



## APPEALING CRITICAL AREA PERMITS

### What are the different types or levels of appeals?

	Review Authority	Appealed to	Process
<b>Type I Permit</b>	Staff	Hearings Examiner	Type III
<b>Type II Permit</b>	Staff	Hearings Examiner	Type III
<b>Type III Permit</b>	Hearings Examiner	Superior Court	Lawsuit
<b>Type III (reconsideration)</b>	Hearings Examiner	Hearings Examiner	Reconsideration

### When does Environmental Services process an appeal and when does Community Development process an appeal?

Environmental Services will only take the lead in processing an appeal if the permit is a “stand alone” critical area permit (not part of a land use permit or development).

If the critical area permit is part of a larger land or development project, chances are good that the appeal will be processed by Community Development. In these cases, Environmental Services will only address the environmental issues.

### Who can appeal a decision regarding an application?

For **Type I reviews** any interested party may appeal the decision. For **Type II & Type III reviews**, only the applicant or Parties of Record may appeal the decision.

To qualify as a Party of Record for a **Type II Review**, you must submit written comments to the Responsible Official before the close of the public comment period and provide an accurate mailing address.

To qualify as a Party of Record for a **Type III Review**, you must either submit written comments before the close of the public hearing, present testimony at the public hearing before the Hearings Examiner, or sign the Sign-In Sheet at the public hearing. You must also provide an accurate mailing address.

### When must the appeal be filed?

Each decision issued includes an identified timeline for appeals. For **Type I and Type II reviews**, a complete appeal application and appeal fee is due within 14 calendar days from the mailing of the decision. **Type III** hearings examiner decisions may be appealed only if, within 21 calendar days after written notice of the decision is mailed, a written appeal is filed in the Superior Court of Clark County, pursuant to Chapter 36.70B RCW or applicable state law.

### What is the application process?

To appeal a **Type I or Type II** review decision to the hearings examiner, the appellant must submit a completed appeal application form and fees, together with four copies of the appeal letter in person to the Permit Services Center during their normal business hours.

The decision by the hearing examiner under a Type III review process will become final and conclusive unless an appeal is filed with Superior Court. Refer to Clark County Superior Court for filing requirements.

## What is required in the appeal application?

Application for an appeal must contain the following information:

- The case number designated by the county and the name of the applicant
- The name of each petitioner, the signature of each petitioner or his or her duly authorized representative, and a statement showing that each petitioner is entitled to file the appeal under CCC 40.510.020(H)(1). If multiple parties file a single petition for review, the petition shall designate one party as the representative for all contact with the responsible official. All contact with the responsible official regarding the petition, including notice, shall be with this representative
- The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error
- The appeal fee adopted by the board. The fee shall be refunded if the applicant requests withdrawal of the appeal in writing to the responsible official, at least fifteen calendar days before the appeal hearing.

## Who can file a motion for reconsideration?

Any party of record to the proceeding before the hearings examiner may file a motion for reconsideration of an examiner's decision with the responsible official within 14 calendar days of written notice of the decision.

The motion must be accompanied by the applicable fee and identify the specific authority within the code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affect the rights of the moving party:

- Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged
- Newly discovered evidence, which the moving party could not, with reasonable diligence discovered and produced for consideration by the examiner;
- The decision is not supported by substantial evidence in the record; or
- The decision is contrary to law.

Within 14 calendar days of the filing of a motion for reconsideration, staff and any other party of record may file a written response to the motion with the responsible official. No reply to the response is permitted.

Within 28 calendar days of the filing of a motion for consideration, the hearings examiner shall issue a decision on the motion.

The examiner's decision on a motion for reconsideration shall state whether the motion is granted or denied in whole or in part; and shall state the factual and/or legal reasons for the decision.

The examiner's decision on a motion for reconsideration shall be final unless a timely appeal is filed to Clark County Superior Court by a party of record.

Refer to Clark County Superior Court for filing requirements.

**Note:** This handout is not a substitute for county code or other regulations that pertain to applying for an appeal.

## ENVIRONMENTAL SERVICES APPEAL FEE SCHEDULE

Appeal to Hearing Examiner for all DES and Community Development cases:	<b>\$200</b>
Issuance Fees paid to Community Development for each determination:	<b>\$94</b>

*If applicable:*

<i>Public Hearing Fee: (only paid if DES will hold the hearing)</i>	<b>\$2,461</b>
<i>Reconsideration by hearing examiner:</i>	<b>Reimbursement</b>

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For other formats, contact the Clark County ADA Office: **Voice** (360) 397-2322;  
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