hearing. However, in some circumstances, such as the late filing of a motion, the Examiner may rule on a motion at the start of the hearing or in the Examiner's written decision. Where efficiency would be served, the Hearing Examiner may consolidate multiple motions for purposes of issuing a single Order.

RULE 4.0 PRE-HEARING SUBMITTAL REQUIREMENTS

4.1 Departmental Reports

a) Land Use Permitting Matters. For Type 2 proceedings, Type 1 appeals, or combined Type 1/Type 2 hearings, the Departmental report shall be prepared and issued subsequent to the issuance of either a final State Environmental Policy Act (SEPA) threshold determination, the expiration of the review period for a final SEPA threshold determination, or the issuance of a final Environmental Impact Statement (EIS) under SEPA, whichever comes latest. However, Departmental reports issued for SEPA-exempt actions and those issued pursuant to the authority of SCC 30.61.220 are not subject to this limitation. The Departmental report shall be filed with the Hearing Examiner's Office no later than seven (7) days before the hearing.

b) All Other Matters. Unless otherwise provided by county code or Hearing Examiner order, the Departmental report shall be prepared and filed with the Hearing Examiner's Office no later than seven (7) days before the hearing. County code deadlines for filing writing materials by a department apply to Departmental reports.

4.2 Contents of the Department Report

a) Land Use Matters. Pursuant to SCC 30.71.090 and 30.72.040, Departmental reports in Type 1, Type 2 and combined Type 1/Type 2 hearings shall include the following information:

- Summarize the nature of the case before the Hearing Examiner. State the basic applicable laws, regulations and policies (including relevant GMA Comprehensive Plan policies, applicable provisions of the Snohomish County Code, Department Rules or Code Interpretations, *etc*.), bearing on the Hearing Examiner's decision in the case, and the issues of concern expressed by the lead department and other reviewing departments/agencies and citizens;

- For development applications, rezones, or permit approval cases, set forth the Department's detailed findings and conclusions as to the conformance of the

application with adopted laws and policies, including the consistency determination recommendation required by SCC 30.70.100, when applicable;

- Clearly indicate the elapsed day count ("Day 101", *etc*.) of the 120-day timeline set forth SCC 30.70.110;

- Include all relevant documents, studies, reports, plan sets, maps, photographs or other materials demonstrating the Applicant's compliance with the applicable development regulations;

b) Animal Control Appeals. In animal control matters, the Departmental report shall clearly indicate:

- The provision(s) of Title 9 SCC that is alleged to have been violated;

- A summary of the nature of the case before the Hearing Examiner, including the applicable laws and policies;

- The Department's findings and conclusions as to whether the violations occurred as alleged;

- The names of potential witnesses the Department intends to call at the hearing, including any animal behavioral experts or other experts, and the date of impound, if any, and the amount of days that have elapsed since such impoundment;

- The Department's recommended action.

c) All Other Matters. In code enforcement matters, including solid waste appeals and Auditor appeals (including false alarm, business license and adult entertainment appeals, but excluding Animal Control appeals), the Departmental report shall set forth the department's findings of fact, including:

- Where applicable, the name and address of the alleged owner and/or occupant, the property tax ID number, applicable zoning, and any other relevant facts as to the subject real property;

- The applicable provisions of the laws, regulations and policies (including relevant GMA Comprehensive Plan policies, applicable provisions of the Snohomish County Code, Departmental Rules or Code Interpretations), that are alleged to have been violated;

- Issues of concern expressed by the department(s) and other reviewing departments/agencies and citizens;

- Conclusions of law as to whether a violation of the County's regulations has occurred;

- Any applicable penalty, any other relevant information, and the Department's recommended action.

d) Changes to Department Recommendation. Nothing in this Rule shall prohibit a department from changing its recommendation at or before the hearing, Provided that, notice of the change and the factual basis for it, is provided to all parties of record and the Hearing Examiner at the Department's earliest opportunity.

4.3 Preparation of the Record – Land Use Matters

a) Initial Exhibits and Exhibit List. For all Type 2 proceedings brought under SCC 30.72.020, the Department shall select from the documents within the application file all those which it believes in its professional judgment will have probative value in the hearing process and which will be necessary for preparation of a properly and fully considered decision. The selected documents shall include at least the following:

- Departmental report, prepared pursuant to SCC 2.02.130 and Rule 4.1;

- The Master Application form;

- Applicant submittals;

- If the matter to be heard is a proposed revision of a previously approved permit and/or a previously approved site plan, a copy of the current permit and/or of the current approved plan(s)/plat map proposed for revision, as applicable;

- Vicinity map;

- Ownership and zoning map;

- Aerial photo: print from the most recent series of county photos of the section(s) involved in the application;

- Final EIS (if one was prepared) or Determination of Nonsignificance (unless categorically exempt);

- Substantive comments of public agencies or community groups, where not incorporated into the Departmental report;

- Final traffic reviewer comments documenting compliance with Title 30.66B SCC;

- Final fire marshal comments documenting compliance with Title 52 SCC;

- Public comment letters, memos or emails;
- Documentation of compliance with public notice requirements;
- If the matter is processed under an old county file number, copies of the prior exhibit list and all substantive documents received into the case record subsequent to the last Hearing Examiner hearing;
- Any other materials and exhibits deemed pertinent by the Department.

b) Marking Exhibits. The Department shall mark each document selected under Rule 4.3(a) with a consecutive Exhibit number, beginning with Exhibit A, followed by related Exhibits A.1, A.2; Exhibit B, followed by related Exhibits B.1, B.2, *etc*. in sequence. (See sample exhibit list). These marked documents shall constitute pre-filed exhibits and will be admitted into evidence at the start of the hearing.

c) Time for Filing the Record. The original (or if the original cannot be provided for exhibit purposes, one clear copy) of each of the pre-filed exhibits shall be transmitted to the Examiner by the Department no later than 12:00 noon, 7 days prior to the date of the hearing.

4.4 Preparation of the Record – All Other Matters

a) Initial Exhibits and Exhibit List. In all matters, the appropriate Department shall select from the documents within the Department's file all those which it believes in its professional judgment will have probative value in the hearing process and which will be necessary for preparation of a properly and fully considered decision. The selected documents shall include at least the following:

- Departmental Report, prepared pursuant to SCC 2.02.130 and Rule 4.1;
- The Department's Citation, Notice and Order or other Final Decision which has been appealed;
- Notice of Appeal statement and any attached exhibits or submissions from the Appellant(s);
- Property ownership documentation, zoning map(s), and aerial photos, where applicable;
- Photographs, videotapes, audiotapes, or other media;
- Witness statements, officer report(s), public comments or complaints, audiotapes, videotapes, CDs, DVDs, and/or public agency or tribal letters, where applicable;

- Documentation of compliance with service of process and/or public notice requirements, where applicable;

- Any other evidence deemed relevant to the appeal by the Department.

b) Marking Exhibits. The Department shall mark each document selected under Rule 4.4(a) with a consecutive Exhibit number, beginning with Exhibit A, followed by related Exhibits A.1, A.2; Exhibit B, followed by related Exhibits B.1, B.2, *etc*. in sequence. (See sample exhibit list.) These marked documents shall constitute pre-filed exhibits and will be admitted into evidence at the start of the hearing.

4.5 Initial Exhibit List

The Department shall prepare a listing of the pre-filed exhibits which shall be available on the County's computer network not later than the time that the pre-filed exhibits are transmitted to the Examiner's Office. The listing shall be current as of the time that the pre-filed exhibits are transmitted to the Clerk. The listing shall be in a software program and use format, storage and naming conventions as mutually agreed upon by the Department and the Examiner. Thereafter, the Clerk will maintain and update the official Exhibit List.

4.6 Parties of Record Register

a) Land Use Matters. In land use matters before the Hearing Examiner, the Department shall prepare a Parties of Record Register (as defined by SCC 2.02.165(1)) which shall be available on the County's computer network no later than the time that the pre-filed exhibits are transmitted to the Examiner's Office. The listing shall be current as of the time that the pre-filed exhibits are transmitted to the Examiner's Office. The listing shall be in a software program and use format, storage and naming conventions as mutually agreed upon by the Department and the Examiner. Thereafter, the Clerk will maintain the official Parties of Record.

b) All Other Matters. In all other matters, the Clerk will create and maintain the Parties of Record Register.

4.7 Mandatory Pre-filing of Evidence in Appeals

a) Mandatory Pre-filing requirement. In every appeal except those filed pursuant to Chapter 30.85 SCC (code enforcement matters), a list of all witnesses, including expert witnesses, along with all technical or scientific documents, materials, studies, reports or analyses, photographs or other evidence that a principal party intends to rely upon as part of its case in chief on appeal, or in defense of an appeal shall be disclosed through the exhibit pre-filing process. Failure to present such evidence within the time required may result in its exclusion by the Examiner. Other technical or scientific evidence may be introduced into evidence in response or on rebuttal only at the discretion of the Examiner. The submittal of evidence in appeals filed under Chapter 30.85 SCC is governed by SCC 30.85.200.

b) Time for Filing. No later than 21 calendar days prior to the date of the scheduled hearing (unless another date has been established by a scheduling order), the party with the burden of proof shall have provided to all other principal parties and to the Office of Hearings Administration pursuant to Rule 1.8 (notice):

1. An original or copy of all evidence that the party desires to enter as exhibits in the appeal record, including photographs and technical or scientific documents, materials, studies, and analyses.

2. A complete list of witnesses;

3. The following information for each person the party expects to call as an expert witness: name, *curriculum vitae* (resume), the subject matter on which the expert is expected to testify, a summary of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion that is expected to be offered.

No later than 14 calendar days prior to the date of the scheduled hearing (unless another date has been established by a scheduling order), the other parties shall have provided the same information to all other principal parties and to the Office of Hearings Administration pursuant to Rule 1.8 (notice).

4.8 Exhibits Offered During a Hearing

a) Copies Required. Any party seeking to admit an exhibit into evidence at the hearing shall make a sufficient number of copies to provide one copy to each principal party, in addition to the Hearing Examiner.

b) Limitation—Good Cause Required. Where a principal party did not submit evidence as required by Rule 4.7, the Hearing Examiner may admit evidence offered by that party for the first time at the hearing only upon a showing of good cause.

c) Marking not required. No party shall pre-mark an Exhibit that will be offered for the first time at the hearing. Marking of such exhibit will be performed by the Clerk after it is admitted into evidence.

4.9 Official Case Record

The official case record of a hearing conducted by the Examiner shall consist of:

a) A written case record including all documentary written materials and other exhibits submitted for consideration by the Examiner and the Examiner's decision(s), together with the Parties of Record Register and the list of exhibits and witnesses maintained by the Clerk.

b) The recording of the hearing made by the Hearing Examiner's Office. Where a qualified court reporter retained by the Examiner's Office reports the hearing, the reporter's transcript of proceedings shall constitute the official transcript of the oral proceedings.

c) The decision, and where applicable, the decision on reconsideration, of the Hearing Examiner.

RULE 5.0 CONDUCT OF HEARINGS

5.1 Requests for Public Accommodation and Accessibility

a) Accommodation allowed. A person with a disability requiring accommodation in order to meaningfully participate in a hearing shall be accommodated to the greatest extent practicable. Individuals needing such accommodation shall contact the Clerk of the Hearing Examiner in advance of the hearing to request accommodation. A person with a disability may also elect to have a personal representative present their testimony or provide support to them during the hearing process. Trained guide dogs and assistance dogs are allowed in the hearing room with their owners and shall remain under their control.

b) Interpreters. Hearing-impaired persons, non-English speaking persons, or persons for which English is a second language, requiring the skills of an interpreter or other accommodation in order to meaningfully participate in a hearing, may request such accommodation from the Hearing Examiner's Office. A request for the appointment of a fair and impartial interpreter should be made to the Clerk at least 10 days prior to the hearing.

5.2 Parties of Record

a) A "Party of Record" shall have the meaning provided in Rule 1.1. Any person over the age of eighteen (18) may become a "Party of Record" in a proceeding before the Hearing Examiner. To become a Party of Record, an individual, organization or government agency shall provide written notice to the Examiner's Office of their desire to become a Party of Record, and shall provide their name(s), mailing address(es) and phone number(s}, and if they desire, an electronic mailing address. For entities, groups or agencies, a single spokesperson shall be designated to participate in the hearing, and receive official notices on the organization's behalf. No other individual members of such organizations shall be allowed to participate in the hearing unless called to testify as a witness by the representative or another party. A child under the age of 12 may only testify if permitted by the Hearing Examiner.

b) The Hearing Examiner's Office will provide a Parties of Record Register for use in each case. The Parties of Record Register will include a place for entry of full name and complete mailing address. The Clerk shall be responsible for updating the initial Parties of Record Register to include all additional persons who become Parties of Record during the hearing process. However, the Clerk will not be responsible for sending materials to persons who

enter their name or address on the register illegibly or incompletely, or who refuse to provide such information.

d) Further mailings will not be made to a Party of Record if mail sent to the address provided by the party is returned by the postal service as undeliverable for any reason, and no attempt to correct the address is made by the Party of Record.

5.3 Rights of Parties

a) Limitations. The Examiner may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony, including imposing specific time limits. Testimony shall be concise and non-repetitious.

b) Direct Testimony. Subject to Rules 5.3(a) and 5.4, every Party of Record shall have the right to testify and offer evidence before the Hearing Examiner as described in SCC 2.02.140(2), and shall have all other rights essential to a fair hearing. A Party of Record may call an expert witness to testify in support of their position, subject to mandatory pre-filing requirements set forth in Rule 4.8, and qualification before the Examiner. Once qualified by their background, training, skill, education, and experience in a subject matter, an expert witness may offer an opinion on the ultimate issue to be decided by the Examiner.

c) Cross-Examination. In accordance with SCC 2.02.090 and 2.02.140(2), only a principal party may cross-examine another witness. However, the scope of cross-examination is within the discretion of the Examiner. The following guidelines shall apply:

i) In general, cross-examination of lay witnesses is limited to the issues raised in direct testimony. However, a lay witness also may be subject to cross-examination as to the foundation of their opinions and statements and to determine any bias, conflict of interest, or other appropriate issues that bear on their testimony, at the discretion of the Examiner.

ii) Expert witnesses may be subject to cross-examination as to the sufficiency of their qualifying credentials, as to the foundations of their opinions and statements, and to determine any bias, conflict of interest, or other appropriate issues that bear on their testimony and conclusions stated in direct testimony before the Examiner.

iii) Only one person representing each principal party may cross-examine a witness. In cases with multiple parties, the Hearing Examiner may place limits on the number of parties that may cross-examine an individual witness and require parties to submit their questions for cross-examination jointly through one party.

iv) A principal party may seek re-direct testimony after cross-examination; however, such re-direct testimony shall be strictly limited to the subject(s) of the statements made under cross-examination.

v) Re-cross examination after re-direct testimony shall not be allowed unless authorized by the Examiner.

d) Rebuttal Testimony. Subject to Rule 5.3(a), rebuttal testimony may be offered by the principal party who bears the burden of proof in the case.

5.4 Expected Conduct

a) Civility Expected. The Hearing Examiner has the right and authority to maintain order and the security of the hearing room at all times. All persons appearing at a hearing, including members of the public, shall conduct themselves with civility and courtesy at all times and shall abide by all rules and orders of the Examiner.

b) Removal. No profanity, combative, rude, degrading or irrelevant questions or testimony will be allowed and shall be deemed to be disruptive behavior. Any person(s) engaging in any form of disruptive behavior shall be deemed to have forfeited his/her/their right to participate in the hearing process and may be removed from the premises.

c) Limitation on demonstrations--security. The Hearing Examiner may limit or prohibit the use of picket signs, posters, flags, or other visible or audible demonstrations as necessary to maintain order, security and the appearance of fairness in any hearing. The Hearing Examiner may have security officers present in the hearing room whenever, in his/her opinion, such officer is needed to maintain order, to protect against the intimidation of a witness, and/or where needed to maintain the appearance of fairness.

5.5 Format of Hearings

a) The format for a hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will be readily and efficiently available to the Examiner. A hearing will normally include, but need not be limited to, the following elements:

- a brief prefatory statement of procedures and introduction of pre-filed exhibits by the Examiner;
- a presentation by the Department, which shall include an explanation of the application request or issue on appeal;
- a presentation by the Applicant/Appellant;
- testimony of any public agencies, including the Department;
- testimony by the public;
- an opportunity for rebuttal by the party with the burden of proof;
- In an appeal, closing statements (unless waived by a principal party).

b) All testimony will be taken under oath or affirmation administered by the Examiner.

c) The Examiner may ask questions of any witness, including any agency and Department staff, at any time during their testimony to seek clarification or elaboration of testimony being given. Further, the Examiner may request submittal of additional information to better enable her/him to make a complete and accurate evaluation of the issues.

d) The Examiner may indicate, at the outset of the hearing, that she/he has studied the materials relating to the case and has preliminarily determined that there appear to be certain central issues which need to be addressed. The Examiner may request that these issues be addressed in the testimony to be offered.

e) The Examiner reserves the right to abbreviate the normal sequence of events at a hearing when it appears that no one's rights would be infringed upon by such abbreviation and that detailed exposition of the facts is not necessary to the Examiner's understanding of the case. The Examiner also reserves the right to vary from the normal sequence of events in order to ensure due process and/or for convenience or efficiency.

f) Each hearing will be recorded to provide a verbatim record of the proceedings. Therefore, all parties wishing to offer verbal testimony will be required to speak into a microphone provided for that purpose, prefacing their remarks with their full name, spelling of their last name and mailing address. Hearing recordings will be retained as required by state law/rule (presently six year retention is required). Recordings will be destroyed or erased at the Examiner's convenience after the end of the retention period.

g) The rules of privilege, including the attorney-client privilege, shall apply.

5.6 Evidence

a) Burden of Proof. The moving party (Applicant, Appellant or Department as the case may be) shall have the burden of proof as to material factual issues except where applicable county code provisions or state law provides otherwise.

b) Admissibility. Hearings before the Hearing Examiner are designed to be accessible to the public without the need for an attorney. Except as provided in Rule 4.8(b), any relevant evidence, including hearsay evidence, may be admitted at the discretion of the Hearing Examiner. Irrelevant, inflammatory, immaterial, unreliable, or unduly repetitious evidence may be excluded.

c) Pre-filed Exhibits. Exhibits pre-filed in accordance with Rule 4.0 shall be entered into the record by the Examiner at the outset of the hearing.

d) Submittal of Evidence. Except where mandatory pre-filing requirements were imposed, or where objections to the admissibility of certain evidence have been granted, any party may seek to admit relevant evidence into the record during their direct, cross-examination and/or rebuttal portions of the hearing, provided appropriate foundation for such evidence has been presented by the offering party.

e) Rebuttal Evidence. Rebuttal evidence in any admissible form (documentary, testimony, *etc*.), may be presented to respond to both expert and lay person testimony.

f) Oversize, Mounted, Three-Dimensional Models, Videos and PowerPoint® Presentations. Demonstrative exhibits (maps, photographs, models, videos, PowerPoint® presentations or other relevant materials), are not required, but may be used by a party to support a party's testimony.

- Large-sized reproductions of maps, photographs or other documents may be used for demonstration purposes during a party's testimony. Demonstrative exhibits should be large enough that the Hearing Examiner can see them, as well as members of the public, from up to six feet away.

- If a party intends to enter oversized materials into the record, a reduced scale/size copy which can easily be folded for storage in a legal sized file folder is preferred due to the limits on storage available to the Hearing Examiner's Office.

- Videos shall be no longer than three (3) minutes in length without prior permission of the Hearing Examiner. A video shall include only relevant information. Prior to playing a video before the Hearing Examiner, the party offering it shall provide appropriate foundation for such information (including when it was made, by whom and what it purports to demonstrate).

- Any party desiring to use a computer and projector or other video equipment to offer a video or PowerPoint® presentation, must provide such equipment. Such parties must contact the Clerk to arrange for set up of the equipment prior to the start of the hearing. The hearing room is equipped with video screens and microphones.

- Three-dimensional models may be used in presentations; however, the model itself will not be admitted into evidence due to storage limitations. Instead, the offering party should provide color photographs of the model for inclusion in the record.

- PowerPoint® presentations may be used at a hearing. However, no PowerPoint® presentation shall be longer than three (3) minutes in length without prior permission of the Hearing Examiner. Where a party seeks to enter a PowerPoint® presentation into the record, a paper copy of the presentation shall be submitted into the record along with the electronic copy.

h) Copies. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.

i) Official Notice. The Examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within her/his specialized knowledge. When any decision of the Examiner rests in whole or in part upon the taking of

official notice of a material fact, not appearing in evidence of record, the Examiner shall so state in her/his decision. Appellate court decisions and adopted state and local laws, ordinances, motions, policies, plans and other similar documents in the public domain may be referenced, cited, quoted and/or relied upon by the Examiner or any Party of Record.

j) Evidence received subsequent to the hearing. No evidence submitted after the close of the hearing will be considered by the Examiner unless, at such hearing, the Examiner granted additional time to submit such material and stated on the record that the hearing record was left open for such receipt. Provided, however, where a party files a motion before the Examiner demonstrating that evidence was inadvertently omitted from the pre-filed exhibits through a clerical error, the Examiner may admit such evidence after the close of the public hearing. Copies of such evidence shall be provided to all principal parties by the moving party.

k) Updating of Exhibit List. The Clerk shall be responsible for updating the initial exhibit list to include all additional materials admitted during the hearing and reconsideration processes.

l) Reconsideration Documents. Documents involved in the reconsideration process (to include the Examiner's initial Decision and Affidavit of Mailing, petitions for reconsideration, *etc*.) will be assigned sequential exhibit numbers for identification. Such documents will become actual exhibits only if the hearing is reopened or through subsequent appeal proceedings.

5.7 Closing Statements

At the conclusion of an appeal hearing, the parties may offer verbal closing statements or, at the discretion of the Hearing Examiner, may be allowed to submit a written brief on any legal issue before the Hearing Examiner.

RULE 6.0 POST-HEARING PROCEDURES

6.1 Examiner Decision – Distribution

The Hearing Examiner shall issue a written decision based on findings of fact and conclusions of law as required by the Snohomish County Code. One copy of the Examiner's decision(s) in each case shall be transmitted or mailed to each of the following:

- The Applicant/Appellant;
- All parties of record whose names and addresses are legible;
- Any public agency or department which the Examiner believes may be particularly affected by or interested in the instant case.

The names of all recipients shall be listed on an Affidavit of Mailing placed in the case file. Additional notice of the decision will be made where required by the Snohomish County Code.

6.2 Petition for Reconsideration

Parties of record may file a Petition for Reconsideration according to the applicable provisions of SCC 2.02.170 or Title 30 SCC. Strict compliance with the grounds for reconsideration is required. The Examiner may combine multiple Petitions for Reconsideration for the same case and rule on them jointly. Where the Examiner agrees to reconsider part or all of a decision, the earlier decision shall be vacated and a new decision on reconsideration shall be issued.

6.3 Re-Opening a Hearing

a) After closing the record the Examiner may re-open the hearing for good cause shown at any time prior to the issuance of a decision or a decision on reconsideration. The Examiner at any time may re-open the hearing if she/he becomes aware that the decision was based on fraudulent evidence, misrepresentation, or other misconduct by a Party of Record; or for any similar reason which would require reopening the hearing in the interest of justice.

b) Where through mistake, misconception of facts, or erroneous application of law the Examiner issues a decision which she/he recognizes may be in error, the Examiner may, prior to the expiration of the appeal period and after due and prompt notice to parties of record, reconvene the hearing for the purpose of considering and correcting the error.

c) When a determination for further hearing is made by the Examiner following a hearing on a given matter as prescribed in Rule 6.3(b), notice of such further hearing shall be given in writing by the Hearing Examiner's Office at least ten (10) days before the date for rehearing to all parties of record from the initial hearing.

6.4 Case Record - Disposition

a) General. The integrity of all materials which have become a part of the case record shall be maintained by all offices handling the case record with the following exceptions:

- Oversize or bulky exhibits may be transmitted directly to the Department for storage. They must be reasonably available for public review if requested, however.

- The electronic recording shall be maintained in the Hearing Examiner’s Office and/or the County’s Archives.

b) Procedure - Land Use Cases. The written case record shall be transmitted to the Department for permanent storage upon completion of proceedings (including the reconsideration period, if any, and the appeal period).

c) Procedure - Non-Land Use Cases. The case record in non-land use cases is maintained in the Office of the Hearing Examiner for approximately 24 months until placed in archives and eventually destroyed according to the County's retention policies.

d) Where an appeal to Council is filed, the record is transferred to the Clerk of the Council. Where an appeal is filed in Superior Court, the record is transferred to the Prosecuting Attorney's Office for submittal to the Superior Court.

RULE 7.0 WITHDRAWAL OF APPLICATIONS

7.1 Procedure to Withdraw

Withdrawal of an application/appeal shall be made by the Applicant/Appellant in writing, except as provided herein, and shall be accepted in the following manner:

a) Withdrawal Prior to Publication of Hearing Notice. If withdrawal of an application or appeal is made before publication of the hearing notice, the Applicant shall notify the Department, which shall place the withdrawal in the official case file. No further action by the County is necessary. If withdrawal of an appeal is made before publication of the hearing notice, the Appellant shall notify the Examiner's Office. The withdrawal shall be documented by the Examiner in a written Order which shall be placed in the official case file and shall be mailed to parties of record.

b) Withdrawal after Issuance of Hearing Notice but prior to Hearing. If withdrawal of an application or appeal is made after publication of the hearing notice but prior to the opening of the hearing, the Applicant/Appellant shall notify the Hearing Examiner's Office of such withdrawal. The withdrawal shall be documented by the Examiner in a written Order which shall be placed in the official case file and shall be mailed to principal parties. Where sufficient time and resources are available, the Order may be mailed to all persons to whom the notice of hearing was mailed.

c) Withdrawal at or after the Hearing but Prior to Decision Issuance. If withdrawal of an application or appeal is made verbally at the hearing or in writing after the hearing but before issuance of a decision, the Examiner shall accept the withdrawal. Withdrawal shall be documented by issuance of a written Order which shall be placed in the official case file and shall be mailed to parties of record.

d) Withdrawal after Decision Issuance. Withdrawal of an Application or Appeal after a decision has been issued will not be honored unless expressly authorized by county code or state law.

7.2 Effect of Withdrawal

No appeal from a withdrawal is authorized. Withdrawal terminates County consideration of the application/appeal and the jurisdiction of the Hearing Examiner.

RULE 8.0 FULFILLMENT OF LAND USE APPROVAL PRECONDITIONS

8.1 Applicability

Certain provisions of Title 30 SCC require an Applicant to take certain actions before a land use permit or approval can be approved. (See, e.g., SCC 30.66B.070, 30.66B.170, 30.66B.220, 30.66B.540) These actions are known as "preconditions" to approval. This rule applies to any Hearing Examiner decision where the decision cannot become effective until the applicant has completed on or more preconditions. The precondition process is not intended as a substitute for compliance with application submittal or other evidentiary requirements established by the Snohomish County Code and/or other law, rule or regulation.

8.2 Effect of Precondition on Decision

A decision subject to one or more precondition(s) is binding but will not become legally effective until the stated precondition(s) have been fulfilled and such fulfillment is certified by the Director on a full copy of the decision. Failure to timely fulfill the precondition(s), or to timely request and receive an extension of time for fulfillment as provided in Rule 8.4, shall render the Hearing Examiner decision null and void.

8.3 Fulfillment Procedures

a) Consultation with the Department. Prior to preparing any required materials or documents related to a precondition, the Applicant is advised to consult with the Planning and Development Services Department and/or the Public Works Department, as applicable. All documents requiring recording shall meet the specifications of the County Auditor.

b) Review of Submittal by the Department--Deadline. An original of each document required for fulfillment of a precondition(s) shall be submitted in a complete, executed form to the applicable Department no later than the deadline established in the Hearing Examiner's decision. All materials (except site plans and other documents not requiring execution) must be signed (and notarized, as necessary), prior to submittal. Documents shall not be recorded with the Auditor prior to submittal to the Department for review. The deadline for submittal shall be established by the Examiner based upon a realistic estimate of the amount of time necessary for a prudent and reasonable person to complete the required action(s).

c) Extension of the Submittal Deadline. A decision subject to preconditions will be automatically null and void if all required precondition(s) are not fulfilled as required. PROVIDED That,

(1) The Hearing Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months, for good cause shown, if a written request for such extension is received by the Examiner prior to the expiration of the original time period for submittal.

(2) The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceeding(s).

d) Fulfillment. As used in these Rules, the term "fulfillment" means recordation with the County Auditor, approval or acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the specific precondition. The Department shall route the submitted documents through the appropriate approval process.

e) Rejection of Submittal related to a Precondition—Extension of Time for Resubmittal. Where the document(s) or material(s) are submitted to the Department to fulfill one or more precondition(s) is/are rejected by the Department and returned to the Applicant for correction and re-submittal, and the time for filing such documents or materials has expired, the Applicant shall have six (6) months to resubmit the required documentation. If the required correction(s) is not received prior to 4:00 p.m. on the last day of the sixth-month period, the decision subject to the precondition(s) shall be null and void.

f) Applicant's Responsibilities. The Applicant is solely responsible for compliance with all fulfillment deadlines set forth in the Decision. These rules provide notice to the Applicant of his/her responsibilities to achieve fulfillment of the required precondition(s).