

#1
12/13/11

Ordinance 879

An ordinance amending portions of Clallam County Code Chapters 26.10 and 27.01

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

Incorporation of testimony.

The Board adopts and incorporates herein the recitals made by staff, and public testimony and documents received at the public hearing.

Incorporation of specific findings made at hearing.

The Board of County Commissioners desires to eliminate a local appeals process to the Board of Commissioners on land use proceedings addressed in Chapter 26.10 of the Clallam County Code (CCC) and as referenced and incorporated in other portions of the County Code. The Board also finds:

- a. The provision for a local, closed record administrative appeal requires a substantial commitment of County resources and staff;
- b. The provision for a local, closed record administrative appeal to the Board, acting in its executive capacity, impairs the right of residents of Clallam County to petition the Board acting in its legislative capacity;
- c. The provisions for a mandatory 120-day project review period were based upon repealed RCW 36.70B.090; the provisions of RCW 36.70B.080 on project review should be adopted herein;
- d. The provisions of CCC 27.01 for State Environmental Protection Act (SEPA) review that incorporate a local appeals process to the Board of Commissioners on land use proceedings addressed in Chapter 26.10 of the Clallam County Code, should be amended to be consistent with CCC 26.10;
- e. Repeal, amendment, or additions to the County Code shall be set forth below in legislative-amendment-style, with text underlining for additions and amendments, and strike-through for repeal; and
- f. The amendments to CCC 26.10 and to CCC 27.01 are purely procedural in nature and do not directly or indirectly modify the purposes, intent, or effect of the regulations under the amended County Code and Policy provisions.

Amendment.

All language and provisions of Chapters 26.10 and 27.01 of the Clallam County Code, except as repealed, amended, or added to below, shall remain in full force and effect. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid at law, such decision shall not affect the validity of the remaining portions of this Ordinance.

BE IT ORDAINED, THE BOARD OF CLALLAM COUNTY COMMISSIONERS hereby adopts the following amendments to the County Code as more specifically set forth in the below-inscribed sections.

Section 1: CCC 26.10.010 is repealed, amended, or added to as follows:

26.10.010 Authority.

The County of Clallam (hereinafter referred to as “the County”) adopts this chapter under the State Growth Management Act, Chapter 36.70A RCW, as amended, ~~and~~ the Regulatory Reform Act, Chapter 36.70B RCW, as amended, and section 5.25 of the Clallam County Charter.

Section 2: CCC 26.10.020 is repealed, amended or added to, as follows:

26.10.020 Purpose and objectives.

The purpose of this chapter is to implement the requirements of the Washington State Regulatory Reform Act, Chapter 347, Laws of 1995, as amended, by consolidating development application and review with the environmental review process in order to avoid duplicative regulation and environmental analysis, and ~~also~~ to provide an overlay permit processing procedure ordinance for Clallam County development regulations. ~~The purpose of this chapter is also to meet other requirements of the Act, including the requirement that development applications be reviewed for consistency with the Comprehensive Plan and development regulations adopted pursuant to the Growth Management Act, Chapter 36.70A RCW.~~

~~—The objectives of this chapter are to encourage the preparation of appropriate information early in the permit process, to provide the general public with an adequate opportunity for review and comment, and to provide the development community with a standardized permit process and predictability. In order to achieve this, Clallam County finds the following:~~

~~—(1) Given the extensive investment that public agencies and a broad spectrum of the public are making and will continue to make in the Clallam County Comprehensive Plan and development regulations, it is essential that review of development permit applications start from the fundamental land use planning choices made in the Comprehensive Plan and regulations. If the applicable regulations or plan identify the type of land use, specify residential density, and identify and provide for funding of public facilities needed to serve the proposed development and site, these decisions at a minimum provide the foundation for further review. The review process, including the environmental review process under Chapter 43.21C RCW (SEPA) and the consideration of consistency, should start from this point and should not reanalyze these land use planning decisions in making a permit decision, unless the County finds that the plan and development regulations do not fully foresee site-specific issues and impacts identified through the application review process.~~

~~—(2) Comprehensive plans and development regulations adopted by the County under Chapter 36.70A RCW (the Growth Management Act), subarea plans, and environmental policies, laws and rules adopted by the County, the State, and the federal government, address a wide range of environmental subjects and impacts. These provisions typically require environmental studies and contain specific standards to address various impacts associated with a proposed development, such as building size and location, drainage, transportation requirements, and protection of environmentally sensitive areas. When the County applies these existing requirements to a proposed project, some or all of a project’s potential environmental impacts may be avoided or otherwise mitigated. Through the integrated project review process described in this chapter, the Administrator will determine whether existing requirements, including the applicable regulations or plans, adequately analyze and address a project’s environmental impacts. Project review generally should not require additional studies and mitigation under Chapter 43.21C RCW (SEPA) where existing regulations adequately address a proposed project’s probable significant adverse environmental~~

~~impacts. Development regulations generally enable project review through the application of established scientific standards, required studies and standard mitigation measures].~~

Section 3: CCC 26.10.040 is repealed, amended, or added to as follows:

26.10.040 Definitions.

(1) “Appellant” means a person, organization, association or other similar group who files a complete and timely appeal ~~of a decision~~ in accordance with Clallam County Code.

(2) “Applicant” means a person (or persons) who is the legal owner of the subject property or the representative authorized in writing of the owner of the subject property and who has applied for a land use permit. If a personal representative has been authorized in writing to proceed on behalf of the property owner with an application, the County shall deal exclusively with that representative as the primary contact for the application proposal.

(3) “Application” means any land use or environmental permit or license required from the County for a proposed development or action subject to this chapter, including, but not limited to, building permits subject to SEPA, zoning conditional use or variances, land divisions, shoreline substantial development permits or conditional uses or variances or exemptions, and critical areas permits. ~~For those applications subject to this chapter, three categories or classifications of the different permit types and processes are established, titled Types I, II, and III.~~

(4) Closed Record Appeal. A “closed record appeal” is held by the appropriate decision-making body to act on such appeal on the record or decision following the conclusion of an open record hearing held on an application whereby the appeal involves a review of the record or decision with no new evidence or information allowed to be submitted unless it could not with reasonable diligence have been discovered and produced at the open record hearing. Only written appeal argument will be allowed by the person(s) filing such appeal, the applicant if different than the appellant, and any parties of record. Argument shall be based on the record. The closed record appeal is held at either a regularly or specially scheduled meeting by the appropriate authority to act on such appeal. ~~An example of a closed record appeal would be an appeal to the Board of Commissioners of the Hearing Examiner’s decision on a Type III permit.~~

(5) “Complete application for processing” shall refer to a development application subject to this chapter, which has been determined by the review staff to contain the minimum application requirements specified under CCC 26.10.310. Determining an application to be complete for processing shall not prevent the review authority from requesting additional information relating to the proposal if that is necessary for reaching an informed decision.

(6) Days. All “days” mean calendar days unless otherwise specified.

(7) “Decision” means a final determination on a land use permit application by the designated decision-making body, or a final decision on other matters addressed by this chapter.

(8) “Decision-making body” means that officer or body prescribed by applicable County regulations as having the authority to approve, approve with conditions, or deny a project permit, or render a final decision, in accordance with adopted County land use regulations, or a final decision on other matters addressed by this chapter; this may include the Administrator of the applicable regulation, the Hearing Examiner or the Board of Clallam County Commissioners, as prescribed.

(9) Open Record Appeal Hearing. An “open record appeal hearing” is conducted by a single hearing body or officer as the appropriate decision-making body which is authorized by the Board of County Commissioners to conduct such hearing in accordance with the applicable regulation that creates the record through testimony and submission of evidence and information under procedures

prescribed by the adopted regulation(s). ~~An example of an open record appeal hearing would result from an appeal of the Administrator's decision on a Type I permit.~~

(10) "Open record hearing" means a hearing conducted by a single hearing body or officer as the appropriate decision-making body ~~as authorized by the Board of County Commissioners~~ to conduct such hearing in accordance with the applicable regulation that creates the record through testimony and submission of evidence and information under procedures prescribed by the adopted regulation(s). ~~An example of an open record hearing would be a Hearing Examiner hearing on a Type III permit.~~

(11) "Parties of record" includes the applicant and those persons who have provided oral testimony at an open record, land use hearing or who are parties to a final decision on other matters addressed by this chapter ~~have provided written comments that form part of the public record and those persons who have requested notification of the permit decision.~~

(12) "Permit type" means a categorization of different permits and actions into types due to similarity of procedures.

(13) Project Permit or Project Permit Application. See "Application."

(14) Reconsideration. A request for "reconsideration" of the decision-making body's decision may be made by any party of record in accordance with CCC 26.10.600 for the purposes of providing additional information or evidence on the application which was not available at the time of the public hearing or the date of decision, or for the purposes of clerical or factual corrections.

(15) "Record" means the oral testimony and written documents presented and accepted at an open record, land use hearing or submitted by parties for a final decision on other matters addressed by this chapter ~~mailed to the County as part of the public comment.~~

(16) "Vested application," for the purposes of this chapter, means a permit application subject to the County regulations in effect on the date submitted, provided the said application is determined to be complete for processing pursuant to CCC 26.10.320. If further information is requested pursuant to CCC 26.10.320(2), vesting shall occur on the date on which the final information that results in a complete application for processing is submitted. The application shall be considered vested until final approval has been granted or the permit application has expired. The term "vested application" shall not in any way imply or otherwise indicate the granting of approval of a permit, or imply license to proceed with development related to the underlying vested application.

Section 4: CCC 26.10.200 is repealed, amended, or added to as follows:

26.10.200 Applicability and exemptions.

This chapter shall apply to land use permit applications as listed in CCC 26.10.210 for land developments pursuant to the following titles and chapters of the Clallam County Code. Unlisted Any other land use permit applications are is exempt from the provisions of this chapter. This chapter shall apply to other matters and final decisions as referenced in other titles and chapters of the Clallam County Code.

- (1) Chapter 33.57 CCC, Sign Code;
- (2) Chapter 26.01 CCC, Planning Agency;
- (3) Chapter 26.04 CCC, Hearing Examiner Code;
- (4) Chapter 27.01 CCC, Environmental Policy Code;
- (5) Chapter 27.12 CCC, Critical Areas Code;
- (6) CCC Title 29, Land Division Code;
- (7) CCC Title 33, Zoning Code;

(8) Chapter 35.01 CCC, Shoreline Management Code.

Section 5: CCC 26.10.210 is repealed, amended, or added to as follows:

26.10.210 Categories of land use application types.

(1) The decision-making body authorized for a certain type of permit or action is specified by the applicable regulation. For the purposes of this section, the Clallam County Hearing Examiner shall be the decision-making body for Type III permits filed under those regulations stipulating the Board of Adjustment or the Shorelines and Sensitive Areas Committee as the review authority.

(2) Types of Permits or Actions and Decision-Making Body. Land use applications which are subject to this chapter are classified into three major categories based on the permit review process: (i) Type I, administrative with no public notice; (ii) Type II, administrative with limited public notice; and (iii) Type III, quasi-judicial with full public notice.

(a) Type I – Administrative without Public Notice. Type I permit decisions are made by the Administrator or his/her/their designee. Administrative review shall include the application of clear, objective and nondiscretionary standards that require the exercise of professional judgment about technical issues. Type I permits are exempt from all permit processing requirements as set forth in this chapter, except for appeal procedures set forth in Part Six, and limitations to permit processing timelines set forth in CCC 26.10.540. Appeal of Type I permits shall be heard by the Hearing Examiner in an open record appeal hearing. ~~Decisions on appeals of Type I permits made by the Hearing Examiner may be appealed through a closed record appeal procedure to the Board of Commissioners.~~ Type I permits include the following types of land use applications:

- (i) Boundary line adjustments pursuant to CCC Title 29, Land Division Code;
- (ii) Lot combinations pursuant to CCC Title 29, Land Division Code;
- (iii) Interpretations of the Zoning Code or other development regulations, which are not associated with the processing of a specific permit Issued by the Department of Community Development;
- (iv) Review of special reports pursuant to Chapter 27.12 CCC, Critical Areas Code;
- (v) Short plat alterations or vacations pursuant to CCC Title 29, Land Division Code;
- (vi) Large lot division alterations or vacations pursuant to CCC Title 29, Land Division Code;
- (vii) SEPA threshold decisions not associated with other land use permits regulated under this chapter;
- (viii) Shoreline exemptions pursuant to Chapter 35.01 CCC;
- (ix) Certificate of compliance and buffer averaging requests pursuant to Chapter 27.12 CCC, Critical Areas Code.

(b) Type II – Administrative with Public Notice. Type II permit decisions are made by the Administrator or his/her/their designee. Administrative review shall include the application of clear, objective and nondiscretionary standards that require the exercise of professional judgment about technical issues. Type II permits shall be reviewed for all permit processing requirements as set forth in this chapter. Appeal of Type II permits shall be heard by the Hearing Examiner in an open record appeal hearing. ~~Decisions on appeals of Type II permit made by the Hearing Examiner may be further appealed through a closed record appeal procedure to the Board of Commissioners.~~ Type II permits includes the following types of land use applications:

- (i) Preliminary short plat approvals pursuant to CCC Title 29, Land Division Code;

(ii) Preliminary large lot division approvals pursuant to CCC Title 29, Land Division Code;

(iii) Administrative variance applications pursuant to Chapter 33.57 CCC, Sign Code.

(c) Type III – Quasi-Judicial. Type III permit decisions are made by the Hearing Examiner, with appeals ~~to Superior Court or other appropriate tribunal of Type III permit decisions to be heard by the Board of Commissioners~~. Authority and procedures for open and closed record hearings before the Hearing Examiner are guided by this chapter, Chapter 26.04 CCC, Clallam County Hearing Examiner Code, the rules of proceedings of the Clallam County Hearing Examiner, and any other applicable development regulation. Type III permits includes the following types of land use applications:

(i) Preliminary approval of a subdivision or binding site plan pursuant to CCC Title 29, Land Division Code;

(ii) Variances pursuant to CCC Title 29 CCC, Land Division Code;

(iii) Zoning conditional use and variances pursuant to CCC Title 33, Zoning Code;

(iv) Critical area variances and reasonable use exceptions pursuant to Chapter 27.12 CCC, Critical Areas Code;

(v) Shoreline substantial development, conditional use and variances pursuant to Chapter 35.01 CCC, Shoreline Management Code, and the Shoreline Master Program;

(vi) PUDs, cluster, master planned resorts pursuant to CCC Title 29, Land Division Code, and CCC Title 33, Zoning Code);

(vii) Variances pursuant to Chapter 33.57 CCC, Sign Code.

Section 6: CCC 26.10.220 is repealed, amended, or added to as follows:

26.10.220 Summary tables of land use permit type categories and processes.

(1) Overview of Permit Process for Each Permit Type.

Permit Action Type and Permit Procedure			
	Type I	Type II	Type III
Notice of application and public notice required	Yes (including: Summary notice of decision)	Yes (including: Notification of neighboring residents, posting of property, and summary notice of permit decision)	Yes (including: Posting of property, notification of neighborhood residents, and notification in local newspaper)
Public hearing required	No	No	Yes
Final decision by (decision-making body)	Administrator	Administrator	Hearing Examiner
Type of appeal process and appeal authority	Two appeals: Open record appeal hearing before Hearing Examiner followed by a closed record appeal before the Board of Commissioners appeal	Two appeals: Open record appeal hearing before Hearing Examiner followed by a closed record appeal before the Board of Commissioners appeal	One appeal: Closed record appeal before the Board of Commissioners Appeal to Superior Court or appropriate tribunal

	<u>to Superior Court or appropriate tribunal</u>	<u>to Superior Court or appropriate tribunal</u>	
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(2) Categories of Land Use Permit Types.

List of Permits or Actions by Category		
Type I Administrative	Type II Administrative	Type III Quasi-Judicial (Hearing Examiner)
Boundary line adjustments and lot combinations pursuant to CCC Title 29, Land Division Code	Short plats pursuant to CCC Title 29, Land Division Code (new applications)	Preliminary decision on subdivisions (new, alteration, vacations) and binding site plans; all variances to CCC Title 29, Land Division Code
Administrative interpretations pursuant to CCC 26.10.555 which are not associated with the processing of a specific permit issued by the Department of Community Development	Large lot divisions pursuant to CCC Title 29, Land Division Code (new applications)	Zoning conditional uses and variances pursuant to CCC Title 33, Zoning Code
Review of special reports, buffer averaging and issuance of certificate of compliance pursuant to Chapter 27.12 CCC, Critical Areas Code	Administrative variances pursuant to Chapter 33.57 CCC, Sign Code	Variances and reasonable use exceptions pursuant to Chapter 27.12 CCC, Critical Areas Code
Alteration or vacation of a short plat or large lot division pursuant to CCC Title 29, Land Division Code		Shoreline substantial development, conditional use and variance permits pursuant to Chapter 35.01 CCC, Shoreline Management Code, and the Clallam County Shoreline Master Program
SEPA threshold decisions not associated with other land use permits listed in this table		PUD, cluster developments, MPRs pursuant to CCC Title 33, Zoning Code
Shoreline exemptions pursuant to Chapter 35.01 CCC, Shoreline Management Code		Variances pursuant to Chapter 33.57 CCC, Sign Code

Section 7: CCC 26.10.230 is repealed, amended, or added to, as follows:

26.10.230 Optional land use pre-application meetings.

(1) All prospective applicants for Type I – III permits may apply for a pre-application meeting on the pre-application form provided by the Administrator. The pre-application meeting fees, paid to the Department of Community Development, will be applied to the subsequent land use permit application, if applicable. The pre-application meeting shall take place at the County courthouse unless otherwise agreed.

(2) The purpose of the pre-application meeting is to provide the applicant with the best available information regarding the application requirements and development information necessary for review prior to expenditure of the application fees and scheduling of the application review process. The pre-application meeting provides an opportunity for the applicant, staff and other agencies to informally discuss and review the proposed application. The pre-application meeting shall include review of the application and permit requirements, fees, review process and schedule, applicable standards, plans, policies, and laws.

(3) Scheduling of the pre-application meeting should be made as soon as practicable from within fifteen (15) calendar days of the date of the request is submitted on forms provided by the Administrator unless otherwise authorized by the applicant, along with the appropriate fee in accordance with Chapter ~~3.305.100~~ CCC, Consolidated Fee Schedule. If for any reason key staff is unable to attend a scheduled pre-application meeting, the applicant shall have the opportunity to reschedule the meeting for a later time during which pertinent staff are available to attend.

(4) The Administrator shall endeavor to provide a brief, written summary of the meeting to the applicant within ten (10) calendar days unless otherwise authorized by the applicant. The summary shall refer to applicable code sections that apply to such proposals and describe any additional issues which may require applicant to research or legal opinions that provide additional information as needed. ~~The summary shall also state that the findings of the report shall be in accordance with adopted regulations as they apply and shall not bind or prohibit the County's future application or enforcement of all applicable regulations.~~

(5) The discussion at the pre-application meeting or content of the summary of the pre-application meeting shall not bind or prohibit the County's future enforcement of applicable regulations.

Section 8: Part Three section header is repealed, amended, or added to as follows:

Part Three. Land Use Permit Processing – General Requirements

Section 9: CCC 26.10.340 is repealed, amended, or added to as follows:

26.10.340 Application review criteria and agency comment.

(1) Application review criteria for Type I – III permits shall be governed by and be consistent with the fundamental land use planning policies which have been established in the comprehensive plans and development regulations. The review process shall consider the type of land use allowed at the proposed site, the density and intensity of the proposed development, the infrastructure available and needed to serve the development, the cumulative effects the development may have in relation to similar developments in the vicinity, the characteristics of the development and its consistency with development regulations. In the absence of applicable development regulations, the applicable

development criteria in the comprehensive or subarea plan adopted under CCC Title 31 and Chapter 36.70A RCW (the Growth Management Act) shall be determinative.

(2) Application Review and Agency Comment.

(a) The purpose of reviewing an application is to ensure that adequate information is contained in the application materials to demonstrate consistency with applicable comprehensive plans, development regulations and other applicable County codes. The project planner will coordinate the involvement of agencies responsible for the review of the proposals under his/her authority.

(b) The project planner assigned to the permit application shall circulate the application to the appropriate review agencies, including other County Departments or Divisions of the Department of Community Development. Comments shall be returned to the project planner within ten (10) days.

(3) Optional Consolidated Review.

(a) When requested by the applicant, the County shall provide a single application review and approval process covering all development permits required by an applicant for all or part of a project action and shall designate a single permit coordinator for such review. Review fees are established by Chapter ~~3.305.100~~ CCC, Consolidated Fee Schedule. All notices required shall provide an explanation of each permit application type being applied for and shall also include the determination of completeness, notice of application and notice of decision as specified in this chapter.

(b) If an applicant elects the consolidated permit review process, the determination of completeness, notice of application, and notice of decision must include all project permits being reviewed through the consolidated permit review process.

(c) In the case of consolidated permit review of Type I or II permits, the Administrator shall make the final decision unless appealed.

(d) In the case of consolidated project permit review which includes a Type III permit, the Hearing Examiner shall conduct the consolidated open record public hearing and shall make the final decision, ~~subject to appeal procedures set forth in CCC 26.10.630.~~

Section 10: Part Four section header is repealed, amended or added to, as follows:

Part Four. Public Notice for Land Use Applications

Section 11: CCC 26.10.400 is repealed, amended, or added to as follows:

26.10.400 Notice of development applications.

For all Type II and III permits, a notice of development application is required which shall comply with this section.

(1) Within ~~fourteen (14)~~ days of issuing a determination of completeness under this chapter and no less than ~~fifteen (15)~~ days prior to a public hearing, if any, the County shall issue a notice of development application for those project permits specified as Type II or III permits pursuant to this chapter. This notice does not substitute for any other required notice but may be combined with other notices where feasible. The notice shall include, but not be limited to, the following:

- (a) Name of the applicant;
- (b) Date of application;
- (c) Dates of the determination of completeness and the notice of application;

- (d) Location and description of the development, including an address or road name and legal description;
- (e) Requested permits, actions, and/or studies;
- (f) Statement of the public comment period, including SEPA comments, which shall be not less than ~~fourteen (14)~~ days nor more than ~~thirty (30)~~ days following the date of the notice of all development applications. The notice of application may include the notice of public hearing where feasible;
- (g) Statement providing information about the right of any person who is a party of record to comment on the application, to receive notice of and participate in any hearings and to request a copy of the decision once made;
- (h) Identification of existing environmental documents that evaluate the proposed project and location where the application and any studies can be reviewed;
- (i) The County staff contact person and phone number;
- (j) Date, time and place of the public hearing or public meeting, whichever is applicable;
- (k) Statement of the SEPA threshold determination, if applicable, if one has been made at the time of notice or the date the permit is to be issued;
- (l) Statement that the decision on the application ~~should will~~ be made within 120 days of the date of the determination completeness, except as provided in CCC 26.10.540;
- (m) Statement of preliminary determination of consistency with applicable development regulations and the Comprehensive Plan and of those development regulations that will be used for project mitigation and the determination of consistency;
- (n) The names of other permit agencies that may have jurisdiction over the application to the extent known by either the applicant or Clallam County.

Section 12: CCC 26.10.420 is repealed, amended, or added to as follows:

26.10.420 Public hearing limitation.

(1) There shall be no more than one open record hearing ~~and one closed record appeal conducted by the County~~ on any application regulated by this chapter, except for those applications which are associated with a determination of significance under Chapter 43.21C RCW, SEPA, and Chapter 27.01 CCC, SEPA Code.

(2) If an applicant so requests, a hearing on any project permit ~~may shall~~ be combined with any hearing held by another local, state, regional, federal, or other agency; provided, that the hearing is held within the geographic boundary of the County; and provided, the joint hearing can be held within the time period ~~guidelines~~ specified in this chapter or the applicant agrees to an alternate schedule in the event that additional time is needed in order to combine the hearings.

Section 13: Part Five section header is repealed, amended, or added to as follows:

Part Five. Land Use Application Review and Approval Process

Section 14: CCC 26.10.530 is repealed, amended, or added to as follows:

26.10.530 Procedures for open record public hearings or open record appeal hearings.

(1) Procedures for Open Record Public Hearings. Open record public hearings and open record appeal hearings shall be conducted in accordance with the hearing body's rules of procedure and

shall create or supplement an evidentiary record upon which the body will base its decision in addition to the procedures set forth by this chapter. Questions directed to the staff or the applicant shall be posed by the chair at its discretion. In cases where scientific standards and criteria affecting project approval are at issue, the chair shall allow orderly cross-examination of expert witnesses presenting reports and/or scientific data and opinions. The decision-making body may address questions to any party who testifies at a public hearing. The chair shall open the public hearing and, in general, observe the following sequence of events:

(a) Staff presentation, including submittal of any administrative reports prepared for the permit decision or as response to an appeal, if applicable.

(b) Applicant presentation, including submittal of any materials.

(c) Testimony or comments by the public germane to the matter.

(d) Rebuttal, response or clarifying statements by the staff, the applicant, the appellant and the parties of record at the chair's discretion.

(e) The evidentiary portion of the public hearing shall be closed and the decision-making body shall deliberate on the matter before it.

(2) Hearings shall be electronically recorded and such recordings shall be a part of the official record. Copies of the recordings shall be made available to the public for reasonable costs. Transcripts of the hearings are not provided unless requested and paid for by the requester.

(3) Rights and Responsibilities of Parties.

(a) Clallam County has the right to present evidence and testimony, object, make motions, arguments, recommendations and all other rights essential to a fair hearing.

(b) Clallam County has the responsibility to provide public notice in compliance with this chapter, provide a staff report at least seven (7) days prior to a hearing, provide a recommendation, present materials at hearings, provide the decision-making body with documentation relevant to the case, and provide revised plans if received within seven (7) days of the hearing.

(c) Every applicant or appellant shall provide the decision-making body with material that supports his/her case, be prepared for questions at the public hearing, and be courteous to all who participate in the proceedings.

(d) Every party of record, including the applicant or appellant, if applicable, shall have the right to present evidence and testimony at hearings, ~~except as expressly limited for closed record appeal hearings as set forth in CCC 26.10.630~~. The right of parties of record to cross-examine, object, submit motions and arguments shall be at the discretion of the decision-making body. The decision-making body may impose reasonable limitations on the number of witnesses and length of testimony, as well as the amount and style of cross-examination.

(e) Parties of record shall conduct themselves with civility and deal courteously with all involved in the proceedings.

Section 15: CCC 26.10.540 is repealed, amended, or added to as follows:

26.10.540 Time limit for final decision – Exceptions.

(1) One Hundred Twenty (120) Day Time Limit. The final decision on project permit applications categorized as Type II – III ~~should shall~~ be made within 120 days from the date of the determination of completeness. The time limit for the processing of Type I permits ~~should shall~~ not exceed 120 days from the date of application.

(2) Excluded Time Periods. In determining the number of days that have elapsed after the County has notified the applicant that the application is complete for processing, the following periods shall be excluded:

(a) Any period during which the applicant has been requested by the County to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the County notifies the applicant of the need for additional information until the date the County determines the additional information satisfies the request for information or fourteen (14) days after the date the information has been provided to the County, whichever is earlier;

(b) If the County determines that the information submitted by the applicant under subsection (2)(a) of this section is insufficient, it shall notify the applicant of the deficiencies and the procedures under subsection (2)(a) of this section shall apply as if a new request for studies had been made;

(c) Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW, Chapter 197-11 WAC (SEPA), and Chapter 27.01 CCC (SEPA Code);

(d) Any period for administrative appeals of project permits or SEPA appeals not to exceed ~~ninety~~-(90) days for open record appeal hearings or ~~sixty~~-(60) days for closed record appeal hearings;

(e) Any extension of time mutually agreed upon by the applicant and the County;

(f) Any reconsideration action to the Administrator or Hearing Examiner.

(3) Time Limits Exceptions for Certain Applications. The 120-day time limit shall not apply if a project permit application:

(a) Requires an amendment to the Comprehensive Plan text or map, or a development regulation;

(b) Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.07A.200; or

(c) Is substantially revised by the applicant, consistent with CCC 26.10.330(3).

(4) Overview of Standard Permit Process Timelines.

Standard Process Timelines <u>Guidelines</u> by Permit Category			
Timeline Element	Type I	Type II	Type III
A determination of complete application for processing, or incomplete application, shall be issued 28 days from the date the application is submitted.	No	Yes	Yes
For applications determined to be incomplete, a new determination of completeness or incompleteness shall be issued 14 days from the date the requested new information has been submitted. This process shall be repeated until the application is deemed complete for processing.	No	Yes	Yes
Once deemed complete for processing, the review authority should <u>shall</u> provide a decision on the underlying permit within 120 days for the date of completeness.	Yes (from date of application)	Yes	Yes
Appeal Period – A permit issued by Clallam County that is subject to this chapter shall not be acted upon within 14 days	Yes	Yes	Yes

of the date the decision is placed in the mail, to allow for any appeals of the decision.			
Appeal Process – The review authority on for an appeal provided for in received pursuant to this chapter should shall issue a decision on the appeal within 90 days of submittal of application for administrative or SEPA appeals, and within 60 days of application for closed record appeal hearings.	Yes	Yes	Yes
Note – Exceptions to these timelines are specified under CCC 26.10.330(3) and 26.10.540.	Yes	Yes	Yes

(5) Time Limit Extensions. If the County is unable to issue its final decision within the **allowed** time limit **guidelines**, it shall provide written notice of this fact to the project applicant; provided, that any extension of such time limit for a permit decision shall not exceed one additional time period according to permit type or action. The notice shall include a statement of reasons why the time limit has not been met and an estimated date for issuance of the notice of final decision.

~~—(6) Liability Limitation. The County shall not be liable for damage due to a failure to make a final decision within the time limits established in this chapter.~~

Section 16: CCC 26.10.555 is repealed, amended, or added to as follows:

26.10.555 Code interpretation.

(1) The Administrator may be requested to interpret the provisions of development regulations subject to this chapter. Such request shall be in writing and shall be specific as to the issue of interpretation. The Administrator ~~may shall~~ obtain legal consultation from the Prosecuting Attorney as necessary and the Board of Commissioners as required under CCC 26.01.070, Planning Agency Code, to ensure consistency with spirit and intent of the subject regulation. The Administrator may request additional information or clarification as deemed necessary to evaluate the interpretation request.

(2) The Administrator may be required to interpret the provisions of development regulations as a matter of review procedures during the processing of a permit or license subject to those County ordinances specified under CCC 26.10.200. The Administrator ~~may shall~~ obtain legal consultation from the Prosecuting Attorney as necessary and the Board of Commissioners as required under CCC 26.01.070, Planning Agency Code, to ensure consistency with spirit and intent of the subject regulation. The Administrator may request additional information or clarification as deemed necessary to evaluate the interpretation request.

(3) Any final decision on a request for code interpretation shall be in writing and shall contain findings that relate to a section or sections of the Comprehensive Plan or regional plans as they apply.

(4) During the review of a code interpretation, the Administrator may defer consideration of the interpretation at ~~his/her/their~~ discretion to the Hearing Examiner. The Hearing Examiner may request additional information or clarification as deemed necessary to evaluate the interpretation request.

~~—(5) Decisions on code interpretations made by the Hearing Examiner are appealable to the Board of Clallam County Commissioners pursuant to CCC 26.10.630.~~ Decisions on code interpretations made by the Administrator are appealable to the Hearing Examiner pursuant to CCC 26.10.620. Any decision on a code interpretation pursuant to this section resulting in, or directly

associated with a permit decision, may be considered by the review authority during appeal proceedings for the underlying permit, unless said interpretation was specifically appealed according to the procedures contained herein prior to the permit decision. Code interpretations made by the Hearing Examiner are appealable to Superior Court or other appropriate tribunal.

(6) The Administrator shall maintain a clear record of all determinations relating to code interpretation. In cases involving appeals, the appellate decision shall be maintained with the record of the underlying request. All final decisions of code interpretation shall be in written form and shall be available in the office of the Department of Community Development for public inspection during regular office hours.

Section 17: Part Six section header is repealed, amended, or added to as follows:

Part Six. Reconsideration and Appeal of Land Use Decisions

Section 18: CCC 26.10.600 is repealed, amended, or added to as follows:

26.10.600 Procedures for reconsideration.

The applicant or a party of record for a Type I – III permit may seek reconsideration of a final decision only by filing a written request on a form provided by the Administrator within ten (10) calendar days of the mailing of the written decision. The decision-making body shall consider the request at its next regularly scheduled meeting or within ten (10) calendar days, whichever is sooner. If the request is denied, the previous action shall become final unless appealed. If the request is granted, the decision-making body may immediately revise and reissue its decision or may call for argument in a accordance with the procedures for closed record hearing appeals in accordance with CCC 26.10.630.

Reconsideration should be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision. This section also allows a reconsideration request to be filed by the Administrator on Type III permits or Type I or II permit appeals. The Administrator has the discretion to accept or reject a request based on its content in relation to the above minimum criteria of legal error or overlooked material fact. In cases where the Administrator rejects a request for reconsideration, any aggrieved party shall have the right to appeal the underlying decision consistent with the procedures set forth in CCC 26.10.610. Any determination by the Administrator relating to a request for reconsideration shall be issued within five (5) calendar days of the date the request is filed with the Department of Community Development. If the reconsideration request is based on the submission of additional evidence that could not with reasonable diligence have been discovered and produced at the previous proceeding, the decision-maker may re-open the proceeding, such as an open record hearing, without creating any conflict with this chapter or violation of Chapter 36.70B RCW.

Section 19: CCC 26.10.610 is repealed, amended, or added to as follows:

26.10.610 Administrative appeals on project decisions.

(1) Appeals of Type I – II Decisions. The decision or action by the Administrator on Type I or II permits shall be final on the date issued unless an appeal is filed in accordance with CCC 26.10.610(4). Said appeal shall be heard by the Hearing Examiner in an open record hearing

~~whereby the Hearing Examiner's decision may be appealed to the Board of Commissioners as a closed record appeal.~~

(2) Appeals of Type III Decisions. The decision by the Hearing Examiner pursuant to this section shall be final on the date issued unless an appeal ~~is filed in accordance with CCC 26.10.610(4). Said appeal shall be heard by the Board of Commissioners in a closed record appeal hearing.~~

~~—(3) Appeals of Board of Commissioner's Decisions. Appeals of the Board of Commissioners' decision shall be made in accordance with State law, including Chapter 36.70C RCW.~~

(4)(3) Appeal Process.

(a) Filing of Local Appeals. ~~Every appeal of a Type III permit decision shall be filed with the Administrator within fourteen (14) calendar days after the date of mailing the decision, or fourteen (14) days from the date of mailing the Administrator's dismissal or Hearing Examiner's decision on a request for reconsideration, whichever is applicable.~~ Every appeal for Type I and II permit decisions shall be filed with the Administrator within ~~fourteen (14)~~ calendar days after the date of notice of the decision. An appeal on the form provided by the Administrator shall be filed with the Administrator by mail or personal delivery, and must be received ~~by 5:00 p.m. during normal business hours and on by~~ the last day of the appeal period, with the required appeal fee as specified in Chapter ~~3.305.100~~ CCC, Consolidated Fee Schedule. If the last day of an appeal period falls on a weekend or legal holiday, the appeal period shall be extended until ~~5:00~~ 4:30 p.m. the next business day.

(b) Form and Content of Appeal. The application for appeal shall be on a form provided by the Administrator and shall include the following:

- (i) The decision being appealed;
- (ii) The name and address of the appellant and his/her interest(s) in the matter;
- (iii) The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;
- (iv) The desired outcome or changes to the decision;
- (v) The appeal fee as required by Chapter ~~3.305.100~~ CCC, Consolidated Fee Schedule;
- (vi) Any additional requirements set forth in the underlying code;
- (vii) Any additional attachments provided by the appellant, ~~consistent with the limitations set forth under CCC 26.10.630(1).~~

(54) Public Notice. Public notice for an open record appeal hearing or a closed record appeal hearing shall consist of the following:

(a) Type I – II Permit Appeals. A written mailed notice shall be sent by the Administrator at least fifteen ~~(15)~~ days prior to the date of the open record appeal hearing. The appellant is responsible for mailing costs of said notice and shall obtain the official list of names and addresses from the County Assessor's office. If the applicant/owner of the proposed project permit under appeal owns property contiguous to the project site, notice shall apply to the boundaries of such contiguous parcels. Notice shall be mailed to the property owner(s), applicant(s), authorized agents, any other parties of record and to all owners of adjacent properties that abut the subject property. For the purposes of this section, properties separated by public right-of-way are considered to be adjacent properties.

~~—(b) Type III Permit Appeals. A written mailed notice shall be sent by the Administrator at least fifteen (15) days prior to the date of the closed record appeal hearing to all parties of record established for the underlying permit. For the purposes of this section, parties of record shall include~~

~~the applicant(s), appellant(s), any person or persons who submitted written or oral testimony during the review of the underlying permit, or any person(s) who requested in writing to receive notification of any decisions relating to the underlying permit.~~

(bc) Advertising in the legal section of the County-designated newspaper of general circulation is not required.

Section 20: CCC 26.10.620 is repealed, amended, or added to as follows:

26.10.620 Procedures for open record appeal hearings.

(1) Procedures for open record appeal hearings shall follow CCC 26.10.530.

(2) Decisions on Appeals. Upon receiving an appeal of the Administrator's decision, the Hearing Examiner shall perform the following actions as appropriate:

(a) A Hearing Examiner decision following an open record appeal hearing shall include one of the following actions:

(i) Affirm the decision in whole or in part;

(ii) Reverse the decision in whole or in part;

(iii) Remand for further proceedings and/or evidentiary hearing and include a statement of the issues to be reviewed.

(b) Criteria. In making its decision on the appeal, the Hearing Examiner shall find that one of the standards has been met:

(i) The land use decision is an erroneous interpretation of the law;

(ii) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record;

(iii) The land use decision is a clearly erroneous application of the law to the facts;

(iv) The land use decision is outside the authority or jurisdiction of the Hearing

Examiner.

(3) Findings and Written Decision. The Hearing Examiner shall make ~~his/her~~their decision with written findings and conclusions consistent with CCC 26.10.550 (either those recommended by staff or findings and conclusions prepared by the Hearing Examiner). Said written decision ~~shall~~ should be forwarded to the applicant, appellant, and parties of record no later than ~~sixty (60)~~ days from the date of filing of the appeal unless otherwise agreed by the applicant.

(4) The County shall electronically record the proceedings. Copies of tapes of the proceedings and written transcripts are provided upon request and payment of reasonable fees.

(5) Record of Appeal. For any open record appeal hearing, the record shall consist of the following:

(a) Written findings and conclusions;

(b) Documents admitted to the record.

Section 21: CCC 26.10.630 is repealed, amended, or added to as follows:

26.10.630 ~~Reserved~~Procedures for closed record appeals.

~~Procedures for a closed record appeals shall comply with this section.~~

~~(1) Closed Record Appeal Procedures. Closed record appeals shall be conducted in accordance with the adopted rules of procedure, if applicable, and shall serve to provide argument and guidance for the decision-making body.~~

- ~~— (2) Decisions on Appeals. Upon receiving an appeal of the Hearing Examiner's decision, the Board shall perform the following actions as appropriate:~~
- ~~— (a) A Board's decision following a closed record appeal hearing shall include one of the following actions:~~
- ~~— (i) Affirm the decision in whole or in part;~~
- ~~— (ii) Reverse the decision in whole or in part;~~
- ~~— (iii) Remand for further proceedings and/or evidentiary hearing and include a statement of the issues to be reviewed.~~
- ~~— (b) Criteria. In making its decision on the appeal, the Board shall find that one of the following standards has been met:~~
- ~~— (i) The land use decision is an erroneous interpretation of the law;~~
- ~~— (ii) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record;~~
- ~~— (iii) The land use decision is a clearly erroneous application of the law to the facts;~~
- ~~— (iv) The land use decision is outside the authority or jurisdiction of the Hearing Examiner.~~
- ~~— (3) Findings and Written Decision. The Board shall make its decision by motion, resolution, or ordinance, as appropriate, and shall adopt written findings and conclusions consistent with CCC 26.10.550 (either those recommended by staff or Hearing Examiner, or findings and conclusions prepared by the Board). Said written decision shall be forwarded to the applicant, appellant and parties of record no later than sixty (60) days from the date of filing of the appeal unless otherwise agreed by the applicant.~~
- ~~— (4) The County shall electronically record the proceedings. Copies of tapes of the proceedings and written transcripts are provided upon request and payment of reasonable fees.~~
- ~~— (5) Record of Appeal. For any closed record appeal, the record shall consist of the following:~~
- ~~— (a) Written findings and conclusions;~~
- ~~— (b) Documents admitted to the record.~~

Section 22: CCC 26.10.640 is repealed, amended, or added to as follows:

26.10.640 State Environmental Policy Act (SEPA) appeals.

The Board of County Commissioners establishes the following administrative SEPA appeal procedures under RCW 43.21C.075 and WAC 197-11-680 (SEPA).

(1) Threshold Determination for Type I and II Permits – Open Record Appeal Hearing and Closed Record Appeal. A threshold determination of significance (DS) by the responsible official on a Type I or II permit shall be processed in accordance with Chapter 27.01 CCC. All other threshold determinations by the responsible official on Type I or II permits may be appealed to the Hearing Examiner for an open record public hearing. Said appeal shall be filed within ~~fourteen (14)~~ days of the date of the mailing of the administrative decision on the underlying permit. The decision on the appeal shall be consolidated with the Hearing Examiner decision on the underlying permit application. ~~The decision by the Hearing Examiner may be appealed to the Board of Commissioners in a closed record appeal.~~

(2) Threshold Determination for Type III Permits – Closed Record Hearing with Underlying Permit. An appeal of threshold determination of significance (DS) on a Type III permit shall be processed in accordance with Chapter 27.01 CCC. ~~All other threshold determinations on Type III permits may be appealed to the Board for a closed record appeal.~~ Said appeal shall be filed within

fourteen (14) days of the date of the mailing of the Hearing Examiner's decision on the underlying permit. The decision on the appeal ~~may~~ shall be consolidated with a land use matter pending before the Hearing Examiner the Board's decision on the underlying permit application.

(3) Any appeal of the SEPA threshold determination under this section shall include the following:

- (a) The decision being appealed;
- (b) The name and address of the appellant and ~~his/her~~their interest(s) in the matter;
- (c) The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;
- (d) The desired outcome or changes to the decision;
- (e) The appeal fee as required by Chapter ~~3.305.100~~ CCC, Consolidated Fee Schedule;
- (f) Any additional requirements set forth in the underlying code.

(4) The threshold determination by the Clallam County responsible official shall carry substantial weight in any appeal proceeding.

(5) The County shall give official notice under WAC 197-11-680(5) (SEPA) stating the date and place for commencing an appeal.

(6) Timing of SEPA Appeals.

(a) There shall be no more than one County appeal proceeding on procedural determination (the adequacy of a determination of significance/non-significance or of a final environmental impact statement). The appeal proceeding on a determination of significance may occur before the County's final decision on a proposed action.

(b) The County shall consolidate an appeal of procedural issues and of substantive determinations made under this chapter (such as a decision to require particular mitigation measure or to deny a proposal with a hearing or appeal on the underlying governmental action), by providing for a single simultaneous hearing before one hearing body to consider the agency decision on a proposal and any environmental determinations made under this chapter, with the exception of the appeal, if any, of a determination of significance).

(7) Reconsideration procedures of a SEPA threshold decision or appeal are not provided.

(8) For any appeal of the SEPA threshold determination under this section, the record shall consist of the following:

- (a) Findings and conclusions;
- (b) Documents admitted to the record.

(9) The County shall electronically record the proceedings. Copies of tapes of the proceedings and written transcripts are provided upon request and payment of reasonable fees.

Section 23: CCC 26.10.650 is repealed, amended, or added to as follows:

26.10.650 Judicial appeals.

Appeals of final decisions under this chapter, for which all local administrative proceedings and appeals, specifically authorized, have been timely exhausted, shall be made in a manner consistent with State law, including Chapter 36.70C RCW.

Section 24: Part Seven section header is repealed, amended, or added to as follows:

Part Seven. Monitoring Effectiveness of Land Use Application Processing

Section 25: CCC 27.01.210 is repealed, amended, or added to as follows:

27.01.210 Appeals

Clallam County establishes the following administrative appeal procedures under RCW 43.21C.075, ~~and~~ WAC 197-11-680, and Chapter 26.10 CCC whereby consolidation of public hearings on projects and appeal hearing are made to the fullest extent possible, as follows:

(1) An aggrieved party may appeal the adequacy of a final EIS (FEIS) pursuant to the following procedures:

(a) Appeals relating to the adequacy of a FEIS shall be consolidated in all cases with the public hearing, if any, of the underlying governmental action. Appeals of the adequacy of a FEIS shall be made within ~~fourteen~~ (14) days of the issuance of the FEIS and shall be consistent with Chapter 26.10 CCC.

(b) If an appeal relating to the adequacy of a FEIS is filed, at the same public hearing on the underlying governmental action, if applicable, the decision-making body shall either affirm or reverse the decision of the responsible official and shall prepare a finding on its decision on the FEIS appeal. The powers of the decision-making body (e.g., Planning Commission) on FEIS appeals shall be consistent with the powers on the underlying governmental action. For example, the Planning Commission provides a recommendation on rezones to the Board of Commissioners; in such a situation, the Board of Commissioners would have final authority on the adequacy of the FEIS. On the other hand, the Hearing Examiner issues final decisions on shoreline permits, subject to appeal; in this situation, ~~the Board of Commissioners would rule on an appeal of~~ the adequacy of the FEIS ~~would accompany an appeal of only when~~ the shorelines decision ~~of the Hearing Examiner is~~ appealed. If the decision-making body determines that the FEIS is not adequate, it may remand the FEIS ~~back~~ to the responsible official requiring that specific impacts be reconsidered.

(c) If no public hearing process is required for the underlying governmental action, or if the underlying governmental action is appealed or advisory, review of the FEIS adequacy shall be heard by the Hearing Examiner in accordance with appeal procedures as set forth in Chapter 26.10 CCC.

(2) An aggrieved party may appeal a final DNS pursuant to the following procedures:

(a) Appeals relating to the adequacy of a final DNS shall be filed with the Hearing Examiner, in accordance with Chapter 26.10 CCC which allows for one appeal of a project decision and includes the except that an appeal of a SEPA threshold determination, which is part of the decision on the underlying permit, shall be filed with the Superior Court as an appeal of a land use or other appropriate tribunal.

(b) At the open or closed record hearing before the Hearing Examiner on the appeal, whichever applies, the Hearing Examiner appellate body as specified in Chapter 26.10 CCC shall either affirm or reverse the decision of the responsible official which is a part of the underlying permit decision. If the Hearing Examiner appellate body determines that the DNS is not adequate, it may:

(i) Remand the decision ~~back~~ to the responsible official requiring that specific impacts be reconsidered. The Hearing Examiner appellate body shall adopt a finding which substantiates the need for a new public hearing for proper and adequate review of the project and wherever possible, all parties shall agree to such process. The new public hearing shall be duly advertised to the parties of record after which the decision-making body shall take action on said permit; or

(ii) Modify the decision of the decision-making body in accordance with the processing of appeals of the underlying permit as specified in Chapter 26.10 CCC.

(3) An applicant may appeal a determination of significance to the Hearings Examiner within ~~fourteen~~(14) days of the date the DS is issued. The processing of an appeal of a DS is exempt from the public hearing limitations set forth in Chapter 26.10 CCC.

(4) For any appeal under this section, the County shall provide for a record that shall consist of the following:

(a) Findings and conclusions; and

(b) A taped or written transcript;

(c) The County may require the appellant to provide an electronic transcript.

(5) The procedural determination by the County's responsible official shall carry substantial weight in any appeal proceeding.

(6) The County shall give official notice pursuant to WAC 197-11-680(4) and (5) whenever it issues a license or project approval for which a statute or ordinance exists which establishes a time limit for commencing judicial appeal.

ADOPTED this thirteenth day of December 2011

BOARD OF CLALLAM COUNTY COMMISSIONERS

Voted "no"

Howard V. Doherty, Jr., Chair

Stephen P. Tharinger

Stephen P. Tharinger

ATTEST:

Trish Holden

Trish Holden, CMC, Clerk of the Board

M.C. Chapman

Michael C. Chapman