



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 6, 2017

Motion 14876

Proposed No. 2017-0007.2

Sponsors von Reichbauer

1 A MOTION relating to the rules of the King County
2 hearing examiner.

3 WHEREAS, the adopted rules of procedure and the rules of mediation under
4 which the hearing examiner currently conducts hearings have not been updated since
5 1995, and

6 WHEREAS, in 2016 the county adopted new King County code provisions
7 related to the hearing examiner office, and

8 WHEREAS, to increase the efficiency and transparency of the hearing examiner
9 process, as well as to better coordinate with the recent code changes, the hearing
10 examiner proposes to the council new rules for conducting the hearing examiner process
11 that will replace the current rules, and

12 WHEREAS, the hearing examiner has complied with the notice requirements in
13 K.C.C. 20.22.330 and the comment period has passed, and

14 WHEREAS, under K.C.C. 20.22.330, the King County council must approve any
15 rule or amendment by motion;

16 NOW, THEREFORE, BE IT MOVED by the Council of King County:

17 The Rules of Procedure and Mediation of the King County Hearing Examiner,
18 contained in Attachment A to this motion, are hereby adopted.
19

Motion 14876 was introduced on 1/17/2017 and passed by the Metropolitan King
County Council on 6/5/2017, by the following vote:


Yes: 8 - Mr. von Reichbauer, Ms. Lambert, Mr. Dunn, Mr.
McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and
Ms. Balducci
No: 0
Excused: 1 - Mr. Gossett

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



J. Joseph McDermott, Chair

ATTEST:



Melani Pedroza, Clerk of the Council

Attachments: A. Rules of Procedure and Mediation of the King County Hearing Examiner, dated May
2017



Rules of Procedure and Mediation

May 2017

Office of the Hearing Examiner

516 Third Avenue Room 1200

Seattle, Washington 98104

(206) 477-0860

hearingexaminer@kingcounty.gov

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I. INTRODUCTION

A. Purpose

The hearing examiner system separates regulatory controls from legislative planning, promotes the community's public and private interests, and expands the principles of fairness, due process, and openness in public hearings. These Rules further those purposes by reducing delays through active case management and efficient use of hearing time, minimizing costs to hearing participants, and facilitating adherence to codified time limits. These Rules replace the Rules of Procedure (effective March 31, 1995) and the Rules of Mediation (effective September 15, 1995).

B. Interpretation

These Rules will be applied to accomplish the above-stated purposes. These Rules' jurisdictional framework derives principally from KCC chapter 20.22. These Rules shall be interpreted consistently with relevant code provisions. Examiners also are guided, where appropriate, by provisions and interpretations of the Washington Administrative Procedure Act (chapter 34.05 RCW), the Rules of Civil Procedure (CR), and the Rules of Evidence (ER) applicable in Washington's superior courts. If two Rules appear to conflict, or when the need for interpretation arises, the more specific statement governs, and headings may be considered in determining a Rule's applicability.

C. Special Exceptions

These Rules are designed to address most normal circumstances. Unforeseen situations may not lend themselves to full, literal Rule compliance. An examiner may exercise reasonable flexibility and discretion when applying these Rules to unusual circumstances.

II. DEFINITIONS

- A. "Determination" means an examiner's final decision (a ruling appealable to the appropriate court or tribunal), decision (a ruling appealable to the Council), or recommendation (a ruling that goes to the Council for final action).
- B. "Examiner" means the King County Hearing Examiner, and includes any deputy or *pro tem* examiner assigned to a proceeding.
- C. "*Ex parte* communication" means a direct or indirect communication between a proponent, opponent, party (or their designee) and the examiner, made outside a hearing or a scheduled conference or outside the presence of all other parties, and regarding the merits of a matter pending before the examiner. See XVII.B.
- D. "File" (when used as a verb) or "filing" means submitting documents to the examiner. See IV.E. When used as a noun, "file" refers to the documents the agency or examiner keeps related to a particular case.
- E. "Interested Person" means a person who requested (in writing, including by email), notice of a determination from the responsible County agency or from the examiner, or who submitted comment, evidence, or argument to the agency or examiner. The term does not include a person whose only communication is a signature on a petition or on a mechanically or electronically reproduced form, or who has made a standing request for notices or documents encompassing a type of case or a geographic area.

- F. "Intervenor" means a person who has been granted party status in a proceeding by specific examiner order. See X.B.
- G. "KCC" refers to the King County Code.
- H. "Motion" means a request—presented either in writing or orally during a proceeding—that an examiner take some action.
- I. "Named Party" is a party listed within the heading of an examiner-issued document.
- J. "Party" means the applicant, proponent, petitioner, or appellant; the owner of property subject to a hearing; the responsible County agency; another agency with jurisdiction or review authority that has notified the examiner's office in writing of its request to be a party; the entity issuing a ruling that is appealed to the examiner; and another person to whom the examiner grants party status.
- K. "Person" includes individuals, corporations, partnerships, other formal associations, and governmental agencies.
- L. "Responsible County Agency" means the King County department, division, or office that has the primary responsibility for coordinating the review of an application or appeal, that issued the decision or recommendation or took the action which is the subject of the proceeding, or that prepares the report required by KCC 20.22.130.
- M. "Serve" or "Service" means submitting documents to other named parties. See IV.E.
- N. "Transmit" refers to documents the examiner sends out to all parties and interested persons by physical delivery, including first class, registered or certified mail, hand-delivery or courier, or by electronic means. (It is up to each party and interested person to ensure the examiner has the correct contact information.)

III. JURISDICTION AND INITIATION OF PROCEEDINGS

A. Jurisdiction

1. Dependent upon Specific Delegation

The examiner's jurisdiction is limited to matters specifically identified in the KCC or assigned to the examiner by County ordinance or Council motion. Equitable defenses or claims based on the constitutionality of County regulations may be raised to exhaust administrative remedies and make a record for judicial review, but they are beyond the examiner's jurisdiction to decide.

2. When Jurisdictional Issues can be Raised

At any time the examiner may consider the office's jurisdiction to hear a matter. A party or interested person shall raise jurisdictional issues promptly upon becoming aware of facts giving rise to the issue.

B. Commencing Proceedings

- 1. Examiner proceedings begin, in accordance with the applicable code, by:
 - a. For applications or other matters where an agency issues a recommendation and an examiner holds a public hearing and issues a determination, the responsible agency following III.C.1.;
 - b. Submitting an appeal statement to the responsible County agency; the agency then files with the examiner the information described in III.C.2.;

- c. Only if a code mandates submitting an appeal directly to the examiner, filing an appeal statement with the examiner;
 - d. The Council enacting an ordinance or adopting a motion that refers a specific matter to the examiner; or
 - e. The King County Executive finalizing an inter-local agreement that calls for the examiner to act in a particular proceeding.
 - 2. The examiner will not schedule or consolidate hearings, adjudicate motions or requests, provide advisory opinions, or take other action before a matter is appropriately commenced.
- C. Information Responsible County Agency Provides Examiner to Initiate Review
- 1. For applications and other matters heard pursuant to KCC 20.22.050 and .060, the responsible County agency sends the examiner a description of the proposal, a property description (if applicable), the applicant's name, the expected number of hearing attendees, a desired range of hearing dates, and the estimated length of time required to conduct the hearing. As soon as it is available, the agency sends the examiner the information described in III.C.3.
 - 2. For appeals and other matters heard pursuant to KCC 20.22.040, within seventeen (17) days of the agency receiving the appeal, the agency sends the decision being appealed, the appeal statement, the estimated time required to conduct the hearing, and the information described in subsection III.C.3.
 - 3. The submittal shall identify any staff whose attendance will be required throughout the hearing, and shall include the agency's current list of parties and interested persons. The agency may also include any threshold motions, such as a motion to dismiss an appeal as untimely filed. The examiner may request additional information or materials.
- D. Scheduling and Notice of Hearings and Pre-Hearing Conferences
- 1. Scheduling

The examiner schedules hearings in consultation with the responsible County agency. Unless a pre-hearing conference is scheduled, or all parties agree to a later date, the examiner typically schedules application hearings so the examiner can complete the hearing and issue a determination within ninety (90) days of receiving the Council's referral, and typically schedules appeal hearings for within forty-five (45) days of receiving the III.C. materials from the responsible County agency.
 - 2. Notice of and Scheduling Pre-hearing Conferences
 - a. If the examiner decides to conduct a pre-hearing conference, at least seven (7) days before the conference the examiner transmits to all parties and interested persons notice of the conference time and place.
 - b. If a hearing has already been set when the examiner decides to conduct a pre-hearing conference, the examiner normally schedules the conference for at least fourteen (14) days before the hearing. A pending hearing date may be converted to a pre-hearing conference upon notice to parties and interested persons.

3. Notice of Hearings
 - a. For applications and other matters heard pursuant to KCC 20.22.050 and .060, the responsible agency prepares a proposed ordinance (title only) and advises the Clerk of the Council of the hearing's time and place. The agency and applicant shall provide the publication, notice by mail, and property posting required by the KCC and agency rules.
 - b. For all scheduled hearings, at least fourteen (14) days before the hearing the examiner transmits notice of the hearing time and place to all parties and interested persons. If a pre-hearing conference has not previously been ordered, the examiner's notice of hearing advises the parties of the opportunity to request a conference.
 - c. Unless otherwise specified, the examiner sends notice of hearings via U.S. Postal Service first class mail, except that County agency employees are notified only via email. Receipt of notice in the ordinary course of business is presumed unless rebutted by substantial evidence.
4. Hearings in the Community; Evening Hearings (Limited to Major Items)
 - a. With or without a motion, the examiner may schedule a hearing in the vicinity of the action and/or during evening hours. The threshold for holding an evening hearing (at any location) is significantly higher than for a normal-business-hours hearing in a particular location. This discretion, especially for after-hours hearings, is typically exercised only for matters of major, community-wide interest and impact, and not for matters of concern primarily to immediate neighbors.
 - b. Other criteria the examiner considers are:
 1. Whether significant additional information would be available if the hearing were conducted in the evening or in the community;
 2. The extent of community interest demonstrated by individual correspondence or contacts to the responsible County agency;
 3. Whether the testimony of technical experts and County personnel would be significantly diminished by the time and place;
 4. Whether a convenient and suitable facility is available for the hearing at reasonable cost; and
 5. Whether the change would delay this or other hearings, disrupt County staff's other duties, or result in unreasonable expense.
5. Consecutive Hearing Days

Once begun, a hearing customarily proceeds on consecutive business days until conclusion. All participants are expected to make prior arrangements to accommodate reasonably anticipated conflicts, including trials and other judicial proceedings, scheduled vacations, and medical appointments. Requests for departures from the normal schedule for hearings in progress will generally be denied except for emergencies or to accommodate the needs of the hearing.

IV. FILING REQUIREMENTS

The following information implements the procedural requirements of KCC chapter 20.22.

A. General Filing

As described below, the requirements for filing and service vary depending on the stage of an application or appeal, but at all stages (a) information provided orally or by voice mail or similar medium does not constitute filing or service, nor does it preserve any rights, and (b) a document is deemed filed only upon actual receipt. When delivery occurs after 4:00 p.m., the document is deemed received on the next business day. The risk of actual delivery or receipt not occurring within the required time period is borne by the person who intends that the document be filed or served. See IV.E.

B. Statements of Appeal: Procedure

1. The statement of appeal, together with any fees required by ordinance, must be submitted in accordance with applicable provisions of the KCC or other governing statutes, ordinances, or regulations.
2. Unless the KCC expressly indicates something to the contrary, the statement of appeal must be submitted directly to the agency that took the action or made the decision being appealed.
3. KCC 20.22.070 and .080 set general requirements for appealing an agency decision, but neither those sections nor these Rules dictate how agencies issue appealable decisions or accept appeals. An agency decision appealable to the examiner should provide a would-be appellant with information on when and how to appeal, including how to pay an appeal fee (if applicable). If that information is unclear, a would-be appellant should contact the agency well before of the deadline to ensure that any appeal is timely and properly submitted.
4. Timely submitting the statement of appeal and appeal fee (if a fee is required) are jurisdictional requirements. The examiner cannot consider appeals that do not meet these requirements.
5. No specific form of the appeal statement (i.e., letter, pleading, pre-printed form) is required, unless otherwise expressly required by the KCC; the content of the appeal statement is detailed directly below.

C. Statements of Appeal: Content

The following are default requirements for appeals governed by KCC 20.22.080; for other types of appeals, such as those listed in KCC 20.22.070, consult the pertinent code.

1. Include a copy of the decision you are appealing, or clearly identify that decision, including the agency that made the decision and the decision's date;
2. Provide your name, mailing and email addresses, and telephone number; it is your responsibility to update the examiner if your contact information later changes;
3. If you have an attorney or other representative, provide the representative's name, mailing and email addresses, and telephone number;

4. If two or more persons join in a single appeal, name one person as the representative;
5. Identify your legal interest in the decision (such as owner of the property or animal in dispute, a neighbor impacted by the agency decision, etc.);
6. Identify the errors you see in the decision or in the process that led to the decision;
7. State the specific reasons why you think the decision should be reversed or modified;
8. State the harm you have suffered or anticipate to suffer because of the decision; if a group or organization, state the harm to one or more members; and
9. Identify the relief you want the examiner to grant.

D. Amending Appeal Statements

1. Unless the examiner authorizes an amendment to the appeal statement, matters or issues raised in the appeal statement shall define and limit the issues the examiner considers.
2. If, at least seventy-two (72) hours before the appeal deadline, an appellant requested from the County relevant information and has not timely received such, the appellant may include with the appeal statement a notice that such statement is incomplete, the matters subject to the outstanding information request, the date of the request, the County employee to whom the request was directed, and the nature and relevance of the information solicited. Under such circumstances, the examiner shall authorize an appeal amendment, consistent with the deadlines for timely appeal processing.
3. Beyond subsection IV.D.2., there is no right to amend an appeal statement after the appeal deadline, but the examiner has discretion to allow such. Where a pre-hearing conference is scheduled, any motion to amend shall be offered by no later than the conference. Where a hearing is scheduled without a conference, a motion to amend shall be filed by the deadline the notice of hearing sets for requesting a conference.

E. Filing and Service

1. Overview

The following default rules apply to filing and service after the agency submits an application or appeal to the examiner (as described in III.C.). The examiner may set alternative requirements for a particular case. Limited, technical assistance is available by emailing hearingexaminer@kingcounty.gov or by calling (206) 477-0860. Call or email well in advance of a filing deadline.
2. Definitions Applicable to this Section
 - a. "Document" refers to the aggregate submittal, not to each individual component. For example, a motion, plus any affidavits and other evidence in support of that motion, qualifies as a single document. Similarly, multiple exhibits due on a given day should be separately numbered, but the exhibits in total are considered a single document.

However, when truly separate items are due on the same day (e.g., exhibits and a witness list), each counts as a separate document.

- b. "Electronic document" is an electronic version of information otherwise filed in paper form.
- c. "E-filing" means emailing electronic documents to the examiner via hearingexaminer@kingcounty.gov.
- d. "File" (when used as a verb) or "filing" means submitting documents to the examiner.
- e. "Hardcopy" is a physical (non-electronic) copy of a document.
- f. "Postmark" means the official postal marking on a piece of mail showing the post office date of mailing.
- g. "Serve" or "Service" means submitting documents to named parties.

3. E-filing Documents with the Examiner

- a. Responsibility: It is the sender's responsibility to confirm receipt of an e-filing. Requesting a confirmation receipt email is recommended. It is a sender's responsibility to confirm that the examiner can read, view, and/or listen to an e-filing, lest the submission be excluded from the record.

- b. Format: Email attachments must be in the following readable formats:

<i>File type</i>	<i>Format</i>
Documents	.pdf (preferred); .doc, .docx, .xls, and .xlsx (acceptable)
Audio	.mp3
Video	.mp4

- c. Names: Emails and any attachments should reference the case number, party name, and document title, e.g., V-1234_Smith_Motion.pdf. When an electronic document must be broken into components (see [IV.E.3.e.](#)), the attachment titles should clearly reflect the intended order, e.g., V-1234_Smith_Motion_A.pdf; V-1234_Smith_Motion_B.pdf; etc.
- d. Multiple Attachments Discouraged: As much as practicable, a submission (such as a motion and its supporting evidence, including any images) should be organized as a single electronic document. There are exceptions: to meet email megabyte limits (see [IV.E.3.e.](#)); truly separate filings (e.g., "motion" is one document and "expert witness list" is a separate document); or when the examiner provides specific, alternative directions. Multiple attachments, especially if not organized in a logical sequence, may result in the examiner ordering the sender to reformat and re-submit.

- e. Size: There are two size restrictions.
 - 1. Emails are limited to ten (10) megabytes (MB) per email. Participants may break electronic documents into smaller pieces and send multiple emails to meet the MB limit (see IV.E.3.c.). Emails larger than ten (10) MB will bounce back and will not be considered filed.
 - 2. For all documents, e-filing is encouraged. However, documents exceeding fifty (50) pages (see IV.E.2.a.), must also be filed in hardcopy (see IV.E.5.b.2.).
 - f. Scaling: All documents must be printable in hardcopy on standard, 8.5"x11"-sized paper. Documents that cannot be printed on this size must also be filed in hardcopy (see IV.E.5.b.2.).
 - g. Signatures: Digital signatures are not required, but emails should reference the sender's name, address, and phone number.
 - h. Timing: Emails the examiner receives on County holidays, weekends, or after 4:00 p.m. are considered filed on the next County business day.
4. Serving Documents on Named Parties
- a. A person filing a document with the examiner must contemporaneously serve that document on the named parties. However, an agency providing the examiner advance copies of a large case file (or portions of the case file) the agency intends to introduce at hearing (such as a preliminary plat file) need not serve those documents on other parties, so long as the materials only contain documents that were available for public inspection on the date of the agency's hearing notice (for an application) or on the date of the decision being appealed (for an appeal); the agency must contemporaneously serve more recent documents on all other named parties.
 - b. Unless the examiner orders otherwise, the default rule is that a person filing a document with the examiner must serve that document on named parties in hardcopy. To promote easier sending and quicker receipt, the named parties may agree to alternative service arrangements among themselves. See IV.E.5.
5. Hardcopy Filing and Service
- a. Acceptable physical delivery includes first class, registered or certified mail (via the mailing addresses listed on the first page of the most recent examiner-issued document), hand-delivery, or courier. The examiner no longer accepts facsimiles. Except as distinguished in IV.E.5.b.2., receipt of items mailed to the examiner and to the named parties is presumed to occur on the third day after the postmark date.
 - b. In the case of mailed documents, whether the hardcopy need only be postmarked by the due date or must actually be received by the examiner and other named parties by the due date depends on the following:

1. For serving documents on any named party who has not agreed to accept email service in lieu of hardcopy, a hardcopy postmarked by the due date is sufficient.
2. For filing documents with the examiner and for serving documents on any named party that has agreed to accept email service in lieu of hardcopy, or where the examiner states that electronic service is acceptable in a particular matter, the sender needs to plan ahead and ensure that the sender can meet all the requirements described in IV.E.3. for responsibility, electronic format, naming, organization, megabytes, signatures, and timing. If the sender cannot meet any of those requirements, the sender must either mail those documents three days in advance of the due date, or must hand-deliver or courier those documents by the due date. If the sender can meet all those e-filing requirements, and the only shortcoming is that a document is over fifty (50) pages or contains information not printable on standard page-sized paper, email on the due date is sufficient, provided hardcopies are postmarked by the due date.

V. MEDIATION

A. Introduction

Mediation is an informal dispute settlement process in which a trained, neutral individual called a mediator helps people work together to resolve disagreements and find mutually acceptable solutions. Mediation can save time and money, protect participants' privacy, allow participants to retain control over the process and outcome, allow consideration of options beyond those an examiner would have authority to address, and generally create more satisfactory results than what an examiner might otherwise impose. The examiner encourages using mediation to reach voluntary and mutually acceptable resolutions.

B. Initiation

1. Mediation may be requested at any time by any party or interested person, or it may be suggested by the examiner or Council.
2. Mediation does not automatically stay examiner timelines. If all parties agree to mediate and to extend the deadlines, the examiner continues the proceedings. In the absence of uniform agreement, if any one party, plus at least one party or interested person with an opposing position, agree to mediate any substantial issue in dispute, the examiner takes that into consideration in determining whether to extend, for up to thirty (30) days, an examiner deadline.

C. Process

1. The examiner may provide information on mediation resources, including *pro bono* or low-cost mediation services, but the examiner does not warrant or represent the fitness or suitability of any such resource. Participants shall be the sole judges of the qualifications of the persons they select as mediators.
2. Mediators shall generally be responsible for mediation conduct, such as: communicating with mediation participants; determining whether parties or

interested persons other than those who had previously requested or agreed to pursue mediation should participate; and the terms, sequence, timing, cost, cost share, and other components of the mediation. Absent an explicit agreement to the contrary, the mediation shall be conducted pursuant to the Uniform Mediation Act, chapter 7.07 RCW.

D. Conclusion

1. When the mediator determines the mediation process is complete, the mediator shall (consistent with RCW 7.07.060) report to the examiner, attaching any signed agreement(s).
2. If no agreement was reached, the examiner process shall proceed as if no mediation had occurred.
3. If an agreement is reached, the examiner may accord it substantial deference in determining a subsequent examiner action, but an agreement does not necessarily obviate the need for (nor limit the scope of) a public process otherwise required by law. The settlement's impact depends on several factors, such as: whether the case is an application (where the examiner has a duty to issue a determination) or an appeal (where the examiner's only jurisdiction is the appeal); whether the mediation resolved all issues for all parties and interested persons; and what the examiner is being requested to do (grant a motion withdrawing an order or appeal, versus issue an order on the merits).

VI. AGENCY FILES: STAFF REPORTS, SPECIAL STUDIES, REVIEWS, AND RESPONSES

A. Agency File

The responsible County agency shall maintain a file that includes all applications, reports, studies, reviews, responses, correspondence, memorandums, and other documents concerning a matter within the examiner's jurisdiction. Unless specifically excluded in whole or in part, this file automatically becomes part of the examiner's record.

B. Timeliness of Report Not Jurisdictional; Continuance as Remedy

Failure of the responsible County agency to timely issue the KCC 20.22.130 report does not void the examiner's jurisdiction, but it may be grounds for a continuance, if a party or interested person can demonstrate that the failure has resulted in prejudice to the movant that cannot be otherwise mitigated. In the absence of extenuating circumstances, such a continuance shall not be longer than two weeks. In egregious circumstances, the examiner may apply the sanctions of IX.C.

C. Optional Written Responses

For applications, parties and interested persons may file written responses to issues raised by appeals, reports, and studies. For appeals, only parties may generally file. See X. The examiner may set requirements and deadlines. Unless otherwise ordered, responses shall be filed at least three (3) business days before a hearing, with copies served contemporaneously upon all named parties. The examiner may exclude responses not timely served.

VII. PRE-HEARING MOTIONS AND PROCEEDINGS

A. Consolidation or Concurrent Hearings

1. If a proposal requires more than one County permit or appeal hearing, or if multiple proceedings involve a significant, common issue of fact, law, or policy, any party may, at least twenty-one (21) days before the first hearing, request consolidated or concurrent hearings. The motion shall identify common issues, as well as major issues (if known) unique to each proceeding. The motion shall state whether the other parties consent.
2. In acting on such a motion, the examiner considers whether consolidation or concurrent hearings will achieve greater efficiency of time and effort, and the extent to which issues unique to each proceeding likely require separate treatment. The examiner may also order consolidation or concurrent hearings without a motion.

B. Dispositive Motions

1. A party may move to dismiss an appeal, in whole or in part, if:
 - a. The appellant lacks standing to appeal the decision or action challenged;
 - b. The appeal or any required fee was not filed by the relevant deadline;
 - c. The examiner lacks jurisdiction, in whole or in part, over the subject matter;
 - d. The appeal is frivolous on its face; or
 - e. The appeal statement is not sufficiently specific to apprise the parties of the factual basis upon which relief is sought, or the grounds stated do not constitute a legally adequate basis for appeal. In lieu of dismissal, the examiner may clarify the issues on appeal or may require the appellant to file a clarification.
2. Motions to dismiss an appeal that do not meet these requirements shall be reviewed as motions for summary judgment.
3. Due to the efficiency and user-friendliness of the hearing process (relative to civil trials), summary judgment motions are dis-favored. Summary judgment motions may be entertained when the moving party demonstrates that:
 - a. The relevant matters primarily involve legal interpretations based on facts that are either uncontested or can be determined expeditiously;
 - b. The parties against whom the motion is made will not be unduly inconvenienced or prejudiced by participating in a more legally-complex proceeding; and
 - c. The motion can be decided without rescheduling previously established procedural deadlines and hearing dates, or the other parties consent to an extension.
4. A party intending to file a dispositive motion (other than a threshold motion discussed in III.C.3.) shall request a pre-hearing conference, if one has not been previously scheduled; failure to do so is grounds for motion denial.

C. Requests to Postpone or Continue

1. A party shall file a motion to postpone a proceeding as soon as the need for the postponement becomes known; the motion shall detail the reason for the request. The examiner may act on the motion alone, may request comment, or may schedule a motion hearing. The examiner considers whether the request can be granted consistent with the applicable code deadlines, the nature of the proceeding being continued (for example, a public hearing with published notice versus a telephonic status conference), whether there are reasonable alternatives to a continuance, and whether other parties or interested persons will be prejudiced or unduly inconvenienced.
2. Motions to postpone a hearing received less than seven (7) days prior to the hearing normally are granted only if the need was not reasonably foreseeable, all parties consent, or for an emergency. Unless otherwise ordered, postponements do not extend discovery deadlines.
3. A proceeding may be rescheduled (with or without a motion) at the examiner's discretion for the safety or welfare of the public, parties, and interested persons, to assure due process of law, or for other purposes consistent with these Rules.

D. Procedural Requirements

Except as otherwise provided by these Rules or by examiner order, pre-hearing motions shall conform to the following requirements:

1. All written pre-hearing motions shall be presented within a separate document headed or captioned to clearly identify the motion.
2. Unless otherwise provided, or unless good cause is shown, pre-hearing motions shall be filed and served at least twenty-one (21) days before the hearing.
3. All parties shall be afforded a reasonable opportunity to respond to a dispositive motion.
4. Where a pre-hearing conference is scheduled, pre-hearing motions will generally be argued at the conference, provided the motion was served on all named parties at least five (5) days before the conference.
5. Any pre-hearing motion which can be granted only upon a finding of fact shall be accompanied by competent affidavits setting forth all necessary factual matters, unless such facts are already established in the record. The need for lengthy affidavits tends to indicate the inappropriateness of such a motion.
6. Affidavits may be made with words to the effect of "I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct" above the affiant's signature, and by providing the date and place signed.

VIII. PRE-HEARING CONFERENCES

A. Purpose

Pre-hearing conferences promote efficient case management by providing an informal avenue for identifying issues and discovery needs early and for resolving procedural matters in complex cases. Evidence will not be received at a pre-hearing conference,

except as required for ruling on a motion. (Pre-marking and introducing exhibits may occur at the examiner's discretion.)

B. Initiation

A party shall move for a pre-hearing conference as soon as the moving party recognizes the need, stating the reasons for the request. The examiner, with or without a party motion, may convene a pre-hearing conference to:

1. Determine whether to proceed to hearing or whether the parties jointly wish to pursue an alternative track;
2. Identify, clarify, limit, consolidate, or simplify issues;
3. Hear and consider any pending pre-hearing motions;
4. Set any pre-hearing deadlines, such as for discovery, required submittals, and anticipated motions;
5. Schedule hearings, identify parties and witnesses, determine the order and limits of testimony, obtain stipulations, and identify and admit exhibits; and
6. Consider and act upon any other matter which may assist the efficient disposition of the case.

C. Conference Proceedings

At the conference, parties—or interested persons who wish to become parties—shall identify any pre-hearing motions they intend to offer, if not already submitted. Failure to make or disclose a motion at conference is grounds for motion denial.

D. Pre-hearing Order

Following a pre-hearing conference, the examiner issues an order specifying the items determined at the conference and other requirements.

IX. DISCOVERY

A. Purpose

Discovery in the examiner process is not designed to duplicate the robust pre-trial discovery common to civil litigation. Limited discovery is authorized to assist parties and interested persons to prepare for hearings and make hearings more productive, consistent with keeping the hearing process efficient and accessible. The principal purpose of discovery is ascertaining, prior to the hearing, the issues for hearing and providing notice of the primary facts that parties and interested persons will rely on.

B. Routine Discovery Required

If no pre-hearing conference is held, the examiner communicates to all parties the following routine discovery requests, along with instructions for furnishing responsive information to the examiner and to other parties:

1. The name, mailing and email addresses, telephone number, and qualifications of any expert witnesses, along with a summary of each expert's expected testimony.
2. Copies of any studies or reports, whether prepared by experts or others, planned to be offered at the hearing that are not part of the County file as of the earlier

of the date of the agency notice of recommendation (applications) or the date of the agency decision being appealed (appeals).

C. Discovery of County Documents

1. Except where a timely request for inspection has been made to an agency but not granted, parties and interested persons are presumed to be aware of documents in the County's case file that were available for public inspection on the earlier of the date of the agency notice of recommendation (applications) or the date of the agency decision being appealed (appeals).
2. For other items, at least twenty-one (21) days before the scheduled hearing any party or interested person may submit a written request to any County agency to produce records within its possession that are material to the hearing. The agency shall promptly estimate the applicable charges (if any) and provide such records within seven (7) days of receiving a deposit for the estimated charge.

D. Discretionary Discovery

1. Contrary to civil litigation, where the thumb is on the scale in favor of greater pre-trial discovery, outside of IX.B. and IX.C., in examiner proceedings the thumb is on scale against greater pre-hearing discovery.
2. Discovery by deposition, written interrogatories, production of specific documents or things, permission to enter upon land, and requests for admissions must be previously approved by the examiner. A request for such discovery shall be made at a pre-hearing conference or by written motion filed and served upon all other named parties and upon those subject to the request at least twenty-one (21) days before the scheduled hearing. The examiner may grant these requests upon finding that (a) the moving party or person has demonstrated a substantial need for the information requested; and (b) the party or interested person to whom the request is directed will not be unreasonably inconvenienced or incur unreasonable cost complying.
3. Discretionary discovery requests shall be targeted toward obtaining clearly identified, specific information. Requests to depose individuals otherwise available for hearing, requests for blanket production of documents, or lengthy interrogatories, are disfavored and, in the absence of compelling circumstances, will not be granted.
4. An interested person seeking discretionary discovery shall concurrently file a petition to intervene. See X.B.
5. The examiner, with or without a motion, may order any discovery authorized by these Rules when necessary for the record's fair and complete development.

E. Sanctions

1. The examiner may impose the following sanctions for failure to fully and timely respond to discovery:
 - a. Continue a scheduled hearing to enable the information requested to be obtained. A party who fails to respond is deemed to have waived KCC chapter 20.22's time limits;

- b. Exclude evidence concerning matters within the failure to respond's scope, or place terms and conditions on introducing that evidence;
 - c. To the extent permitted by law, modify the applicable burden of proof or make adverse evidentiary inferences;
 - d. Order specific facts subject to the discovery request as having been admitted by the person who failed to respond;
 - e. Require that the person who failed to respond pay the costs incurred by other parties or interested persons to establish discoverable facts;
 - f. Dismiss the order, application, or appeal of a party who failed to respond to a request for discovery, or recommend such action to the Council;
 - g. Require or recommend future reconsideration of a decision if facts subject to the discovery request emerge; and/or
 - h. Other relief the examiner determines appropriate.
2. To the extent feasible, the relief provided shall not penalize or inconvenience other parties or unduly delay the proceedings. When determining appropriate sanctions, the examiner weighs the private and public interests affected by the failure to provide discovery and the impact of the sanctions on those interests.

F. Subpoenas

- 1. A party may move the examiner to issue a subpoena compelling the attendance of—or documents from—a person, if necessary to present the movant's case. The movant shall explain why the witness or documents are necessary, and why the witness or documents would be unavailable absent a subpoena. Subpoenas will be issued at the examiner's discretion and delivered to the moving party for service, according to law. Parties can enforce an examiner-issued subpoena under RCW 34.05.588(1).
- 2. The party requesting a subpoena shall pay the cost of producing records and the witness fees and allowances as provided in King County superior courts by chapter 2.40 RCW and by RCW 5.56.010.

X. PARTIES AND REPRESENTATION

A. General Principles

- 1. For applications or other approvals over which the examiner has original jurisdiction (such as preliminary plats, road vacations, or public benefit ratings), any member of the public may offer testimony at a hearing, subject to procedural rules of general applicability or to a specific examiner order.
- 2. For appeals, participation is normally limited to the parties. Non-parties usually may only offer testimony if called as a witness by a party. Non-parties with a substantial interest in an appeal proceeding should file a petition for intervention, described below.

B. Intervention

1. Purpose

a. Intervention as a Matter of Right

The examiner shall allow intervention where the law confers an unconditional right to intervene or when a non-party demonstrates a substantial interest in the proceeding's subject matter, that such interest is likely to be directly affected by the proceeding's result and will not be adequately represented by existing parties, and that intervention will not impair the orderly and prompt conduct of proceedings.

b. Discretionary Intervention

The examiner may allow intervention where the law confers a conditional right to intervene or when the intervenor's participation as a party would advance the public interest, and where intervention will not impair the orderly and prompt conduct of proceedings.

2. Procedure

A petition to intervene may be made orally or in writing. Every petition shall be supported by facts sufficient to justify the request. (A petition accompanied by a request for discovery is subject to the time limits of IX.)

a. Time Limits for Petition

1. A petition to intervene as a matter of right shall be submitted before or at the pre-hearing conference. If no pre-hearing conference is scheduled, a petition to intervene as a matter of right shall be submitted at least fourteen (14) days before the hearing.
2. Failure to timely petition to intervene as a matter of right waives that right. The examiner retains discretion to grant an untimely intervention request.
3. A petition for discretionary intervention shall be submitted at the earliest point the petitioner knows facts giving rise to the need for intervention. Petitions submitted subsequent to the introduction of substantial evidence will normally be denied.

b. Petition Content

A written petition to intervene should state:

1. The name, mailing and email addresses, and telephone number of the person seeking to intervene;
2. The name, mailing and email addresses, and telephone number of petitioner's attorney or other representative, if any;
3. The specific nature and extent of the petitioner's interest affected by the proceeding, or the specific reason why intervention would be in the public interest;

4. Why the petitioner's interests will not be adequately represented by the existing parties; and
5. Petitioner's claim, concern, or other statement regarding the dispute, including the desired outcome.

c. Petition Processing

1. Petitions to intervene may be resolved by written order or at a conference or hearing. Existing parties shall be afforded a reasonable opportunity to provide written or oral comment.
2. Upon approval, the petitioner becomes an intervenor with the procedural rights of a party, subject to limitations the examiner may impose. Conditions of intervention may include:
 - (i) Limiting the intervenor's participation to the stated interest identified in the petition;
 - (ii) Requiring or limiting the intervenor's use of discovery, cross-examination, and other procedures;
 - (iii) Requiring two or more intervenors and/or parties with similar interests to combine their efforts; and
 - (iv) Such other terms as the examiner determines appropriate.
3. The examiner may amend the intervention order at any time.
4. Granting a petition to intervene does not confer or imply standing to bring an action in a court or other tribunal.

C. Representation Optional

Representation by an attorney is not required for full participation. The examiner may make reasonable allowances to enable persons unfamiliar with proceedings to participate effectively. Any person, group, or organization may authorize another person (attorney or not) to present written or oral arguments, enter exhibits, or otherwise participate in a hearing as a designated representative.

D. Use of Representative Parties

Multiple parties and interested persons with similar interests are encouraged to select one or two persons (who need not be attorneys) as representatives to accept document service, schedule hearings, and otherwise facilitate efficient case management. In the absence of voluntary selection, the examiner may designate one or more representatives.

XI. ORDER AND CONDUCT OF PROCEEDINGS

To the extent practicable, and consistent with legal requirements, hearings are conducted expeditiously. The examiner and all participants shall avoid unnecessary delay. Subject to the terms of any pre-hearing order, hearings generally proceed as described below.

A. Applications and Petitions

1. The responsible County agency introduces the matter and may provide its written report, a synopsis, staff exhibits, and a preliminary recommendation.
2. The applicant or petitioner presents evidence and argument.

3. Other parties and interested persons may present evidence and argument.
4. The agency offers evidence and argument not already submitted as part of the introduction.
5. After the initial presentations, parties may present rebuttal evidence. Rebuttal by non-parties may be allowed at the examiner's discretion.
6. Following the testimony of any witness, cross examination is permitted. See XII.E.
7. The parties may make final arguments, following the same order as initial presentations, except that the applicant shall have the opportunity to make the last argument.
8. The responsible County agency makes its final recommendation; if the final recommendation differs from the previous recommendation, or includes new facts or argument, parties may respond.

B. Appeals Where Appellant Bears the Burden of Proof (See XV.F.)

1. Parties' opening statements (optional).
2. The responsible County agency introduces the matter and may provide its written report, a synopsis, staff exhibits, and a preliminary recommendation.
3. Appellant presents evidence.
4. Any party (such as an intervenor, applicant, or property owner) generally aligned *with* appellant presents evidence.
5. The agency presents evidence (to the extent that it was not provided during the agency's introduction).
6. Any party (such as an intervenor, applicant, or property owner) generally aligned *against* appellant presents evidence.
7. Rebuttal evidence, in the same order as initial presentation.
8. The agency makes its final recommendation.
9. Final argument (optional), commencing with the appellant, who may reserve time for the last statement.

C. Appeals Where Agency Bears the Burden of Proof (See XV.F.)

1. Parties' opening statements (optional).
2. The responsible County agency presents evidence.
3. Any party (such as an intervenor, applicant, or property owner) generally aligned *against* appellant presents evidence.
4. Appellant presents evidence.
5. Any party (such as an intervenor, applicant, or property owner) generally aligned *with* appellant presents evidence.
6. Rebuttal evidence, in the same order as initial presentation.
7. The agency makes its final recommendation.
8. Final argument (optional), commencing with the agency, who may reserve time for the last statement.

D. Alternate Order of Proceedings

The examiner may modify proceeding order to produce a clear, fair, and efficient hearing. Where a hearing combines applications and appeals, or combines enforcement and non-enforcement appeals, the order will necessarily involve some adjustments. The order may also be modified by party agreement, with the examiner's approval. Modifying the order does not alter any applicable burdens.

E. Decorum, Recording, and Safety

1. All persons in attendance shall conduct themselves with the decorum and courtesy appropriate to quasi-judicial proceedings. If not, the examiner may recess a hearing and re-convene it pursuant to oral or written notice, under conditions reasonable to assure that the violation is not repeated. Such conditions can include exclusion of identified persons from further participation.
2. The examiner may permit recording and photographic equipment, subject to conditions preventing disruption and maintaining the deliberative environment. Flash photography and high intensity lighting are prohibited.
3. No weapons shall be permitted in the hearing room, except when in the possession of a law enforcement officer.

XII. PRESENTATION AND RECEIPT OF EVIDENCE AT HEARINGS

A. Oath or Affirmation

1. All testimony before the examiner shall be given under oath or affirmation.
2. Any interpreter shall swear to make a true interpretation to the person testifying or being examined in a language or in a manner which the person understands, and to repeat the person's statements, in English, to the best of the interpreter's skill and judgment.
3. Statements made by an unsworn attorney or other representative are not evidence.

B. Admissibility of Evidence

1. Except as otherwise provided by these Rules, admissibility is not controlled by the Washington Rules of Evidence (ER). Any trustworthy oral or documentary evidence may be received, including reliable hearsay. The examiner excludes unreliable, unduly repetitive, irrelevant, immaterial, privileged, or unconstitutionally obtained evidence, and may use the ER as a guide in evidentiary rulings.
2. There is no formal process for admitting expert witness testimony, but the examiner considers knowledge, skill, experience, training, and education of an expert in evaluating the weight to give opinion testimony on scientific, technical, and other specialized subjects. The examiner usually admits lay witness opinions, even on matters normally within the purview of qualified experts, but considers lack of qualification in weighing such testimony.
3. The examiner may admit excerpts from public documents or from books, studies, or reports when the remainder of such material is either irrelevant or unnecessary.

4. In proceedings where King County seeks a significant penalty, forfeiture, or similar divestiture of legally cognizable rights, the examiner may more strictly apply the ER and may require adherence to other rules applied in superior court.
5. The examiner may admit evidence, but limit its scope or probative value.

C. Exhibits

1. Unless the examiner orders otherwise, anyone intending to offer a document as evidence at a hearing shall bring one copy to retain, one for each named party, one for the examiner to mark up, and one copy as the official exhibit.
2. Copies of documents submitted as exhibits must be legible.
3. A rare or one-of-a-kind exhibit held by an agency which cannot be conveniently reproduced (such as the official zoning map) may be entered in the record by reference. Duplicate, reduced copies should be provided as an exhibit when possible to do so without excessive cost.
4. The examiner may exclude even relevant physical evidence imposing an unreasonable custodial burden. The examiner may also require substitute photographs, reduced-sized copies, or written or oral descriptions.
5. While oversized displays may be used for demonstrative purposes, any exhibits must be sized (or folded) to fit within an 8.5 by 14.5-inch filing cabinet. (This is commonly achieved by attaching the item(s) to a plain paper backing prior to mounting on poster board with binder clips, allowing easy removal and folding.)
6. Any PowerPoint or similar presentation must be accompanied by printed paper copies of each panel/image: one for each for each named party, one for the examiner, and one for the record. An exact copy of any photograph or transparency, CD, DVD, or recording used in any other type of audio/video presentation shall be submitted for the record. Without such copies, the presentation may be disallowed. Finally, do not assume needed A/V equipment is available at the hearing; the intended user must ascertain equipment availability at least three (3) business days before the hearing.
7. Exhibits accepted into the record will not normally be returned to parties; the responsible County agency may act as the official case file custodian. The examiner may order an exhibit's return when there is no need for retention.
8. The agency's case file is normally admitted as an exhibit in its entirety. Any party may object to the admission of specific documents within the case file on any of the grounds in XII.B. Parties are encouraged to offer specific case file documents as separate exhibits when of special importance.

D. Objections

An objection to admitting evidence shall state briefly the ground for objection. Any evidence entered into the record without objection is be deemed admissible. The examiner determines the probative value, if any, of all evidence entered into the record.

E. Cross Examination

1. In addition to questions the examiner asks, cross examination of any witness is permitted, except as limited by these Rules.
2. Cross examination is limited to the subject matter of the direct testimony and to witness credibility.
3. Parties have the right to cross examine, although an examiner may limit intervenors' right to cross examine. Interested persons do not have a right to cross examine, although an examiner may permit it to create a complete record and enhance public confidence, and if it does not unduly burden proceedings.
4. The examiner prohibits irrelevant, cumulative, unduly repetitious, argumentative, or abusive cross examination.
5. In order to achieve efficiency, the examiner may:
 1. Require consolidated cross examination by parties and interested persons sharing a common position or objective;
 2. Require or permit parties and interested persons to state their questions for the examiner to ask;
 3. Limit cross examination of opinion testimony offered by interested persons who do not claim to be experts;
 4. Establish reasonable time limits for cross examination, consistent with the requirements of due process; and
 5. Allow concurrent cross examination of two or more witnesses who have testified on the same subject matter.
6. If a witness refuses to answer any question the examiner rules proper, the examiner may strike some or all of that witness's testimony.

F. Limits on Testimony and Argument

1. While appropriate latitude may be provided for public testimony, testimony and argument is generally limited to matters material to the examiner's decision.
2. The examiner admits and excludes evidence, as provided in XII.B. and XII.D.
3. The examiner may establish reasonable time limits on testimony and argument. The examiner also may provide an opportunity to submit written supplementary testimony, in which case the examiner allows opposing parties a reasonable opportunity to respond.
4. Legal opinions are accepted as argument, not as evidence.

XIII. EXAMINER RECORD

A. General Standards

In all quasi-judicial examiner proceedings, the examiner bases factual findings on evidence admitted to the hearing record and on matters subject to judicial notice. Examiners may conduct site inspections for the purpose of understanding the hearing testimony and documentary evidence, but site inspection observations themselves are not evidence, outside of the XIV.F. context.

B. Basic Record

Unless specifically excluded, the hearing record shall include, but is not limited to:

1. The application or petition;
2. Environmental review documents and determinations;
3. The responsible County agency's report and recommendation;
4. Written comments the agency received during its review;
5. Exhibits and written comments the examiner receives prior to the record closing;
6. Written motions and briefs submitted by parties and interested persons;
7. Written examiner orders;
8. The examiner's determination;
9. Notices issued and mailing lists used by the responsible County agency and by the examiner's office; and
10. The examiner's audio recording of conferences and hearings; absent examiner approval, no other recording shall be accepted as an official record.

C. Official Notice

1. The examiner may take official notice of the following:
 - a. The published regulations, rules, and adopted policies of a public agency;
 - b. Decisions of other tribunals;
 - c. Generally known facts or data beyond reasonable dispute; and
 - d. Any other matter susceptible to judicial or official notice in administrative tribunals operating pursuant to federal or Washington administrative procedure acts.
2. No advance statement of intent to take official notice is required, but after an examiner incorporates official notice into a finding, parties and interested persons may challenge the finding's accuracy within seven (7) days. No fact shall be officially noticed if there is a reasonable dispute as to its accuracy. The examiner shall take appropriate action in response to a challenge.

D. Briefs, Written Arguments, and Proposed Findings and Conclusions

1. The examiner may request that parties or interested persons submit briefs, written arguments, or proposed findings and conclusions.
2. For applications, parties and interested persons may submit briefs, written argument, or proposed findings and conclusions, subject to applicable deadlines and hearing close. For appeals, submissions are normally limited to parties. See X.
3. When a brief, written arguments, or proposed findings and conclusions are filed, copies shall be served concurrently on all named parties, as described in IV.E.

E. Information Received after Close of Hearing

Evidence or argument submitted after a hearing is not considered or included in the hearing record, unless the examiner issues a discretionary order reopening the hearing to permit its introduction and affords a reasonable opportunity for response.

XIV. SPECIAL PROCEEDINGS

The following procedures modify and supersede the normal procedural rules for particular subclasses of cases. Where this section does not describe modified procedures, the standard requirements are presumed to apply. Certain Rules may be superseded by provisions in KCC Title 12. See section XIV.E.

A. Complainant Appeals

1. A complainant appeal under KCC 23.02.070(I) and KCC 23.36.010(B) shall be granted where the record demonstrates all of the following:
 - a. Prior to filing the appeal, the complainant alleged in writing to the agency a violation of KCC chapter 9.12, 16.82, or 21A.24, and the agency determined not to issue a citation or order. The complaint must have identified the alleged violation's location, the property owner or other person responsible (if known), and the facts supporting the complainant's belief that a violation has occurred or was about to happen.
 - b. The agency is presumed to have determined not to issue a citation or order if thirty (30) days after receiving the complaint the agency has issued no written response to the complainant that affirmatively commits to taking the action requested or its reasonable equivalent, such as sending a violation letter to the alleged violator demanding corrective action by a certain date.
 - c. The complained-of structure, activity, or behavior violates the applicable law and the agency's determination not to issue a citation or order was unreasonable. The determination is reasonable if it does not result in action specifically prohibited by code and, to the extent interpretation may be required, is based on a regulatory construction consistent with the code's intent and purpose. The determination is also reasonable if the violation is *de minimis*, meaning the limited benefit to the public from pursuing an enforcement action is clearly outweighed by the administrative cost of such action to the agency.
2. The hearing on a complainant appeal shall be subject to the following procedural requirements:
 - a. The subject matter shall be limited to alleged violations of KCC chapter 9.12, 16.82, or 21A.24.
 - b. Any owners of property subject to the proposed enforcement action shall be served with the relevant notices and shall be entitled to participate in the hearing as parties.
 - c. Discovery orders directed to an agency shall be limited to production of records, in the possession of the agency, generated in the previous ten

years, and concerning the affected property (or adjacent properties sharing the same characteristic).

- d. The agency's claim that the complainant did not effectively submit a complaint, that the agency has not determined not to issue a citation or order, that the agency's enforcement decision is reasonable, that the alleged violation is *de minimis*, or that the complaint repeats an earlier complaint, may be resolved via a dispositive pre-hearing motion.
3. If the examiner grants the appeal, the examiner shall order the agency to take some specified step within a specified time frame. The examiner may retain jurisdiction to assure compliance. If an agency fails to reasonably comply with the examiner's order, the examiner may issue a notice and order directly.

B. Mineral Extraction Periodic Review

An appeal of a periodic review report issued by the Department of Permitting and Environmental Review (DPER) pursuant to KCC 21A.22.050 shall be subject to the following standards and requirements:

1. The appeal proceeding shall be a *de novo* hearing to determine whether, based on current regulatory standards, the ongoing DPER inspection and enforcement procedures are adequately addressing present and anticipated adverse environmental impacts arising from site extractive operations.
2. An appellant must demonstrate that DPER's periodic review report does not comply with KCC 21A.22.050's requirements. A site operator's appeal generally focuses on claims that the periodic review report findings are not supported by the evidence and that the proposals for new permit conditions are either unnecessary or exceed applicable regulatory authority. Appeals by other parties generally involve claims that existing and proposed permit conditions (and the factual findings underlying them) fail to adequately characterize and mitigate the adverse environmental impacts arising from site operations.
3. The adequacy or propriety of existing grading permit conditions are not automatically at issue in a periodic review appeal. Challenges to existing grading permit conditions are considered only where an appeal alleges such conditions or their effectiveness have been erroneously characterized within the periodic review report or that existing permit conditions inadequately mitigate the adverse environmental impacts of site operations.
4. DPER's periodic review and its appeal are inspection and enforcement—not permitting. Accordingly, neither the periodic review report nor the appeal decision operate directly to modify grading permit conditions, and both are categorically exempt from SEPA threshold determination requirements. If either the review or decision requires future actions that necessitate new or revised permit conditions, such conditions may require SEPA review prior to implementation. The appeal decision may also contain findings regarding whether existing environmental documents adequately identify and describe the adverse impacts of current or future site operations.

C. Alteration Exceptions

In considering a critical areas alteration exception appeal under KCC 21A.24.070, the following principles apply:

1. The proceeding shall be a *de novo* review. The appeal decision shall embody an individualized inquiry based on the specific characteristics of the applicant's property, as established by the hearing record. Agency rules governing the process shall function as guidelines, where appropriate and when the factual record supports their applicability.
2. In determining whether a proposed alteration of a critical area is the minimum necessary to allow for reasonable use of the property, the examiner may consider the dimensions and character of development on other comparable properties in the neighborhood.

D. Conditional Uses and Variances

1. The conditional use or variance decision appeal proceeding shall be a *de novo* review consistent with KCC 21A.02.090(B). The scope of review generally will be determined by the appeal statement. For uncontested matters the examiner may, after providing parties with notice and a reasonable opportunity for comment, rectify errors in the agency decision.
2. Unless special circumstances relating to the public interest warrant receiving public testimony, hearing testimony generally will be limited to parties to the appeal (including intervenors) and their designated witnesses.

E. Civil Rights

The following provisions apply to civil rights enforcement hearings authorized by KCC chapter 12:

1. To the extent there is a direct conflict between these Rules and any provision in KCC Title 12—such as KCC 12.16.115, KCC 12.17.030(D–E), KCC 12.17.060, KCC 12.18.040(D), KCC 12.18.070(D), KCC 12.20.100, KCC 12.22.040(D), or KCC 12.22.070—the provisions in KCC Title 12 control.
2. In interpreting KCC chapters 12.16, 12.17, 12.18, 12.20, and 12.22, reliance upon relevant federal statutes and case law is appropriate where County and state authority or precedent are unclear. For example, allocation of the burden of proof in civil rights enforcement proceedings may follow the format established for analogous federal proceedings.
3. Compliance with the Rules of Evidence may be strictly applied, especially regarding admitting hearsay testimony and claims of privilege.

F. Site-Specific Land Use Map Amendments

Hearings on proposed site-specific land use map amendments conducted under KCC 20.18.050 and KCC 20.22.170 are legislative rather than quasi-judicial. As such they are not required to conform strictly to quasi-judicial procedural restrictions, but adherence to restrictions on *ex parte* communications will generally be required. To the extent the examiner's recommendation is based on site inspections or documentary information obtained outside the hearing record, the examiner shall disclose such sources in the recommendation.

XV. HEARING OUTCOME

A. Continuances

1. If a hearing cannot be completed on the date set, the examiner may announce, before adjourning, the time and place of a continued hearing. No further notice is required.
2. The examiner may continue or postpone a hearing upon a finding of good cause or to prevent manifest injustice.
3. Unless waived by the parties or required by law, continuances are scheduled to meet KCC 20.22.100's time limits. Any party who requests or consents to a continuance that prolongs the proceeding beyond these time limits waives compliance with such limits. Unless otherwise specified, the waiver shall include the date the hearing record closes, plus an additional ten (10) business days.
4. As an alternative to continuing a hearing to receive further oral testimony, the examiner may leave the record open to allow written argument or specified additional evidence, and may allow for a period of response or reply.

B. Inadequate Legal Notice

Lack of required legal notice may be raised by any person at any time before the hearing closes. To the extent possible and consistent with due process, the deficient notice is cured by providing (through continuances and other mechanisms) adversely affected persons a reasonable opportunity to effectively participate. Receipt of actual timely notice of a proceeding generally cures a deficiency. If other available corrective actions are inadequate, the examiner adjourns the hearing and orders new notice to be issued. The examiner may waive KCC chapter 20.22's time limits to cure deficient notice.

C. Remand

The examiner may remand any matter to an applicant or agency for additional information, analysis, review, or modification.

D. Default

An examiner may enter an order of default against any party who fails to appear at a proceeding. Failure of a party to present evidence or argument in support of the application, petition, order, or appeal, either in person, through a representative, or in writing prior to or at the time set for the hearing, is cause for dismissal. Prior to entering a dismissal, the examiner shall ascertain whether the party has received legal notice of the hearing and if inclement weather or other conditions hazardous to the general public precluded attendance.

E. Burden of Proof

1. Except as otherwise specified by law or XIV., the moving party (the applicant, appellant, or petitioner) bears the burden of proof.
2. Except as otherwise specified by law or XIV., in enforcement actions the agency bears the burden of proof on those matters or issues raised in the appeal statement or in any appeal statement amendment the examiner authorizes.

3. If the burdened party fails to introduce sufficient evidence, the examiner may deny the application, petition, order, or appeal without taking evidence or hearing argument in opposition.

F. Standard of Proof

1. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
2. For appeals from threshold determinations made pursuant to the State Environmental Policy Act, the appellant must demonstrate that the determination was clearly erroneous based on the record as a whole.
3. The examiner only grants substantial weight or otherwise accords deference when directed to by an ordinance, statute, or pertinent case law.

G. Determination

Unless the examiner requests additional information or briefing or otherwise re-opens the record, the examiner issues a determination within ten (10) business days of the close of the hearing.

XVI. POST-HEARING PROCEEDINGS

A. Reconsideration

1. Upon a timely request or *sua sponte*, an examiner may reconsider a determination based on the existing evidential record. A request for reconsideration is not timely if filed after the period for appealing the examiner determination expires.
2. A motion for reconsideration is not a prerequisite to appealing an examiner determination. However, a motion filed prior to the expiration of the appeal period stays the appeal period until the examiner rules on the motion.
3. The examiner may grant the motion if the movant shows that the examiner's determination was based in whole or in part on erroneous information or failed to comply with existing laws, regulations, or adopted policies, or shows that a procedural error prevented consideration of directly affected persons' interests.

B. Reopened Hearing

1. Prior to Examiner Determination or on a Motion for Reconsideration
Upon notice to the parties and other interested persons, and consistent with XIII.E., the examiner may reopen a hearing to permit additional consideration of issues or to receive responsive comments to a proposed determination.
2. During Pendency of Council Appeal
Prior to Council action on an appeal from an examiner's determination under KCC 20.22.050 or .060, the examiner may reopen a hearing if the appeal potentially states meritorious claims and the interest of the parties and public would be best served by the examiner's corrective action or clarification.
3. Upon Remand
The examiner may reopen a hearing to address an issue remanded by the Council or another tribunal. If the examiner reopens the hearing to allow oral testimony,

the examiner shall provide reasonable notice of the reopened hearing. If the examiner reopens a hearing for written submittals, the examiner shall provide at least seven (7) days for such filings. The examiner's notice shall set forth the issues to be addressed in the reopened hearing.

C. Retained Jurisdiction

Examiner determinations may expressly retain jurisdiction for purposes within the scope of the original matter, including effecting compliance with a lawful order.

D. Minor Corrections

Examiner determinations may be revised to correct textural errors. Unless otherwise specifically provided, such revisions shall not alter or extend applicable appeal deadlines or the effective date of the examiner determination.

XVII. FAIRNESS

A. Disqualification

1. An examiner shall disqualify himself or herself from a proceeding in which the examiner's impartiality might reasonably be questioned. The fact that an examiner has considered the same or a similar proposal in another hearing, has made a ruling adverse to the interests of a party in this or another hearing, or has previously considered and ruled upon the same or a similar issue, is not a basis for disqualification.
2. A request for disqualification shall be granted whenever the examiner:
 - a. Has a personal bias or prejudice concerning a party;
 - b. Has served in a professional or business relationship with respect to the matter in issue, or is currently associated with a person who is or was so engaged; or
 - c. Has directly, or through a family member or fiduciary relationship, a financial or personal interest in the outcome of the matter or issue.
3. The examiner will be guided by the provisions and interpretations of Rule 2.11 of the Code of Judicial Conduct.

B. *Ex Parte* Contacts

All examiner quasi-judicial proceedings are subject to the appearance of fairness doctrine. No person shall contact an examiner off the record for the purpose of influencing the examiner's decision. *Ex parte* contacts limited strictly to the clarification of procedural matters (and not to the merits of a dispute) are permitted. A deliberate *ex parte* contact in violation of this section may be deemed an attempt to interfere with examiner duties in violation of KCC 20.22.020. If a substantive *ex parte* communication is made to or by the examiner, the examiner shall publicly disclose it.