

# Model Permit Report

By EDC Permit Streamlining Committee



Snohomish County EDC



December 2002



# **Model Permit Report**

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EDC Permit Streamlining Committee  
Snohomish County Economic Development Council

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## Acknowledgements

In the years ahead, the Snohomish County Economic Development Council (EDC) will continue its commitment to fostering a climate where innovative problem solving and creative leadership can flourish. We will also continue our collaboration with partners that support and develop Snohomish County into a strong and vibrant economic force.

Whether we connect businesses with the resources they need to stay ahead or develop initiatives to strengthen our economy, we cannot achieve our goals without the investment of our volunteers. The expertise and guidance provided to our organization enable us to move ahead and enhance our collective prosperity and encourage economic investment in our community.

The EDC had the distinct pleasure of working with an enjoyable group of individuals representing business, neighborhoods, the environment, and local government, who together in building a model permit system. Without their contribution, this project would not be where it is today.

Our sincere thank you goes to:

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The Snohomish County EDC is a private, nonprofit organization that collaborates with businesses, citizens, and government to support and develop the County as a strong and vibrant economic force.

*Our Sponsors:*

**Reid Middleton**



## **Executive Summary**

The Snohomish County Economic Development Council (EDC) recognizes that an efficient permit process is one of the best economic development tools at a local government’s disposal simply because, at some point, most businesses enter into the land use permit process.

For new businesses or businesses relocating to a jurisdiction, the land use permit system will be their first experience of how “business friendly” a community really is. In turn, a community ideally realizes liveable wage jobs and an enhancement to their quality of life as businesses expand or locate to their areas. Jobs and quality of life usually support local governments by adding to the tax base.

## **EDC Permit Streamlining Committee**

Back in December 2001, the Snohomish County EDC formed a Permit Streamlining Committee (Committee) that consisted equally of local government officials, citizen, and private-sector representatives. Under the leadership of co-chairs Doug Burns, director of facilities for Bothell, Washington-based ICOS Corporation, and Paul Roberts, director of planning and community development for the city of Everett, the Committee examined, compared, and analyzed land use permitting processes, held focus groups, and sought out examples of effective land use permitting process reform.

## **The Question**

The Committee asked a key question of local governments and private sector representatives: “What can or should an applicant and a jurisdiction do to make each stage of the permit process as efficient and effective as possible?”

In the end, they generated this joint public- and private-partnership report. At its core is the Model Permit System.

## **The Model Permit System**

The Committee strongly believes that local businesses and governments can benefit by implementing the Model Permit System. As governments grapple with dwindling budgets, they can realize substantial benefits through an efficient and effective land use structure. Such a system can be a significant marketing tool for local governments seeking businesses to locate their communities. As well, an efficient and effective land use permit system will save both the public- and private-sectors funds.

Customer Service from Both Sides of the Counter. The six-stage Model Permit System is centered on a core message: Both the jurisdiction and applicant should take a customer service approach to permitting. This is especially important given that Washington State’s permitting system is arguably the most cumbersome in the United States. By customer service, the Committee recommends that both jurisdictions and applicants



promote staff and consultant competency, encourage and reward problem solving attitudes, approach permitting with a good attitude, and designate single points of contact.

### **Six-Stage Model Permit System**

The six-stage Model Permit System is based around a three-component framework:

1. Jurisdictions should adopt and maintain efficient policies and procedures;
2. Jurisdictions should implement a hearing examiner system; and,
3. Jurisdictions should distinguish between simple and large, complex projects and expedite their reviews.

While these three steps focus on jurisdictional changes, the six-stage Model Permit System equally addresses steps the jurisdiction and applicant should take during each stage. Those stages include:

- Project Concept Discussions
- Pre-Application Submittal Meeting
- Application Intake
- Application Review
- Permit Decision
- Appeals Process

## **Conclusion**

The Committee developed the Model Permit System under the belief that local governments and business alike will welcome the chance to streamline an ineffective process. The Committee encourages local jurisdictions and businesses to implement the recommendations in hopes of making Snohomish County that much more inviting a place to established businesses and a lure to those businesses that are considering this County their home.



## **Section One: Responding to the Washington Competitiveness Council Recommendations**

The Snohomish County Economic Development Council (EDC) has begun a multiphased, multiyear initiative to encourage a healthier business climate in Snohomish County. The first step in this strategy was to recommend methods to streamline the land use permit process.

Improving the land use permit process has been an identified goal of the EDC for many years. The EDC Land Use Committee created the “Permit Streamlining/ Regulatory Reform” Committee (Committee), which developed this report and its recommendations.

This EDC initiative responds, in large measure, to recommendations of the Washington Competitiveness Council. Specifically, the Committee’s work addresses the Council’s recommendations relating to “Regulations and Permitting:”

- Reducing unnecessary delays;
- Creating certainty and predictability; and,
- Creating a positive regulatory culture with a bias toward making decisions.

The Washington Competitiveness Council recommendations address permit process consolidation and coordination, as well as full implementation of those elements of the Growth Management Act (GMA) that provide efficient land use permit processing. The EDC has adopted the Council’s recommendations and, by this initiative, taken a significant step toward improving land use permitting locally.

### **Committee Members and Mission**

The Committee consisted of businesses, local government representatives, and citizens (**Appendix**, Committee Membership). The Committee’s mission was to create an efficient, effective, predictable model land use permit system. To accomplish this, the Committee agreed that Washington’s statutory framework for land use needed some significant changes as recommended in the Washington Competitiveness Council report; however, changes to state and federal statutes are beyond the scope and breadth of the Committee. Rather, the Committee examined the administrative land use permit process under the existing statutory framework. The Committee also made recommendations on what a model land use permit process might look like and how it might function at the local government level. This model permit structure can apply to other cities and counties in Washington State besides agencies within just Snohomish County.

### **Key Assumptions**

The Committee clearly saw that parameters were needed to guide their efforts and adopted a set of key assumptions to guide its work:

- The permit streamlining work would be limited to working within the framework of existing state and federal environmental and land use laws.
- The focus of the work is within existing UGAs (urban growth areas).
- Existing model permit processes would be considered in the development of a model land use permit system.

The Committee’s mission was to create an efficient, effective, predictable model land use permit system.



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- Permit streamlining efforts would focus primarily on commercial and industrial land use, not building codes. Specifically, efforts would focus on:
  1. Issues underlying land use and comprehensive plans;
  2. Intensity of use;
  3. Capital facilities necessary to support the intensity of use; and,
  4. Site-specific details.
- Attitude and professionalism are part of the land use permitting process and need to be part of the permit streamlining discussion.

### Framework

The Committee recognized that several efforts have been made over the years to streamline the state's land use laws and regulations. In the 1990s, the Governor's Task Force on Regulatory Reform and the Land Use Study Commission recommended significant changes to state laws regarding land use. Most recently, the Washington Competitiveness Council report made specific recommendations regarding permitting and procedures. Most relate to state actions though all of them have significant implications for land use administration at the local government level.

These efforts have been met with some success and were built upon the assumption that the GMA framework is the essential platform for managing growth. The Committee accepted the GMA framework as the basic foundation for its work. Also, the Committee chose to focus primarily on local government land use procedures and substantive issues within the framework of existing state and federal laws.

## Section Two: Methodology

The EDC invited Doug Burns, director of facilities for Bothell, Washington-based ICOS Corporation, and Paul Roberts, director of planning and community development for the city of Everett, to co-chair the Committee. In December 2001, the Committee began meeting to organize its work. As noted previously, the Committee adopted a set of Key Assumptions. The Committee first looked at the basic regulatory structure, statutory framework, and administrative procedures used by local governments in land use administration. Next, the Committee examined the land use issues from the private-sector perspective then compared their issues to current local review systems. In comparing the two, the Committee developed a list of recommendations for streamlining the local land use permit review process (the model permit system).

### Government Procedural Review

In January 2002, the Committee reviewed existing state and federal laws, specifically the State Environmental Policy Act (SEPA), GMA, Shoreline Management Act (SMA), and a host of other laws. The Committee reviewed a number of studies, reports, and publications including the Washington Competitiveness Council report published in December 2001, *Smart Permit, A Blueprint for Success* and various publications, articles, and studies related to growth and land use economics.

### Private-Sector Information

On March 7, 2002, the Committee interviewed a number of private-sector representatives in a focus group. These interviews explored the simple and complex issues businesses face, and what does and does not work when navigating through local government land use permit procedures. Focus group leaders further solicited input on regulatory efficiency to better define the issues the private sector perceived as critical and to identify means of improving the regulatory process. A copy of *Permit Streamlining Committee Focus Group Summary Report* is in the Appendix.

### Local Government Information

A questionnaire was prepared and distributed to local governments on what they perceived as issues in the regulatory process and what they were doing, if anything, to improve their land use permit systems. Local jurisdictions provided positive examples of their efforts and suggestions to improve the existing regulatory systems. The *Land Use Streamlining Response to Questionnaire* is in the Appendix.

### Distilling Public- and Private-Sector Recommendations

Each group (business and government) commented on:

- Their experience;
- How they would change the systems if they could;
- What actions they would recommend; and,
- How their actions could improve the system.

At each stage, the Committee explored an essential question: "What can or should an applicant and a jurisdiction do to make this stage of the process as efficient and effective as possible?"



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The Committee assembled and analyzed the information and a model emerged that divided the permit review procedures into distinct categories or elements. The model elements were:

- Project Concept Discussion;
- Pre-Application Submittal Meeting;
- Application/Intake;
- Application Review;
- Permit Decision; and,
- Appeals Procedure.

At each stage, the Committee explored the essential question: “What can or should an applicant and a jurisdiction do to make this stage of the process as efficient and effective as possible?” The Committee’s answers are found in **Section Four: Issues** and **Section Five: Recommendations**.



## **Section Three: Private Sector Section – Why Is a Model Permit System Needed**

For several years, the private sector has discussed the difficulties of navigating through the local permit systems in Snohomish County. Many have indicated that difficulties in permitting have prevented employers from building or expanding in particular communities. The Committee examined ways to improve the local permit process to create a more competitive business environment.

The Committee and EDC staff conducted a focus group and interviews with facility managers, engineers, land use attorneys, developers, real estate brokers, among others to explore the simple and complex issues businesses face when permitting large commercial and industrial projects in Snohomish County.

### **What Is Efficiency, Predictability, and Timeliness?**

The challenge put before the building community was to define clearly what they meant by efficiency, predictability, and timeliness and then highlighted the actions that affected these desired outcomes.

#### *Efficiency equals steps that:*

- Reduce costs to taxpayers and/or the building community;
- Provide clear definitions of intake requirements and expectations of the jurisdiction;
- Ensure all jurisdiction requests for additional information occur simultaneously;
- Ensure the review processes remain consistent.

#### *Predictability equals steps that:*

- Give developers educated decisions about project opportunities;
- Feature permit application packets that outline all submittals requirements and estimated review times;
- Include process application outlines; and,
- Encourage consistent decision making.

#### *Timeliness equals steps that:*

- Prevent applicants from having to follow the permit constantly to ensure it does not sit on a reviewer's desk for extended periods;
- Provide accurate permit process timelines at the pre-application stage;
- Represent minimal turnaround times in review;
- Set realistic commitments for review timelines;
- Meet or exceed deadlines established by state law; and,
- Establish commitments on both sides of the table (developer and staff) to work together within the time frame agree upon.

### **Steps to Improve Permitting**

Overwhelmingly, the building community expressed a need for greater clarity in expectations and requirements. Without clarity, problems inevitably arise during the permit review process. Time delays can result from inconsistent conditions placed on the applicant during the re-submittal phase or inadequate



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feedback before the initial application intake. Also noted were times when critical information was needed to complete an application but the alert was provided too late in the review process—in some cases notice of requirements came six months after the review process began.

Members of the building community suggested ways to address the clarity problem:

- Ensure all staff reviewing the plan participate in a pre-application or initial technical review meeting; and,
- Assign a single point-of-contact to work with the applicant throughout the duration of the review process.

### Promote Consistency in the Review Process

Across the board, concerns pointed to issues of consistency in code interpretation and how this affects the applicant's ability to serve his or her client by meeting deadlines predictably. Even in jurisdictions with timely and predictable permit systems, the building community believes that staff still struggles with consistency in code interpretation.

#### Suggested Ways to Improve the Consistency Problem

- Allow for a small or simple review formats for projects that are considered “standard” or “simple.” This frees up staff time for review of more complex projects.
- Provide the applicant with a checklist that describes what is needed for project approval.
- Rectify codes that are complicated and overlapping.
- Make sure all departments and districts interpret codes in the same manner.
- Assign one person to work with the applicant who explains the process, interprets issues along the way, trouble shoots, and fosters a partnership with the applicant.
- Encourage active participation between jurisdiction and applicant by having team meetings with the applicant regularly.

### Integrate Customer Service into the Permit Review Process

Most private-sector representatives believed that jurisdiction counter staff approach applicants with good intentions. When asked about customer service, focus group participants divided their responses into two types of categories:

1. Relationship between staff and the applicant; and,
2. Manner in which the administration managed the actual review process.

#### Suggested Ways to Improve Customer Service

- Return telephone calls quickly.
- Hold follow-up meetings to address applicant questions on requirements or comments or questions.
- Empower counter staff so that they can answer critical questions and ensure timely follow up by those with the right expertise.
- Establish a culture of leadership for the review process.
- Remain objective by eliminating activist attitudes.
- Be proactive and let the applicant know if application information is missing.



### **Managing the Permit Application Process**

Many in the building community have expressed an overall concern that Snohomish County does not appreciate the value businesses bring to the community: economic vitality, family wage jobs, charitable contributions, and more. When systems are kept inefficient and expensive, public officials appear unresponsive to the value of time and how a lengthy review process impacts the location of jobs and tax revenue for the community. Local governments can make significant positive overtures to businesses by implementing the model permit system. In addition, business will gravitate towards those local jurisdictions that make the permit system friendly without compromising the integrity of the environmental and public involvement processes.

### **Recommended Steps for Managing the Permit Process**

- Implement a simultaneous rather than step-by-step review process.
- Establish decision making authority that ensures timely decisions and reduces a top-heavy management chain within the review agencies.
- Eliminate a culture where one reviewer can halt the entire review process.

## Section Four: Issues

### Efficiency in the Regulatory Process

The Committee agreed with the spirit of the Washington Competitiveness Council that applying the regulatory process efficiently is essential to improve the state's economy. To this end, efficiency is a major focus of this report and built into the model permit system.

The Washington State legal structure is responsible for much of today's regulatory tangles. Arguably, no other state in the Union addresses land use in as cumbersome a fashion as Washington. In contrast, Oregon shares the same reputation as Washington for a strong environmental ethic; yet, Oregon has implemented a growth management law that is effective, manageable, and less cumbersome. Oregon does have more history with strong growth management laws. The state adopted its laws in the 1970s versus 1990 and 1991 for Washington. Also, Oregon has no SEPA or SMA and has a fully consolidated land use appeals process.

Arguably, no other state in the Union addresses land use in as cumbersome a fashion as Washington.

As land use laws have been adopted in Washington, the state legislature has not coordinated or consolidated them with existing laws. The result is a complex structure with excessive procedural requirements. Such a structure is understandably challenging to businesses that are driven by the time value of money and that cannot afford a land use structure that is unable to produce certain and predictable responses in a timely fashion. Likewise, Washington's cumbersome structure is challenging to the local governments responsible for administering such laws. This structure is inefficient, costly, and complex. Furthermore, the State does not provide sufficient funding for administering what are essentially unfunded state mandates.

There is a clear recognition by most building community professionals that respecting the existing collection of laws ultimately supports an efficient review of a permit application.

Most developers and planning agencies want to do their work efficiently. There is a clear recognition by most building community professionals that respecting the existing collection of laws ultimately supports an efficient review of a permit application. Efficiency, used here, relates to administering existing laws not to weakening the protections for environmental resources. In other words, how can we plan work, add value to the communities we serve, and execute this work efficiently?

### Clarifying and Separating Land Use Roles and Functions

The land use process, like other governmental procedures, benefits from a clear structure. The separation of powers – policymaking (legislative), administration, and judicial – is an essential structure to be observed and practiced in planning and land use administration. Given recent court decisions, this is especially important. The decisions have been costly to local governments and have exposed local officials to personal liability.

The Committee's research determined that, in general, when a jurisdiction's legislative body (for example, city council) takes on what should be administrative or quasi-judicial roles significant inefficiencies and

liability are introduced. Therefore, the Committee recommends that jurisdictions use a hearing examiner process (discussed further in **Section Five**).

A quasi-judicial proceeding is one in which the elements of procedural due process apply and generally involves a public hearing on a permit application required by state statute. Quasi-judicial land use hearings concern matters including subdivisions, variances, conditional use permits, shoreline permits, SEPA appeals, and appeals of administrative decisions or determinations.

Quasi-judicial matters should be addressed by some entity other than city or county council members who were elected to be legislators rather than judges. In most instances, the appropriate entity to address land use administration is an administrative department (for example, planning or building) or an administrative law judge or hearing examiner. There are instances where the elected or appointed officials may be involved in quasi-judicial matters; however, it is in the interest of the jurisdiction and the tax payers to limit such instances.

Washington State courts have repeatedly held in favor of applicants/developers who have been delayed or harmed because of city or county councils abusing or confusing their legislative roles with land use administration. In such cases, the taxpayers often have been asked to foot the bill for the very development that is objectionable to the elected officials. Where the legislative body confuses its role with administrative or judicial roles, there is serious risk of liability exposure to the taxpayers and to the elected officials.

### **Case Examples**

A few of the cases are worth noting. The first is a case out of Snohomish County, *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91 (1992). In this case, the court ruled that the County acted in an arbitrary and capricious manner in denying a conditional use permit and that the denial constituted a deprivation of civil rights. The court also found that the denial of due process and violation of rights resulted in potential personal liability for the decision makers. Thus, not only were the taxpayers liable for the overruled actions of the elected and appointed officials in the discharge of their duties, but the immunity usually granted to these officials was not absolute, meaning that elected officials could be found personally liable for their actions.

In *Cox v. Lynnwood*, 72 Wn. App. 1 (1993), the court found the City of Lynnwood to have acted in an arbitrary and capricious manner in the denial of a boundary line adjustment. The court held in favor of the applicant and further provided for the applicant to recover its attorney's fees from the city.

A more recent case from the Spokane area is *Mission Springs v. City of Spokane* 134 Wn. 2d 947 (1998). The court found that the city council unlawfully interjected itself in the issuance – or in this case the denial – of a building permit. The actions of the City Council were contrary to the advice of the City's legal counsel. Like the Lutheran case, Mission Springs raised liability issues for the City of Spokane and the individual, and personal liability for the decisions makers – the City Council. In the legal action that followed the city council's denials, all of the City Council members and their spouses were named in a lawsuit seeking injunctive relief.



As a result of these cases, the entities that provide municipal insurance to local governments have begun to pay attention to how local governments discharge the administration of their land use responsibilities.

Where the legislative body confuses its role with administrative or judicial roles, there is serious risk of liability exposure to the taxpayers and to the elected officials.

Local governments have a powerful incentive to clarify the basic role of government with respect to land use permitting authority. The legislative, administrative, and judicial functions are best kept separate.

### **The Responsibilities of the Applicant and the Jurisdiction**

The Committee questioned the responsibility of the participants in the land use process. Based on anecdotal information and observations, the Committee found that the attitude of the applicant and jurisdictional staff can have a profound positive or negative affect on a particular application's outcome.

#### **Applicants**

Applicants want to see a well-organized, professional staff that knows its work and executes it positively. They want an understandable permit system where the procedures are clear and the processing timelines are known and reliable. Codes should be well organized and in a user-friendly format. Because applicants are frequently not land-use specialists, they may be confused or intimidated or both at the cumbersome nature of Washington's land use laws and procedures. To them, the studies and long time frames associated with an application may not appear necessary. They may not understand the need to build a record for decisions that a jurisdiction must make and may later have to defend.

Applicants who understand the processes want them coordinated. They want to be informed of their responsibilities, including:

- How the procedure will unfold;
- When studies are to be done;
- How quickly their application will be acted upon; and,
- What the decision process will be.

Applicants, particularly professionals in the land use business, want to be assured that the application is being coordinated and someone is paying attention—preferably by someone who has a professional attitude and works for an organization that values clear communication and responsive decision making.

#### **Jurisdictions**

From the jurisdiction's perspective, the staff wants to work with competent applicants and for an organization that values what they do and the processes they are obligated to apply. Staff wants to deal with applicants who understand the land use process or who are willing to learn. They know that almost any project can have significant pitfalls, which must be addressed. Jurisdictional staff would like to see applicants who are responsive and provide critical information and the necessary studies to support the application in a timely manner. Argumentative or difficult applicants frustrate the procedure and ultimately complicate the process.



The Committee found that the less tangible attributes are extremely important to those on both sides of the counter, including a positive attitude, strong “people” communication skills, professionalism, and respect for the process and the people who participate.

### Public Involvement

Washington’s land use laws are rich in due process and public involvement. Virtually all land use statutes (GMA, SMA, and SEPA) have significant public involvement components. In SEPA, the disclosure of impacts to decision makers before decisions are made and the requirement for public notice and comment are principal elements of the law. GMA requires early and continuous public involvement in plan and policy development. SMA carries special provisions related to the common law “public trust doctrine.” Each law has evolved with accompanying administrative law and judicial interpretations supporting public involvement.

The Committee found that the less tangible attributes are extremely important to those on both sides of the counter:

- Positive attitude;
- Strong “people” communication skills;
- Professionalism; and,
- Respect for the process and the people who participate.

Under these laws, early public involvement in developing land use policy and plans is the most important aspect to building public support for subsequent land use permitting decisions. Jurisdictions that fail to take public involvement seriously add significant risk to the process. Conversely, jurisdictions that provide for early meaningful public involvement can significantly enhance the efficient administration of the land use process.

The Committee recommends that jurisdictions have clear and understandable opportunities for public involvement in developing land use plans and policies. Similarly, the land use permitting process should provide for an early public notice and on-going public involvement through the application’s life.



## Section Five: Recommendations for an Efficient Land Use Structure

The Committee hopes these recommendations will serve as a beginning for discussion and examination of land use practices for local governments. For applicants, we hope that these recommendations will help them understand the complexities of land use practices in Washington State and the steps that they can take to expedite land use matters. For citizens, we hope the recommendations will inform and direct their efforts.

### **Local Governments Should Adopt and Maintain Efficient Policies and Procedures**

Despite the complex structure of Washington’s land use laws, local governments should strive to maintain clear policies and procedures. The Committee recognizes that this is a complex matter demanding time, staff, funding, and the “political will.” Jurisdictions must want to create an efficient permit system. Next, they will likely have to reform their land use plans and codes systematically. Developing and maintaining efficient land use policies and practices is an ongoing effort.

All local Snohomish County governments are obligated to prepare plans under the GMA and to follow SEPA and SMA where appropriate. No local government can prepare such plans and policies alone. Preparing local plans and policies is extremely dynamic as local land use laws undergo constant change. For example, the GMA (passed in 1990, amended in 1991) set a number of deadlines that led to the adoption of comprehensive plans in 1995.

Developing and maintaining efficient land use policies and practices is an ongoing effort.

While this work was going on, the Governor’s Task Force on Regulatory Reform attempted to address the integration of GMA with SEPA and SMA. The legislature updated these laws in 1995; they also created the Land Use Study Commission. In 1996 and 1997, the Land Use Study Commission made recommendations to the legislature. The recommendations resulted in major changes to the statutes that govern land use, shorelines, and land use procedures. As a result, a number of changes have been made to administrative laws governing how plans and policies are assembled. In 1996, we first learned of the potential of listing of salmon and other species under the Federal Endangered Species Act (ESA). In 1998, salmon were in fact listed. Further listings under ESA are still possible. In the past 12 years, local land use and shoreline issues have been under constant change and scrutiny. Meanwhile, state and federal agencies are still unable to provide clear and concise direction regarding the application of local land use laws.

The Committee acknowledges that this lack of a consistent and reliable federal and state framework makes the job of local governments more difficult. Local jurisdictions should conduct an analysis of its underlying statutory frame work to ensure inconsistencies do not prevent efforts to build an efficient permit review process.

### **Implement a Hearing Examiner System**

As mentioned in Section Four, a jurisdiction should implement a hearing examiner system to:

- Provide for the administrative review of more complex permits; and,
- Address the appeals to administrative permit decisions.

Elected officials should not serve as a quasi-judicial hearing board for land use matters.



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The hearing examiner should serve as the final administrative review body for appeals to administrative decisions. Except where the hearing examiner may review land use matters that are legislative in nature and require (by statute) action by the local legislative body, the hearing examiner’s decision should be final and appealable to Superior Court. The hearing examiner can provide the open record hearing as prescribed under state laws; the hearing examiner establishes a clear record including written findings of fact, conclusions of law, and a land use permit decision. Creating the hearing examiner structure and delegating the final administrative decision making to this position should provide the quasi-judicial structure required by law for review of land use decisions.

**Adopt a Hearing Examiner Procedural Ordinance.** Local governments adopting a hearing examiner system should adopt a procedural ordinance as well. The procedural ordinance, at a minimum, will provide clear authorization for the hearing examiner, defining roles and responsibilities, powers, duties, and qualifications. The ordinance may address matters such as hearing, review, or concurrent review procedures; notice provisions; timely submittal of information; reconsideration; appeals; and such other matters concerning the conduct of the hearing process. These matters need to be addressed in the jurisdiction’s municipal code.

### Separate Simple Projects and Expedite Their Review

Jurisdictions experience projects of differing complexity. Projects such as home remodels or simple building permit applications can and should be separated from more complex projects at point of entry into the system. From the counter, jurisdictions should expedite simple projects through the land use system unless there is an issue warranting further review. Simple permits can be addressed in days if sufficient trained staff is available.

### Implement Six Stage Review Process for Significant Projects

The Committee’s work primarily focused on land use review procedures undertaken by local governments for projects that are major in size or complexity. Typically, these projects require significant amounts of staff time and attention. They also have a greater likelihood of experiencing delays and a greater impact on the County or local area’s economic health.

As a result of the Committee’s research and discussions, it developed the procedure set forth in Figure 1 “Review Process for Large, Complex Projects: Jurisdictions” and Figure 2 “Review Process for Large, Complex Projects: Applicants.” There are six steps identified in the Review Process. In each step, the Committee examined the roles of the jurisdiction and applicant. The recommended review process is described in the following steps from the perspectives of the jurisdiction and applicant.

#### A Customer Service Approach to Permitting

Both jurisdictions and applicants should take the following steps:

- Promote staff/consultant competency
- Encourage and reward problem solving attitude
- Approach permitting with a good attitude
- Designate single points of contact

### Six-Stage Model Permit System

#### Stage One: Project Concept Discussion

The project concept discussion is the communication that takes place before the formal application submittal—in effect, a very early pre-application discussion. This communication may be verbal or written



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and usually focuses on the nature of the proposal and on the requirements of the land use process (comprehensive plan, zoning, type of use, intensity of use, review procedures) that relate to the prospective application.

Often this stage is very informal. Rarely, if ever, is this stage recognized in local land use codes. Yet many basic decisions are made in this stage regarding the nature and character of the application. Therefore, early communication is essential for the development and efficient processing of the application.

#### **Jurisdiction: Communicate Early and Often**

To recognize issues associated with early-stage applications, the jurisdiction will want to promote staff competency and training. Positive problem-solving attitudes are extremely important. The person at the counter may be the first encounter applicants will have with the jurisdiction. How applicants are treated may form a lasting impression of the jurisdiction's willingness to support development. If the development is consistent with adopted plans, the jurisdiction's best interests lie in understanding the details of the application and communicating the appropriate requirements. At this preliminary stage, the jurisdiction will want to:

- Define land use and permit requirements;
- Define land use processes that are likely to apply;
- Identify potential issues, concerns, or problem areas;
- Provide materials that explain the more common land use procedures; and,
- Foster good communication between the staff and the public – developers and citizens.

#### **Stage One: Project Concept**

##### *Jurisdiction and Applicant*

#### **Jurisdictional Steps**

- Develop Cohesive Permit Process
- Define Requirements
- Define Process
  - Promote Communication
  - Process brochure
  - Counter hours (clearly stated times and days with extended hours if possible)
  - Regular updates
- Promote Early Public Participation

#### **Applicant Steps**

- Hire Consultant
- Review Jurisdiction Checklist

#### **Applicant: Hire a Consultant**

The applicant needs to approach the process with a positive, problem-solving attitude. Ill tempers or special treatment expectations will likely not elicit a positive reaction or quicken staff response. To the extent that submittal information is developed conceptually without extraordinary investment, it will be helpful and could require less extensive redesign (if required). The land use process could require some redesign or alteration of a conceptual plan (in response to specific requirements contained in applicable land use regulations and information developed during field review of the proposed project).

For any major project, applicants should retain the services of competent consultants early on. They should spend time communicating and understanding what the process will require and what the time lines and expenses will be. The relationship between the jurisdiction, applicant, and consultant may be the most critical factor in



successful, efficient application processing. This three-way relationship depends upon open communication and clear expectations. Many Committee members cited the failure of communication between the jurisdiction and the consultant or the consultant and the applicant as a major reason for problems with applications.

### Stage Two: Pre-Application Submittal

The pre-application submittal is when some form of application enters the system and the jurisdiction establishes a record of the application. Many jurisdictions recognize the pre-application submittal in their codes or land use procedures.

The pre-application submittal is often a conceptual site plan with enough detail to identify the nature of the proposal and the key physical characteristics such as building locations, roads and utilities, streams, and wetlands. In drafting the pre-application, the applicant and its consultant should make positive use of the insights obtained from staff in the project concept discussion.

Within the jurisdiction, staff—usually planning staff—should circulate this submittal to appropriate departments (for example, public works, parks, fire and police). In turn, these departments review the submittal, raise questions, offer comments, and identify additional information they may need to process the application. The applicant and the jurisdiction should schedule a pre-application conference. In the conference, they should review these comprehensive comments and the conceptual application together. The information should be used by the applicant to revise or redesign the application.

### Jurisdiction Steps

*The jurisdiction should:*

- Have clear policies that require pre-application review for all significant projects;
- Encourage applicants to bring representatives of their development team to the pre-application meeting;
- Organize circulation of pre-application submittals with a checklist and coordinate the review and pre-application meeting with other departments within the jurisdiction;
- Assure that other departments take the pre-application procedures seriously;
- Train staff to conduct pre-application reviews and to seek an open and candid dialog with applicant team;
- Identify issues at this stage of review;

### Stage Two: Pre-Application

*Jurisdiction and Applicant*

#### Jurisdictional Steps

- Promote Participation of Applicant and all Reviewers in Pre-Application Meetings
- Generate Pre-Application Checklist
- Encourage a Two-Week Time Frame for Pre-Application Process
- Provide Applicant with Environmental Information
- Conduct Ongoing Staff Training to Address Applicant Questions

#### Applicant Steps

- Develop Quality Submittal
- Hold Private, Pre-Submittal Meeting with Consultant to Perform Quality Control Check (Compare against Jurisdiction Checklist)
- Participate in Pre-Application Submittal Meeting
- Encourage Meetings with Neighborhood Groups
- Ensure Consultants and Plan Reviewer Discuss Comments from Pre-Application Meeting
- Obtain Required Environmental Permit Application Information



## Model Permit Report

### EDC Permit Streamlining Committee

Snohomish County EDC

- Establish how issues will be addressed;
- Identify any special studies and environmental or other analyses that will be required as part of a complete application;
- Advise the applicant of appropriate public involvement, notice, and potential discussions with surrounding property owners, neighbors, and neighborhood organizations, if any.

#### Applicant Steps

*The applicant and its consultant should:*

- Scope its project before the pre-application process;
- Avoid being locked into a rigid or detailed design or plan prior to the pre-application review to the best extent possible;
- Participate in the pre-application process directly or delegate someone who has the authority to fully direct the application;
- Bring representatives of the design team, as appropriate;
- Communicate with its consultant/design team before and after the pre-application review and encourage completeness of information submitted to the jurisdiction; and,
- Work through the pre-application checklist with the jurisdiction representatives at the meeting and the consultant/design team following the meeting.

#### Stage Three: Application Intake

Application intake is where the application is formally accepted by the jurisdiction and the processing clock begins ticking. The application should reflect all changes discussed in stages one and two and be accompanied by all supporting documentation. A fairly clear site plan should accompany the application. The jurisdiction also has an obligation to state upfront the land use procedures that apply and estimates of the time frame for processing the application. Projects typically vest at this stage of the process and will be processed under the regulatory structure that is in existence as of the date the application is received.

#### Jurisdiction Steps

*The jurisdiction should:*

- Foster a culture where supervisors and managers know application review is a high priority;
- Designate a single point-of-contact for the land use and environmental review at the very least; this person should be responsible for shepherding the project's review between departments and for taking the application through the steps prescribed by code;
- Establish internal procedures that support and reward simultaneous review of the application by departments;

#### Stage Three: Application Intake *Jurisdiction and Applicant*

##### Jurisdictional Steps

- Develop Integrated Review Process that Holds Simultaneous Reviews
- Encourage Organizational Consistency in Interpreting Codes
- Determine Application Completeness at Counter
- Designate Single Point of Contact
- Provide Applicant with Public Procedures and Notification Methods
- Hold Intake Meetings for Complex Projects
- Encourage Public Participation

##### Applicant Steps

- Designate Single Point of Contact
- Hold Consultant Meeting
- Encourage Meetings with Neighborhood Groups
- Conduct Continued Review with Consultant



## Model Permit Report

### EDC Permit Streamlining Committee

Snohomish County EDC

- Develop an integrated review procedure for all appropriate departments;
- Conduct some form of intake review and project assignment, particularly for larger projects;
- Design a structure that responds to the completeness of the application at the intake counter, rather than accepting an incomplete application and notifying the applicant within 28 days of that incompleteness; and,
- Provide appropriate public notice, including to neighborhood organizations.

#### Applicant Steps

##### *Applicants should:*

- Designate a single point-of-contact who will be responsible and authorized to act on behalf of the applicant and who will be responsible for the items listed here;
- Develop a structure to coordinate comments among the consultants and development team;
- Coordinate the review of comments between the jurisdiction and members of the development team;
- Follow up with the jurisdiction to assure that communication is moving and issues are being addressed and resolved;
- Seek clarification, as appropriate, for issues arising from the review process; and,
- Assure that the declaration of completeness is accomplished.

#### Stage Four: Application Review

During this phase, the details of the application are being reviewed and the various decisions/permits are being prepared. This is where:

- The various studies and supporting documentation are reviewed;
- Conditions and mitigation measures are recommended or prescribed; and,
- Basic framework for the approval is prepared.

If a public hearing is required, at this point, the hearing process will begin; materials for the hearing are prepared and submitted according to jurisdictional procedures. If there is no hearing, public notice and comment will likely be provided. Most large or complex projects undergo some public notice and comment procedure.

#### Jurisdiction Steps

##### *The jurisdiction should:*

- Use the checklist to help the application through the process; all departments should use this checklist to manage the review applications;
- Conduct either formal or informal internal review discussions before communications are sent to the applicant;

#### Stage Four: Application Review

##### *Jurisdiction and Applicant*

#### Jurisdictional Steps

- Conduct Simultaneous Reviews
- Have a Reviewer's Checklist for all Reviewing Bodies
- Encourage Consistent Code Interpretation
- Conduct Internal Review Meeting prior to First Comment Letter
- Determine if Public Meeting Is Necessary
- Hold Review Internal Meeting AFTER Public Meeting
- Send One Complete Comment Letter for Re-Submittal

#### Applicant Steps

- Meet with Staff and Consultant to Review Revision Requests
- Establish Dialogue between Design Team and Reviewers
- Assemble Revisions for Re-Submittal
- Check all Review of Re-Submittal Information



## Model Permit Report

### EDC Permit Streamlining Committee

Snohomish County EDC

- Conduct and coordinate the public review and comment process with clear and simple directions that explain the public’s role with regard to the application, what they are being asked to comment on, and what will happen to their comments;
- Conduct or coordinate public hearings, if required, with available written procedures if not a procedural ordinance that governs the hearings;
- Follow the public comment or hearing process with an internal review of the application and prepare a written decision for the applicant;
- Communicate clearly regarding the hearing process and decision to all parties of record; and,
- Ensure the single point-of-contact is communicating and working with the applicant throughout the process.

#### Applicant Steps

*The applicant should:*

- Work with staff to coordinate public comment/hearing proceedings, assuring that appropriate consultants are present and make presentations as needed; and,
- Coordinate comments and meetings as appropriate.

#### Stage Five: Permit Decision

Under state law, the decision process for some permits requires a hearing; for other types, no hearing is required. If a hearing is required, the procedures for issuance of a decision and the time frame for motions for reconsideration or appeals need to be clearly spelled out in the hearing examiner procedural ordinance.

For instance, state law provides for no more than one open record and one closed record hearing for land use matters. The hearing examiner must provide a consolidated hearing review for all matters. That hearing will serve as the open record hearing for the application. Subsequent reviews can be to Superior Court, which would then serve as the closed record review. This may be the most efficient process possible under state law and places the hearing examiner in the position as the final arbiter for the jurisdiction. However, a jurisdiction organizes its procedures, they should be clearly spelled out in a procedures ordinance.

If no hearing is required, the jurisdiction must provide a notice of decision. The notice of decision should be a clearly written decision document/permit approval with clearly stated conditions.

#### Stage Five Permit Decision

##### *Jurisdiction and Applicant*

Goal - Promote administrative or hearing examiner to de-politicize the decision making process

##### Jurisdictional Steps

###### *Administrative Decision*

- Create Standardized Administrative Decision Format
- Provide Applicant with Enforceable and Clear Follow-Up Conditions

###### *Hearing Examiner*

- Send Staff Report along with Conditions and Recommendations
- Consolidate All Hearing Matters
- Issue SEPA Determination
- Provide Applicant with Enforceable and Clear Follow-Up Conditions

##### Applicant Steps

###### *Administrative Decision*

- Review Conditions for Clarity

###### *Hearing Examiner*

- Review Recommended Conditions
- Clarify Points with Jurisdiction



## Model Permit Report

### EDC Permit Streamlining Committee

Snohomish County EDC

#### Stage Six: Appeals

Appeals may be made to a department’s administrative decisions or to those of a hearing examiner. As noted, the committee recommends that jurisdictions use a land use hearing examiner to:

- Review complex permits where hearings are required; and,
- Hear appeals of administrative decisions.

Further appeals of a hearing examiner’s decisions should be to Superior Court or to the Shorelines Hearings Board for shoreline permits. Appeals of administrative decisions should be expedited and handled within a prescribed time frame. Most appeals should be addressed within 90 days at the administrative level; this is the time frame specified in the regulatory reform statute (RCW 36.70B).

#### Training and Support for Land Use Staff

To achieve effective and efficient land use administration, staff must be prepared to do their jobs well. Jurisdictions should provide adequate training that covers:

- Technical matters and communications
- Mediation and active listening skills
- How to work with difficult people and difficult conflict situations
- Presentation skills

Staff should be recognized and rewarded for good performance. Management should create an ethic that supports decision making and a positive attitude when working with the public, applicants, and citizens.

#### Stage Six: Appeals

##### *Jurisdiction and Applicant*

Goal - Promote an efficient and timely appeals process

##### Jurisdictional Steps

- Use Hearing Examiner Decision-Making Process
- Have Hearing Examiner Conduct a Prehearing Conference
- Provide Clear Hearing Procedures
- Consider Mediation Process as Option
- Ensure Clear Reconsideration Process

##### Applicant Steps

- Meet with Jurisdiction to Resolve/Address Disputes if Necessary
- Use Counsel during the Appeals Process
- Consider Mediation Process as Option

**See Figure 1**



**See Figure 2**

## Section Six: Permit Time Frames

Time and cost involved in securing a permit are the ultimate measures of permit streamlining are a function of several factors:

- Complexity of the application
- Whether the application involves sensitive environmental issues
- Clarity of policies
- Staffing levels of the jurisdiction
- The attitude of the parties

Recommended benchmarks for application time frames are an important part of streamlining the permitting process. A number of variables exist. The recommendations are general here and depend upon sufficient staffing levels and the jurisdictions implementation of other recommendations in this report. The recommended time frames vary depending upon the type of permit and its complexity. Overall, the Committee established these time frames under the assumption that the jurisdiction has aggressively chosen to develop an efficient permit processing structure.

The recommendations are divided into five categories of permits, from the most simple to the most complex. The permit processing times are based on the best possible set of circumstances for both the applicant and the jurisdiction.

### Minor Administrative Review

Minor permits are ministerial actions that are permitted outright in the codes. These involve simple home remodeling permits, sign permits, nonconforming use determinations, boundary line adjustments, zoning code compliance, landscape modifications, accessory dwelling units, and home occupation permits. Minor in nature, these permits may not require any notice to surrounding property owners. Some can require considerable research before a permit can be granted (for example, a nonconforming use determination). Nevertheless, these permits can be processed in seven to 30 days (assuming no complications, no opposition, and no appeal). Some of these permit applications can be granted over the counter or within one to two days. Separating minor actions from more complex land use proposals – and quickly disposing of them – will free up staff to concentrate on more complex projects. As noted earlier, this approach will enhance the reputation of the department and the jurisdiction as a “good place in which to do business.”

#### Time Frames for Different Permit Review Processes

<i>Review Type</i>	<i>Time Frame</i>
Minor Administrative Review	7 to 30 Days
Administrative Review	2 to 4 Months
Hearing Examiner Review	2 to 4 Months
Legislative Review	10 Weeks to 1 Year



### **Administrative Review**

Administrative reviews require some discretion on the part of the jurisdiction, usually the planning department or planning director. Administrative reviews often require notification of adjacent property owners and review under SEPA, but do not require a hearing. Examples of administrative reviews include preliminary subdivisions less than 50 lots and short subdivisions, and administrative shoreline permits. Where SEPA reviews are required there is a 45-day minimum review time to meet the procedural requirements assuming no significant issues are involved. Administrative reviews can be processed in two to four months (assuming no complications, no opposition, and no appeal).

### **Hearing Examiner Review**

The hearing examiner review involves the exercise of discretion through the hearing process. The hearing examiner can approve an application outright, approve it with conditions, or modify or deny an application based upon the applicable local ordinances. The hearing examiner may have the authority to apply state and federal laws too, depending upon the local ordinances and state and federal law. The ordinance that establishes the examiner's authority should provide criteria governing how the examiner exercises their discretion. Some examples covered under the hearing examiner's review include subdivisions, major shoreline permits, conditional use permits, appeals of administrative reviews, variances, and expansion of nonconforming uses. The length of the hearing process may depend upon the procedures involved and the complexity of the matters being heard. Hearing examiner reviews can be processed in two to four months (assuming no complications and no significant opposition).

### **Legislative Review**

The legislative review involves the exercise of the greatest amount of discretion on the part of the jurisdiction. Where the other review processes are administrative in nature or involve a hearing examiner, they all involved a measure of entitlement of property rights or presumed entitlement on the part of the applicant. The legislative review may involve the conveyance of such rights and may be entirely discretionary. The legislative review is not subject to any time frames except those set by the jurisdiction itself. The legislative review process usually begins with review by a planning commission that is advisory to the elected council. The planning commission establishes a record and a recommendation and passes both along to the council for final action.

Examples of matters reviewed in this way include rezones, changes to the comprehensive plan, comprehensive plan changes, and changes to the text of the zoning code, other codes, or ordinances related to land use. Legislative reviews typically will require more time than other matters. Amending the comprehensive plan can be done only once a year and requires a docketing procedure. Almost all legislative matters require review under SEPA. Legislative reviews can be processed in ten weeks to one year or more presuming the council wishes to take an action. Emergency actions can be taken in days depending upon the procedures of the local legislative body.

## **Section Seven: Issues for Future Work**

The Committee identified a number of issues that were worth noting in the hope that the EDC and others would consider them for future action. These were outside of this Committee's scope. Also, most of these issues require some changes to state statutes or actions by organizations other than general-purpose local governments.

### **Consolidation of Land Use Laws Under the GMA**

Washington and California are the only states in the Union that have GMA, SEPA, and SMA statutes. In Washington, each of these statutes has its own procedural structure, appeals process, and public involvement structure. In 1995, the legislature enacted the regulatory reform statutes, partially consolidating elements of SEPA and SMA into the GMA, but it failed to fully consolidate these laws. This lack of consolidation and coordination adds substantially to the time and cost of doing business in Washington for both private and public sectors. These laws need to be fully consolidated for jurisdictions planning under the GMA.

### **SEPA Administration Under One Jurisdiction**

Keeping with the need to consolidate land use procedures, SEPA provides for any public agency to conduct the SEPA review on its own projects even though the land use permit process is the responsibility of the local government. Under these procedures, ports, PUDs, school districts, and other government agencies conduct the environmental review for a project while the land use permit process is conducted by the local government. These circumstances make it impossible to consolidate the land use record or to consolidate the appeals process for many public projects. This aspect of SEPA should be changed, along with the consolidation of existing state land use laws.

### **State and Federal Coordination**

State and federal agencies are often late comers to the land use process. They do not fully recognize the responsibilities that rest with local governments under GMA. This lack of coordination is evident when developing plans and policies, and at the project review stage. It is common for such agencies to provide comments after the review deadline, complicating the permitting process. In many instances, state and federal agencies can coordinate their jurisdictional interests with those of other agencies and the public. The land use process would be better served by such an approach.

### **The Washington Competitiveness Council Report**

The Washington Competitiveness Council makes a number of recommendations addressing regulations and permitting. Many are beyond the scope of this Committee's efforts. However, the EDC and others should review these recommendations and consider support for these recommendations. The recommendations made by this Committee are intended to be consistent with those made by the Washington Competitiveness Council. A copy of the Washington Competitiveness Council recommendations regarding regulations and permitting is included in the Appendix of this report.

### **Special Purpose District Coordination**

Washington State has more special government districts than nearly any other state in the Union. These Districts need to coordinate urban services with GMA planning under the direction of general-purpose



governments (cities and counties). Budgets and plans for special-purpose districts need to be consistent with adopted GMA plans. Furthermore, special-purpose district services need to be coordinated at the permit level with the local government responsible for issuing the permit.

### **Annexation Reform**

When GMA was adopted, annexation laws were not changed. Consequently, the assertion of jurisdiction by cities to serve urbanizing areas has not kept pace with population and job growth. As a result, areas are developing with poor levels of service and standards. This issue has been made worse by recent state Supreme Court decisions making annexations even more difficult. An overhaul of annexation laws is long overdue in Washington and is essential if GMA and urban services are to be efficiently delivered to citizens and businesses.

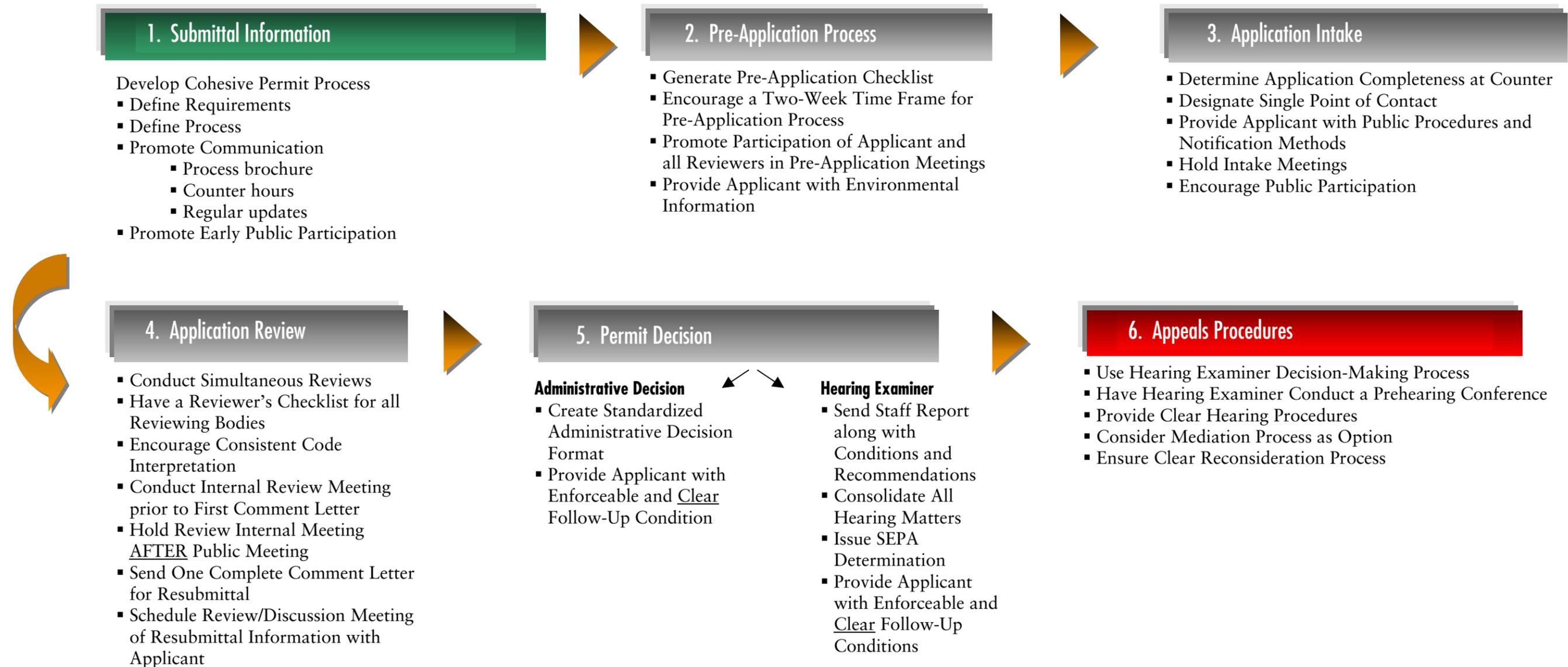
# REVIEW PROCESS FOR LARGE, COMPLEX PROJECT APPLICATIONS

## Jurisdiction

### A Customer Service Approach to Permitting

Both jurisdictions and applicants should take the following steps:

- Promote staff/consultant competency
- Encourage and reward problem solving attitude
- Approach permitting with a good attitude
- Designate single points of contact



# REVIEW PROCESS FOR LARGE, COMPLEX PROJECT APPLICATIONS

# Applicant

## A Customer Service Approach to Permitting

Both jurisdictions and applicants should take the following steps:

- Promote staff/consultant competency
- Encourage and reward problem solving attitude
- Approach permitting with a good attitude
- Designate single points of contact

