RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE ISLAND COUNTY HEARING EXAMINER

Promulgated: May 28, 2024
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1. Definitions.

Terms used herein are defined below:

- **A.** "Agent" means a Natural Person who has written authorization to convey the position of a Party pursuant to Rule 16(A).
- **B.** "Appellant" means the person who submits a complete and timely appeal of a final administrative decision to the Hearing Examiner.
- **C.** "Applicant" means a person who submits a complete and timely application for a permit, project permit, or other regulatory approval.
- **D.** "Code" means the applicable ordinances or statutes governing these proceedings.
- **E.** "Comprehensive Plan" means all development principles and standards adopted by the Council as objectives and goals for the Comprehensive Plan for the County in effect at the time of submission of a petition or application.
- **F.** "Council" means the Island County Board of Commissioners.
- **G.** "Days" refers to calendar days unless explicitly stated otherwise.
- **H.** "Department" refers to the County department issuing the administrative decision being appealed or administering the applicable section of the Code.
- **I.** "*Ex Parte* Communication" is a communication that occurs between any person and the Hearing Examiner, written or oral, outside of the presence of the other Parties of Record.
- **J.** "Hearing Examiner" means the person(s) either appointed pursuant to the Island County Code ("ICC") 16.13, or any other section of the ICC, to carry out the duties of the Office of the Hearing Examiner as outlined in that portion of the ICC and elsewhere in the ICC or acting as a *pro tempore* hearing examiner.
- **K.** "Hearing Examiner Clerk" or "Clerk" means the person(s) assigned by Island County to assist the Hearing Examiner in the administrative tasks of the Office of the Hearing Examiner, distribute orders, maintain an exhibit log, preserve the record, coordinate hearing dates, and receive requests for procedural and format inquiries.
- **L.** "Intervenor" means a person granted intervention pursuant to Rule 18. An Intervenor has the same rights of participation in the proceedings as the Appellant or Applicant and the County, unless such rights are expressly limited by the Hearing Examiner.
- **M.** "Motion" means an oral or written request to the Hearing Examiner for an order or ruling.

N. "Natural Person" means a human being.

O. "Open Record Hearing" has the meaning provided for it in RCW 36.70B.020.

P. "Office of the Hearing Examiner" means the procedures, systems, and people carrying out the work of the Hearing Examiner under the direction and in support of the Hearing Examiner.

Q. "Participant" means any person who is not a Party and that is taking part in the proceedings including members of the general public and *amicus* parties; note that this definition may include some "parties of record" as defined in Code.

R. "Party" means the Applicant, Appellant, Department, or Intervenor; note that this definition may include some "parties of record" as defined in law and use of the word "party" is not meant to exclude "parties of record" from what rights they have under the Code, but not all parties of record are Parties.

S. "Party of Record" means any person who has testified at a hearing or has submitted a written statement related to an action and who provides the County with a complete address, or a person who has formally requested to receive information via a written statement with a complete mailing address.

T. "Person" means an individual, partnership, corporation, association, organization, cooperative, municipal corporation, or government agency.

U. "Rules" or "ICHE" means these Island County Hearing Examiner's Rules of Procedure.

V. "Record" means the official record of documents, briefs, motions, testimony, recordings, and other items submitted, reviewed, considered, discussed, created and/or relied on during the course of the proceedings before the Hearing Examiner, which will be the full and complete record of proceedings if the Hearing Examiner's decision is appealed. The record may include both admitted and unadmitted evidence.

W. "Staff Report" means a document prepared by a Department pursuant to and for the purpose of review by the Hearing Examiner in a particular case.

X. "Standing" is the status required for a person to bring an action before the Hearing Examiner. For example, in most Land Use actions, standing in Island County conforms to RCW 36.70C.060 and is conferred upon:

- **a.** The Department making a decision subject to appeal or recommendation.
- **b.** The applicant and the owner of property to which the land use decision is directed;
- **c.** Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
    i. The land use decision has prejudiced or is likely to prejudice that person;
    ii. That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
    iii. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
    iv. The petitioner has exhausted their administrative remedies to the extent required by law.

Y. "Timely" means within the time frame provided by applicable Code, these Rules, or within the time specified by the Hearing Examiner.

2. History.

The Office of the Hearing Examiner as currently recognized was established by Island County via Ord. PD-83-03, adopted on August 22, 1983.[1]

ICC 16.13.100 authorizes the Hearing Examiner to prescribe rules and regulations for the conduct of hearings before them. The first promulgation of Rules of Procedure For Proceedings Before The Island County Hearing Examiner (RPPICHE) occurred at some point in the early 1990s, upon the authority of Hearing Examiner Michael Bobbink. A second promulgation was issued on January 6, 2020. This is the third promulgation of Hearing Examiner Rules.[2]

Record of known Hearing Examiners: Michael Bobbink (Mar. 1988 – Sept. 2019); Andrew Reeves (Nov. 2019 – Aug. 2023); and Rajeev D. Majumdar (Sept. 2023 to present).

3. Applicability.

The scope of the Hearing Examiner's jurisdiction is defined by the County via ordinances which they may amend, revoke, or promulgate from time to time.

These Rules of Procedure (hereinafter "Rules") shall be followed in all proceedings before the Island County Hearing Examiner. These Rules supplement the provisions of the Island County Code relating to proceedings before the Hearing Examiner, including but not limited to ICC 16.19.

Nothing herein shall be construed to give or grant to the Hearing Examiner the power or authority to alter or change the Zoning Ordinance, including the Zoning Map, that authority being fully reserved to the Council. Any conflict between the rules and the Ordinances will be decided consistent with the provisions of the Ordinances.

4. Quasi-Judicial Hearings

The Hearing Examiner carries out Quasi-judicial hearings. Quasi-judicial hearings and actions conducted by the Hearing Examiner are those proceedings which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions or hearings do not include the hearings pertaining to legislative actions adopting, amending, or revising a general governmental policy or ordinance, or a comprehensive, community, or neighborhood plan or other land

[1] And amended numerous times over the years. *See* Ord. C-170-90 [PLG-028-90], adopted 10/1/90; Ord. C-80-91, adopted 4/15/91; Ord. PLG-075-91, adopted 11/18/91; Ord. PLG-026-92, adopted 8/24/92; Ord. C-12-98, adopted 3/16/98; Ord. C-82-98 [PLG-017-98], adopted 9/29/98; Ord. C-136-98 [PLG-042-98], adopted 11/9/98; Ord. C-75-04 [PLG-012-04], adopted 7/26/04; Ord. C-96-06 [PLG-006-06], adopted 8/21/06; Ord. C-39-11 [PLG-001-11], adopted 5/2/11; Ord. C-75-14 [PLG-006-14], adopted 9/22/14; Ord. C-43-16[PLG-002-16], adopted 5/3/16; Ord. C-47-16[PLG-001-16], adopted 5/24/16; Ord. C-47-16, adopted 5/24/16; Ord. C-140-16, adopted 12/13/16; Ord. No. C-86-17 [PLG-009-17], adopted 8/15/17; *and* Ord. No. C-78-21 [PLG006-21], adopted 12/14/21.

[2] Promulgated May 28, 2024 and minor revisions on June 30, 2024, December 26, 2024, and now October 29, 2025.

use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

In any of the decisions or applications subject to review by the Hearing Examiner, the Hearing Examiner has the power to grant in part or as a whole, reject in part or as a whole, or to remand in part or as a whole with directions for interpretation by the Department. Further in granting, denying, or remanding any decision or application, partially or otherwise, the hearing examiner shall have the power to impose, modify, or remove conditions.

5. Amendment of Rules.

ICC 16.13.100 authorizes the Hearing Examiner to prescribe rules and regulations for the conduct of hearings before them.

6. Interpretation.

The Hearing Examiner shall interpret the Rules and determine the application of the Rules to specific circumstances so that proceedings are fair and due process is achieved. Where there are questions of proceeding or practice not addressed by these Rules, or where the Hearing Examiner may use their inherent delegated power to waive a rule, the Hearing Examiner shall follow a practice or proceeding which provides fair treatment and due process of law to all Parties.

7. Presiding Officer.

The Hearing Examiner is the presiding officer over proceedings before them and over the Office of the Hearing Examiner. The Hearing Examiner shall ensure a fair and impartial hearing, take all necessary action to avoid undue delay, gather facts necessary to make their decision, and maintain order. The Hearing Examiner shall have all powers necessary to achieve these ends.

In the performance of their adjudicative functions, the Hearing Examiner shall not be subject to the supervision or discretion of any elected official, officer, employee or agent of any Department or other government body.

8. Conflicts and Recusal.

A conflict of interest can arise when the Hearing Examiner cannot impartially carry out the proceeding. This can be due to the action being proposed or opposed by the Hearing Examiner's business associates or a member of the hearing examiner's immediate family. It could also involve substantive and biasing *ex parte* communications (See §9), or ownership of property in the vicinity by the Hearing Examiner. The State of Washington Appearance of Fairness Doctrine is generally applicable to all quasi-judicial proceedings, and all proceedings before the Hearing Examiner. See RCW 42.36.010.

Because of a conflict of interest, another substantial reason, or scheduling conflict, a Hearing Examiner may recuse themselves from a particular hearing, with or without a request for recusal from a Party.

A Party may request recusal, but that party must request recusal as soon as possible after the reason for the requested recusal is known, and before any discretionary rulings are made. The fact that the Hearing Examiner has considered the same or a similar proposal in another hearing, or has made a ruling adverse to the interests of a party in this or another hearing, or has considered and ruled upon the same or a similar issue in the same or similar context, shall not be a basis for disqualification. Upon a motion by any party, or on the Hearing Examiner's own motion, the Hearing Examiner shall rule upon the motion to determine if recusal and the appointment of a substitute Hearing Examiner is necessary for a fair proceeding.

If a Hearing Examiner is recused, a Hearing Examiner *pro tem* will take their place as arranged and selected with the discretion of the Office of the Hearing Examiner.

The recusal of the Hearing Examiner may be grounds for a continuance depending on the circumstances, and the Hearing Examiner may grant a continuance for that reason even if there is a conflict of interest.

9. *Ex Parte* Communications.

A. "*Ex parte*" is Latin and means "done with respect to or in the interests of one side only or of an interested outside party," and is something that occurs outside of the public eye. No person, regardless of whether that person is a Party or not, may communicate *ex parte* in any way with the Hearing Examiner regarding the merits of a particular hearing or a factually-related petition, appeal, or application. The Hearing Examiner may likewise not communicate *ex parte* in any way about the same topics with any person.

B. If prohibited *ex parte* communication occurs, it shall be immediately disclosed to all Parties and made a part of the record. If a substantial prohibited *ex parte* communication occurs, the Hearing Examiner shall exercise their proper discretion and determine whether they must recuse themselves.

C. A person may communicate *ex parte* with the Clerk concerning strictly procedural matters or to make requests for publicly available documents.

10. Expeditious Proceedings – Frequency and Scheduling.

A. To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. The Hearing Examiner and all Parties shall make every reasonable effort to avoid delay.

B. Hearings before the Hearing Examiner shall be scheduled on an as-needed basis with the Clerk. Applications or Appeals requiring a proceeding before the Hearing Examiner shall be scheduled for hearing promptly after notification by the Department that the Application or Appeal is ready.

C. The Office of the Hearing Examiner shall assign a date for hearing in compliance with statutory requirements, and may coordinate with the parties to select an appropriate date. Hearings

may be set outside of regular business hours in order to accommodate competing infrastructure and space needs of the County, or the unique needs of the parties.

D. There may be more than one case scheduled to commence at the same time, and in such event the Hearing Examiner shall have discretion in setting the agenda.

11. Consolidation and Separation.

Whenever practical and consistent with the Code and state law, proceedings before the Hearing Examiner related to the same matter may be consolidated or separated. The Hearing Examiner may order consolidation or separation with or without a motion from a Party.

12. Dismissal and Denial.

A. Procedural Dismissal without Hearing. The Hearing Examiner may on their own initiative decline to file a submitted matter or dismiss it via written decision, with or without a hearing, and with or without a motion any Appeal or Application over which the Hearing Examiner determines that they have no jurisdiction, or which is without merit on its face, contains patently false information, frivolous, brought only to secure delay, or where proper notice as required by the applicable ordinance has not been given.

B. Dismissal For failure to Appear. The Hearing Examiner may dismiss a matter, or rule in favor of the non-violating party, when a Party or authorized representative fails to appear at the time and place scheduled for any hearing, conference, or other ordered appearance.

i. The Hearing Examiner shall make a written ruling in those cases which are dismissed due to the Party's failure to appear.

ii. The Party may, within seven (7) days of the date of notice of dismissal, apply for reinstatement of the matter. In such cases, the Party must file a written request for reinstatement. Reinstatement shall be at the discretion of the Hearing Examiner for good cause shown. The applicant shall also be responsible for the payment of any costs associated with the provision of required public notice for hearing on the reinstated application, prior to actual reinstatement.

C. Withdrawal of Application or Appeal.

i. If an Applicant or Appellant requests to withdraw its Application or Appeal, or portion thereof, before official notice of the public hearing is served, the Applicant or Appellant shall notify the Department and the withdrawal shall be permitted.

ii. If a withdrawal request is made after official notice of the public hearing is served, the Hearing Examiner may permit or deny the withdrawal at their discretion.

iii. Any dispute between the Department and the Applicant or Appellant regarding any fees paid by the Applicant or Appellant is a matter not within the purview of the Hearing Examiner.

D. Agreement of the Parties. The Hearing Examiner will dismiss without a hearing any matter or portion of a matter stipulated by the Parties in writing.

E. Failure to Follow Procedure. The Hearing Examiner may dismiss a matter, or rule in favor of the non-violating party, with or without a hearing any matter or portion of a matter in which a party has materially failed to follow the procedural rules including making substantive attempts at making *ex-parte* contact directly or through third parties. This action is not for technical failures to follow rules, but is used in situations in which the failure also raises questions about the fairness of the proceeding, substantially interferes with the administration of the proceedings by the Hearing Examiner, or shows a willful disregard for the rules of procedure.

F. Upon a Dispositive Motion. The Hearing Examiner may deny an appeal or dismiss a case, after a dispositive motion hearing (*e.g.* Summary Judgments in which there are no substantive disagreements over the facts but only over questions of law, motions for want of jurisdiction, motions regarding timeliness of the appeal, mootness, *etc*.).

13. Computation of Time and Deadline Extensions.

A. Computation. Except as otherwise provided in the law or these Rules, any prescribed period of time begins on the first day following that on which the act initiating the period of time occurred. When the last day of the period of time is a Saturday, Sunday, or County holiday, the period shall extend to the following business day. All materials due on a given day must be served on all other Parties and submitted to the Hearing Examiner before 5:00 PM on that day unless otherwise agreed.

B. Extension. Any Party may move to extend any deadline specified in these rules, except for the statutory deadlines to file an Appeal or Application. The Hearing Examiner may grant or deny such motions at their discretion.

14. Rights of Parties and Participants to Fair Hearing and Participation.

A. Parties have the rights of due notice, due process, cross-examination, rebuttal, presentation of evidence, objection, motion, argument, and all other rights essential to a fair open record hearing.

B. Parties may participate in any pre-hearing conference, submit legal briefing, motions, and witness and exhibit lists, present witnesses, and testimony at a hearing, and perform other hearing-related functions as needed to protect their legal rights and interests. *But see* §16(B).

C. Participants may submit exhibits, written statements, and testimony to the Hearing Examiner at a hearing, or submit written comments in advance of a hearing. Such Participants shall participate in the other aspects of the hearing only at the Hearing Examiner's discretion.

15. Entitlement to Notice of Hearings, Orders and Decisions.

A. When a Party or Participant consists of more than one individual, such as an association, corporation, or other entity, that Party or Participant shall designate one individual to be its representative. The Party or Participant shall inform the Clerk and other Parties of the name, mailing address, e-mail address, and telephone number of the representative for receipt of official notifications and service. The representative alone shall exercise the rights of that Party or Participant, and notice or communication to the representative shall constitute notice or communication to the Party or Participant.

B. Parties in the case shall receive notice of hearings, decisions, and recommendations from the Hearing Examiner if they have supplied the Clerk and other Parties with their name, mailing address, E-mail address, and telephone number for receipt of official notifications and service.

C. Participants may also receive notice of hearings, decisions, and recommendations from the Hearing Examiner if they have supplied the Clerk and other Parties with their name, mailing address, E-mail address, and telephone number for receipt of official notifications.

D. The Hearing Examiner will send any orders, decisions, and communications to eligible persons through the Clerk.

16. The Practice of Law and Legal Counsel.

A. A party may be represented by Legal Counsel or an Agent, but only Legal Counsel may practice law. An Agent must be a Natural Person and shall provide to the Hearing Examiner a written authorization from that party prior to the hearing, and may be limited to testifying as to the will of their Party, their agreement or disagreement with the Staff Report and proposed conditions, and procedural history of the underlying decision from the Party's perspective. A business entity, or other legal person that is not a natural person, may not represent itself. Department Staff are considered inherent Agents of the Department without written authorization being required.

B. Practice of Law. The practice of law is defined in the Washington Supreme Court's GR 24. RCW 2.48.180 makes the unlicensed practice of law a crime in Washington. Only an attorney actively licensed in good standing to practice law by the Washington State Bar Association ("WSBA") shall file motions or briefs, argue motions, conduct discovery, make objections to evidence, examine, or cross-examine witnesses, or file legal memoranda. None of the foregoing is intended to prevent a Party that is a Natural Person from carrying out any of these acts or advocacy on their own behalf (also known as *pro se* representation).

i. *Pro Hac Vice* Admission. To engage in the practice of law in Hearing Examiner Proceedings as a lawyer not licensed in Washington, but licensed in a jurisdiction and credentialed in a way acceptable to the WSBA, *pro hac vice* admission by the WSBA is required following the guidance of WA APR 8.8(b). Local counsel must file an application/motion with the WSBA, and pay the fees and mandatory assessments, unless specifically waived by the WSBA, and then file certifications and provide copies of the same with the Office of the Hearing Examiner, to become part of the record. Local counsel may use a modified form of any of the WSBA's pattern form motions appropriate for a trial court.

C. Parties' counsel. All Parties participating in any hearing may be represented by legal counsel at all stages of the proceedings. A notice of appearance pursuant to §17 of these rules is required by all parties except the Department who is perpetually represented by the Island

County Prosecuting Attorney. Service may not be made on the Prosecutor's Office for the Department, unless they have appeared or such has been authorized.

D. Legal Counsel to Hearing Examiner. An appointee of the Island County Prosecuting Attorney, screened from any conflict in Department representation in any specific case, shall act as legal counsel to the Office of the Hearing Examiner and may be consulted in cases where the powers of the Hearing Examiner are not clearly defined. At the discretion of the Hearing Examiner, a representative of the Island County Prosecuting Attorney shall be present at public hearings or meetings to advise on matters of law and procedure.

17. Notice of Appearance.

A. When an attorney represents a Party, the attorney shall file a notice of appearance with the Clerk and send a copy of that notice to all other Parties, except that such notice of appearance shall not be required if the attorney representing the Party filed the Application or Appeal.
B. When an attorney enters a notice of appearance on behalf of a Party, all official notices and service shall be directed to the attorney instead of to the Party.
C. Failure to file a notice of appearance at least seven (7) days before a hearing may be grounds for a continuance.

18. Intervention.

A. A person may intervene as a matter of right when the requirements of intervention in Washington State Superior Court Civil Rule 24(a), or its successor rule, adopted here, are met.
B. At their discretion, the Hearing Examiner may permit the intervention of a person when the requirements for permissive intervention in Washington State Superior Court Civil Rule 24(b), Intervention, or its successor rule, are met.
C. A person desiring to intervene must file a motion for intervention stating the legal grounds for intervention with the Hearing Examiner before the date of the hearing.
D. A person granted intervention will have a right to participate in all aspects of the proceedings, including without limitation pre-hearing conferences, briefing, motions, presentation of witnesses and exhibits, and oral argument, unless such right is expressly limited by the Hearing Examiner as a condition of permissive intervention.

19. Filing and Service of Documents.

A. Initial filings for Appeals and Applications must be submitted to the Department. The Director may also request additional information to be submitted to their office after receiving the initial Appeal or Application, in order to provide the Clerk all the necessary information to open a case with the Office of the Hearing Examiner.
B. All pleadings, exhibits, comments, motions, and other material intended to be seen by the Hearing Examiner as part of any decision making process the Hearing Examiner is involved in, must be filed with the Clerk by e-mail. The Clerk shall ensure the material filed and any decisions and orders of the Hearing Examiner are made part of a public record that is

accessible or distributed to all parties and the Hearing Examiner prior to a hearing or after a decision.

C. Any direct e-mail to the Hearing Examiner is prohibited. Exception to this prohibition may result from: the direction of the Hearing Examiner or where an emergency requires such action, and all parties are included in the communication.

D. Any Party or Participant filing legal briefs or motions shall submit them to the Clerk in both .pdf and a .doc/.docx format.

E. All citations to legal authority in any pleading should adhere to the Washington Supreme Court Style Sheet, as they may amend or supersede from time to time.

F. Wherever possible, citations should be made using footnotes as opposed to "in-text" or parenthetical citation.

G. Any and all historical laws or regulations, no longer published or not made electronically available to the general public by the County, that are referenced by any Parties or Participants must be filed with copies of said laws and transmitted to all Parties as well.

H. Any Party filing a document must serve other Parties. Documents may be served personally, electronically to the e-mail of record, or by first-class, registered, or certified mail. This may also include emailing of a functional link to download files too large for email. Service shall be regarded as complete three days after the deposit of a properly addressed and stamped envelope in the regular facilities of the US Postal Service, or upon the time of personal service or electronic transmission. One Department may serve another Department using the intra-county mail system. The Parties are encouraged to agree to e-mail or other electronic transmission.

20. Discovery.

A. At their discretion, the Hearing Examiner may permit discovery upon the motion of the Applicant, Appellant, Department, or Intervenor. The Hearing Examiner may limit the scope of discovery as appropriate. The Hearing Examiner shall generally not permit discovery, except in exceptional circumstances and where good cause is shown.

B. Subpoenas and summons. The Hearing Examiner is authorized to issue subpoenas and summons. To that end, the Hearing Examiner, in their sole discretion, may issue a subpoena consistently with the procedures adopted by the Hearing Examiner. The Office of the Hearing Examiner is adopting procedures analogous to those described in Washington State Superior Court Civil Rule 45, and are hereby adopted by reference.

21. Creation of Record – Party Deadlines.

A. Submission of Proposed Evidence. Parties should submit any evidence they intend to submit to the Office of the Hearing Examiner via the Hearing Examiner Clerk as soon as they have access to it for the purposes of indexing and pre-marking for the hearing. All supporting exhibits must be provided to the Hearing Examiner Clerk no less than seven (7) days prior to the hearing.

B. Organization & Public Preservation of the Record. All documents submitted to the Office of the Hearing Examiner shall be indexed in numerical order. All documents submitted to the Office of the Hearing Examiner shall be included in the official record of the hearing subject to any ruling on includability or admissibility by the Hearing Examiner.

- **i.** Parties shall accompany submissions of documents with an Exhibit List in .doc/.docx format for the Clerk's usage.
- **ii.** Parties shall label electronic copies of documents with clear titles and dates in the name of the file.

The following items will be included in the record—procedural decisions and orders of the Hearing Examiner; any document, item, or other materials the Hearing Examiner admitted into evidence, made part of the record, relied on, or considered; the Hearing Examiner's written decision; and a video or audio recording of the hearing.

The record shall be maintained for public inspection in the form of a file containing the various records of the Hearing Examiner's actions, findings, and determinations. This can be obtained by contacting the Hearing Examiner Clerk at the Office of the Hearing Examiner located at the Island County General Services Administration Department at 1 NE 7th Street, Room 200 in the Administration Building, Coupeville, WA 98239. Copies of any written materials in the record may be obtained by any interested person upon payment of the cost of reproduction of such materials.

C. Facts Proposed for Evidence and Supplementing Record on Appeal. At least **thirty (30) calendar days** prior to a hearing, unless a different deadline is set at a pre-hearing conference, a party may submit to the Clerk any documents in addition to those submitted by the Department. This would include all forms of facts including documents, photographs, reports, maps, etc. upon which a Party will be relying or presenting at the hearing. Any documents submitted later than the timelines provided in this Section shall be included in the official record at the discretion of the Hearing Examiner. The Hearing Examiner may refuse to consider or admit into the record any factual record received late. The Hearing Examiner shall make all such records available to the public in advance of the hearing, or if documents are submitted late but accepted by the Hearing Examiner, as soon as reasonably feasible.

D. Expert Witness Disclosure on Appeal. Parties must identify expert witnesses in advance in the form of a Witness List with names, titles, contact information, and the general nature of their testimony. The Witness List must be submitted to the Clerk no less than thirty (30) days in advance of the hearing with copies to other Parties. Parties and Island County staff need not be identified on such lists and always have the right to testify. However, any party may request a statement of the general nature of staff testimony if such has not been described in a relevant staff report. The Hearing Examiner may refuse to consider testimony from any witness not listed on the Witness List or received late. The Hearing Examiner shall make all such documents available to the public in advance of the hearing, or, if documents are submitted late but accepted by the Hearing Examiner, as soon as reasonably feasible.

E. Transmission of Department Record. Original case files of the Department are kept at the Department.

i. Based on a timeline established in §21(E)(ii), the Department shall provide the Office of the Hearing Examiner with an index of the planning file along with electronic copies (or hard copies if necessary) of all relevant evidence. All evidence provided by Planning shall be placed in the record. These documents should be all relevant materials to any Department decision or recommendation, or procedural history, and may include, but are not limited to, the following materials:

1. The Application, including all drawings, plans, and supplemental materials included with the application;
2. Expert Reports;
3. Appeal Petition;
4. Staff Reports (submission timelines of Staff Reports are governed by §22);
5. Any administrative decisions or recommendation from the Department; and
6. Comments received on the Application from the public, County Departments, or other non-County government agencies.

ii. Timelines for Submission of Department Record

i. For appeals, the Department Record as exists at that time shall be transmitted within fourteen (14) calendar days after the Department notifies the Office of the Hearing Examiner that a new appeal is filed, unless a different deadline is set at a pre-hearing conference or a request for good cause extension is granted.

ii. For permits, project permits, and all other applications, the Department Record shall be transmitted at the time the Department requests a hearing be scheduled, unless a different deadline is set at a pre-hearing conference or a request for good cause extension is granted.

iii. Extensions of time will be given liberally for good cause where the Department record is large.

F. Development of the Record at the Hearing. All evidence presented at the hearing including, but not limited to, oral testimony, exhibits, demonstrative aids, and other materials considered at the hearing shall be included in the official record of the hearing subject to any ruling on admissibility by the Hearing Examiner.

G. Objection to the Record Created. A Party may object to the inclusion of any particular document in the record. Such objections shall be made either by written motion before the hearing or by oral motion during the hearing. The Hearing Examiner shall rule on such objections prior to the close of the record.

22. Staff Reports – Party Deadlines.

An initial Staff Report shall be submitted no less than twenty (20) days before the Hearing Date, unless otherwise dictated by the Code, but may be amended or supplemented thereafter. The staff report informs the Hearing Examiner of the Department's position regarding the application or appeal. In an appeal a legal brief, as described in §23, may be submitted in lieu of a staff report. A Staff Report should contain the following elements:

- **A.** Basic factual information about the property and the Applicant, such as name, ownership, address, parcel number, lot size, zone, availability of utilities and public services, and other relevant information;
- **B.** A detailed description of the lot or lots, including location of existing structures and other improvements, vegetation, slope, critical areas and buffers, and other relevant factors;
- **C.** A description of the Application and Applicant's objective and procedural history;
- **D.** Information about the zone the property occupies, topography, and neighboring uses;
- **E.** A description of how public notice was achieved, a summary of the public comments the Department received, and a statement of whether the Department concludes that the public comments were adequately addressed in the staff report;
- **F.** A statement describing the results of any related SEPA review, or a statement explaining why no SEPA review occurred;
- **G.** A summary of the reports or recommendations of any other agencies consulted;
- **H.** Analysis of the proposal's consistency with the State and/or County Law, and Comprehensive Plan. In making the analysis, the staff shall refer to applicable ordinances as often as possible;
- **I.** It should fully inform the Hearing Examiner of how the Department made the determination being appealed or applied for, including relevant facts, context, and citations as needed; and
- **J.** The Department's recommendation, including any recommended conditions on approval or remand/rejection.

23. Submission Deadline for Briefs – Party Deadlines.

- **A.** Any initial Briefs with legal argument must be submitted to the Clerk no less than fifteen (15) days in advance of the hearing unless a deadline is otherwise set by the Hearing Examiner in a pre-hearing order or briefing schedule. A Staff Report may be considered an initial brief, or may be supplemented with an additional initial brief. At their discretion, the Hearing Examiner may require legal authority to be submitted earlier. The Hearing Examiner may refuse to consider or admit into the record any legal authority received late. The Hearing Examiner shall make all such documents available to the public in advance of the hearing, or if documents are submitted late but accepted by the Hearing Examiner, as soon as reasonably feasible.
- **B.** Content of Briefs.
    - **i.** Applicant's Brief
        - **a.** An Applicant must file a brief if legal issues are anticipated.
    - **ii.** Appellant/Intervenor's Brief
        - **a.** Appellant briefs shall include substantially the following content:
        - **b.** Statement of Facts, Statement of Issues, Explanation of Position, Legal Authority, and Ruling Requested.

c. Failure to timely file an Appellant brief identifying the issues shall result in dismissal of the appeal. An appeal dismissed under this rule may be reinstated at the discretion of the Hearing Examiner for good cause shown.

d. *Pro se* appellants are subject to all of the above.

C. Response Briefs responding to the above shall be filed at least seven (7) days prior to such hearing, but are not required.

D. Reply Briefs in reply to the above shall be filed at least two (2) days prior to such hearing, but are not required.

E. The above schedule may be altered via a pre-hearing order or briefing schedule ordered by the Hearing Examiner or as agreed by the Parties and submitted to the Hearing Examiner, who may approve, reject, or modify such schedule.

F. The Hearing Examiner may request specific legal briefing from Parties.

24. Pre-Hearing Conference.

A. The Hearing Examiner, *sua sponte* or at the request of a party, may require one or more pre-hearing conferences conducted on the record like any other hearing, which may be in person, by virtual meeting, or telephonic, to discuss matters appropriate to ensure the orderly and expeditious disposition of the proceedings. Items discussed at a pre-hearing conference may include:

i. Whether issue clarification statements, scheduling dispositive motions, exhibit lists and distribution, witness lists, hearing briefs, post-hearing briefs, and other submittals are needed, and if so, deadlines and methods of filing and service of the same;

ii. The date, time, and location at which the hearing is to be held;

iii. Issues related to discovery;

iv. Issues related to intervention; and

v. Other procedural issues as the Hearing Examiner deems appropriate.

B. The Parties shall receive notice of a pre-hearing conference at least seven (7) calendar days in advance of the conference, unless otherwise agreed. All participants shall attend the conference either personally or via a representative or attorney, unless the Hearing Examiner grants permission to not attend or directs that it will be a telephonic or video conference.

C. Following a pre-hearing conference, the Hearing Examiner may issue orders reflecting the actions taken, decisions made, or rulings made during the conference.

25. Pre-Hearing Motions.

A. All motions, other than those made orally during a hearing, shall be in writing and shall state the relief requested and the grounds for that relief. Motions must be served on all Parties the same day they are submitted to the Hearing Examiner. Unagreed motions should be served thirty (30) days before any hearing that they may affect; agreed motions may be filed at any time.

B. Unless otherwise specified by the Hearing Examiner, the other Parties may file and serve a written response to a Motion within nine (9) days of the filing of the motion.

C. Unless otherwise specified by the Hearing Examiner, the Hearing Examiner shall rule on the motion within fourteen (14) days of the passing of the deadline for answers to the motion or within fourteen (14) days of oral argument as ordered by the Hearing Examiner, whichever is later. There is no right to oral argument for a motion filed outside of a hearing, but the Hearing Examiner may in their discretion grant a request for, or require oral argument before, ruling on the motion.

D. Motions made orally during a hearing may be answered and ruled on immediately.

E. A party may file a motion at any time without regard otherwise to timelines in these rules upon the Hearing Examiner approving an order declaring the necessity of shortening any timelines in these rules or for emergency continuances.

26. Nature of Hearings.

A. Hearings shall be of an informal nature, but shall allow a reviewing body to easily ascertain the relevant facts, evidence, and arguments presented during the hearing and allow the Parties to develop a complete record. The order in which Parties present their cases shall not impact the applicable burden(s) of proof.

B. The Examiner shall have the power to maintain order and decorum during the conduct of all hearings before them.

C. All persons in attendance at any hearing of the Hearing Examiner or any other conference or meeting provided for in these Rules shall conduct themselves with reasonable decorum and courtesy consistent with judicial proceedings. All persons shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the hearing at the discretion of the Hearing Examiner. The Hearing Examiner may recess a hearing at any time that a violation occurs. In that event, the Hearing Examiner shall re-convene the hearing pursuant to oral notice given at the time of recessing, or pursuant to subsequent written notice to the parties of record, under such conditions as are reasonable to assure that the violation(s) will not repeat. Such conditions may include the exclusion of identified persons for the hearing or exclusion from further participation in the matter.

D. The Examiner may remove or have removed from the hearing room any person whose conduct is interrupting the hearing. If necessary, law enforcement officers may be summoned by the Examiner to carry out any of the provisions of this Rule and to maintain law and order. In the event that any person or persons interrupt any hearing before the Examiner such that

it becomes impossible to conduct an orderly hearing and order cannot be restored by removal of the individuals interrupting the hearing, the following steps may be taken:

i. The Examiner may mute or block participants in a hearing appearing by video or telephonic methods;
ii. The Examiner may order the hearing room cleared of specific individuals or all participants and continue in session as order is restored; and,
iii. The Examiner may adjourn the hearing and reconvene the hearing at another location.

E. Whenever the Examiner deems it necessary to reconvene a hearing in a new location or to clear the room of all persons before resuming because of interruptions preventing an orderly hearing at the regular hearing room location:

i. Final disposition may only be taken on matters appearing on the agenda at the time the disturbance arose leading to an adjournment.
ii. The Examiner may establish a procedure for re-admitting any persons not responsible for the disturbing of the orderly conduct of the hearing.

27. Format of Hearings.

A. When the Hearing Examiner holds a hearing the hearing should proceed according to the following outline:

i. Hearing examiner's introductory statement;
ii. Opening statements by the Parties, if any;
iii. Presentation of staff report by the Department;
iv. Presentation and/or testimony by the Applicant;
v. Presentation and/or testimony by the Appellant;
vi. Presentation and/or testimony by the landowner, if different than the Applicant or Appellant Presentation;
vii. Presentation and/or testimony by Intervenors;
viii. Public comment regarding the matter;
ix. Opportunity for Department, Applicant, Appellant, Intervenors, and the Hearing Examiner to ask additional questions to any Party at Hearing Examiner's discretion; cross examination of any witness will otherwise usually occur immediately following direct testimony from that witness;
x. Opportunity for rebuttal testimony.
xi. Closing statements of the Parties.

B. The Hearing Examiner may alter the order of the proceedings as needed.

28. Special Rules on Appeals to The Hearing Examiner.

A. Filing an application for appeal shall stay all proceedings in furtherance of the action(s) appealed from unless the Hearing Examiner finds that a stay of decision would cause an undue hardship or danger to persons or property, subject to any conflicting or superseding authority.

29. Burden of Proof & Evidence.

A. In each hearing on an application for a permit, the Applicant shall have the burden of proof. In each appeal hearing, the Appellant shall have the burden of proof.

B. With regard to decisions of the Department, the Hearing Examiner shall give due deference to the expertise and experience of the staff rendering such decision.

C. The Hearing Examiner has discretion over the admission of evidence.

i. Admissibility. The federal district court or state superior court rules of evidence that would apply in a court setting need not be observed, but may serve to guide the Hearing Examiner in their discretion. Generally, any and all relevant evidence with probative value from a reliable source shall be admitted, including hearsay. It is the Hearing Examiner's prerogative to give weight to admitted evidence as they see appropriate.

ii. Objection. Any Party may object to the admission of evidence into the record. The Hearing Examiner shall rule on all objections to evidence made during the hearing before the close of the record.

iii. Testimony. The Hearing Examiner may limit testimony that would be repetitious or irrelevant, may impose a reasonable limit on the number of witnesses and the length of their testimony, and may limit cross examination only to what is necessary for the full disclosure of facts.

iv. Documents. Documentary evidence may be received in the form of copies if the original is not readily available.

v. Privilege. To the extent recognized by law, the rules of privilege shall apply.

vi. Judicial Notice. The Hearing Examiner may take judicial notice of a fact if the truth of the fact cannot reasonably be doubted. In addition, the Hearing Examiner may take judicial notice of facts within their specialized knowledge. The Hearing Examiner may give notice to the Parties that they are taking judicial notice of a fact; this can be accomplished by an announcement during the proceedings or in the written decision.

D. No additional evidence may be submitted after the close of the record. The Hearing Examiner may, in their discretion, hold open the record after a hearing for a prescribed period of time. The Hearing Examiner may re-open the record to allow new evidence at their discretion if the evidence has significant relevance and there is good cause for the delay in its submission.

30. Witnesses.

A. The Hearing Examiner may require all witnesses testifying before the Hearing Examiner to take an oath or affirmation to be truthful and may refuse to take testimony from a witness that refuses to make such attestations.

B. If a witness testifies via an interpreter, the interpreter shall take an oath that a true interpretation shall be made.

C. As Hearing Examiner proceedings are open to the public, it is anticipated that some members of the public may wish to testify. Witnesses who are not Parties shall be allowed to testify in proceedings on an Application for which public testimony is allowed. Witnesses who are not Parties may be allowed to testify in Appeal proceedings at the Hearing Examiner's discretion.

The Parties may in their discretion cross-examine members of the public testifying as witnesses in proceedings. The Parties may be allowed to cross-examine members of the public testifying as witnesses in proceedings on an Appeal, at the Hearing Examiner's discretion. Witnesses who are not parties may not cross-examine.

D. Witnesses may present their testimony via telephone, virtual meeting, or video-conference at the discretion of the Hearing Examiner, as long as all present can hear or hear and see the witness and the ability to cross-examine the witness is not impacted.

31. Site Inspection.

When it is helpful to develop a full understanding of the case or making a finding of fact, the Hearing Examiner may inspect the site(s) at issue prior to, during or subsequent to the hearing if the proceedings are held open or re-opened for that purpose. The inspection itself is not recorded or part of the record, but the Hearing Examiner shall orally or in writing add any site inspection observations relied upon to the record prior to closing the record. Failure to inspect the site will not render the Examiner's recommendation of decision void. If Parties or Participants are present at the site inspection, all persons must observe the *ex parte* communications rules.

32. Continuances.

A. The Hearing Examiner may continue or re-open proceedings for good cause by entering an order to that effect prior to issuing their decision.

B. If a Party requests that the Hearing Examiner consider a continuance or a rescheduling of a continued hearing:

i. The party must reasonably attempt to confer with other Parties and make the request in writing, and be received by the Clerk not less than 14 days prior to the established hearing date, and must state why a further delay is desired.

ii. The Department or Clerk must inform the Examiner that there is adequate time and resources to send timely cancellation notices to all persons who were sent the initial hearing notice and to all parties of record. A cancellation notice is "timely" only if mailed seven (7) or more days prior to the date of the scheduled open record hearing.

iii. The Examiner will grant or deny the request in writing based upon consideration of the public interest impacts of the request.

iv. If a continuance requested by a Party will result in a hearing date beyond a date specified by the applicable ordinance for a final decision, the Party shall be deemed to have given a waiver of that deadline to the new hearing date.

C. If the Hearing Examiner continues proceedings during a hearing and announces the date, time, place, and nature of the future hearing, no further notice of the continuance is required.

D. If the Hearing Examiner continues proceedings outside of a public hearing, notice shall be provided to all parties with standing and others who have requested notice not less than five (5) days prior to the newly scheduled hearing. Hearings requiring public notice shall be re-noticed for the public. If the hearing is continued during the public hearing, no additional notice is required to the parties or public. Said notice shall include the date, time, place, and nature of the subsequent hearing.

33. Leaving the Record Open.

The Hearing Examiner may leave the record open at the conclusion of a hearing to receive further evidence or argument or for other good cause, under conditions the Hearing Examiner deems appropriate. All Parties of Record shall be given notice that the record has been left open and the date it will be closed.

34. Re-Opening Proceedings.

At any time prior to the issuance of the decision, the Hearing Examiner may re-open proceedings for the reception of further evidence or legal briefing. When the Hearing Examiner determines after a hearing that a future hearing is needed, all persons entitled to notice shall be provided at least seven (7) days' notice of the date, time, place, and nature of the future hearing. Such notice shall also be published in a publication of record.

35. Decision of the Hearing Examiner.

The written decision of the Hearing Examiner shall be issued within 10 working days of the hearing pursuant to RCW 36.70.970 unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner. The written decision shall include all of the following elements:

A. A statement of the nature and background of the proceeding;

B. Findings of Fact. The findings of fact are a statement of all the facts that form the basis of the decision. The findings of fact must be derived exclusively from testimony and evidence presented during the hearing and facts of which the Hearing Examiner took official notice. The source of each finding of fact should be identified and cited;

C. Conclusions of Law. Conclusions of law should cite to specific provisions of law or regulations and include reasons and precedents relied on, whenever applicable. If relevant, the conclusions of law should address how the decision is supported by the comprehensive plan and the effect of the decision on properties in the vicinity; and

D. Order. The Hearing Examiner's order shall be based on the entire record and supported by reliable, probative, substantial evidence.

36. Motions for Corrections of Clerical Errors, Clarification, and Reconsideration.

A. Clerical Errors. Clerical errors in any part of the record, order, or decision arising from an oversight or from errors in computation may be corrected by an order at the Hearing Examiner's initiation or in response to a motion of any Party.

B. Clarification. Any Party, after reasonably attempting to confer with other Parties, may request clarification within seven (7) days of any order or decision, if the parties have a disagreement in the meaning of any provision or agree that it is ambiguous.

C. Reconsideration. Any Party may request reconsideration within seven (7) days of an order or decision. The grounds for a reconsideration must fall under the standards outlined in Washington State Superior Court Civil Rule 59(a), adopted here.

37. Termination of Jurisdiction.

The jurisdiction of the Hearing Examiner to revise or amend a Final Decision is terminated seven (7) days after the issuance of the Hearing Examiner's decision, except when the Hearing Examiner expressly retains jurisdiction, re-opens the hearing, a substantive motion about the final decision is filed, a reviewing court remands a matter to the Hearing Examiner, the parties agree, or as otherwise provided in these Rules or the law. The Hearing Examiner may affirm, reject, or modify the decision at their discretion, and shall modify the decision if the law so requires.

Where the Hearing Examiner determines that the grounds cited for reconsideration do not warrant modification of the decision, they shall provide the requesting party with written notice of such determination prior to the expiration of the time set out herein for the filing of an appeal.

Unless otherwise specified by the Hearing Examiner or other applicable law, a Final Decision of the Hearing Examiner authorizing a proposal shall expire if the applicant fails to execute the approval within one (1) year of the date of the decision. An extension of the expiration date may be granted by the Hearing Examiner where the applicant has made a written request for an extension at least thirty (30) days prior to the expiration date. The Hearing Examiner may, at their discretion, order that a public hearing be held on the request.

38. Appeals of Hearing Examiner Decisions.

The effect of the hearing examiner's decision may vary by type of Application or Appeal and is as stated in the law. For most matters, the Hearing Examiner's decision is the final decision, subject to appeal to Island Superior Court, the Shoreline Hearings Board, or other reviewing body as legally mandated. Recommendations are not subject to appeal as they are not final decisions.

The time for appealing a Final Decision shall run from the Final Decision, or from any final ruling on motions filed in response to the Final Decision (Clerical Error, Clarification, or Reconsideration).

Unless otherwise specified by the law, a Party aggrieved by a final decision of the Hearing Examiner may appeal to the Island County Superior Court, as provided in RCW 36.70C.040 or other body as specified by the code. Such an appeal must be made within twenty-one (21) days of the date of that final decision. Appeals of decisions made under Title 23, the Shoreline Management Program, must be appealed to the Shoreline Hearings Board pursuant to RCW 90.58.180.

The foregoing rules and regulations are hereby promulgated pursuant to ICC 16.13.100 on the 29th of October, 2025 by the Island County Hearing Examiner.

Rajeev D. Majumdar