

# **Pierce County Land Use Process and strategies for Hearing Examiner public hearings**

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**DISCLAIMER:** This handbook was compiled by the Friends of Pierce County ("FPC") as a public service. It is intended to give a summary of the current land use processes in Pierce County, Washington. It is not intended to be a substitute for professional legal, environmental or land use planning advice. While FPC has attempted to publish only complete, accurate and current content, the handbook is not intended to be the sole source of information about the matters contained herein, and FPC makes no assurances, guarantees, or warranties regarding completeness, accuracy or currentness. FPC shall not be liable on account of any errors, omissions, delays or losses in connection with compilation, publication or presentation of this information.

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## BACKGROUND

Pierce County is the second most populated county in Washington State with a population of 624,000 people and 84% of the population growth occurring in unincorporated areas (Pierce County 2003a). The Puget Sound Regional Council (2003) notes a population increase of 147,795 between 1990 and 2003. See Appendix A for detailed Pierce County land use summary.

The Growth Management Act allows communities to manage growth while striving to maintain its quality of life (WSC TED 1997). With rapid growth occurring in most areas, citizens want to provide input on how their communities are planned. **The most effective time to provide input into how communities are developed is through the Community Plan and Comprehensive Plan process. Citizens should volunteer to serve on planning boards, committees and attend public hearings.** Citizens are also given a chance to comment on specific development projects in the public hearing process.

Citizen testimony at public hearings, which is aimed at balancing community concerns with development, often lacks organization and focus and suffers because of inexperience with plans and development regulations.

Although Pierce County plans and regulations are available at the County's website and at the County Planning Department, citizens may not have the experience, skill, or time to interpret relevant documents before providing testimony or recommendations to the Hearing Examiner. Citizens must be knowledgeable of regulations and processes to be effective. This document is an attempt to inform citizens about the land use process in Pierce County and assist them in preparing Hearing Examiner testimony.

Pierce County has a specific process for development of private and public lands. This document offers a step-by-step guide to that process. There are three crucial steps that should be followed if you wish to successfully participate in the public input process for a specific development:

1. Review project files, written comments, and meet with assigned planner if possible,
2. Attend and/or provide input at Land Use Advisory Commission meeting, and
3. Attend and testify at Hearing Examiner Hearing.

Detailed information on each step of the process is covered in subsequent chapters.

## PIERCE COUNTY PLANNING DEPARTMENT

Some citizens are unaware of the role Pierce County Planning and Land Services (PALS) plays in land use planning. The mission of PALS is to guide the development of better communities by providing quality and timely decisions and information related to land use, building safety, and environmental protection (Pierce County 2003b).

The PALS Department is comprised of the Building Division, the Development Center, Development Process and Advance Planning. Together these four sections guide and regulate development in Pierce County.

### **Building Division**

The Building Division is comprised of Building Inspectors and Plans Examiners. They are charged with the task of insuring all proposed structures comply with the Uniform Building Code.

### **Development Center**

The Development Center processes and distributes all applications reviewed by the Planning and Land Services Department. These applications include all unincorporated Pierce County Building Permits, Site Development Permits, Land Use Permits, Fire Code Permits and Sign Permits. The section includes Permit Technicians and Technical Support Staff. The Permit Technicians are the front-line staff to answer questions and process permits. On-site technical assistance is provided by assigned representatives from Current Planning, Resource Management, Public Works and Utilities, Development Engineering, Tacoma Pierce County Health Department, Building Division, Fire Prevention and Code Enforcement. The Development Center is a resource for site specific development information.

### **Development Process**

Development Process is comprised of the Current Planning, Development Engineering, Code Enforcement, Resource Management and Technical Support sections. These sections review items such as: i) proposed development's road and storm drainage projects, ii) land use approvals including items such as property division and actions requiring public hearings, iii) administration of the County's environmental regulations, iv) public presentations, and v) education programs to create awareness of natural resource issues. Code Enforcement coordinates with the other Development Process divisions on the enforcement of the conditions of application approval and violations of land use and development codes. Technical Support is comprised of staff from the Current Planning section, Development Engineering section, Building Division, Utilities Division, the Tacoma Pierce County Health Department, and the Fire Marshals Office.

### **Advance Planning**

The Advance Planning Division drafts changes to land use policy and regulations as mandated by the Washington State Legislature through the Growth Management Act or as directed by resolution of the Pierce County Council. Advance Planning also works to implement the 1994 Comprehensive Plan for Pierce County and is currently working with various citizen groups to draft specific Community Land Use Plans. Amendments to Pierce County land use regulations and policies are reviewed by the various citizens Land Use Advisory Commissions and the Planning Commission and then are forwarded to the Pierce County Council.

## Code Enforcement

The Code Enforcement Section investigates citizen and agency inquiries regarding potential violations of the Pierce County Code. The Code Enforcement Section takes in requests for Building, Code Enforcement, Health, Development Engineering, Resource Management, Public Works, and Fire Prevention. Once the request is taken in Code Enforcement will process the request and route it to the appropriate section. Each section has their own guidelines and time frames on how they handle the request (Pierce County Code Enforcement staff, personal communication, dated 1/27/04).

Code Enforcement also ensures compliance with minimum standards of County Sign Codes, Zoning Regulations (except discretionary land use permits), Shoreline Regulations, and the State Shoreline Management Act. Functions of the Code Enforcement Section include: Structural review of commercial sign permits and final inspection of signs. Researches current and historical records from citizens and County and State agencies. Conduct inspections of possible violations of: Zoning code, Shoreline Use Regulations, and other development regulations setbacks occupied RVs home occupation / cottage industries animals (number, setbacks of pens, structures, etc.) junk, salvage, and wrecking yards illegal businesses and illegal expansion of nonconforming uses illegally placed signs and surface mining (Pierce County Planning Staff, personal communication, dated 1/12/04).

To report a violation on a parcel, call Pierce County Code Enforcement at (253) 798-3737 for a recorded message, which you can leave information. Or call (253) 798-7158 to speak with a code enforcement officer. On the internet, violations can be reported at <http://www.piercecountywa.org/pc/services/home/property/pals/violations/enforce.htm>.

## PIERCE COUNTY DEVELOPMENT PERMIT PROCESS

This section describes six major steps in the Pierce County development and permit process:

1) Submitting the Master Application (Appendix B). and required submittal standards starts the development process. This application asks the applicant to select from a list of numerous potential permits and requests specific site information. These forms can be obtained via the Internet at <http://www.piercecountywa.org/pc/services/home/property/pals/permits/apps.htm>. An applicant may request to have a meeting with Pierce County personnel to find out what to expect when an application is processed (See Appendix C for meeting details). Depending on the nature of the request, representatives of the following departments may attend the pre-filing meetings: Development Engineering, Fire Marshal, Code Enforcement, Tacoma/Pierce County Health Department, Resource Management Environmental Biologist, Utilities, and Building.

The public typically is not allowed to attend unless the applicant approves of them being there. In some instances there might be confidentiality issues. For example, an applicant planning to develop a commercial project may not want to alert potential competitors.

The applicant can receive the submittal standards for the desired development during the meeting. **All the items requested by department representatives must be submitted for the application to be considered complete.** Once the applicant is informed of the application submittal requirements, no timelines are given for the submittal.

2) The applicant submits a complete application consistent with submittal standards. Complete applications are vested (See Appendix D on vesting), or reviewed under the regulations in effect

at the time of application. The applicant is normally informed that to be vested for the regulations in effect at the time, a complete application must be filed. The applicant then submits the completed application at the Development Center, and a planner will check it for completeness (Pierce County Planning staff, personal communication, 6/17/2003).

3) The applicant is informed when the Notice of Application (NOA) is mailed, and purchases a public notice sign to post on the property within 14 days of the submittal of the application. The planner receives the application within a day and will issue a NOA within two days of receiving the application. The site is then posted with a yellow public notice sign. This sign will have information posted that will be needed to request files.

The NOA is sent out to all neighbors within 300 feet (and/or two lots deep), relevant County departments, and state agencies for comments. School Districts, Fire Districts, Treaty Tribes and other pertinent entities are also sent copies of the application for comments. The general public (those not living near the site) can find NOAs posted at the PALS office in the front lobby and in the Development Center. Also, the yellow sign posted on the property gives notice to the public that there is an application in process (See Appendix E for information on notice details). The County website at <http://www.piercecountywa.org/cfapps/DCIS/mainpage.htm> allows people to check the status of submitted permit applications. Land use and subdivision project inquiries can be directed to Development Processing at (253) 798-7037. For more information on application filing, see Pierce County Code – Development Regulations, General Provisions Title 18.40 (Appendix F).

4) The Environmental Official at the County will conduct a site visit and issue an environmental threshold determination under the State Environmental Policy Act (SEPA) guidelines (see SEPA section for more information).

5) The project is then scheduled for a public meeting before the Land Use Advisory Commission (LUAC) and a public hearing before the Hearing Examiner. There is a minimum wait of 45 days between the issuance of SEPA determination and the public hearing for the purposes of 15-day comment period and 30 days for appeal if the project is heard by a LUAC. The notice is published in the official County newspaper (currently the *Eatonville Dispatch*) and sent to the parties of record. The meetings before the LUACs are not considered public hearings. The *Eatonville Dispatch* website is: <http://www.dispatchnews.com>.

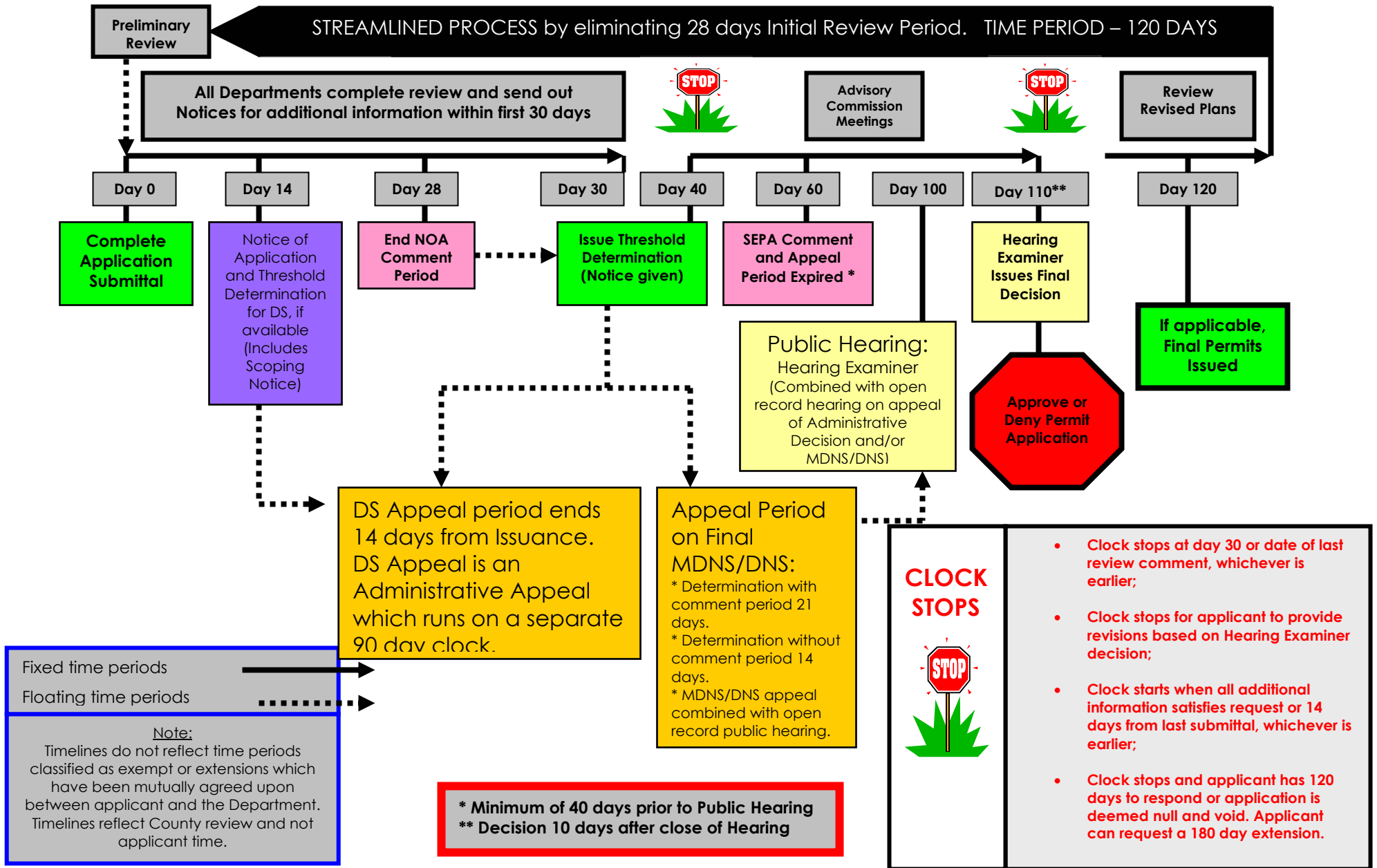
County planners prepare a staff report, which is mailed to the LUAC members a minimum of one week before the meeting. The LUAC meeting is held and a recommendation is made to the Hearing Examiner. There is approximately a 2-week period between the LUAC meeting and the Hearing Examiner hearing. This allows for advertising in the official County newspaper, the paper of general circulation, and for the planner to incorporate the LUAC recommendation into the Hearing Examiner staff report. Notices are sent again to the neighbors, parties of record, and posted in the official County newspaper informing interested parties of the upcoming hearing before the Hearing Examiner. **A party of record** is defined by the County as a person or entity who has testified before the Hearing Examiner, listed their names on a sign-up-sheet, or specifically advised the Planning Department or Hearing Examiner by individual written letter of their desire to become a party of record. Staff reports may be obtained from the Planning Department.

6) The planning and engineering files for any development project contain critical information that will be discussed at public meetings and hearings. **It is highly recommended that you**

**review all project files before submitting any input to the Land Use Advisory Commissions or the Hearing Examiner.**

The Planning and Land Services Department will provide project files upon request. **When requesting case files from PALS, make sure that you bring in the case number or parcel number so staff can supply the correct information.** You will fill out a request form at the PALS counter. Request all files which could include the Planning File, the Development Engineering file and the Environmental file (if they are Critical Areas).

The following flowchart outlines the public hearing process for Pierce County.



# Public Hearing Timeline.....

## **CITIZEN PARTICIPATION**

If you wish to actively engage in the planning process for a development project, you will have three major opportunities to participate:

- 1) Comment on SEPA (see SEPA section),
- 2) Provide testimony at Land Use Advisory Commission meeting, and
- 3) Provide testimony at Hearing Examiner hearing.

### **Participating in Land Use Advisory Commission meetings**

The citizen Land Use Advisory Commissions (LUAC) provide recommendations to the Hearing Examiner and provide assistance to the Planning Department and County Council. Pierce County Code 2.45.110 describes the three functions and purposes of LUACs:

- A) ... may make...recommendations to the county planning boards, planning commission, executive and council regarding community/comprehensive plans;
- B) ... review community and comprehensive plans;
- C) ... review applications on specific development proposals that require a public hearing.

Sixteen LUACs have been formed, and seven are currently active. Land Use Advisory Commissions are advocates for the communities they represent, and therefore shoulder the responsibility of balancing the “playing field” between the professional consultant and the concerned citizen, neighbor, or small property owner.

The LUAC members and concerned citizens must be able to provide a clear vision on very complicated issues for projects within their communities that are supported by the individual plans, associated regulations and the communities they represent. Functions of the LUACs have significantly changed since the adoption of the Growth Management Act, as all land-use projects are now reviewed against more complex regulations and plans. The LUAC members, therefore, require comprehensive knowledge of all County regulations as well as specific understanding of regulation nuances to provide qualified reviews and effective recommendations.<sup>1</sup>

The current LUACs have been established in the following areas of Pierce County: Frederickson, Graham, Peninsula, South Hill, and Upper Nisqually.

Agendas for the LUACs listed above are available at <http://www.piercecountywa.org/pc/services/home/property/pals/hearings/luac.htm>. You may also contact Terrence Belieu at (253) 798-3194 for more information on LUACs.

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<sup>1</sup> Current Planning Section, Pierce County Planning and Land Services, summary of LUAC and staff qualifications.

## **Providing testimony to Hearing Examiner**

### **Appearance of fairness and “ex parte” communications**

Hearing Examiner hearings are quasi-judicial. As a result, persons are prohibited from contacting the Hearing Examiner outside the public hearing for the purpose of influencing a decision. The Hearing Examiner’s administrative staff screens all correspondence and telephone calls to prevent prohibited contacts. Hearing Examiners may not participate in quasi-judicial proceedings in which they have a financial interest, have pre-judged the issues, or may appear to be biased as a result of connections with a party or property involved. Any person who has reasonable grounds to believe that a Hearing Examiner might be influenced by any factor outside the public record of the hearing should promptly bring that concern to the attention of the Hearing Examiner (King County 2003).

The appearance of fairness doctrine is a rule of law that requires government decision-makers to conduct quasi-judicial hearings and make quasi-judicial decisions in a way that is both fair in appearance and in fact. The doctrine has been applied primarily to quasi-judicial land use decisions, and its purpose is to bolster public confidence in the fairness of such decisions. In practice, the doctrine should work to disqualify from the quasi-judicial decision-making process those decision-makers who have prejudged the issues, who have a bias in favor of one side in the proceeding, who have a conflict of interest, or who cannot otherwise be impartial. Also, it prohibits "ex parte" communications between a decision-maker and a proponent or opponent of the matter being decided. RCW 42.36.060 (MRSC 2003a).

If you think that the appearance of fairness doctrine has been violated, raise it at the beginning of your testimony with a request for the decision maker to explain the situation. If you still feel that there is a violation, you can ask the Hearing Examiner or LUAC member to remove themselves from hearing the case.

If a decision-maker's participation in a quasi-judicial decision violates the appearance of fairness doctrine and that participation was challenged in a timely manner, a court can invalidate the decision. A new hearing and decision will then need to be made without the disqualified decision-maker (MRSC 2003a).

### **Hearing Examiner duties**

A state law passed in 1977 authorized counties to utilize Hearing Examiners. Pierce County adopted the Hearing Examiner system by resolution on February 28, 1978. The Pierce County Hearing Examiner is selected by the County Council and hired on an annual contract. The Hearing Examiner has to have training or experience to conduct quasi-judicial hearings (fact finding hearings to establish facts pursuant to law/ordinance passed and/or to determine if violation has occurred) utilizing land use and other regulatory codes and must have expertise and experience in planning and should have knowledge or experience in at least one of the following areas: environmental sciences,

law, architecture, economics or engineering. The Hearing Examiner duties are established in Revised Code of Washington (RCW) 36.70.970 and Chapter 1.22 of Pierce County Code (Appendix G).

The Pierce County Council appoints the Hearing Examiner who acts as the decision-maker for the County regarding discretionary land use permits and approvals such as variances, conditional use permits, shoreline permits, and selective applications to subdivide land for formal plats only (4 or more lots). The Hearing Examiner also hears and decides appeals of administrative decisions made by the Planning and Land Services Department.

### **Hearing schedules and agendas**

Hearings before the Hearing Examiner are generally held on a weekly basis in the public meeting room at the Pierce County Public Services Building, located at 2401 S. 35th Street in Tacoma. Public notice of hearings of these hearings are published in the official County newspaper (currently the *Eatonville Dispatch*), and if possible, the paper of general circulation, ten working days prior to a hearing.

Hearing Examiner agendas are available at:

<http://www.piercecountywa.org/pc/services/home/property/pals/hearings/scedul.htm>.

The planner assigned to the project can also be contacted by phone for more information (Appendix H).

### **Public hearings**

A public hearing is a special meeting, which allows the public to comment on proposed plans and projects before officials make a final decision. All members of the public wishing to testify regarding an action may do so. Public hearings are generally divided into two categories: legislative and quasi-judicial. Legislative hearings are conducted to seek Planning Commission, County Council and citizen views on land use plans and ordinances, while Hearing Examiner hearings deal with individual property. The official(s) conducting the hearing may establish rules regarding how the hearing is conducted, including time limitations on public testimony. Members of the public wishing to testify at a public hearing should prepare their testimony in advance of the hearing to ensure their testimony is clearly understandable by the official(s) conducting the hearing (Pierce County 2002b). **It is important that you submit your comments in writing as well as oral testimony at the hearing.** Make sure you include your contact information in your comments. Your comments can be sent in advance or turned in on the day of the hearing.

The following format summarizes tips for providing testimony at a public hearing (City of Gig Harbor 2003):

- **Purpose** – What is the idea you wish to present. Begin with ‘I statement’ outlining your ideas such as, “I am here to (support/oppose)...”

- **Reason** – Why are you making this point? This is an important step so the listener does not make assumptions about your motives.
- **Example** – Use a brief and relevant example to clarify and make your point concrete.
- **Summary** – What condition will be changed or improved if your point is considered?
- **Action** - What needs to be done and who will do it?

**It is important to remember that decision makers want to hear from you. This is the whole purpose of public hearings and other methods of public involvement.**

The Livable Communities Coalition and 1000 Friends of Washington (2003a), offer the following suggestions for providing effective testimony before decision makers:

- **Arrive early.** Show up at least a half hour early in order to sign up to testify for contentious issues. If you do not arrive early, it may be a long wait before you can testify.
- **Prepare.** There might be a time limit imposed on presentations. Prepare your presentation to include two or three key points. Practice or role-play your testimony.
- **Do not be alarmed if you are sworn in before you are allowed to testify for the Hearing Examiner.** When testifying on a site specific or quasi-judicial decision or a permit application, you will be required to swear or affirm that what you say is true at the Hearing Examiner hearing but not at the LUAC meeting.
- **Identify yourself.** Begin by giving your name and address. If you are testifying for a group, state the name of the organization or group, briefly describe the group's mission, and state how many members it has.
- **Clearly state your position.** Give a clear and concise description of your position on the issue.
- **Speak from your own experience,** either personal or from your work. Talk about how the policy in question affects you and people like you. Use your own words. Do not use unfamiliar terms. Formulated testimony is not as impressive and eloquent as speaking in your own words. Describe or show through pictures how the issue affects you. If you are going to use photographs or a Power Point presentation, check with staff in advance on what kind of audio-visual equipment will be available for use in the hearing room.
- **You do not need to be an expert to testify.** Your experience and your informed opinions can be persuasive. Do be well informed and organized.

- **Be concise and stick to the facts.** Offer clear and well-documented comments. Make sure that what you state as fact is correct and, as appropriate, take care to distinguish opinion and interpretation from uncontested information. It is important that you back up your information with citations to reliable sources. It is best if you can provide copies of the sources to the decision makers.
- **Avoid emotional testimony.** Emotional testimony works to your disadvantage. Credibility is lost and so are the points you are presenting when testimony becomes emotional. Make recommendations based on facts.
- **Don't read your testimony.** The committee or council will listen to you and appreciate your testimony more if you tell it from the heart and not from a script. Your oral testimony does not have to be exactly the same as your written testimony.
- **Prepare written testimony.** Bring enough copies to distribute to all members of the LUAC, and staff. At the top of the page, put your name, your organization (if any) and how to get in touch with you. Putting your points "in the record" can be critical, if you eventually need to appeal to a higher authority to overturn an unfavorable decision. Also, if you want data or a report to be part of the record, you should submit a copy with your testimony. Otherwise, it may not be available if you decided to appeal.
- **Request action.** State exactly what you would like the decision maker (s) to do.
- **Don't just ask questions.** Testimony that consists primarily of asking questions is ineffective. The purpose of a public hearing is to hear your comments. If possible, ask questions of the planner before the hearing. It is OK to ask a question if you still have doubts or unanswered questions after reviewing the file and speaking with staff.
- **Offer solutions.** Whether speaking to a specific or general approach to an issue, solutions or feasible alternatives are always well received.
- **Be respectful and courteous.** Never blame anyone or make accusatory remarks.
- **Stay within the time limit.** Time your testimony so that it will fit within the imposed time limit. If you have a lot more to say, include it in your written testimony or ask someone else in your group to include it into his or her testimony. In case time runs out on you before you have a chance to finish your remarks, be sure to have a point that you can skip to in summation – the point you want to leave them with.
- **Offer to answer any questions.** It is usually acceptable for LUAC members or the Hearing Examiner to interrupt the presenter to ask questions. Answer the questions and return to where you left off in your testimony. Be sure to answer questions honestly. If you do not know the answer, say so. If possible, defer the question to another testifier who may have the information.

- **Listen to other testimony and take notes.** Try not to repeat exactly what a previous speaker has presented - speaking from your own experience is effective, because your experience is likely to be somewhat different. Be a good participant in the process. Do not laugh, jeer, speak out of turn, or make bodily gestures during the hearing. These actions could damage your own testimony.
- **Thank the Decision-Maker.** Close your presentation by thanking the LUAC or the Hearings Examiner.

Specifically for the Hearing Examiner hearings, citizens should also follow these recommendations:

- 1) Establish credibility by explaining your connection to project, your background, research, or training that allows you to come to your conclusions about the project.
- 2) If possible, negotiate with the applicant **before** the project gets too far into the permit process. Sometimes applicants will address citizen concerns if they know early in the process before they have spent substantial finances on permits.
- 3) Focus testimony on issues where Hearing Examiner has discretion (i.e. Conditional Use Permit, Planned Development District). It is important to note that the Hearing Examiner may want to rule in your favor, but he is limited to what the law allows him to rule upon.
- 4) Obtain copies of Hearing Examiner decisions on similar projects for ideas. Appendix I provides an example of a good Hearing Examiner decision.
- 5) Do not exceed Hearing Examiner's authority. Do not ask Hearing Examiner to rule on a health issue, (e.g. deny building a cell tower because of health concerns).
- 6) If there are expert studies required (such as wetlands, septic designs, or traffic), the Hearing Examiner places a lot of weight on their testimony or study. If you disagree with the applicant's expert, it is suggested that you hire your own expert to review the study and refute it rather than perform an additional study. If you hire an expert to testify on your behalf, advise the Hearing Examiner in advance that a citizen will have an expert attend hearing. The Hearing Examiner can call your expert out of the standard order to reduce your expert's hourly fee.
- 7) When testifying as a group, submit written testimony in advance to the Hearing Examiner or at the hearing that lists individual concerns with each issue. Organize your presentation by having individuals testify about one issue each, rather than each person saying the same thing. Inform the Hearing Examiner in advance of the meeting that an organized presentation is prepared and he will allow the presentation to proceed uninterrupted.

Appendix J offers more information on citizen participation in the public process and Appendix K offers a guide to Hearing Examiner public hearings. Appendix L provides rules of procedure for hearings for Hearing Examiner.

The Hearing Examiner normally issues the decision within 10 working days (or longer depending upon the complexity of the case) following the hearing.

### **Request for Reconsideration**

You can file a Request for Reconsideration if you disagree with the Hearing Examiner's decision. This is normally filed if there are conditions that were left out of the decision, if particular issues were not adequately addressed, erroneous omissions, or if the Hearing Examiner made an error in his decision. A Request for Reconsideration can be filed within 7 working days after the issuance of the decision. Request for Reconsideration is normally filed to clarify decisions and to take care of omissions that may have occurred in the decision. To file a request for Reconsideration, fill out a written request with the County. The current reconsideration fee is \$600. See Appendix M for form and Appendix N for current fee schedule.

### **Going to Court/ Judicial appeals**

If the Request for Reconsideration is not handled to your satisfaction, an appeal of the Hearing Examiner's decision can be filed with Pierce County Superior Court no later than 21 days following the final decision by the Hearing Examiner. To appeal the Hearing Examiner decision, one must file at Pierce County Superior Court and pay a fee of \$110.00. This process is governed by the Land Use Petition Act (LUPA) in RCW 36.70C. Under LUPA, a court may only grant relief from a land use decision if at least one of the following factors is present:

- The body that made the land use decision engaged in unlawful procedure;
- The land use decision is an erroneous interpretation of the law;
- The land use decision is not supported by evidence that is substantial;
- The land use decision is a clearly erroneous application of the law to the facts;
- The land use decision is outside the authority or jurisdiction of the body making the decision; or
- The land use decision violates the constitutional rights of the party seeking relief.

In Washington State, LUPA is the exclusive means of obtaining judicial review of most land use decisions for individual projects. Growth Management Hearings Boards, such as the Central Board has jurisdiction over Pierce, King, Snohomish and Kitsap Counties.

However, there are exceptions. For instance, shoreline permits are first appealed to the Washington State Shoreline Hearings Board and certain air and water permits are first appealed to the Washington State Pollution Control Hearings Board (David Bricklin, Bricklin, Newman and Dold, personal communication, dated 10/9/03).

According to the Hearing Examiner<sup>2</sup>, these are some issues a Court of Appeals Judge looks for when reviewing his decisions:

- Was proper procedure followed at the local level?
- What is the land use application that was applied for and its criteria?
- Facts and details to provide a word picture of project.
- What ordinances and statutes govern each issue including copies of local ordinances?
- Technical documents and testimony important to issue identified.
- Basis of opposition and what arguments were relevant.
- What factors are significant and why?
- Relevant policy questions that need to be dealt with.
- Whether it is adopted policy.
- History of site zoning and date application was made.
- Resolve issues with expert conflicts and why Hearing Examiner chose one over another.
- What agency has jurisdiction?
- The historical interpretation by county or planning director. Case law may override strict reading of county ordinance.

For more information, you can contact the Pierce County Superior Court at (253) 798-7455.

## **DEVELOPMENT PLANS, POLICIES AND REGULATIONS**

The Pierce County series of development regulations are periodically amended to implement adopted county policy or changes to state law. We have categorized the development regulations into those that are 1) typically within the Hearing Examiner's jurisdiction, 2) sometimes within the Hearing Examiner's jurisdiction, and 3) not within the Hearing Examiner's jurisdiction.

### **Plans, policies and regulations typically within the Hearing Examiner's jurisdiction**

***Title 17A - Construction and Infrastructure Regulations - Site Development and Stormwater Drainage:*** These Regulations establish criteria for review and analysis of all development including but not limited to grading, formal subdivision, short subdivision,

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<sup>2</sup> Statement made by Stephen Causseaux on November 28, 2001 at PAC meeting.

large lot division, commercial building, binding site plans, planned unit developments, planned development districts, mobile home parks, single family home construction, duplex construction, or other projects when so required by the Pierce County Hearing Examiner or County Council. These Regulations include this Title plus the Pierce County Stormwater Management and Site Development. Regulations are available for inspection and/or purchase at the Pierce County Public Works and Utilities Department Reprographics Counter (Pierce County 2003b).

***Title 18 – General Provisions:*** These regulations outline general provisions for development regulations regarding application filing, department review, public notice, time periods, code interpretations, enforcement and penalties (Pierce County 2003b).

***Title 18A – Development Regulations Zoning:*** These regulations implement the Pierce County Comprehensive Plan which is intended to prevent the harm posed by uncoordinated and unplanned growth. These Development Regulations are not intended to be the sole method of implementing the Comprehensive Plan. Other methods such as subdivision regulations, taxing strategies, capital facility expenditures, and other implementation techniques will also be employed (Pierce County 2003b).

***Title 18B – Development Regulations, Signs:*** These regulations establish general requirements and regulations for signs and/or street graphics located within Pierce County (Pierce County 2003b).

***Title 18C - Site Development Regulations:*** These regulations establish criteria for review and analysis of all development including, but not limited to, grading, formal subdivision, short subdivision, large lot division, commercial building, binding site plans, planned unit developments, planned development districts, mobile home parks, single family home construction, duplex construction, or other projects when so required by the Hearing Examiner or County Council. All proposals for development, whether public or private, which are submitted to the County for review, must conform to these Regulations, which are to be used as the basis for review, design, and construction (Pierce County 2003b).

***Title 18D – Development Regulations, Environmental:*** These regulations implement the State Environmental Policy Act rules (Pierce County 2003b).

***Title 18E - Critical Areas:*** These regulations establish general requirements for the protection of Critical Areas. By regulating development within and adjacent to or abutting Critical Areas, this Title seeks to implement the following goals adopted by Ordinance Numbers 88-182, 89-162 and 91-47S:

1. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks,
2. Protect the environment and enhance the State's high quality of life, including air and water quality and the availability of water; and
3. Maintain and enhance the biological and physical functions and values of wetlands (Pierce County 2003b).

***Title 18F - Subdivisions and Platting (currently Title 16):*** Every subdivision shall comply with the provisions of Chapter 58.17 Revised Code of Washington, these regulations and all future amendments or applicable Federal, State or local laws. After final plat or short plat approval, any subsequent division of platted or short platted lots, parcels, tracts, sites or divisions, shall be allowed only if the procedures of these regulations are first followed (Pierce County 2003b).

***Title 18G - Shorelines (currently Title 20):*** These regulations are designed to provide standards which will regulate and promote intensities and qualities of development consistent with the protection of the shoreline environment and its related resources and the policy of the Shoreline Management Act (Pierce County 2003b).

The shoreline regulations apply to the water and extend inland a distance of 200 feet (horizontally) from the Ordinary High Water Mark. As a rule of thumb, everything proposed within that area requires a shoreline permit unless it is specifically exempted by the shoreline regulations. There are several exemptions, some of the most commonly utilized are for work with a fair market value of \$5,000 or less in saltwater environments (this includes donated labor/materials), normal maintenance and repair of legal structures, construction of a single family residence, construction of a bulkhead necessary to protect a house and associated structures, and construction of a dock that is 8 feet wide by 50 feet long. This is a summary of the exemptions; the specific writing of the exemptions is more detailed and contained in Section 20.76.030 B. of the Pierce County Shoreline Management Use Regulations and even more detailed in Washington Administrative Code Section 173-27-040 (Ty Booth, Pierce County Associate Planner, personal communication, August 4, 2003). Even though something is exempt from the shoreline regulations, many of the exemptions still require filing paperwork and submitting a fee of \$200 with the County to ensure that the proposal is actually exempt. Further, even if something is exempt from the shoreline regulations, it still may require environmental review pursuant to the State Environmental Policy Act, and it may also require a County building permit and permits from other agencies such as the Washington State Department of Fish and Wildlife (Ty Booth, Pierce County Associate Planner, personal communication, 8/4/03). If a proposal does not qualify for an exemption, then a shoreline permit must be obtained. The County shorelines are divided up into five shoreline environments; each shoreline environment allows certain uses and not others. If a use is allowed in a certain shoreline environment and is not an exempted use, a shoreline permit will be required.

Each of the following types of permits has specific review criteria (Ty Booth, Pierce County Associate Planner, personal communication, 8/4/03). Various types of shoreline permits include:

- Shoreline substantial development permit,
- Shoreline variance,
- Shoreline conditional use permit, and
- Shoreline nonconforming use permit.

These permits require a public hearing and a recommendation to the Washington State Department of Ecology (DOE). Further, a shoreline variance and shoreline conditional use permit also require review and final approval by the DOE.

Currently, Title 20 of the Pierce County Code is designed to provide standards which will regulate and promote intensities and qualities of development consistent with the protection of the shoreline environment and its related resources and the policy of the Shoreline Management Act. For a copy of Pierce County Shoreline Regulations, go to <http://www.piercecountywa.org/pc/services/home/property/pals/regs/regs.htm> or call (253) 798-3739. Appendix O and a later section of this document offer more information on the Shoreline Management Act.

**18H – Forest Practices:** These regulations set forth procedures and review criteria for approval of Class IV-Special conversion forest practices, Class IV-General forest practices, Conversion Option Harvest Plans (COHPs), and certain Class I forest practices, and establishes a process for implementing development moratoria on properties which have been harvested in violation of forest practice requirements (Pierce County 2003b).

Pierce County Code Title 18H (Forest Practices) provides regulations which set forth procedures and review criteria for approval of the following:

- Class IV-Special conversion forest practices,
- Class IV-General forest practices,
- Conversion Option Harvest Plans, and
- Class I forest practices.

According to Pierce County’s Forest Practices (Title 18H) Class I forest practices do not require an application by the Department of Natural Resources (DNR), but they must comply with the Forest Practices Act. Some examples of Class I activities include:

- Cutting and/or removing of less than 5,000 board feet of timber in any consecutive 12-month period for personal use only where harvest will not occur on water, in wetlands or on slopes greater than 40%.
- A forest practice involving a single land owner where contiguous ownership is less than two acres in size and where none of the operation or limits of construction take place within a shoreline designation, within a Riparian Management Zone of certain water types, or within a Urban Growth Area, and where operation does not impact any Threatened or Endangered species.
- Culture and harvest of Christmas trees and seedlings,
- Tree planting or seeding,
- Tree removal within an existing golf course or cemetery.

Class II forest practices require a DNR application and reforestation is required. There can be a 6-year development moratorium placed on the harvested area if a COHP is not approved with application. Examples of Class II forest practices include:

- Construction of fire trails,
- Timber harvest of less than 40 acres, and
- Partial cutting of 40% or less of the live timber volume on a site if none of the operation is within the Riparian Management Zone.

Class III forest practices require DNR application and reforestation is required. A 6-year development moratorium can be imposed unless associated with a COHP. Examples of Class III forest practices include:

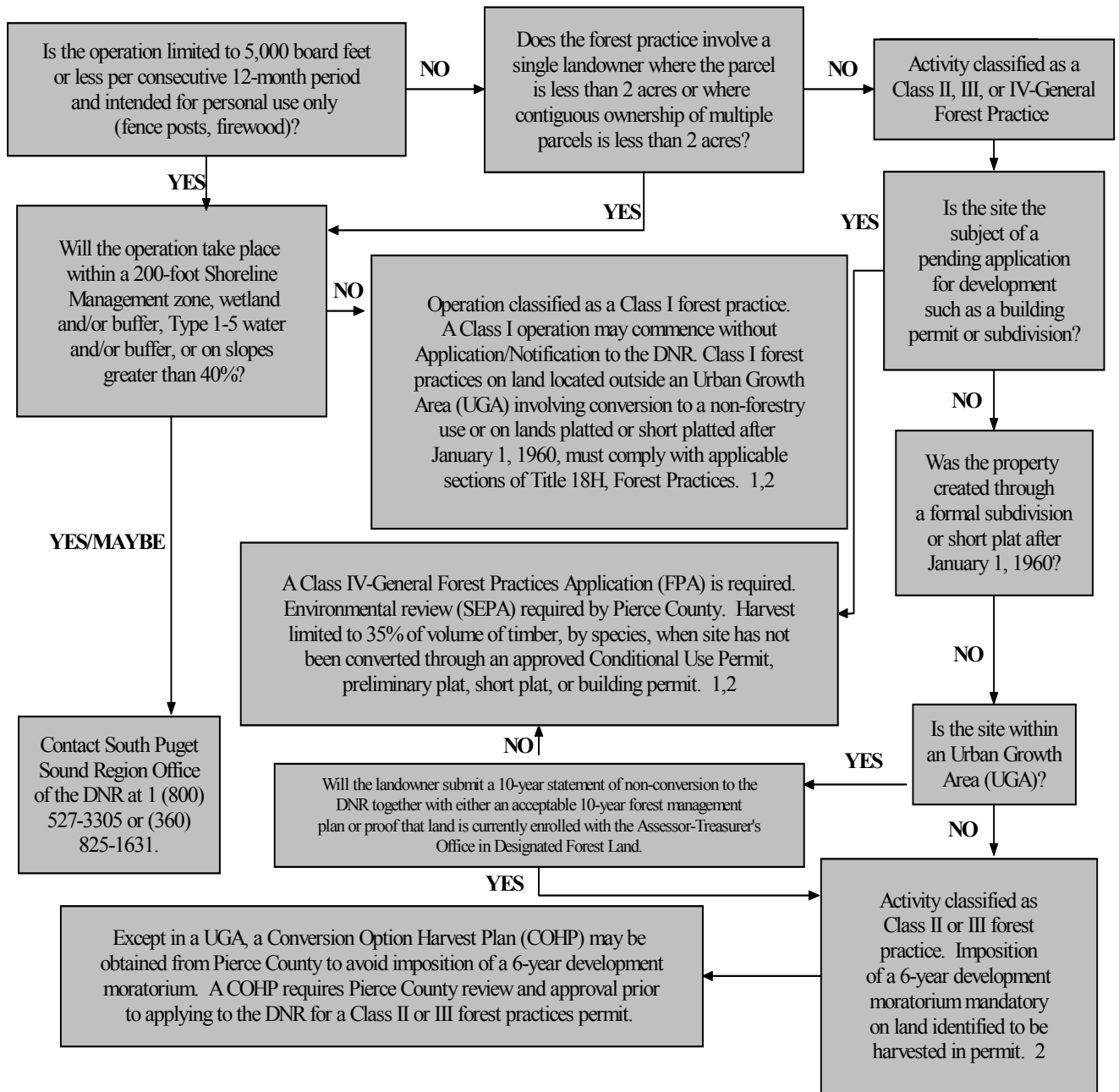
- Uses that are not Class I, Class II or Class IV (special and general).

This Title also establishes a process for implementing development moratoria on properties which have been harvested in violation of forest practice requirements. There are several exemptions to the Forest Practice regulations. Check Title 18H.10.060 for specific list. To obtain a copy of this title, go to:

<http://www.piercecountywa.org/pc/services/home/property/pals/regs/regs.htm>.

If the County finds that a land owner did not have the correct permits before removing trees, a 6-year moratorium will be placed on the property. This prohibits any development permit applications for six years. The Hearing Examiner may remove the moratorium if applicant has been compliant with regulations. There is public notice and a public hearing to remove a moratorium at the Hearing Examiner level.

The following flowchart summarizes Pierce County Forest Practices. The flowchart helps determine if a forest practice permit is required for an operation. Begin in upper left-hand corner of flowchart (Source: Pierce County PALS 2003).



1 A Site Development Permit for clearing and/or grading may be required by Pierce County.  
 2 A Temporary Road Approach permit for access onto a County road may be required by Pierce County.

### 18J - Residential Design Standards

The Residential Design Standards (Section 18A.25.035) went into effect in 1999. They are meant to provide single family and multi-family design standards for residential development in urban areas. The standards require curbs, gutters, sidewalks, street trees, street lighting and recreational areas. The standards also require that new urban developments be compatible with adjacent existing developments. They also require dry

sewer extension for developments within the Urban Growth Area in anticipation of future sewer connection (Pierce County, PALS staff, personal communication, 8/26/03).

Some jurisdictions have their own residential design standards. A jurisdiction's Community Plan will take precedent over Residential Design Standards (Pierce County, PALS staff, personal communication, 8/26/03).

For a copy of Residential Design Standards, go to: <http://www.piercecountywa.org/pc/services/home/property/pals/regs/regs.htm>.

### ***State Environmental Policy Act***

The State Environmental Policy Act (SEPA) was adopted in 1971 and is Washington's most comprehensive environmental protection law. It requires that environmental values be considered by local and state agencies when making decisions on land use proposals (DOE 2000). It provides substantive authority to jurisdictions to mitigate or deny projects based on special environmental protection policies adopted by the jurisdiction pursuant to SEPA (RCW 43.31C.060). There is both a procedural and informational gathering aspect and or substantive aspect to SEPA. Most SEPA litigation focuses on the procedural aspects because the substantive authority is discretionary. Local jurisdictions may deny or condition permits based on SEPA but they are not required to do so. As a result, SEPA's substantive authority is best utilized by citizens when attempting to persuade the original decision-maker to condition or deny a permit. At that stage, the citizen and decision maker can invoke SEPA's substantive policies to influence the decision. But once a decision is made, the ability to use substantive SEPA policies in an appeal process is almost non-existent. Because the use of substantive SEPA policies is usually a matter of discretion for the original decision-maker, there usually is little basis for appealing the use of this discretion. Only in cases where there has been an obvious abuse of discretion would an appeal be possible (David Bricklin, Bricklin, Newman and Dold, personal communication, dated 10/9/03).

Pierce County's substantive SEPA policies are identified in Pierce County Code Title 18D. Permit writers frequently ignore these policies. Citizens should be familiar with them and ask staff to utilize them in appropriate cases (David Bricklin, Bricklin, Newman and Dold, personal communication, dated 10/9/03).

If the project requires SEPA, the SEPA process begins when a development application is filed. It is then determined if the proposal is categorically exempt from SEPA or if the applicant must simultaneously submit an environmental checklist. This checklist asks the applicant to disclose information about the natural and built environment (transportation, utilities, and services). **NOTE: In order for citizens to review the SEPA determination, a copy of the underlying environmental checklist prepared by the applicant is also needed** (David Ortman, former director NW Office Friends of the Earth, personal communication, dated 10/01/03).

Mitigation measures are changes or conditions added to a proposal to avoid, minimize, or compensate for probable, significant, adverse impacts (DOE 2000). There are numerous categorical SEPA exemptions listed in WAC 197-11-800. Mitigation may involve almost

anything, such as paying impact fees to local school districts, or changing the design of the project to avoid impacts to wetlands or other sensitive areas.

Mitigation can also be based on information on adverse environmental impacts in the SEPA document (DOE 2003). **Note: Citizens have no ability to enforce mitigation conditions.**

The County may request additional reports and studies, during the threshold determination process, to determine the impacts to the environment and surrounding community from the proposed project. For instance, if there are traffic impacts to the surrounding community, the applicant may be required to submit a traffic impact analysis detailing current and predicted traffic patterns and counts from the project. The County will make a determination on the project after all required input has been received.

At present, SEPA notices are published in the *Eatonville Dispatch*, the paper of record. There is no requirement for the County to publish in other local newspapers. For a list of SEPA documents with open comment periods, go to: <http://www.ecy.wa.gov/apps/sepa/>.

The County sends its SEPA determination to affected agencies for their comments regarding the proposal. The comment period is open for 15 days from the date of issuance. Citizens are allowed to submit comments during this time frame as well.

**IMPORTANT - This is the time frame in which citizens should raise environmental concerns. The Hearing Examiner does not have authority over SEPA unless an appeal is filed. The time to provide your concerns on SEPA issues is when the comment period is open.**

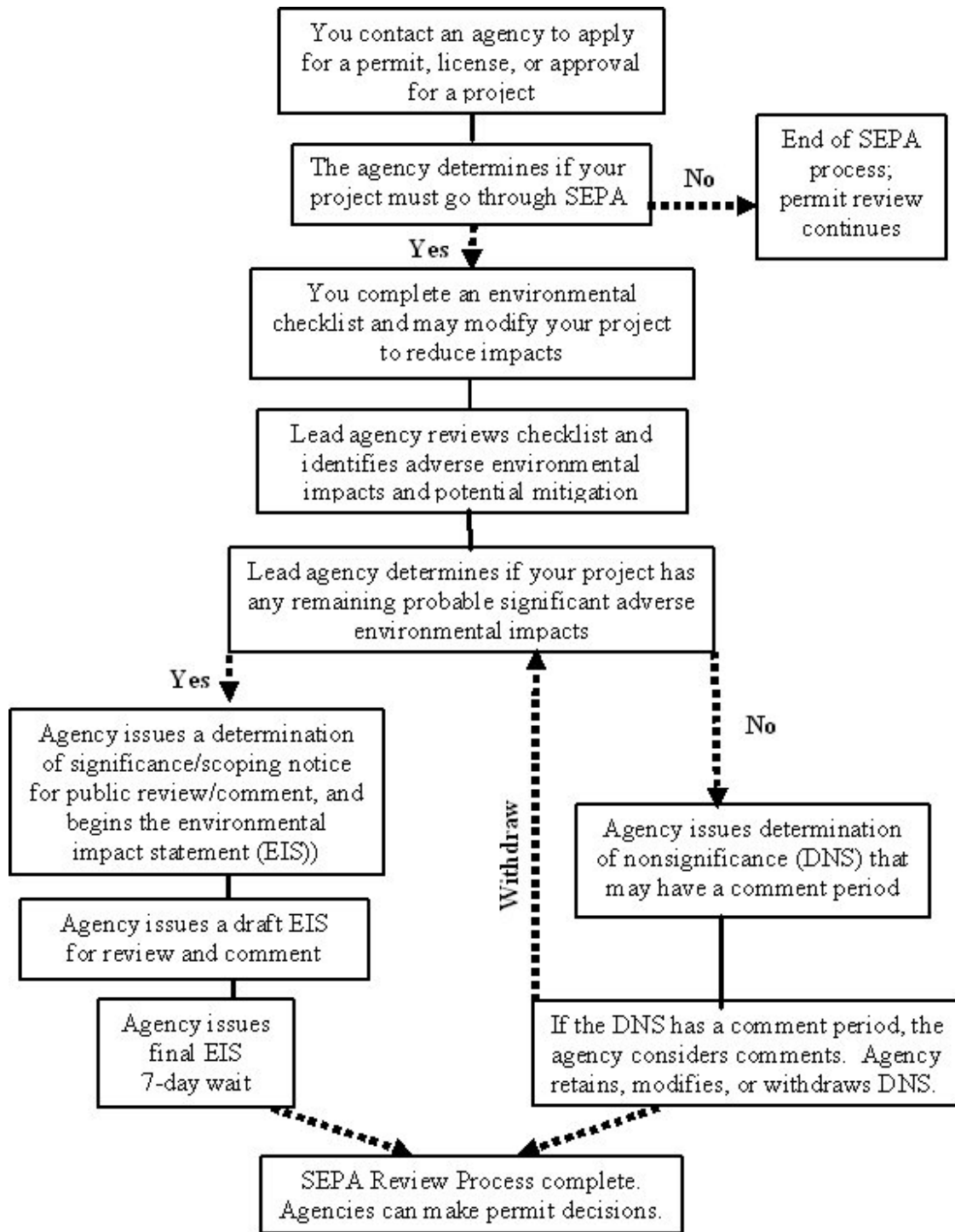
Not all development projects require public notice. For example, construction of a bulkhead does not require public notice signs to be posted on site. For this and other types of development, a NOA is posted at PALS only. Washington Administrative Code (WAC) 197.11.300 lists conditions under which public notice is given (Pierce County staff, Environmental Designee, personal communication, 8/22/03).

According to DOE (2000) the following are determinations that the Environmental Official will make in regards to SEPA:

1. **Determination of Nonsignificance (DNS)** – If the county finds the proposal is not likely to have a significant adverse environmental impact.
2. **Mitigated Determination of Nonsignificance (MDNS)** – County believes mitigation has been identified to reduce the impacts sufficiently.
3. **Environmental Impact Statement (EIS)** - If mitigation cannot be easily identified to sufficiently reduce the likely significant adverse impacts, an EIS will be needed. The Environmental Designee will issue a **Determination of Significance (DS)** which triggers the preparation of an EIS.

To appeal a SEPA determination, one must fill out form at the Pierce County Development Center and submit fee of \$1,050 before the end of the 14-day appeal period

(Pierce County staff, Environmental Designee, personal communication, 8/22/03). For legal assistance, check with the Washington State Bar Association listed in the Contact Section of the document.



Summary of SEPA process. Department of Ecology. Publication #00-06-043.

Contact the Environmental Designee for Pierce County at (253) 798-7165 for information on this process. For SEPA information, go to: [www.ecy.wa.gov/programs/sea/sepa/e-review.html](http://www.ecy.wa.gov/programs/sea/sepa/e-review.html) or call the Washington State Department of Ecology at (360) 407-6924.

### ***Shoreline Management Act***

The Shoreline Management Act (SMA) was enacted in 1971, and its purpose is to manage and protect the shorelines of the state by regulating development in the shoreline area. A major goal of the Act is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." Its jurisdiction includes the Pacific Ocean shoreline and the shorelines of Puget Sound, the Strait of Juan de Fuca, rivers, and streams and lakes above a certain size. It also regulates "wetlands" associated with these shorelines. The Shoreline Management Act is found in chapter 90.58 RCW. For an overview of this legislation, see "Introduction to Washington's Shoreline Management Act (RCW 90.58)", by the Department of Ecology in December of 1999.

The primary responsibility for administering this regulatory program is assigned to local governments. Local governments have done so through the mechanism of shoreline master programs, adopted under rules established by the Department of Ecology (DOE), that establish goals and policies that are implemented through use regulations. See chapter 173-26 WAC, Parts I and II. No substantial development is permitted on the state's shoreline unless a permit is obtained from the local jurisdiction.

On November 29, 2000, the DOE adopted new shoreline master program guidelines, Chapter 173-26 WAC, that were to provide cities and counties with a two-path approach to give them a choice in how they write and implement their Shoreline Master Programs. However, on August 27, 2001, the state Shorelines Hearings Board in *Association of Washington Business v. Department of Ecology*, SHB No. 00-037, invalidated these new guidelines on a number of grounds. The existing guidelines relating to shoreline master program amendments in chapter 173-26 WAC, Parts I and II were not affected by the Shorelines Hearings Board decision and remain in effect (MRSC 2003b).

For more information on the Shoreline Management Act, go to <http://www.ecy.wa.gov/programs/sea/shorelan.html> or call (360) 407-0271.

### **Plans, polices, and regulations that are sometimes are within Hearing Examiner's jurisdiction**

This section summarizes various Pierce County Development Regulations which are sometimes within Hearing Examiner's jurisdiction. The Hearing Examiner applies Pierce County regulations to the facts of a specific development application. The Hearing Examiner does not have authority to enforce state or federal regulations. The Hearing Examiner also has no ability to change or shape the County's development regulations. The Hearing Examiner must apply the development regulations as they are. In fact, in most cases, the Hearing Examiner must apply the development regulations that were in effect when the developer filed a complete application for a subdivision, building permit or similar permit. The filing of a complete application "freezes" the regulations on the date the application was deemed complete and vests the proposal. Many neighbors

opposing development proposals become involved only after the development application is filed. In many cases, this is too late.

For example, if the zoning allows apartments and a developer files an application for an apartment building, you cannot argue to the Hearing Examiner that the zoning should not allow apartments. The developer's application vests it to the zoning in effect which allows apartments (David Bricklin, Bricklin, Newman and Dold, personal communication, dated 10/9/03).

**If you want to protect your neighborhood, you must get involved when development regulations and Comprehensive Plans are being developed and amended. This is a critical stage in the development project because it sets the rules by which subsequent projects are judged. Pierce County is required to review and revise as necessary its Comprehensive Plan (usually every two years) and all its Development Regulations. Citizens who care about the issues should get involved in this process.**

Returning to the earlier example, even if zoning allows apartments in your neighborhood, there may be other regulations which allow you to impact the development. Traffic ordinances may place limits on the amount of traffic generated by the new development or may be used to assure that important road and intersection improvements are made (paid for by the developer). The Critical Areas Ordinance may be used to protect wetlands, streams, and wildlife habitat. Other regulations and codes may also come into play.

When confronted with a development proposal, you should consider the potential impact to each of these. Frequently projects are also subject to state or federal regulations. While these are beyond the scope of this booklet, we summarize some of these regulatory programs in later sections.

### ***Pierce County County-Wide Planning Policies***

The County-Wide Planning Policies (CWPPs) are written statements that establish a countywide framework for the development of growth management guidelines adopted by the County and its cities and towns (Pierce County, PALS staff, personal communication, 8/26/03).

The framework is intended to ensure consistency among all jurisdictions in addressing certain growth management issues. Pierce County adopted its County-Wide Planning Policies on June 30, 1992 with additional amendments in 1995 and 1997. The CWPPs are primarily used to guide the development of Community Plans and Development Regulations. They are not usually applicable to individual projects therefore; they will not be discussed here.

### ***Pierce County Comprehensive Plan***

The County's Comprehensive Plan was adopted in 1994 with the zoning code adopted in 1995. The Pierce County's Comprehensive Plan contains land use designations and policies. In urban areas, densities in Pierce County's zoning regulations are implemented

by net developed area. The Pierce County Comprehensive Plan contains various policies that address the designated Urban Growth Areas (Pierce County 2002a).

The Pierce County Comprehensive Plan was developed in response to the requirements of the Washington State Growth Management Act. The Plan integrates, developers' and citizens' ideas, concerns and preferences into statements of how the County should be developed, what development regulations should accomplish, what facilities and services levels are needed, and how publicly funded improvements should support these objectives. County regulation must be consistent with the Comprehensive Plan.

**IMPORTANT** – If you are opposed to a particular project, look for policies in the Comprehensive Plan that would support your position. Use this as your starting point in researching regulations. **This is helpful to decision makers and for mitigation.**

Generally speaking, Comprehensive Plan policies are not considered when evaluating an individual project. The idea is that the plan's policies are translated into specific code requirements and those codes, not the plan, are used to evaluate individual projects.

However, there are at least two exceptions. One, some codes specify that a project must be consistent with the Comprehensive Plan. Two, some jurisdictions have adopted SEPA policies which include their Comprehensive Plan policies. In either of those cases, Comprehensive Plan policies are relevant to evaluating specific projects (David Bricklin, Bricklin, Newman and Dold, personal communication, dated 10/9/03).

For a copy of the County's Comprehensive Plan online, go to:

<http://www.piercecountywa.org/pc/services/home/property/pals/landuse/landuse.htm>

### ***Community Plans***

Community Plans express the voice of local citizens in how the Comprehensive Plan and its development regulations will be carried out in specific communities. Community Plans indicate specific land use designations, appropriate densities, and design standards. Currently, five community plans are in the process of being developed in Pierce County (Pierce County 2003a). By September 2003, there were four community plans adopted by the County.

Copies of community plans are available at the Pierce County Development Center. A fee is charged for these plans based on the printing cost. Please contact the Development Center at (253) 798-3290 for document availability. Community plans, which are currently being developed, can be picked up free of charge by contacting Advance Planning at (253) 798-2785. For a copy of community plans, go to

<http://www.piercecountywa.org/PC/services/home/property/pals/aboutus/advanceplanning.htm>.

### **Plans, Policies and Regulations typically not under Hearing Examiner's jurisdiction**

This section summarizes regulations that are typically not under Hearing Examiner's jurisdiction, but require Hearing Examiner decisions to be consistent with Community Plans and Growth Management Act.

### ***Growth Management Act***

Washington cities and counties have prepared comprehensive plans for many years; however, growth management in Washington took on new meaning with the passage of the Growth Management Act (GMA) by the Washington State Legislature in 1990. The GMA was enacted in response to rapid population growth and concerns with suburban sprawl, environmental protection, quality of life, and related issues. The GMA has been amended several times, and is codified in many chapters but primarily in Chapter 36.70A RCW (MRSC 2003c). The Legislature did not prioritize the following goals, recognizing that each community would emphasize them differently (OCD 1999). The GMA requires the fastest growing counties and the cities within them to plan extensively in keeping with state goals on:

1. sprawl reduction,
2. concentrated urban growth,
3. affordable housing,
4. economic development,
5. open space and recreation,
6. regional transportation,
7. environmental protection,
8. property rights,
9. natural resource industries,
10. historic lands and buildings,
11. permit processing,
12. public facilities and services,
13. early and continuous public participation, and
14. shoreline management.

Nonetheless, the Growth Management Hearings Boards have held that in the planning process, “the land speaks first”, and that the initial focus should be on protecting critical areas and natural resource lands (forest, farms, and minerals). The Act required counties and cities to protect these lands before embarking on the rest of the planning process (RCW 36.70A. 060).

Only the state’s fastest growing counties and cities are required to fully plan under GMA. Counties are required to fully plan if their population is 50, 000 or more, they grew more than 10% in the 10 years preceding May 16, 1995 (or 17% after this date), any county that has grown more than 20% in 10 years, and any community which voluntarily elects

to plan under the GMA. However, the Act does establish some mandatory requirements for all counties and cities (OCD 1999). Twenty-nine counties in Washington State are either required to fully plan under the GMA or have chosen to do so. These counties make up about 95 percent of the state's population. The remaining ten counties must plan for critical areas and natural resource land only under the GMA (MRSC 2003c).

The GMA provides a framework for regional coordination. Counties planning under the GMA are required to adopt County-Wide Planning Policies to guide and achieve consistency among the plans adopted by the county and cities within the county. In the Central Puget Sound region, there is an additional layer of inter-jurisdictional planning required. King, Pierce, Snohomish, and Kitsap counties are required to adopt “multi-county planning policies” to achieve consistency among the plans of all counties and cities in this region (RCW 36.70A). Local comprehensive plans must include the following elements: land use, housing, capital facilities, utilities, transportation, and, for counties, a rural element. Shoreline master program policies are also an element of local comprehensive plans (MRSC 2003c).

The GMA establishes the primacy of the comprehensive plan. The comprehensive plan is the starting point for any planning process and the centerpiece of local planning. Development regulations (zoning, subdivision, and other controls) must be consistent with comprehensive plans. State agencies are required to comply with comprehensive plans and development regulations of jurisdictions planning under the GMA (MRSC 2003c).

Three Growth Management Hearings Boards resolve disputes concerning comprehensive plans and development regulations adopted under the GMA. The Governor has the authority to impose sanctions on cities, counties, and state agencies that do not comply with the GMA, as determined by the Growth Management Hearings Board (MRSC 2003c) though sanctions are extremely rare.

Appendix P provides more information on the GMA. For more information on the GMA, go to: <http://www.ocd.wa.gov/info/lgd/growth/law/> or call the Office of Community Development at (360) 725-2800.

### ***Forest Practices Act***

In 1974, the Washington State Legislature implemented the Forest Practices Act, Chapter 76.09 of the Revised Code of Washington. The Act defines a plan to protect public resources while assuring that Washington State continues to be a productive timber growing area. The Act regulates activities related to growing, harvesting or processing timber on all local government, state and private forest lands (DNR 2003).

The Department of Natural Resources (DNR) issues most logging permits. However in some situations, Pierce County is involved especially where the logging is a prelude to development and will not be followed by replanting (David Bricklin, Bricklin, Newman and Dold, personal communication, dated 10/9/2003). Prior to most site clearings, the applicant must have a permit to remove trees. Go to [www.wa.gov/redirDNR/splash.html](http://www.wa.gov/redirDNR/splash.html) for more information on the DNR.

For a copy of DNR Forest Practices, go to <http://www.dnr.wa.gov/forestpractices>.

### ***Endangered Species Act***

The Regulatory Branch of the U.S. Army Corps of Engineers (Corps) evaluates applications for permits for work in waters of the U.S. [33 CFR Parts 320 through 330; 40 CFR Part 230]. The Corps regulatory program is based on its authorities pursuant to the Rivers and Harbors Act of 1899, the Federal Water Pollution Control Act, as amended (Clean Water Act), and the Marine Protection, Research, and Sanctuaries Act of 1972 (Ocean Dumping Act). At the conclusion of the evaluation process, the Corps decides to either issue or deny the permit for the proposed work. The Corps permit decision is considered a Federal action that must comply with the Endangered Species Act (ESA). The ESA is administered by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). The NMFS has ESA jurisdiction over salmon, other marine fish, marine mammals, and marine reptiles. The USFWS has ESA jurisdiction over birds, terrestrial animals, plants, amphibians, and most freshwater fish (USACE 2003).

Under Section 7 of the ESA, the Corps must consult with the NMFS and the USFWS on its permit program on any permit application for proposed work which may affect threatened or endangered species, or their designated critical habitat. With listings of many fish species as threatened or endangered, the majority of permit applications in the state of Washington will likely involve some elements that require Section 7 evaluation. In addition to fish, other threatened and endangered plants and animals occur in various areas of the state (USACE 2003).

Under the Corps' Federal permit applications must be reviewed for the potential impact on threatened and endangered species pursuant to Section 7 of the ESA. The Corps, through informal and formal consultation procedures with the NMFS and USFWS, must evaluate information on the presence of listed species (including timing and life stages), habitat for such species and their prey sources, and other parameters. The information required for ESA evaluation must be prepared in the form of a Biological Evaluation (BE) which is utilized to assess project impacts to listed, and/or proposed species and designated and/or proposed critical habitat. The Corps will use the BE to determine whether the project may affect listed species or their critical habitat (USACE 2003).

If the Corps determines that work proposed in the permit application would have no effect on all threatened or endangered species, no further consultation with NMFS and USFWS is required. The Corps has developed guidelines for "No Effect" situations, for both freshwater and marine environments (USACE 2003).

If the Corps determines that the work proposed in a permit application may affect any threatened or endangered species, some kind of consultation with NMFS and USFWS is required. The two types of consultation are listed below:

### ***Informal Consultation***

If the effects of the proposed work on listed species would be beneficial, or the potential adverse impacts are insignificant and discountable, then the Corps determines that the project may affect, but not likely to adversely affect the species or critical habitat. The Corps would then forward the BE to NMFS and USFWS (based on the species affected) and request that they concur with the "not likely to adversely affect" determination. The consultation process ends when concurrence is granted. If NMFS or USFWS finds that the project will have significant adverse effects on listed species or critical habitat and can not concur with the "not likely to adversely affect" determination, then formal consultation commences.

### ***Formal Consultation***

If the proposed work may have more than insignificant and discountable adverse impacts to listed species or critical habitat, then the Corps determines that the project may affect or is likely to adversely affect the species or critical habitat. The Corps then defers to NMFS and USFWS to initiate formal consultation. The NMFS and USFWS prepare a Biological Opinion (BO) that documents whether the project will jeopardize the continued existence of the species or destroy or adversely modify critical habitat. If the BO finds that the project will jeopardize the species, then the Corps will generally deny the permit. Projects that will not jeopardize the species must comply with the terms and conditions of the BO. Formal consultation ends with receipt of the BO (USACE 2003).

For questions related to ESA and Corps policies and procedures, visit [http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=ERS&pagename=ERS\\_Compliance#esa](http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=ERS&pagename=ERS_Compliance#esa) or call (206) 764-5529.

### ***Clean Water Act***

Section 404 of the Clean Water Act requires that anyone interested in placing dredged or fill material into a water of the United States, including wetlands, must receive authorization prior to such activities. The Corps has been assigned the responsibility for administering the Section 404 permitting process (USACE 2003). Activities in wetlands for which permits may be required include, but are not limited to: placement of fill material, certain ditching activities, levee and dike construction, mechanized land clearing, land leveling/grading, most road construction, and dam construction.

The final determination of whether an area is a wetland and whether the activity requires a permit within the state of Washington must be made by the Regulatory Branch of the Seattle District Corps of Engineers (USACE 2003).

Veto Authority Section 404(c) of the Clean Water Act authorizes Environmental Protection Agency (EPA) to restrict or prohibit the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas. Because Section 404(c) actions have mostly been taken in response to unresolved permit applications, this type of action is frequently referred to as an EPA "veto" of the Corps

permit. The EPA has completed only 11 "veto" actions out of an estimated 150,000 permit applications received since the regulations went into effect in October 1979 (EPA 2003).

An EPA Regional Administrator initiates the action if he or she determines that the impact of a proposed permit activity is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat, or recreation areas.

The EPA (2003) summarizes the Section 404(c) "Veto" Process:

- **Intent to issue notice of Proposed Determination**

The EPA Regional Administrator states his or her intention to issue a public notice of a Proposed Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for discharge of dredged or fill material.

- **Notice of Proposed Determination** (within 15 days)

If the Regional Administrator is not satisfied that no unacceptable adverse effects will occur, a notice of the Proposed Determination is published. The Proposed Determination begins the process of exploring whether unacceptable adverse effects will occur.

- **Public comment period** (generally between 30 and 60 days)

A public hearing is usually held during the comment period.

- **Recommended Determination or withdrawal** (within 30 days of the public hearing or, if no public hearing is held, within 15 days of the end of the comment period)

The Regional Administrator prepares a Recommended Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for disposing of dredged or fill material. Alternatively, he or she withdraws the Proposed Determination.

- **Review of Recommended Determination** (30 days)

The EPA Regional Administrator forwards the Recommended Determination and the administrative record to the EPA Assistant Administrator for Water.

- **Final Determination** (60 days after receipt of the Recommended Determination)

The EPA Assistant Administrator affirms, modifies, or rescinds the Recommended Determination and publishes notice of the Final Determination in the Federal Register.

### ***Priority Habitats and Species***

The Priority Habitats and Species (PHS) Program fulfills one of the most fundamental responsibilities of the Washington Department of Fish and Wildlife (WDFW) which is to provide comprehensive information on important fish, wildlife, and habitat resources in Washington State. The PHS program is the principal means by which WDFW provides important fish, wildlife, and habitat information to local governments, state and federal agencies, private landowners, consultants, and tribal biologists for land use planning purposes (WDFW 2003a).

The PHS program is the agency's primary means of transferring fish and wildlife information from resource experts to those who can protect habitat. The PHS information is used to screen Forest Practice Applications, Hydraulic Project Applications, SEPA reviews, Growth Management Act requirements, development of Habitat Conservation Plans, landscape-level planning, ecosystem management; and for statewide oil spill prevention planning and response (WDFW 2003a).

According to WDFW (2003a) the PHS program addresses three central questions:

- Which species and habitat types are priorities for management and conservation?
- Where are these habitats and species located?
- What should be done to protect these resources when land use decisions are made?

The following documents are available from the PHS program:

- **Priority Habitats and Species List** - Identifies and defines which species and habitats are priorities, and it outlines criteria used for choosing them.
- **Management Recommendations for Washington's Priority Habitats and Species** - These detailed documents identify the needs of fish and wildlife based on the best available science. Guidelines for their incorporation in management decisions are provided.
- **Geographic Information System (GIS) maps** - Display locations and extent of priority species and habitats on 29 million acres in Washington State (WDFW 2003a).

For more information on the PHS program, call the WDFW at (360) 902-2543 or go to [www.wa.gov/wdfw](http://www.wa.gov/wdfw).

### ***Hydraulic Project Approval***

The WDFW has the responsibility of preserving, protecting, and perpetuating all fish and shellfish resources of the state. To assist in achieving that goal, the Washington State Legislature passed a state law now known as the "Hydraulic Code" (See RCW 75.20.100-

160). Although the law has been amended occasionally since it was originally enacted, the basic authority has been retained (WDFW 2003b).

### ***What Is The Purpose Of The Law?***

Damage or loss of fish and shellfish habitat results in direct loss of fish and shellfish production. The enactment of RCW 75.20.100-160 was recognition by the state Legislature that virtually any construction within the high water area of the waters of the state has the potential to cause habitat damage. It was also an expression of a state policy to preclude that potential from occurring. The law's purpose is to see that construction is done in a manner to prevent damage to the state's fish, shellfish, and their habitat. By applying for and following the provisions of the Hydraulic Project Approval (HPA) issued under RCW 75.20.100-160, most construction activities around water can be allowed with little or no adverse impact on fish or shellfish (WDFW 2003a).

### ***What Types Of Activities Are Subject To The Law?***

The major types of activities in freshwater requiring an HPA include, but are not limited to: streambank protection; construction of bridges, piers, and docks; pile driving; channel change or realignment; conduit (pipeline) crossing; culvert installation; dredging; gravel removal; pond construction; placement of outfall structures; log, log jam, or debris removal; installation or maintenance (with equipment) of water diversions; and mineral prospecting.

Major saltwater activities requiring an HPA include: construction of bulkheads, fills, boat launches, piers, dry docks, artificial reefs, dock floats, and marinas; placement of utility lines; pile driving; and dredging.

It is important to emphasize that the above are only examples of major types of activities requiring an HPA and that any construction activity within the ordinary high water line in fresh or salt water requires an HPA, even if the activity is outside the water at the time it is undertaken (WDFW 2003a).

### ***How Do I Know Where The Ordinary High Water Line Is Located?***

This line is usually identified by examining the bed and banks of the water along the shore to determine where action of the water has created a distinct mark upon the soil with respect to upland vegetation. Note that this line is not the same as the "controlled pool level" where there is a control structure. If there are questions, contact a WDFW office for assistance. See contact section for more information.

### ***What Other Information Is Available?***

Chapter 220-110 WAC was adopted by the WDFW to guide administration of RCW 75.20.100-160. Additionally, "Irrigation and Fish" and "Gold and Fish" booklets provide information specific to the relationships between the law and irrigation and mineral prospecting activities, respectively. Copies of the above can be acquired from any WDFW office. Department regional offices may also have additional pamphlets related

to specific types of activities which require HPAs and/or a list of local contacts to assist in determining what other permits may be required (WDFW 2003b).

### ***How to apply for an HPA?***

The form to apply for an HPA is called a Joint Aquatic Resource Permit Application (JARPA). The JARPA form consolidates seven permit application forms for federal, state, and local permits. The JARPA is used to apply for an HPA and also for Water Quality Certifications or Modifications from the Department of Ecology, Aquatic Resource Use Authorizations from the Department of Natural Resources, Corps permits, and Shoreline Management Act permits from participating local city or county agencies. Currently, not all local government agencies use JARPA. The JARPA form is available from any WDFW office, as well as from any DOE, Corps, or participating local government offices. Copies of the JARPA form must be submitted to all participating agencies that require a project permit (WDFW 2003b).

For a copy of the Hydraulic Code Rules, go to <http://www.wa.gov/wdfw/hab/hpa/hpahcp.htm>. For a copy of the JARPA form, go to: <http://www.ecy.wa.gov/programs/sea/pac/jarpa.html>.

## **OTHER USEFUL REPORTS AND INFORMATION**

There are other reports and information that might be useful in preparing testimony or conducting research. They are summarized in this section.

### **Buildable Lands Report**

Since 1997, Pierce County and its 23 cities and towns have worked collaboratively in a program to collect annual development permitting data, inventory developable land, and enhance information relating to wetlands and steep slopes. Commonly referred to as the Buildable Lands Program, this collaborative program is aimed at satisfying the 1997 amendments to GMA and improving accuracy in the information used to determine the capacity of the County's Urban Growth Areas (Pierce County 2002a).

The first report generated by this program, referred to as the Buildable Lands Report, consolidates incorporated and unincorporated land development data for all urban areas within Pierce County. Through this effort, a substantial amount of information has been collected to assist local jurisdictions in evaluating the effectiveness of their adopted comprehensive plans and associated regulations, as well as documenting the methodology in calculating the 20-year population and employment capacity of the adopted Urban Growth Areas (Pierce County 2002a).

Collectively, the statistics derived from the analyses indicate Pierce County's existing Urban Growth Areas contain the necessary land to accommodate planned growth. A sufficient amount of housing units and employment capacity exists within the Urban Growth Areas. While the analyses may indicate some jurisdictions do not have the housing capacity to meet their needs, the overabundance of other jurisdictions meet the County's overall needs (Pierce County 2002a).

Copies of this report are available for viewing on-line at <http://www.piercecountywa.org/PC/services/home/property/pals/landuse/buildablelands.htm>

The report and maps can also be obtained on compact disk by calling Pierce County Planning and Land Services at (253) 798-2785. The report is also available for viewing at local libraries (Pierce County 2002a).

### **How-to-win development issues book**

The Community and Environmental Defense Services' book *How to Win Land Development Issues* can be downloaded for free from their website at <http://www.ceds.org/publications.html>. This book details how to work with developers to get the kind of development the community wants (1000 Friends of Washington 2003b).

### **Revised Code of Washington**

Washington's laws are compiled into the Revised Code of Washington. The rules of Washington State agencies are compiled into the Washington Administrative Code (WAC). The RCWs, WACs, and other materials are available at the following website: <http://slc.leg.wa.gov> (1000 Friends of Washington 2003b).

### **PRACTICAL ADVICE FROM EXPERIENCED PEOPLE**

#### **Marian Berejikian, Friends of Pierce County Executive Director**

If there are numerous people involved with a project, we hold a meeting before the LUAC meeting, and after reviewing the county files for any "red flag" items (usually wetland and traffic studies, or anything that raises concerns with process). Copies are made from the files at the County and brought to the meeting.

Others and I attend the LUAC meetings to see what issues the staff, applicant, and Commission have with the project. Depending on how controversial the project is, I will testify at the hearing and submit a letter one-week prior to the LUAC hearing. I take notes and review county files after the hearing to double-check on the issues. I will make an appointment with the planner and other staff on the same day to discuss any outstanding or controversial issues. I go through the staff report and look up their cited regulations and see if I agree with their interpretation. I also look through other County regulations to see if I can find anything that supports my position.

Before the Hearing Examiner public hearing, I will meet again with the group to strategize what each of us will say. Each person sticks to his or her topic and one letter summarizes everyone's position. **It is strongly suggested that research be performed on impacts from similar projects to see previous decisions.** There is standard material in the County Code and available on the Internet about development impacts. This material should be included as an exhibit or an attachment to your presentation. I sometimes include photos of the proposed development site and surrounding properties as exhibits, particularly if there are Critical Areas.

Usually, I have reasons why the Hearing Examiner should deny a project, but just in case he approves it, I include recommended conditions of approval in my letter that I would like to see imposed on the project.

At the hearing, a copy of the letter is presented to the Hearing Examiner and County staff, so it can be entered into the record. If there are issues that did not get raised or I would like to submit additional material, I will ask the Hearing Examiner to leave the record open for two weeks in order for me to submit the information. During the open record period, anyone can submit comments.

**Kirk Kirkland, long time community activist and past board member of 1000 Friends of Washington, Tahoma Audubon Society, and Friends of Pierce County**

I learned three valuable lessons in my dealings with the Hearing Examiner over a period of 10 years as an environmental activist in Pierce County.

1) Just the facts, please.

After a long line of neighbors stood up asking the hearing examiner to stop a subdivision which bordered on a salmon stream called Minter Creek, I noticed the Hearing Examiner was unmoved by their appeals to keep their neighborhood from changing from rural to suburban sprawl. But when a neighborhood activist pointed out that the surface water facility was going to be placed in the wetland and stream buffer, he suddenly started taking notes. Such placement violated the rules for stream and wetland buffers and surface water regulations. This simple fact resulted in a re-design of the subdivision. The number of homes on the acreage had to be reduced to make room for the surface water facility on dry land. The result changed the economics of the subdivision and it was not profitable to be built in that location without the higher densities made possible before the surface water facility was relocated.

**Lesson learned:** The Hearing Examiner may have wanted to help the neighbors, but he is limited to what the law allows him to rule upon. He helped the neighbors only when he saw a way to require the right design and enforcement of a specific regulation.

2) Using Endangered Species as a “trump card”.

A gravel mine was operating in the county for 10 years under permit of the Hearing Examiner. The gravel mine ignored over a dozen of the requirements on the permit which included:

a) spilling water off the mining lake into an adjacent wetland, neighbor’s property and into the Nisqually River.

b) using 400 trucks a day to carry the gravel instead of transporting gravel by train as promised in the permit.

c) allowing a water well to be drilled in a 10 acre plot that was set aside for an endangered species as a condition in the mining operation permit.

**Lesson Learned** - Unless a specific regulation protects a particular endangered species in that defined location, don't count on the Endangered Species Act to work as a trump card in county regulations.

### 3) Overturning the Hearing Examiner.

At times, the Hearing Examiner can make an error. When he makes an error, it is very expensive, but not impossible to overturn his decision.

The Hearing Examiner ruled that even though Park Junction Resort is located in a volcanic hazard area which is just 10 minutes away from Mount Rainier and even though the resort did not have an early warning system to protect their 1,700 guests, that the resort was exempt from the regulation that limited the resort's convention facility to 300 people even if the guests were meeting in "public assembly."

The resort planned to house 500 people in a convention center and 270 to 520 guests in an adjoining lodge, another 1,000 people in condos. A county administrator decided that because the resort was a privately owned structure, the resort did not have to consider any of its structures as providing for 'public assembly'. Basically the rule as interpreted said no protection was available for groups of 300 people or more who might be sleeping at the resort or meeting in the convention hall when a volcanic mudslide came roaring down the side of Mt. Rainier.

The Hearing Examiner also ruled incorrectly that the County Council had not ruled specifically against development in volcanic hazard areas in the Nisqually Valley or Puyallup Valley. In fact the Council's Nisqually Community Plan limited development to 1 home on 40 acres. In the Puyallup Valley, development was allowed only because an early warning system provided for the evacuation of residents. No such system was available in the Nisqually Valley.

After considerable legal expense, and two years later, a Thurston County Superior Court Judge overruled the County's Hearing Examiner who was confused about private ownership of structures where 300 people would gather in 'public assembly.' The reduction of the resorts size by 40% was enough to affect the profitability of the resort's operation.

The resort owner then appealed to the Court of Appeals. But had the County Administrator enforced the 300 person limit at the start of the permit process, the developer could have saved millions of dollars in environmental studies and legal costs and the environmental community could have saved tens of thousands in court costs.

**Lesson learned:** Even when the law is in your favor, overturning the Hearing Examiner's decision is a high stakes monetary gamble.

**Betsy Stubbs has served on several Pierce County Committees including: Thun Field Master Plans, Solid Waste Advisory Committee, South Hill Community Planning Board and the South Hill Advisory Committee.**

When testifying, be concise, informative and respectful. It is appropriate to suggest or seek other alternatives that would facilitate problem solving. Complaining, griping or negative outbursts are not appropriate. Attack the issue, not the person.

Most officials realize that if you care enough to participate in proceedings, you do represent public opinion. Very often you can offer first-hand information or history that is not included in reports. Focus on what is best for your area and make your neighbors and community proud.

## CONTACT INFORMATION

<u>Agency and Duty</u>	<u>Physical Address</u>	<u>Phone Number</u>
1) Army Corps of Engineers <i>Permits for filling wetlands, or work in navigable waters</i>	Federal Center South 4735 E. Marginal Way S. Seattle, WA 98124	(206) 764-3495
2) Washington State Dept. of Ecology <i>SEPA</i>	300 Desmond Dr. Olympia, WA 98504	(360) 407-6922
3) Washington State Dept. of Fish and Wildlife Habitat Department <i>Permits work in or near the water</i>	600 Capitol Way Olympia, WA 98504	(360) 902-2534
4) Washington State Dept. of Natural Resources Forest Practices Division <i>Logging permits</i>	1111 Washington St. P. O. Box 47012 Olympia, WA 98504-7012	(360) 902-1400
5) Growth Management Program	906 Columbia St. SW 3 <sup>rd</sup> floor P. O. Box 48300 Olympia, WA 98504	(360) 753-2222
6) Washington State Bar Assoc. Environmental & Land Use Law	500 Westin Building 2001 Sixth Ave. Seattle, WA 98121	(206) 727-8200
7) Pierce Co. Planning and Land Services <i>Development permits</i>	Pierce County Annex 2401 S. 35 <sup>th</sup> St. Tacoma, WA 98409	(253) 798-7200
8) Hearing Examiner	Stephen Causseaux Jr. 902 South 10 <sup>th</sup> St. Tacoma, WA 98405	(253) 272-2206
9) Pierce County Superior Court <i>Appeal of HE decision</i>	930 Tacoma Ave. S. Room 110 Tacoma, WA 98402	(253) 798-7455

**Other contacts:**

10) Pierce Co. Advance Planning <i>GMA, Comp. Plan</i>	Pierce County Annex 2401 S. 35 <sup>th</sup> St. Tacoma, WA 98409	(253) 798-2785
11) Friends of Pierce County	P. O. Box 2084 Gig Harbor, WA 98335	(253) 851-9524

Here is a list of County contact phone numbers for additional information:

- Zoning (253) 798-3739
- Wetlands – Resource Management (253) 798-3739
- Grading & Filling – Development Engineering (253) 798-3739
- Building Code (253) 798-3741
- Health – Septic and well (253) 798-3740
- Sewer Utilities (253) 798-4050
- Fire Prevention – Fire Marshall (253) 798-7179

**Go here for full contact sheet for all departments:**

<http://www.piercecountywa.org/pc/services/home/property/pals/aboutus/staff.htm#bldg-div>

**Go here for an organizational chart of county contacts:**

<http://www.piercecountywa.org/pc/services/home/property/pals/aboutus/organiz.htm>

## DEFINITIONS

(Prepared by the Washington State Planning and Community Affairs Agency, 1980)

**BUFFER: From the CARLS** – Means an area contiguous with a critical area that is required for the integrity, maintenance, function, and structural stability of the critical area.

**From Proposed Chapter 18.25** – Means a tract or strip of land that separates one type, category or use of land from another. Buffers typically serve to provide a defined area between a more intensive use of land and a land use that is less intensive. Buffers are typically referenced by the associated critical area such as wetland buffer, riparian buffer, etc.

**From Title 19A** – Pierce County Comprehensive Plans Appendix B – Means open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen one use or property from another so as to visually shield or block noise, lights, or other nuisances. A “buffer” may also mean undisturbed areas of natural vegetation contiguous to a critical area which helps maintain the natural functions of the critical area.

**BULK REGULATIONS:** The combination of requirements which establish the maximum size and shape of a building and its location on the lot. Their purpose is, first, to assure sufficient light, air, and open space on the ground and at all levels of a building and, second, to maintain a compatible and pleasing appearance. Components of bulk regulations include: size and height of building; location of exterior walls at all levels with respect to lot lines, streets, or other buildings; building coverage; gross floor area of buildings in relation to lot area (floor area ratio); open space (yard) requirements; and amount of lot area provided per dwelling unit.

**COMPREHENSIVE PLAN:** A document or series of documents for guiding the future development of a county or city, or a part of, and is based upon the stated long term goals and objectives of a community. Such a plan is the result of public input, study, and analysis of existing physical, economic, environmental and social conditions and a projection of what future conditions are likely to be. Certain elements of a comprehensive plan, such as land use and circulation elements, are required by the enabling legislation are required by the enabling legislation (Chapters 35A.63.061 and 36.70.330 RCW). Other elements, such as those dealing with housing, recreation, open space or conservation, are optional elements under enabling laws, but some are required by other state statutes or federal programs. Once adopted, the plan serves as a guide for making land use changes, preparation of implementing ordinances (zoning, platting), preparation of capital improvement programs and the rate, timing, and location of future growth.

**CONDITIONAL USE AND PERMITS:** Certain uses because of their size, special requirements, or possible safety hazards are expected to have detrimental effects on surrounding properties, but may be compatible with the other uses if they are properly designed. Such uses are classified in zoning ordinances as conditional

uses requiring conditional use permits. A conditional use permit is granted after a careful review by either the board of adjustment, hearing examiner, or zoning adjuster. The zoning ordinance prescribes the necessary standards (“conditions”) which will make the use acceptable in the district. Most zoning ordinances specify permitted, accessory, conditional, and limited use activities within each zone designation and establish criteria for determining the conditions to be imposed. Public utilities, schools, churches, and community centers are often considered as conditional uses in a single-family residential zone. (See Chapter 36.70 RCW).

**CRITICAL AREAS:** Means wetlands, flood hazard areas, fish and wildlife habitat areas, aquifer recharge areas and geologically hazardous areas.

**DENSITY:** The number of families, persons or housing units per unit of land usually expressed as “per acre”. Density is controlled through zoning, based upon the density indicated in the comprehensive plan.

**DENSITY TRANSFER:** This technique permits unused allowable densities in one area to be transferred to another. Where density transfer is permitted, the average density over an area remains constant, but allows internal variations. Within a single development, the result would normally be a clustering of buildings on smaller lots while retaining some land in open space. On a larger scale, this is a technique for concentrating residential densities adjacent to existing urbanized areas with utilities and outlying areas left open. In recent years, the application of the density transfer has been expanded into transfer of development rights.

**DEVELOPMENT RIGHTS:** When a piece of property is purchased, the purchaser also acquires a number of rights towards the use of that property, such as the right to build a home, a right to develop commercially, a right to remove gravel or other minerals, a right to use water, a right to raise crops. Which of these rights are purchased with each property depends on the zoning, other applicable regulations and the terms of the purchase. Acquisition of development rights is a method for controlling urban growth and conserving natural resources. Essentially, the concept involves buying the future development potential for land and permits the owners to continue the existing use, usually agriculture, in urbanizing areas. Hence, a county could acquire a fee or any lesser interest necessary (development rights) to conserve selected open space, timber, or agricultural lands. A county could also acquire fee title to such property and convey or lease the property back to its original owner using covenants or contractual agreements to limit the future use of the property.

**ENVIRONMENTAL IMPACT STATEMENT (EIS):** A fact finding report which is required by either the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA) before a government may authorize a proposed project, program, law or any other major activity requiring a governmental authorization. The EIS usually contains a description of the proposal and its location, its environmental effects, plus available alternatives to the proposal and possible ways to mitigate the expected negative effects. The

purpose of the EIS is to make known to the decision makers what is likely to happen if the proposed project or program goes ahead and thus, help them arrive at an informed decision.

**FISH AND WILDLIFE HABITAT AREAS:** Means those area identified as being of critical importance to maintenance of fish, wildlife, and plant species, including areas with endangered, threatened, and sensitive species have a primary association; habitats and species of local importance, commercial and recreations shellfish areas; kelp and eelgrass beds, herring, and smelt spawning areas; naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat; waters of the State, lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity, or private organization; State natural area preserves and natural resource conservation areas.

**FOREST LAND:** All land which is capable of supporting a merchantable stand of timber and it not being actively used to a use which is incompatible with timber growing.

**FOREST PRACTICE:** Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

**GROWTH MANAGEMENT:** A wide range of techniques in combination to determine the amount, type, and rate of growth, and directed to designated areas. Comprehensive plans often form the backbone of the system. Techniques used to execute growth management policy may include zoning, emphasizing flexibility, capital improvements, public facilities ordinances, urban growth boundaries, population ceilings, and others. Some of the sophisticated systems have departed dramatically from the traditional land-use controls using a variety of innovative devices to achieve particular policies. Growth management differs conceptually from conventional approaches in that it does not accept the likely population growth rate as inevitable but as something open to question and subject to determination by public policy and action.

**HEARING EXAMINER:** An appointed official with the authority conduct hearings and make decisions on applications for zone changes, county sub- divisions, variances, conditional uses, or other land use matters. The range of responsibilities varies with each jurisdiction, and the decision may have the effect of a recommendation to the legislative body or that of an administrative decision appeal-able within specified time to the legislative body. The first hearing examiner system in the state was established by King County in 1969. Several others have followed, and the 1977 legislature amended the state's planning laws to formally enable counties and cities to adopt hearing examiner systems as an alternative to the traditional powers and duties of planning commissioners. (See Chapters 335.63, 35A.63, 58.17 and 36.70.970 RCW). The hearing examiner system is a growing trend in local administration nationwide, because it relieves planning commissions from administrative decisions so that they may concentrate on policy issues of comprehensive planning and rewriting of zoning ordinances which are their primary responsibilities.

**ILLEGAL USE:** A use, building or activity is illegal if it is prohibited by the zoning ordinance and was established after the zoning ordinance became effective, as compared to a nonconforming use which is a prohibited use that was established before the zoning ordinance became effective.

**LAND USE:** A term used to indicate the utilization of any piece of land. The way in which land is being used is the land use. A study of the existing use of land usually provides the basis for the formulation of a land use plan in a community and the establishment of district boundaries in a zoning ordinance.

**LEGISLATIVE HEARING:** Hearing (not heard by Hearing Examiner) to review facts which call for passing laws; heard by Council.

**LOT OF RECORD:** A lot which is part of a subdivision officially recorded or a lot or parcel described by metes and bounds, and the description of which has been so recorded.

**MANUFACTURED HOUSING:** Includes several types of permanent dwellings at least 32 feet by 8 feet in size built in one or more units in a factory and transported to the home site for assembly along public roads on its own running gear. When in place, it is designed to be connected to public utilities. Since June 15, 1976, manufactured homes are building to federal construction and safety standard, under the jurisdiction of the Department of Housing and Urban Development.

**MITIGATION:** Mitigation means: (1) Avoiding the impact altogether by not taking a certain action or parts of an action; (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts; (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; (5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or (6) Monitoring the impact and taking appropriate corrective measures.

**NATURAL ENVIRONMENT:** Natural environment" means those aspects of the environment contained in WAC 197-11-444(1), frequently referred to as natural elements, or resources, such as earth, air, water, wildlife, and energy.

**OPEN SPACE:** Land with non-development or minimum development types of uses (examples: golf courses, agricultural uses, parks, very low density residential development) or land left undeveloped for aesthetic reasons (examples: greenbelts, floodways, steep unstable slopes, or wetlands). Open space can also be classified based on ownership, for example: 1) privately owned open space: the yards or acreage associated with private homes or farms; 2) common use of open space: land designated at the time of recording a plat or site plan as open space for the common access and use of the residents of the development, or 3) public open

space: publicly owned land for the active or passive recreational use of the public.

**ORDINANCE:** A legislative enactment of a county or city. It is a governmental statute or regulation and its adoption requires a public hearing and publication of the complete text of the ordinance in a local newspaper.

**PARTIES OF RECORD:** Persons or entities who have testified before the Hearing Examiner, listed their names on a sign-up-sheet (available during hearings), specifically advised the Planning Department of Examiner by individual written letter of their desire to become a party of record or the applicant or appellant or any of the applicant's or appellant's agents.

**PLANNING:** The process of setting development goals and policy, gathering information and developing alternatives for future action based on the previous analysis is commonly referred to as planning. In a community, planning is a joint effort between the citizens, elected officials, planning commission, and sometimes, planning staff. It consists of identifying the physical, social, and economic factors which affect and are part of the community; defining the community's goals and objectives; and after careful evaluation of the information and possible alternatives for the future, selecting a course of action which is most likely to bring the community closer to its desired goals. The products of this process usually include a comprehensive plan (goals, policies, generalized land use, housing, transportation, and other elements), plus one or more regulatory ordinances to carry out the plan. A comprehensive plan may range from a single page with policy statements to a series of reports, plans and programs. It may consist of a single plan for the entire jurisdiction or separate plans for geographic sub-areas of a city or county. Planning is a continuous process, because community goals and attitudes change, new information and philosophies emerge, and new economic and social conditions develop. This requires periodic re-evaluation of the previously established values and programs.

**PLANNING COMMISSION:** A group of citizens appointed by the mayor or chairman of the board of county commissioners to research, survey, analyze, and make recommendations on current and long range land development policies, resource management, implementing ordinances and administrative decisions such as subdivision plats, shoreline permits, and rezones requests. The planning commission functions as a fact finding and advisory board to the elected officials, but its main function is to recommend a comprehensive plan and implementing measures to be adopted by the city council or board of county commissioners.

**PLAT:** A plat is a map representing a subdivision of a parcel of land into lots, blocks, and streets or other divisions and dedications. A preliminary plat is an approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and restrictive covenants to be applicable to the subdivision. A final plat is the final drawing of the subdivision prepared for filing for record with the county auditor and containing all requirements set forth (see Chapter 58.17 RCW, platting and Subdivision Act).

**POLICY:** A more specific statement than a goal which describes a particular course of action to accomplish the purposes of the comprehensive plan. Policies represent the will of the people translated into decision oriented statements which are continuously available to the legislative body while evaluating a new project or a proposed change in ordinance.

**REGULATORY MEASURES:** The legal tools available to the local political unit under the police power to implement a local comprehensive plan or other documents expressing community goals. Regulatory measures include but are not limited to zoning, subdivision regulations and building permits, shoreline permits and occupancy permits.

**QUASI JUDICIAL:** Fact-finding hearing to establish facts pursuant to law/ordinance passed and/or to determine if violation occurred.

**RESOLUTION:** In the proceedings of city council or a board of county commissioners, a resolution is something less formal and binding than an ordinance. Generally speaking, it is only a formal statement of opinion, or determination adopted by the governmental body. Adoption of a resolution does not require a public hearing or publication of the complete text in the local newspaper as is the case with an ordinance.

**STATE ENVIRONMENTAL POLICY ACT (SEPA):** The State Environmental Policy Act of 1971 (SEPA) is the most comprehensive environmental law in the state and recognizes explicitly that “each person has a fundamental and inalienable right to a healthful environment.” SEPA applies to actions by every governmental unit in the state including state agencies, counties, cities, and special purpose districts. Its primary purpose is to provide a solid data base for public decision making. The Act requires that prior to a government authorization of any project or program, the effects on the environment be assessed and made available to the decision makers and the public. This requirement applies not only to projects, but to new plans, programs and laws as well. All major actions require that a detailed report, the Environmental Impact Statement (EIS) be prepared explaining the environmental effects of the proposed action and possible alternative actions. The state’s act is modeled closely after the National Environmental Policy Act (NEPA) of 1969.

**SHORELINE MANAGEMENT ACT:** With the passage of the State’s Shoreline Management Act in 1971, the legislators recognized that the shores and waters of (RCW 90.58) the state are among the most valuable and fragile of our natural resources and established a management process that consists of locally administered permit systems and local shoreline master programs which were developed based on state guidelines. The Act applies to all marine waters in the state, to all streams with average flow of 20 cubic feet per second (c.f.s.), to all lakes with 20 acre minimum surface area, and to a 200 foot wide shore area adjacent to the above mentioned water bodies collectively, the area subject to the Act are referred to as “Shorelines of the State”. The Act applies equally to private and public land (except Federal).

**SHORELINE MASTER PROGRAM:** A comprehensive management program prepared by each jurisdiction with “shorelines of the state” within its boundaries as required by the Shoreline Management Act of 1971 (RCW 90.58). The master programs were developed by citizen advisory committees based on state’s guidelines and the policies of the Shoreline Management Act. The master programs consist of goals, policies, and regulations and are used as basis for reviewing permit applications for development along shorelines.

**SHORELINES OF THE STATE:** All the water area which are subject to the Shoreline Management Act of 1971, plus the shorelands and wetlands adjacent to them.

**SHORELINE DEVELOPMENT PERMIT:** A permit obtained from the local government before any substantial development worth \$1000 or more may proceed if located on “shorelines of the state”. The building of a single family home plus a few other activities are exempted from obtaining the permit but still have to comply with the regulations contained in the shoreline master programs.

**SHORT PLAT:** A short plat is the map representing a short subdivision (RCW 58.17.020).

**SHORT SUBDIVISION:** A division of land into four or less lots, tracts, parcels, sites, or Subdivisions for the purpose of sale or lease (Chapter 58.17.020 RCW).

**SITE PLAN:** A scale drawing showing proposed uses and structures for a parcel of land as required by the applicable regulations. It includes lot lines, lot area, streets, parking space, private roadways, walkways, topographic features, reserved open space, buildings and other structures, major landscape features, and the location of proposed development than shown in a plat, and may also include density and statistical data.

**SUBDIVISION:** Subdivision is both the process and the result of laying out a parcel of undivided land into lots, blocks, streets, and public areas. The state law (Chapter 58.17.020, RCW) defines “subdivision” as the division of land into five or more lots, tracts, parcels, or sites for the purpose of sale or lease and subject to applicable subdivision regulations. The division of and into four or less parcels is defined as “short subdivision and subject to local short plat regulations.

**SUBDIVISION REGULATIONS:** Local ordinances that regulate the conversion of undivided land into building lots for residential or other purposes. The regulations establish requirements for streets, utilities, site design and procedures for dedicating land for open space or other public purposes to the local government or for fees in lieu of dedication, and prescribe procedures for plan review and payment of fees. Subdivision regulations which govern the land conversion process, and zoning ordinances which establish permitted land uses, have been local government’s primary development and land-use tools (See RCW 58.17).

**TIMBER:** Means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.1270 includes Christmas tress and short-rotation hardwoods.

**VARIANCE:** A variance is a relaxation of the terms of a zoning ordinance or another regulatory document in order to avoid unnecessary hardships to a landowner. A variance usually deals with some measurable physical requirements such as height, bulk, or setbacks and is based upon a finding that such relaxation will not be contrary to public interest. A typical use of the variance procedure would be to permit construction of a home on a lot that is too narrow to have the required side yards, because it was platted before the adoption of the current side yards regulations. The variance mechanism is not to be used in hardship situations that are the result of an action by the landowner, but only when the particular physical surroundings, shape of the property or topographic conditions render strict compliance with the zoning ordinance impractical. A mere inconvenience or desire to make more money are not regarded as sufficient reasons for variance. Authority to decide variances is vested in the board of adjustment or a hearing examiner. The administrators have to be aware that the cumulative effect of repeated variances may significantly change the character of an area in violation of plans and policies. On the other hand, repeated requests for similar variances in the same vicinity indicate that a revision of existing regulations might be needed.

**ZERO LOT LINE:** A development approach in which a building is sited on one or more lot lines with no yard. Conceivably, three of the four sides of the building could be on the lot lines. The intent is to allow more flexibility in site design and to increase the amount of usable open space on the lot between buildings, especially in urban areas with high density and small lots. Virtually all zoning ordinances retain yard requirements; where zero lot line developments have been permitted, they have been handled through variances or planned unit development procedures or other devices which allow for site plan review. The few ordinances which specifically authorize the zero lot line approach do so as an exception to prevailing regulations and under clearly defined circumstances. Definitions of incompatibility often are difficult to make and public bodies or officials may be required to make individualized determinations of transitional needs and requirements in doubtful cases.

**ZONING ORDINANCE:** Zoning ordinance is the local law adopted by the governing body to assure orderly development according to specific standards established for the general public welfare and to implement the comprehensive plan. A zoning ordinance may govern the types of permitted land uses, 'the maximum density or minimum lot size, building heights, set backs and so on. Zoning ordinances usually consist of a text and a zoning. district map. The map divides the jurisdiction into districts (zones) for different types of development, while the text specifies what regulations apply to each district, including general provisions and administration. Generally, this conventional description of a zoning ordinance still applies, but many modern ordinances have advanced beyond the

traditional format. They have a greater variety of districts and employ various techniques to provide flexibility such as floating zones, conditional use permits, performance standards, and Planned Unit Developments (PUDs).

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**APPENDICES A-L**

**Appendix A**

**2003 Land use summary for unincorporated Pierce County**

Source: Pierce County Planning and Land Services

## **Appendix B**

### **Master application for land use actions**

Source: Pierce County Planning and Land Services

## **Appendix C**

### **Description of pre-development meetings**

Source: Pierce County Planning and Land Services

## **Appendix D**

### **Vested rights summary and County Code**

Sources: City of Gig Harbor, development workshop and Pierce County Planning and Land Services

**Appendix E**  
**Notice regulations**

Source: Pierce County Planning and Land Services

# **Appendix F**

## **Application Filing**

Source: Pierce County Planning and Land Services

## **Appendix G**

### **Pierce County Hearing Examiner Code**

Source: Pierce County Planning and Land Services

**Appendix H**  
**Development processing area assignments**  
**(map of planners)**

Source: Pierce County Planning and Land Services

## **Appendix I**

### **Decision by Snohomish County HE John Galt**

Source: Snohomish County, Office of the Hearing Examiner

## **Appendix J**

### **Citizen participation and the public process**

Source: Office of Community Development, Short Course of Local Planning

**Appendix K**  
**Guide to Public Hearings of the**  
**Pierce County Hearing Examiner**

Source: Pierce County, Office of the Hearing Examiner

**Appendix L**  
**Pierce County Office of the Hearing Examiner,**  
**Rules of procedure for hearings**

Source: Pierce County, Office of the Hearing Examiner

## **Appendix M**

### **Reconsideration of decision of the Pierce County Hearing Examiner form**

Source: Pierce County Planning and Land Services

## **Appendix N**

### **2004 Fee Schedule**

Source: Pierce County Planning and Land Services

## **Appendix O**

### **Shoreline Management Act summary**

Source: Office of Community Development, Short Course on Local Planning

## **Appendix P**

### **Growth Management Act summary**

Source: Office of Community Development, Short Course on Local Planning