

#### 40.510 TYPE I, II, III AND IV PROCESSES

##### 40.510.020 Type II Process – Administrative Decisions

###### A. Pre-Application Review.

1. The purposes of pre-application review are:
  - a. To acquaint county staff with a sufficient level of detail about the proposed development to enable staff to advise the applicant accordingly;
  - b. To acquaint the applicant with the applicable requirements of this code and other law. However, the conference is not intended to provide an exhaustive review of all the potential issues that a given application could raise. The pre-application review does not prevent the county from applying all relevant laws to the application; and
  - c. To provide an opportunity for other agency staff and the public to be acquainted with the proposed application and applicable law. Although members of the public can attend a pre-application conference, it is not a public hearing, and there is no obligation to receive public testimony or evidence.
2. Pre-application review is required for applications, with the following exceptions:
  - a. The application is for one (1) of the following use classifications:
    - (1) Section 40.210.010, Forest and Agriculture districts;
    - (2) Section 40.520.020, Planning Director reviews and similar use determinations;
    - (3) Chapter 40.260, special uses (unless specified as a Type III review);
    - (4) Section 40.260.220, temporary permits;
    - (5) Section 40.530.010(F)(6), change in nonconforming use;
    - (6) Section 40.260.210, temporary dwelling permit;
    - (7) Section 40.520.060, post-decision reviews;
    - (8) Section 40.450.040, preliminary (stand-alone) wetland permit;
    - (9) SEPA review for projects that are not otherwise Type II reviews (e.g., grading);
    - (10) Section 40.500.010, interpretations;
    - (11) Section 40.550.020, administrative variances;
    - (12) Section 40.540.120(E)(3), minor plat alterations; or
  - b. The applicant applies for and is granted a pre-application waiver from the responsible official. The form shall state that waiver of pre-application review increases the risk the application will be rejected or processing will be delayed. Pre-application review generally should be waived by the responsible official only if the application is relatively simple. The decision regarding a pre-application waiver can be appealed as a Type I decision.
3. To initiate pre-application review, an applicant shall submit a completed form provided by the responsible official for that purpose, the required fee, and all information required by the relevant section(s) of this code. The applicant shall provide the required number of copies of all information as determined by the responsible official.

4. Information not provided on the form shall be provided on the face of the preliminary plat, in an environmental checklist or on other attachments. The responsible official may modify requirements for pre-application materials and may conduct a pre-application review with less than all of the required information. However, failure to provide all of the required information may prevent the responsible official from identifying all applicable issues or providing the most effective pre-application review and will preclude contingent vesting under Section 40.510.020(G). Review for completeness will not be conducted by staff at the time of submittal and it is the responsibility of the applicant.
5. Within fifteen (15) calendar days after receipt of an application for pre-application review, the responsible official shall send written notice to the applicant and to other interested agencies and parties, including the neighborhood association in whose area the property in question is situated. The notice shall state the date, time and location of the pre-application conference, the purposes of pre-application review, and the nature of the proposal.
6. The responsible official shall coordinate the involvement of agency staff responsible for planning, development review, roads, drainage, parks and other subjects, as appropriate, in the pre-application review process. Relevant staff shall attend the pre-application conference or shall take other steps to fulfill the purposes of pre-application review.
7. The pre-application conference shall be scheduled at least five (5) calendar days after the notice is mailed but not more than twenty-eight (28) calendar days after the responsible official accepts the application for pre-application review. The responsible official shall reschedule the conference and give new notice if the applicant or applicant's representative cannot or does not attend the conference when scheduled.
8. Within seven (7) calendar days after the date of the pre-application conference, the responsible official shall send to the applicant and to other parties who attend the conference or who otherwise request it in writing, a written summary of the pre-application review. The written summary generally shall do the following to the extent possible given the information provided by the applicant:
  - a. Summarize the proposed application(s);
  - b. Identify the relevant approval criteria and development standards in this code or other applicable law and exceptions, adjustments or other variations from applicable criteria or standards that may be necessary;
  - c. Evaluate information the applicant offered to comply with the relevant criteria and standards, and identify specific additional information that is needed to respond to the relevant criteria and standards or is recommended to respond to other issues;
  - d. Identify applicable application fees in effect at the time, with a disclaimer that fees may change;
  - e. Identify information relevant to the application that may be in the possession of the county or other agencies of which the county is aware, such as:
    - (1) Comprehensive plan map designation and zoning on and in the vicinity of the property subject to the application;
    - (2) Physical development limitations, such as steep or unstable slopes, wetlands, wellhead protection areas, water bodies, or special flood hazard areas, that exist on and in the vicinity of the property subject to the application;
    - (3) Those public facilities that will serve the property subject to the application, including fire services, roads, storm drainage, and, if residential, parks and schools, and relevant service considerations, such as minimum access and fire flow requirements or other minimum service levels and impact fees; and

(4) Other applications that have been approved or are being considered for land in the vicinity of the property subject to the proposed application that may affect or be affected by the proposed application.

f. Where applicable, indicate whether the pre-application submittal was complete so as to trigger contingent vesting under Section 40.510.020(G).

9. An applicant may submit a written request for a second pre-application conference within one (1) calendar year after an initial pre-application conference. There is no additional fee for a second conference if the proposed development is substantially similar to the one reviewed in the first pre-application conference or if it reflects changes based on information received at the first pre-application conference. A request for a second pre-application conference shall be subject to the same procedure as the request for the initial pre-application conference.

10. A new request for or waiver of a pre-application review for a given development shall be filed unless the applicant submits a fully complete application that the responsible official finds is substantially similar to the subject of a pre-application review within one (1) calendar year after the last pre-application conference or after approval of waiver of pre-application review.

(Amended: Ord. 2005-04-12; Ord. 2006-05-01; Ord. 2007-06-05; Ord. 2007-11-13; Ord. 2009-03-02; Ord. 2009-07-01; Ord. 2010-08-06; Ord. 2017-07-04; Ord. 2020-03-01)

B. Review for Counter Complete Status.

1. Before accepting an application for review for fully complete status, and unless otherwise expressly provided by code, the responsible official shall determine the application is counter complete.

2. The responsible official shall decide whether an application is counter complete when the application is accepted, typically "over the counter."

3. An application is counter complete if the responsible official finds that the application purports and appears to include the information required by Section 40.510.020(C); provided, no effort shall be made to evaluate the substantive adequacy of the information in the application in the counter complete review process. Required information which has been waived by the responsible official shall be replaced by a determination from the responsible official granting the waiver.

4. If the responsible official decides the application is counter complete, then the application shall be accepted for review for fully complete status.

5. If the responsible official decides the application is not counter complete, then the responsible official shall immediately reject and return the application and identify what is needed to make the application counter complete.

(Amended: Ord. 2017-07-04)

C. Review for Fully Complete Status.

1. Before accepting an application for processing, the responsible official shall determine that the application is fully complete.

2. The responsible official shall decide whether an application is fully complete subject to the following:

a. Within twenty-one (21) calendar days after the responsible official determines the application is counter complete; or

b. Within fourteen (14) calendar days after an application has been resubmitted to the county after the application has been returned to the applicant as being incomplete.

3. An application is fully complete if it includes all the required materials specified in the submittal requirements for the specific development review application being applied for and additional materials specified in the pre-application conference. If submittal requirements are not specified in the applicable code sections the application is fully complete if it includes the following:

- a. A signed statement from the applicant certifying that the application has been made with the consent of the lawful property owner(s) and that all information submitted with the application is complete and correct. False statements, errors, and/or omissions may be sufficient cause for denial of the request. Submittal of the application gives consent to the county to enter the property(ies) subject to the application;
- b. The signature of the property owner or the property owner's authorized representative;
- c. A legal description supplied by the Clark County Survey Records Division, a title company, surveyor licensed in the state of Washington, or other party approved by the responsible official, and current County Assessor map(s) showing the property(ies) subject to the application;
- d. A current County Assessor map(s) showing the property(ies) within a radius of the subject site as required in Section 40.510.020(E);
- e. Unless the responsible official has waived the pre-application conference or a pre-application conference was not required pursuant to Section 40.510.020(A)(2), a copy of the pre-application conference summary, and information required by the pre-application conference summary, unless not timely prepared as required by Section 40.510.020(A)(8);
- f. The applicable fee(s) adopted by Council for the application(s) in question;
- g. An application shall include all of the information listed as application requirements in the relevant sections of this code.
  - (1) The responsible official may waive application requirements that are clearly not necessary to show an application complies with relevant criteria and standards and may modify application requirements based on the nature of the proposed application, development, site or other factors. Requests for waivers shall be reviewed as a Type I process before applications are submitted for counter complete review or the application must contain all the required information;
  - (2) The decision about the fully complete status of an application, including any required engineering, traffic or other studies, shall be based on the criteria for completeness as established by the responsible official and shall not be based on differences of opinion as to quality or accuracy;
- h. Any applicable SEPA document, typewritten or in ink and signed.

4. If the responsible official decides an application is not fully complete, then, within the time provided in Section 40.510.020(C)(2), the responsible official shall send the applicant a written statement indicating that the application is incomplete based on a lack of information and listing what is required to make the application fully complete.

- a. The statement shall specify a date by which the required missing information must be provided to restart the fully complete review process pursuant to Section 40.510.020(C)(2)(b). The statement shall state that an applicant can apply to extend the deadline for filing the required information, and explain how to do so.
- b. The statement also may include recommendations for additional information that, although not necessary to make the application fully complete, is recommended to address other issues that are or may be relevant to the review.

5. If the required information is not submitted by the date specified and the responsible official has not extended that date, within seven (7) calendar days after that date the responsible official shall take the action in Section 40.510.020(C)(5)(a), (C)(5)(b) or (C)(5)(c). If the required information is submitted by the date specified, then within fourteen (14) calendar days the responsible official shall decide whether the application is fully complete and, if not, the responsible official shall:

- a. Reject and return the application and scheduled fees and send to the applicant a written statement which lists the remaining additional information needed to make the application fully complete; or
- b. Issue a decision denying the application, based on a lack of information; provided, the responsible official may allow the applicant to restart the fully complete review process a second time by providing the required missing information by a date specified by the responsible official, in which case the responsible official shall retain the application and fee pending expiration of that date or a fully complete review of the application as amended by that date.

6. If the responsible official decides an application is fully complete, then the responsible official shall, within fourteen (14) calendar days of making this determination:

- a. Forward the application to the county staff responsible for processing it;
- b. Send a written notice of receipt of a complete application to the applicant acknowledging acceptance, listing the name and telephone number of a contact person for the responsible official, and describing the expected review schedule;
- c. Prepare a public notice in accordance with Section 40.510.020(E).

7. An application shall be determined fully complete if a written determination has not been sent to the applicant within twenty-eight (28) calendar days of the date the application is submitted. An application shall be determined fully complete if a written determination has not been sent to the applicant within fourteen (14) calendar days of the date that the necessary additional information is submitted.

8. A fully complete determination shall not preclude the county from requesting additional information, studies or changes to submitted information or plans if new information is required or substantial changes to the proposed action occur.

(Amended: Ord. 2006-05-01; Ord. 2012-07-03; Ord. 2017-07-04; Ord. 2019-05-07)

D. Procedure.

1. Within fourteen (14) calendar days after the date an application is accepted as fully complete, the responsible official for the application shall issue a public notice of the application pending review consistent with the requirements of Section 40.510.020(E).

2. The responsible official shall send to the applicant a copy of comments timely received in response to the notice together with a statement that the applicant may respond to the comments within fourteen (14) calendar days from the date the comments are sent. The responsible official shall consider the comments timely received in response to the notice and timely responses by the applicant to those comments. The responsible official may consider comments and responses received after the deadline for filing.

3. A decision shall be made within the timelines specified by Section 40.510.020(F), and shall include:

- a. A statement of the applicable criteria and standards in this code and other applicable law;
- b. A statement of the facts that the responsible official found showed the application does or does not comply with each applicable approval criterion and assurance of compliance with applicable standards;
- c. The reasons for a conclusion to approve or deny; and

d. The decision to deny or approve the application and, if approved, conditions of approval necessary to ensure the proposed development will comply with applicable law.

4. Within seven (7) calendar days of the decision, the responsible official shall send a notice of decision to the applicant and applicant's representative, the neighborhood association in whose area the property in question is situated, and all parties of record regarding the application. The notice shall include the following information:

a. A statement that the decision and SEPA determination are final, but may be appealed as provided in Section 40.510.020(H) to the hearing examiner within fourteen (14) calendar days after the notice of decision. The appeal closing date shall be listed in boldface type. The statement shall describe how a party may appeal the decision or SEPA determination or both, including applicable fees and the elements of an appeal statement; and

b. 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 where the case file is available and the name and telephone number of the county representative to contact about reviewing the case file.

5. Notice of Agricultural, Forest or Mineral Resource Activities.

a. All plats, building permits or development approvals under this title issued for residential development activities on, or within a radius of five hundred (500) feet for lands zoned agriculture-wildlife (AG-WL), agriculture (AG-20), forest (FR-40 and FR-80), or surface mining (S), or in current use pursuant to Chapter 84.34 RCW, shall contain or be accompanied by a notice provided by the responsible official. Such notice shall include the following disclosure:

The subject property is within or near designated agricultural land, forest land or mineral resource land (as applicable) on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. Potential discomforts or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any twenty-four (24) hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.

b. In the case of subdivisions or short plats, such notice shall be provided in the Developer Covenants to Clark County; in the case of recorded binding site plans, such notice shall be recorded separately with the County Auditor.

(Amended: Ord. 2005-04-12; Ord. 2016-06-12; Ord. 2017-07-04)

E. Public Notice.

1. The notice of the application shall include the following information, to the extent known:

a. The project name, the case file number(s), date of application, the date the application was determined fully complete, and the date the notice is sent;

b. A description of the proposed project and a list of project permits included with the application;

c. A statement of the public comment period, that the public has the right to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A statement shall indicate that written comments received by the county within fifteen (15) calendar days from the date of the notice will be considered;

d. The deadline for submitting a SEPA appeal pursuant to Section 40.570.080(D);

e. A statement of the preliminary SEPA determination, if one has been made;

- f. A list of applicable code sections;
- g. The name of the applicant or applicant's representative and the name, address and telephone number of a contact person for the applicant, if any;
- h. A description of the site, including current zoning and nearest road intersections, reasonably sufficient to inform the reader of its location and zoning;
- i. A map showing the subject property in relation to other properties or a reduced copy of the site plan;
- j. The date, place and times where information about the application may be examined and the name and telephone number of the county representative to contact about the application; and
- k. Any additional information determined appropriate by the county.

[1. Additional information as specified in Section 40.240.050.E and 40.240.060.D for proposals on all lands in Clark County, Washington within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act.](#)

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2. Distribution.

- a. The responsible official shall send a copy of the notice to:
  - (1) The applicant and the applicant's representative;
  - (2) The neighborhood association in whose area the property in question is situated, based on the list of neighborhood associations kept by the responsible official and known interest groups;
  - (3) Owners of property within a radius of three hundred (300) feet of the property that is the subject of the application if the subject property is inside the urban growth boundary or to owners or property within a radius of five hundred (500) feet of the property if the subject property is outside the urban growth boundary;
    - (a) The records of the County Assessor shall be used for determining the property owner of record. The failure of a property owner to receive notice shall not affect the decision if the notice was sent. A sworn certificate of mailing executed by the person who did the mailing shall be evidence that notice was mailed to parties listed or referenced in the certificate, and
    - (b) If the applicant owns property adjoining the property that is the subject of the application, then notice shall be mailed to owners of property within a three hundred (300) or five hundred (500) foot radius, as provided in this subdivision, of the edge of the property owned by the applicant adjoining the property that is the subject of the application;
  - (4) Agencies with jurisdiction; and
  - (5) To other people the responsible official believes may be affected by the proposed action or who request such notice in writing.

[\(6\) Other parties as outlined in 40.240.050.E and 40.240.060.D.](#)

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(Amended: Ord. 2007-06-05)

F. Decision Timelines.

Not more than seventy-eight (78) calendar days after the date an application is determined fully complete, the responsible official shall issue a written decision regarding the application(s); provided:

1. If a determination of significance (DS) is issued, then the responsible official shall issue a decision not sooner than seven (7) calendar days after a final environmental impact statement is issued.
2. An applicant may request in writing to extend the time in which the responsible official shall issue a decision. If the responsible official grants such a request, the responsible official may consider new evidence the applicant introduces with or subsequent to the request.
3. In determining the number of days that have elapsed after the county has notified the applicant that the application is fully complete, the following periods shall be excluded:
  - a. Any period during which the applicant has been requested by the county to correct plans, perform required studies, or provide additional required information. The responsible official shall specify a time period based on the complexity of the required information in which the required information must be submitted. The period shall be calculated from the date the county notifies the applicant of the need for additional information until the earlier of the date the county determines whether the additional information satisfies the request for information or fourteen (14) calendar days after the date the information has been provided to the county.
  - b. If the county determines that the information submitted by the applicant under Section 40.510.020(F)(3)(a) is insufficient, it shall notify the applicant of the deficiencies and the procedures under Section 40.510.020(F)(3)(a) shall apply as if a new request for studies had been made.
  - c. Any period of time during which an environmental impact statement is being prepared; provided, that the maximum time allowed to prepare an environmental impact statement shall be one (1) year from the issuance of the determination of significance unless the responsible official and applicant have otherwise agreed in writing to a longer period of time. If no mutual written agreement is completed, then the application shall become null and void after the one (1) year period unless the responsible official determines that delay in completion is due to factors beyond the control of the applicant.
  - d. Any period of time as outlined in 40.240.180.D.

G. Vesting.

1. Type II applications shall be considered under the development regulations in effect at the time a fully complete application for preliminary approval is filed.
2. Contingent Vesting. An application which is subject to pre-application review shall earlier contingently vest on the date a fully complete pre-application is submitted. This vesting shall become final if a fully complete application for substantially the same proposal is submitted within one hundred eighty (180) calendar days of the date the responsible official issues its written summary of pre-application review subject to the limitations of Section 40.510.020(A)(4). Requests to waive contingent vesting rights by the applicant shall be approved, subject to the request being submitted in writing and submitted as part of the full application package.
3. Special rules apply to certain nonconforming uses under Section 40.530.010.
4. For concurrency approval requirements, see Section 40.350.020.

(Amended: Ord. 2007-06-05)

H. Appeals.

1. Applicability. A final decision may be appealed only by a party of record. Final decisions may be appealed if, within fourteen (14) calendar days after written notice of the decision is sent, a written appeal is filed with the responsible official.
2. Submittal Requirements. The appeal shall contain the following information:



- a. The case number designated by the county and the name of the applicant;
- b. The name of each petitioner, the signature of each petitioner or his or her duly authorized representative, and a statement showing that each petitioner is entitled to file the appeal under Section 40.510.020(H)(1). If multiple parties file a single petition for review, the petition shall designate one (1) party as the contact representative for all contact with the responsible official. All contact with the responsible official regarding the petition, including notice, shall be with this contact representative;
- c. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and
- d. The appeal fee adopted by Council; provided, the scheduled fee shall be refunded if the applicant files with the responsible official at least fifteen (15) calendar days before the appeal hearing a written statement withdrawing the appeal.

3. Appeal Procedures.

- a. The hearing examiner shall hear appeals in a de novo hearing. Notice of an appeal hearing shall be sent to parties of record, but shall not be posted or published. A staff report shall be prepared, a hearing shall be conducted, and a decision shall be made and noticed. The decision can be appealed under a Type III process.
- b. Except for SEPA appeals which are governed by RCW 43.21C.075, the applicant shall have the burden of proving by substantial evidence compliance with applicable approval standards. Where evidence is conflicting, the examiner shall decide an issue based upon the preponderance of the evidence.

(Amended: Ord. 2005-10-04; Ord. 2007-11-13; Ord. 2019-05-07; Ord. 2021-07-03)

**40.510.030 Type III Process – Quasi-Judicial Decisions**

A. Pre-Application Review.

1. The purposes of pre-application review are:
  - a. To acquaint county staff with a sufficient level of detail about the proposed development to enable staff to advise the applicant accordingly;
  - b. To acquaint the applicant with the applicable requirements of this code and other law. However, the conference is not intended to provide an exhaustive review of all the potential issues that a given application could raise. The pre-application review does not prevent the county from applying all relevant laws to the application; and
  - c. To provide an opportunity for other agency staff and the public to be acquainted with the proposed application and applicable law. Although members of the public can attend a pre-application conference, it is not a public hearing, and there is no obligation to receive public testimony or evidence.
2. Pre-application review is required for applications, with the following exceptions:
  - a. The application is for a post-decision review, as described in Section 40.520.060; or
  - b. The applicant applies for and is granted a pre-application waiver from the responsible official. The form shall state that waiver of pre-application review increases the risk the application will be rejected or processing will be delayed. Pre-application review generally should be waived by the responsible official only if the application is relatively simple. The decision to waive a pre-application can be appealed as a Type I decision.

3. To initiate pre-application review, an applicant shall submit a completed form provided by the responsible official for that purpose, the required fee, and all information required by the relevant section(s) of this code. The applicant shall provide the required number of copies of all information as determined by the responsible official.
4. Information not provided on the form shall be provided on the face of the preliminary plat, in an environmental checklist or on other attachments. The responsible official may modify requirements for pre-application materials and may conduct a pre-application review with less than all of the required information. However, failure to provide all of the required information may prevent the responsible official from identifying all applicable issues or providing the most effective pre-application review and will preclude contingent vesting under Section 40.510.030(G). Review for completeness will not be conducted by staff at the time of submittal and it is the responsibility of the applicant.
5. Within fifteen (15) calendar days after receipt of an application for pre-application review, the responsible official shall send written notice to the applicant and to other interested agencies and parties, including the neighborhood association in whose area the property in question is situated. The notice shall state the date, time and location of the pre-application conference, the purposes of pre-application review, and the nature of the conference.
6. The responsible official shall coordinate the involvement of agency staff responsible for planning, development review, roads, drainage, parks and other subjects, as appropriate, in the pre-application review process. Relevant staff shall attend the pre-application conference or shall take other steps to fulfill the purposes of pre-application review.
7. The pre-application conference shall be scheduled at least five (5) calendar days after the notice is sent but not more than twenty-eight (28) calendar days after the responsible official accepts the application for pre-application review. The responsible official shall reschedule the conference and give new notice if the applicant or applicant's representative cannot or does not attend the conference when scheduled.
8. Within seven (7) calendar days after the date of the pre-application conference, the responsible official shall send to the applicant and to other parties who attend the pre-application conference or who otherwise request it in writing, a written summary of the pre-application review. The written summary generally shall do the following to the extent possible given the information provided by the applicant:
  - a. Summarize the proposed application(s);
  - b. Identify the relevant approval criteria and development standards in this code or other applicable law and exceptions, adjustments or other variations from applicable criteria or standards that may be necessary;
  - c. Evaluate information the applicant offered to comply with the relevant criteria and standards, and identify specific additional information that is needed to respond to the relevant criteria and standards or is recommended to respond to other issues;
  - d. Identify applicable application fees in effect at the time, with a disclaimer that fees may change;
  - e. Identify information relevant to the application that may be in the possession of the county or other agencies of which the county is aware, such as:
    - (1) Comprehensive plan map designation and zoning on and in the vicinity of the property subject to the application;
    - (2) Physical development limitations, such as steep or unstable slopes, wetlands, well head protection areas, water bodies, or special flood hazard areas, that exist on and in the vicinity of the property subject to the application;

(3) Those public facilities that will serve the property subject to the application, including fire services, roads, storm drainage, and, if residential, parks and schools, and relevant service considerations, such as minimum access and fire flow requirements or other minimum service levels and impact fees; and

(4) Other applications that have been approved or are being considered for land in the vicinity of the property subject to the proposed application that may affect or be affected by the proposed application.

f. Where applicable, indicate whether the pre-application submittal was complete so as to trigger contingent vesting under Section 40.510.030(G).

9. An applicant may submit a written request for a second pre-application conference within one (1) calendar year after an initial pre-application conference. There is no additional fee for a second conference if the proposed development is substantially similar to the one reviewed in the first pre-application conference or if it reflects changes based on information received at the first pre-application conference. A request for a second pre-application conference shall be subject to the same procedure as the request for the initial pre-application conference.

10. A request for or waiver of a pre-application review for a given development shall be filed unless the applicant submits a fully complete application that the responsible official finds is substantially similar to the subject of a pre-application review within one (1) calendar year after the last pre-application conference or after approval of waiver of pre-application review.

(Amended: Ord. 2007-11-13; Ord. 2009-03-02; Ord. 2017-07-04)

B. Review for Counter Complete Status.

1. Before accepting an application for review for fully complete status, and unless otherwise expressly provided by code, the responsible official shall determine the application is counter complete.

2. The responsible official shall decide whether an application is counter complete when the application is accepted, typically "over the counter."

3. An application is counter complete if the responsible official finds that the application purports and appears to include the information required by Section 40.510.030(C)(3); provided, no effort shall be made to evaluate the substantive adequacy of the information in the application in the counter complete review process. Required information which has been waived by the responsible official shall be replaced by a determination from the responsible official granting the waiver.

4. If the responsible official decides the application is counter complete, then the application shall be accepted for review for fully complete status.

5. If the responsible official decides the application is not counter complete, then the responsible official shall immediately reject and return the application and identify what is needed to make the application counter complete.

(Amended: Ord. 2017-07-04)

C. Review for Fully Complete Status.

1. Before accepting an application for processing, the responsible official shall determine that the application is fully complete.

2. The responsible official shall decide whether an application is fully complete subject to the following:

- a. Within twenty-one (21) calendar days after the responsible official determines the application is counter complete; or
  - b. Within fourteen (14) calendar days after an application has been resubmitted to the county after the application has been returned to the applicant as being incomplete.
3. An application is fully complete if it includes all the required materials specified in the submittal requirements for the specific development review application being applied for and additional materials specified in the pre-application conference. If submittal requirements are not specified in the applicable code sections the application is fully complete if it includes the following:
- a. A signed statement from the applicant certifying that the application has been made with the consent of the lawful property owner(s) and that all information submitted with the application is complete and correct. False statements, errors, and/or omissions may be sufficient cause for denial of the request. Submittal of the application gives consent to the county to enter the property(ies) subject to the application;
  - b. The signature of the property owner or the property owner's authorized representative;
  - c. A written narrative that addresses the following:
    - (1) How the application meets or exceeds each of the applicable approval criteria and standards; and
    - (2) How the issues identified in the pre-application conference have been addressed, and generally, how services will be provided to the site;
  - d. A current County Assessor map(s) showing the property(ies) within a radius of the subject site as required in Sections 40.510.030(E);
  - e. A legal description supplied by the Clark County Survey Records Division, a title company, surveyor licensed in the state of Washington, or other party approved by the responsible official, and current County Assessor map(s) showing the property(ies) subject to the application;
  - f. Unless the responsible official has waived the pre-application conference, a copy of the pre-application conference summary, and information required by the pre-application conference summary, unless not timely prepared as required by Section 40.510.030(A)(8);
  - g. A preliminary site plan or plat that shows existing conditions and proposed improvements;
  - h. The applicable fee(s) adopted by Council for the application(s) in question;
  - i. Any applicable SEPA document, typewritten or in ink and signed.
4. An application shall include all of the information listed as application requirements in the relevant sections of this code.
- a. The responsible official may waive application requirements that are clearly not necessary to show an application complies with relevant criteria and standards and may modify application requirements based on the nature of the proposed application, development, site or other factors. Requests for waivers shall be reviewed as a Type I process before applications are submitted for counter complete review or the application must contain all the required information;
  - b. The decision about the fully complete status of an application, including any required engineering, traffic or other studies, shall be based on the criteria for completeness and methodology set forth in this code or in implementing measures timely adopted by the responsible official and shall not be based on differences of opinion as to quality or accuracy.

5. If the responsible official decides an application is not fully complete, then, within the time provided in Section 40.510.030(C)(2), the responsible official shall send the applicant a written statement indicating that the application is incomplete based on a lack of information and listing what is required to make the application fully complete.

a. The statement shall specify a date by which the required missing information must be provided to restart the fully complete review process pursuant to Section 40.510.030(C)(2)(b). The statement shall state that an applicant can apply to extend the deadline for filing the required information, and explain how to do so.

b. The statement also may include recommendations for additional information that, although not necessary to make the application fully complete, is recommended to address other issues that are or may be relevant to the review.

6. If the required information is not submitted by the date specified and the responsible official has not extended that date, within seven (7) calendar days after that date the responsible official shall take the action in Section 40.510.030(C)(6)(a) or (C)(6)(b). If the required information is submitted by the date specified, then within fourteen (14) calendar days the responsible official shall decide whether the application is fully complete and, if not, the responsible official shall:

a. Reject and return the application and scheduled fees and send to the applicant a written statement which lists the remaining additional information needed to make the application fully complete; or

b. Issue a decision denying the application, based on a lack of information; provided, the responsible official may allow the applicant to restart the fully complete review process a second time by providing the required missing information by a date specified by the responsible official, in which case the responsible official shall retain the application and fee pending expiration of that date or a fully complete review of the application as amended by that date.

7. If the responsible official decides an application is fully complete, then the responsible official shall, within fourteen (14) calendar days of making this determination:

a. Forward the application to the county staff responsible for processing it, and schedule public hearing;

b. Send a written notice of receipt of a complete application to the applicant acknowledging acceptance, listing the name and telephone number of a contact person at the review authority, and describing the expected review schedule, including the date of a hearing for a Type III process;

c. Prepare a public notice in accordance with Section 40.510.030(E).

8. An application shall be determined fully complete if a written determination has not been sent to the applicant within twenty-eight (28) calendar days of the date the application is submitted. An application shall be determined fully complete if a written determination has not been sent to the applicant within fourteen (14) calendar days of the date that the necessary additional information is submitted.

9. A fully complete determination shall not preclude the county from requesting additional information, studies or changes to submitted information or plans if new information is required or substantial changes to the proposed action occur.

(Amended: Ord. 2006-05-01; Ord. 2012-07-03; Ord. 2017-07-04; Ord. 2019-05-07)

D. Procedure.

1. At least one (1) public hearing before the hearing examiner is required. The public hearing should be held within seventy-eight (78) calendar days after the date the responsible official issues the determination that the application is fully complete.

2. At least fifteen (15) calendar days before the date of a hearing, the responsible official shall issue a public notice of the hearing consistent with the requirements in Section 40.510.030(E).
3. At least fifteen (15) calendar days before the date of the hearing for an application(s), the responsible official shall issue a written staff report and recommendation regarding the application(s), shall make available to the public a copy of the staff report for review and inspection, and shall send a copy of the staff report and recommendation without charge to the hearing examiner and to the applicant and applicant's representative. The responsible official shall send or provide a copy of the staff report at reasonable charge to other parties who request it.
4. Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing examiner, except to the extent waived by the hearing examiner. A public hearing shall be recorded electronically.
  - a. At the beginning of a hearing or agenda of hearings, the hearing examiner shall:
    - (1) State that testimony will be received only if it is relevant to the applicable approval criteria and development standards and is not unduly repetitious;
    - (2) Identify the applicable approval criteria and development standards;
    - (3) State that the hearing examiner will consider any party's request that the hearing be continued or that the record be kept open for a period of time and may grant or deny that request;
    - (4) State that the hearing examiner must be impartial and whether the hearing examiner has had any ex parte contact or has any personal or business interest in the application. The hearing examiner shall afford parties an opportunity to challenge the impartiality of the authority;
    - (5) State whether the hearing examiner has visited the site;
    - (6) State that persons who want to receive notice of the decision may sign a list for that purpose at the hearing and where that list is kept; and
    - (7) Summarize the conduct of the hearing.
  - b. At the conclusion of the hearing on each application, the hearing examiner shall announce one (1) of the following actions:
    - (1) That the hearing is continued. If the hearing is continued to a place, date and time certain, then additional notice of the continued hearing is not required to be mailed, published or posted. If the hearing is not continued to a place, date and time certain, then notice of the continued hearing shall be given as though it was the initial hearing. The hearing examiner shall adopt guidelines for reviewing requests for continuances;
    - (2) That the public record is held open to a date and time certain. The hearing examiner shall state where additional written evidence and testimony can be sent, and shall announce any limits on the nature of the evidence that will be received after the hearing. The hearing examiner may adopt guidelines for reviewing requests to hold open the record;
    - (3) That the application(s) is/are taken under advisement, and a final order will be issued as provided in Section 40.510.030(D)(6); or
    - (4) That the application(s) is/are denied, approved or approved with conditions, together with a brief summary of the basis for the decision, and that a final order will be issued as provided in Section 40.510.030(D)(5).

5. Unless the applicant agrees to allow more time, within fourteen (14) calendar days after the date the record closes, the hearing examiner shall issue a written decision regarding the application(s); provided, the hearing examiner shall not issue a written decision regarding the application(s) until at least fifteen (15) calendar days after the threshold determination under Chapter 40.570 is made. The decision shall include:

- a. A statement of the applicable criteria and standards in this code and other applicable law;
- b. A statement of the facts that the hearing examiner found showed the application does or does not comply with each applicable approval criterion and standards;
- c. The reasons for a conclusion to approve or deny; and
- d. The decision to deny or approve the application and, if approved, any conditions of approval necessary to ensure the proposed development will comply with applicable criteria and standards.

6. Within seven (7) calendar days from the date of the decision, the responsible official shall send the notice of decision to the applicant and applicant's representative, the neighborhood association in whose area the property in question is situated, and all parties of record. The notice shall include the following information:

- a. A statement that the decision and SEPA determination, if applicable, are final, but may be appealed as provided in Section 40.510.030(I) within fourteen (14) calendar days after the date the notice is sent. The appeal closing date shall be listed in boldface type. The statement shall describe how a party may appeal the decision or SEPA determination, or both, including applicable fees and the elements of a petition for review;
- b. A statement that the complete case file is available for review. The statement shall list the place, days and times where the case file is available and the name and telephone number of the county representative to contact for information about the case.

7. Notice of Agricultural, Forest or Mineral Resource Activities.

- a. All plats, building permits or development approvals under this title issued for residential development activities on, or within a radius of five hundred (500) feet for lands zoned agriculture-wildlife (AG-WL), agriculture (AG-20), forest (FR-40 and FR-80), or surface mining (S), or in current use pursuant to Chapter 84.34 RCW, shall contain or be accompanied by a notice provided by the responsible official. Such notice shall include the following disclosure:

The subject property is within or near designated agricultural land, forest land or mineral resource land (as applicable) on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. Potential discomforts or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any twenty-four (24) hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.

- b. In the case of subdivisions or short plats, such notice shall be provided in the Developer Covenants to Clark County; in the case of recorded binding site plans, such notice shall be recorded separately with the County Auditor.

(Amended: Ord. 2005-04-12; Ord. 2008-06-02; Ord. 2016-06-12; Ord. 2017-07-04; Ord. 2019-05-07)

E. Public Notice.

1. The notice of the application shall include the following information, to the extent known:

- a. The project name, the case file number(s), date of application, the date the application was determined fully complete, and the date the notice is sent;

- b. A description of the proposed project and a list of project permits included with the application;
- c. A description of the site, including current zoning and nearest road intersections, reasonably sufficient to inform the reader of its location and zoning;
- d. A map showing the subject property in relation to other properties or a reduced copy of the site plan;
- e. The name of the applicant or applicant's representative and the name, address and telephone number of a contact person for the applicant, if any;
- f. A list of applicable code sections;
- g. A statement of the public comment period, that the public has the right to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A statement shall indicate that written comments received by the county within fifteen (15) calendar days from the date of the notice will be considered by staff in their recommendations;
- h. The date, time, place and type of hearing;
- i. A statement of the preliminary SEPA determination, if one has been made;
- j. A statement that a consolidated staff report and SEPA review will be available for inspection at least fifteen (15) calendar days before the public hearing, and the deadline for submitting written comments;
- k. The deadline for submitting a SEPA appeal pursuant to Section 40.570.080(D);
- l. The date, place and times where information about the application may be examined and the name and telephone number of the county representative to contact about the application;
- m. The designation of the hearing examiner as the review authority, and a statement that the hearing will be conducted in accordance with the rules of procedure adopted by the hearing examiner; and
- n. Any additional information determined appropriate by the county.

[l. Additional information as specified in Section 40.240.050.E. and 40.240.060.D for proposals on all lands in Clark County, Washington within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act.](#)

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2. Where the notice of application under Section 40.510.030(E)(1) is incomplete, a separate notice of public hearing shall be provided which is consistent with Section 40.510.030(E)(3).

3. Distribution.

- a. The responsible official shall mail a copy of the notice to:
  - (1) The applicant and the applicant's representative;
  - (2) The neighborhood association in whose area the property in question is situated, based on the list of neighborhood associations kept by the responsible official;
  - (3) Owners of property within a radius of three hundred (300) feet of the property that is the subject of the application if the subject property is inside the urban growth boundary or to owners of property within a radius of five hundred (500) feet of the property if the subject property is outside the urban growth boundary;
    - (a) The records of the County Assessor shall be used for determining the property owner of record. The failure of a property owner to receive notice shall not affect the decision if the notice



was sent. A sworn certificate of mailing executed by the person who did the mailing shall be evidence that notice was mailed to parties listed or referenced in the certificate, and

(b) If the applicant owns property adjoining the property that is the subject of the application, then notice shall be mailed to owners of property within a three hundred (300) or five hundred (500) foot radius, as provided in this subdivision, of the edge of the property owned by the applicant adjoining or contiguous to the property that is the subject of the application;

(4) Agencies with jurisdiction; and

(5) To known interest groups and other people the responsible official believes may be affected by the proposed action or who request such notice in writing. \_

(6) Other parties as outlined in 40.240.050.E and 40.240.060.D.

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

c. Except for plat alteration applications that have been elevated to Type III applications, and shorelines permits, the applicant shall post one (1) four (4) foot by eight (8) foot sign board on the property subject to the development application as follows:

(1) Location. The board shall be installed at the midpoint along the site street frontage at a location five (5) feet inside the property line, or as otherwise directed by the responsible official to maximize visibility.

(2) Required Information. The sign shall include the following information:

(a) The project name, a brief description (i.e., one hundred (100) single-family lots; fifty thousand (50,000) square feet of retail commercial space; etc.) case number, public hearing date, time and location.

(b) The telephone number and Internet address through which interested parties may contact the county for additional information.

(c) The preliminary land subdivision, site plan or other plot plan view depicting the applicable development permit request.

(d) The name of the applicant's contact and his or her telephone number, should interested parties wish to contact the applicant directly.

(e) The sign shall be made of materials that will endure inclement weather conditions typical of Clark County.

(f) The responsible county official shall provide the applicant a template for the sign.

(3) Construction Specifications. The sign board shall be constructed with four (4) foot by eight (8) foot material and secured with at least two (2) four (4) inch by four (4) inch posts. The board shall be affixed to the posts with at least two (2) five (5) inch long three-eighths-inch diameter bolts, washers and nuts per post. Bracing shall be provided in order for the sign board to withstand high wind conditions that may occur. Posts shall be dug twenty-four (24) to thirty-six (36) inches into the ground for stability. The top of the sign board shall be designed to be between seven (7) and eight (8) feet above grade.

(4) Installation and Removal Requirements. The sign board, including all required information per Section 40.510.030(E)(3)(d)(2), shall be installed on the site at least thirty (30) calendar days in

advance of the public hearing. The applicant shall maintain the sign board in good condition throughout the application review period, which shall extend through the time of the final county decision on the proposal including the expiration of the applicable appeal period of the hearings examiner's decision if submitted. If the sign board is removed, county review of the land use application may be discontinued until the board is replaced and has remained in place for the required period of time. The applicant shall remove the sign board within fourteen (14) calendar days after final county decision on the application, including expiration of applicable appeal periods.

(5) Affidavit of Installation. The applicant shall execute an affidavit certifying where and when the sign board was posted and submit to the responsible official for inclusion in the project file.

(Amended: Ord. 2006-11-07; Ord. 2007-06-05; Ord. 2007-11-13; Ord. 2009-03-02; Ord. 2011-08-08; Ord. 2014-01-08)

F. Decision Timelines.

Not more than ninety-two (92) days after the date an application is determined fully complete, the hearing examiner shall issue a written decision regarding the application(s); provided:

1. If a determination of significance (DS) pursuant to Chapter 40.570 is issued, then the hearing examiner shall issue a decision not sooner than seven (7) calendar days after a final environmental impact statement is issued.
2. An applicant may agree in writing to extend the time in which the hearing examiner shall issue a decision. If the hearing examiner grants such a request, the hearing examiner may consider new evidence the applicant introduces with or subsequent to the request. New evidence may not be considered unless the time extension would allow for public review and response to the new evidence.
3. In determining the number of days that have elapsed after the county has notified the applicant that the application is fully complete, the following periods shall be excluded:
  - a. Any period during which the applicant has been requested by the county to correct plans, perform required studies, or provide additional required information. The responsible official shall specify a time period based on the complexity of the required information in which the required information must be submitted. The period shall be calculated from the date the county notifies the applicant of the need for additional information until the earlier of the date the county determines whether the additional information satisfies the request for information or fourteen (14) calendar days after the date the information has been provided to the county.
  - b. If the county determines that the information submitted by the applicant under Section 40.510.030(F)(3)(a) is insufficient, it shall notify the applicant of the deficiencies and the procedures under Section 40.510.030(F)(3)(a) shall apply as if a new request for studies had been made.
  - c. Any period of time during which an environmental impact statement (EIS) is being prepared; provided, that the maximum time allowed to prepare an EIS shall not exceed one (1) year from the issuance of the determination of significance unless the responsible official and applicant have otherwise agreed in writing to a longer period of time. If no mutual written agreement is completed, then the application shall become null and void after the one (1) year period unless the responsible official determines that delay in completion is due to factors beyond the control of the applicant.

d. Any period of time as outlined in 40.240.180.D.

G. Vesting.

1. Type III applications (other than zone change proposals) shall be considered under the land development regulations in effect at the time a fully complete application for preliminary approval is filed.

2. Contingent Vesting. An application which is subject to pre-application review shall earlier contingently vest on the date a complete pre-application is submitted. Contingent vesting shall become final if a fully complete application for substantially the same proposal is submitted within one hundred eighty (180) calendar days of the date the responsible official issues its written summary of pre-application review subject to the limitations of Section 40.510.030(A)(4). Requests to waive contingent vesting rights by the applicant shall be approved, subject to the request being submitted in writing and submitted as part of the full application package.

3. Special rules apply to approved planned unit developments under Section 40.520.080 and certain nonconforming uses under Section 40.530.010.

4. For concurrency approval requirements, see Section 40.350.020.

(Amended: Ord. 2007-06-05)

H. Burden of Proof. Except for SEPA appeals which are governed by RCW 43.21C.075, the applicant shall have the burden of proving by substantial evidence compliance with applicable approval standards. Where evidence is conflicting, the examiner shall decide an issue based upon the preponderance of the evidence.

(Amended: Ord. 2007-11-13)

I. Appeals.

1. Applicability. A final decision may be appealed only by a party of record.

2. Except as outlined in 40.510.030.H.3, Final decisions may be appealed only if, within twenty-one (21) calendar days after written notice of the decision is sent, a written appeal is filed in the superior court of Clark County, pursuant to Chapter 36.70C RCW or applicable state law.

3. Final decisions on all lands in Clark County, Washington within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act, may be appealed only if, within thirty (30) calendar days after written notice of the decision is sent, a written appeal is filed with the Gorge Commission.

(Amended: Ord. 2005-04-12; Ord. 2005-10-04; Ord. 2006-09-13; Ord. 2007-11-13; Ord. 2009-10-19; Ord. 2011-08-08)

J. Special appeal procedure applicable to uses licensed or certified by the Department of Social and Health Services or the Department of Corrections.

1. In accordance with RCW 35.63.260 (Section 1, Chapter 119, Laws of 1998), prior to the filing of an appeal of a final decision by a hearing examiner involving a conditional use permit application requested by a party that is licensed or certified by the Department of Social and Health Services or the Department of Corrections, the aggrieved party must, within five (5) days after the final decision, initiate formal mediation procedures in an attempt to resolve the parties' differences. If, after initial evaluation of the dispute, the parties agree to proceed with mediation, the mediation shall be conducted by a trained mediator selected by agreement of the parties. The agreement to mediate shall be in writing and subject to RCW 5.60.707. If the parties are unable to agree on a mediator, each party shall nominate a mediator and the mediator shall be selected by lot from among the nominees. The mediator must be selected within five (5) days after formal mediation procedures are initiated. The mediation process must be completed within fourteen (14) days from the time the mediator is selected except that the mediation process may extend beyond fourteen (14) days by agreement of the parties. The mediator shall, within the fourteen (14) day period or within the extension if an extension is agreed to provide the parties with a written summary of the issues and any agreements reached. If the parties agree, the mediation report shall be made available to the county. The cost of the mediation shall be shared by the parties.

2. Any time limits for filing of appeals are tolled during the pendency of the mediation process.

3. As used in this section, “party” does not include county, city or town.

(Amended: Ord. 2007-11-13; Ord. 2021-07-03)

rd. 2018-10-02)

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