

Chapter 17.13

LAND USE AND DEVELOPMENT REVIEW PROCEDURES

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17.13.010 Purpose and Applicability.

- A. The purpose of this chapter is to establish standard procedures for land use and development permit decisions. The procedures are designed to:
1. Promote timely and informed public participation;
 2. Eliminate redundancies, minimize delays, and adhere to the standards of RCW 36.70B; and
 3. Consolidate procedural and substantive land use and environmental review processes.
- B. The provisions of this chapter apply all land use decisions and development permits. Where conflicts exist with procedural requirements in other sections of the Mukilteo Municipal Code, this chapter shall govern.

17.13.020 Types of land use decisions.

- A. Classification system. Four types of review are established for permit and project processing:
1. Type I: Clerical. Categorically exempt from SEPA and subject to clear and objective standards.
 2. Type II: Administrative. Projects subject to SEPA or subject to a combination of objective and subjective standards.
 3. Type III: Quasi-judicial. Projects of a scale or complexity that warrant a public hearing.
 4. Type IV: Legislative. Policy and regulatory decisions with widespread impacts.
- B. Unlisted permits. If a review type is not identified for a particular permit, the director shall determine the proper procedure by determining which procedure the permit most closely resembles. Where there is a question as to the appropriate classification, the director shall resolve the question in favor of the higher procedure and type number.
- C. Consolidated Review. An application that involves two or more permit types may be processed collectively under the highest numbered procedure required for any part of the application or processed individually. If the application components are processed individually, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure. When multiple applications are submitted concurrently, the city will process them as a consolidated application unless otherwise notified by the applicant. Project permit applications are allowed a maximum of one open record hearing and one closed record appeal hearing.

D. Permit Types

Type I: Clerical	Type II: Administrative	Type III: Quasi-judicial	Type IV: Legislative
Accessory Dwelling Units	Any Type I actions subject to SEPA review	Abatement Actions	Annexation
Administrative Interpretations	Binding Site Plans	Appeals	Code Amendments
Application extensions (excluding plats)	Code enforcement	Conditional Uses	Comprehensive Plan Amendments
Building permits	Code interpretations	Essential Public Facilities	Development Agreement
Clearing and Grading Permits	Fence modifications	Preliminary Plats	Rezones
Final Plats/Final Short Plats	Minor modifications	Plat alterations and extensions	Sector Plan Amendments
Historic register applications	Noise Variances	Reasonable Uses > 50% disturbance	
Inspections	Reasonable Uses < 50% disturbance	Variances (excluding noise)	
Lot line adjustments	SEPA Determinations		
Right of Way Permits	Short Plats		
Shoreline Exemptions	Shoreline Substantial Development		
Stormwater Permits	Wireless Communication Facilities and Small Cell Wireless		
Temporary uses			
Tree or vegetation removal			
Wireless Eligible Facility Requests			

17.13.030 Overview of Permit Review Process.

	Type I	Type II	Type III	Type IV
Pre-application meeting	No	Optional, but encouraged		
Notice of completeness	Yes ¹	Yes	Yes	Yes
Notice of application	No ¹	Yes	Yes	Yes ⁹

SEPA determination	No	Varies ²	Varies ²	Varies ²
Open record public hearing	No	No	Yes	Yes
Notice of hearing	N/A	N/A	Yes	Yes
Recommendation made by	N/A	N/A	Director	Planning Commission
Decision made by	Director	Director	Hearing Examiner	City Council
Decision timeline ⁶	65 days ⁷	100 days	170 days ⁸	None
Notice of decision	No ¹	Yes	Yes	No
Administrative appeal to	Hearing Examiner	Hearing Examiner or Shorelines Hearings Board ³	Shorelines Hearings Board ³	N/A
Judicial Appeal to	Superior Court	Superior Court	Superior Court	Superior Court ⁴ or Growth Management Hearings Board ⁵

Footnotes for table:

1. Exempt from the noticing requirements of RCW 36.70B.060 and 36.70B.110 – 130 as authorized by RCW 36.70B.140(2). While these permits do not typically receive a written determination of completeness, the default completion standard on 29th day after submittal still applies.
2. No SEPA determination if categorically exempt under Chapter 17.84.
3. Appeals of shoreline permits must be filed with the Shoreline Hearings Board within 21 days pursuant to Chapter [90.58](#) RCW. Appeals of Type III permits for non-shoreline permits go direct to Superior Court.
4. For site-specific rezones and street vacations.
5. For text amendments to development regulations or Comprehensive Plan and non-site-specific land use or zoning map amendments.
6. Any applicant-initiated suspensions or periods of nonresponsiveness greater than 60 days add 30 days to the acceptable timeline for review. Substantial project revisions restart the review timeline to the date the revised project application was determined complete. Timeline is calculated from the determination of completeness to the date a final decision is made excluding:
 - Any period between the date a written request for additional information is sent and the date sufficient responsive information is resubmitted.
 - Any period where the applicant requests suspension of review or the city an applicant otherwise agree to a waiver of the clock.
 - Any period during which an environmental impact statement (EIS) is being prepared.
 - Any period from appeal filing to resolution.
7. Preliminary plats must be approved, disapproved, or returned to the applicant within 90 days from the date of filing a complete application, unless the applicant consents to an extension. Final plat and final short plat approvals must be approved, disapproved, or returned to the applicant within 30 days

from the date of filing a complete application, unless the applicant consents to an extension. Wireless Eligible Facility Requests must be approved or disapproved within 60 days.

8. Timeline not applicable to essential public facilities.
9. Publication as a discussion or review item on an agenda for a public meeting is considered notice.

17.13.040 Pre-Application Meetings

- A. Optional. Pre-application meetings are strongly encouraged but not required.
- B. Request. Any person may request a pre-application meeting by submitting a request form prepared by the department and including required supplemental materials. At a minimum, the applicant shall provide a draft site plan, project narrative, and list of questions.
- C. Content. Pre-application meetings are scheduled with representatives of multiple city departments. Representatives from the applicable water and wastewater districts are also invited to attend. The goal of the meeting is for the applicant to provide city staff with the necessary information about the proposed project and site conditions so that the city can efficiently and effectively provide the applicant with feedback on applicable requirements and necessary permits/submittal materials to proceed through the formal review process.
- D. Limitations. It is impossible for the meeting to be an exhaustive review of all potential issues. The discussions at the conference do not bind or prohibit the city's future application or enforcement of all applicable laws. Review of a project proposal at a preapplication meeting not vest a project. Vesting only occurs at the time a formal application is determined complete.

17.13.050 Determination of Completeness

- A. Submittal requirements. A permit application is complete for purposes of this section when it contains all items on the relevant submittal checklist provided by the department on the city's website or application portal together with the appropriate fees as established by city council resolution. The director. To be determined complete, submittal materials must be in a comprehensible format with adequate information to allow review of the project to progress.
- B. Timeline. Within 28 calendar days of receiving an initial land use development permit application (or within 14 calendar days of resubmittal in response to a determination of incompleteness), the city must provide a written determination to the applicant that states either:
 1. The application is complete; or
 2. The application is incomplete and what additional information is necessary to make the application complete.
- C. Default determination. If the city fails to provide a written determination within 28 calendar days, the permit application shall be deemed complete by default. A determination of completeness (whether written or by default) does not preclude the city from requesting additional information or studies or requiring project modifications.
- D. Incomplete Applications. Applicants have 90 days from a determination of incompleteness to submit the necessary information. The director may grant up to two 90-day extensions. Failure to resubmit within 90 days (or extended timeline), will cause the application to lapse and the permit file will be closed.

17.13.060 Project Review

- A. Consistency Review. City staff will review each application to determine whether the proposed project is consistent with the applicable development regulations – including the types of uses proposed, bulk and dimension standards, adequacy of infrastructure, and criteria specific to the type

of permit or project being proposed. In the absence of applicable development regulations, the appropriate elements of the comprehensive plan will be used to evaluate the project.

- B. Environmental Review. Land use development permit applications must be reviewed for compliance with the State Environmental Policy Act, including Chapter 43.21C RCW, Chapter 197-11 WAC, and Chapter 17.84 of the Mukilteo Municipal Code. If the city's policies and regulations adequately address a project's probable specific adverse environmental impacts, no additional mitigation may be assigned under SEPA.
- C. Documentation. Key findings of the project review will be captured in the notice of decision or ordinance. For permits that don't require a notice of decision, staff will put notes in the file as needed to how the application was consistent/inconsistent with applicable development regulations and standards.
- D. Insufficient Information. The city's determination of completeness shall not preclude the city from requesting additional information or corrections either at the time of the determination of completeness or at some later time as necessary to demonstrate the project is consistent with city codes and regulations. Requests for corrections or additional information shall be made in writing. Applicants have 90 days from the written request to submit the necessary information or corrections. The director may grant up to two 90-day extensions. Failure to resubmit within 90 days (or extended timeline), will cause the application to lapse and the permit file will be closed.

17.13.070 Required Notices

A. Notice of Application.

- 1. Timing. A notice of application must be issued within 14 calendar days of the determination of completeness and in no case fewer than 15 days before an open record hearing.
- 2. Contents. A notice of application must include:
 - a. Date of submittal, determination of completeness, notice of application, and public hearing (if applicable and already scheduled);
 - b. A description of the proposal and permits included in the application;
 - c. Identification of other permits likely to be needed and existing environmental documents, to the extent known;
 - d. Where the application materials can be reviewed;
 - e. Timing for the public comment period;
 - f. Instructions and rights for commenting, becoming a party of record, and appeals; and
 - g. If using the optional DNS process, a statement that the optional DNS process is being used and that this may be the only opportunity to comment on the environmental impacts of the proposal.
- 3. Public comments. The comment period shall be 14 days following the date of notice of application, except for shoreline permits which shall have a comment period of 30 days. Comments received by the department by 4:30 p.m. on the last day of the comment period will be considered timely. The city may accept public comments at any time prior to the close of the open record public hearing, or if there is no public hearing, prior to the decision on the project permit.

B. Notice of Public Hearing.

- 1. Timing. A notice of notice of public hearing must be issued at least 10 days before the hearing.
- 2. Contents. A notice of public hearing must include:

- a. The date of the application or date the proposal was discussed at a public meeting;
- b. A description of the proposed action;
- c. Time and location of the hearing; and
- d. Opportunities and methods for public participation, or a statement that there are none.

C. Notice of SEPA Determination

1. Timing. Except when using the optional DNS process or issuing a determination of significance, threshold determinations must be issued the end of the public comment period on the notice of application and in no case fewer than 15 days before an open record hearing.
2. Contents. A SEPA determination shall be consistent with the requirements of MMC Chapter 17.84, SEPA Rules, and Ecology guidance.

D. Notice of Decision

1. Timing. A notice of decision must be issued within 10 calendar days of the decision.
2. Contents. A notice of decision must include:
 - a. The final determination of approval or denial of the project
 - b. A statement of any threshold determination made under SEPA
 - c. The procedure to appeal the decision, if an appeal is available; and
 - d. A statement that property owners may request a change in valuation for property tax purposes.

E. General provisions. For notices not outlined above, the director shall determine appropriate timing and contents. No proceeding shall be invalid due to minor notice deficiencies if there was a good faith attempt to comply with the requirements of this section.

F. Distribution of notices.

	Post on Site	Post on City Website	Mail to Owners Within 300'	Email to Agency Contacts	Email to Parties of Record	Post at Official Posting Places	Publish in Newspaper of Record
Notice of Application	Site-specific proposals only	X	Site-specific proposals only	X			City-wide proposals only
SEPA Determination	Site-specific proposals only	X		DOE Only	X		
Notice of Public Hearing	Site-specific proposals only	X			X	X	X
Notice of Decision		X		Assessor Only	X		

17.13.080 Public Hearings

- A. Number and types of hearings for project permits. The Regulatory Reform Act, Chapter 37.70B RCW, provides for no more than one open record hearing and one closed record appeal on a permit.

The open record hearing shall consist of the public hearing on the proposed development as well as any appeal hearing on a threshold determination (except for a determination of significance) or an appeal of an administrative decision. Appeals of other final decisions will be heard during a closed record hearing.

- B. Number and types of hearings for nonproject permits. Land use approvals that do not involve project permits are not subject to any limitations on the number of hearings and do not require consolidation with appeal hearings. For actions that do not involve project permits, the city may schedule as many hearings as it wishes, provided they at least conduct the minimum required hearing.
- C. Joint Public Hearing. The director may combine any public hearing on a project permit application with any hearing that may be held by another local, state, regional, federal, or other agency as long as:
 - 1. The hearing is held within the city limits;
 - 2. The city acts as the lead agency on the proposed application;
 - 3. The other agency has authority to conduct joint hearings in the City of Mukilteo;
 - 4. The timing meets the requirements of this chapter or the applicant agrees to an alternate schedule;
 - 5. Sufficient notice of the hearing is given to meet each of the agencies' notice requirements;
 - 6. The other agency has received sufficient notice and the necessary information to properly prepare, advertise, and hold its hearing at the same time.
- D. Procedures. All public hearings shall generally follow the procedure described below:
 - 1. The person acting as the presiding officer will open the public hearing by:
 - a. Stating the public hearing is open; and
 - b. Describing the subject matter; and
 - c. Describing the procedures to be followed.
 - 2. Anyone wishing to speak must wait to be recognized by the presiding officer and state their name, residence location, and nature of their interest in the matter. Demonstrations of any kind are not allowed and anyone making "out of order" comments is subject to removal from the public hearing.
 - 3. Public hearings must comply with Appearance of Fairness Doctrine (RCW 42.36).

17.13.090 Decisions

- A. Timing. Permit decision must be issued within the timelines identified in 17.13.030 unless the applicant has consented to an alternate timeline. If the city is unable to issue its notice of decision within the established timeline, they should provide written notice to the applicant with the reasons for the delay and estimated decision date.
- B. Options. Permits may be approved, approved with conditions, or denied based on findings of the consistency analysis performed during project review.
- C. Effective date. Decisions are presumed valid and in effect on the date issued unless an administrative appeal is filed. The filing of any administrative appeal shall stay all development activity based on the decision granting the application until such time as the city issues a final decision on the matter. Any applicant receiving approval who engages in any activity based on the decision granting the application prior to the filing of any appeal or prior to the expiration of any administrative appeal period, does so at his/her own risk.
- D. Expiration and Extensions. An approved permit will expire and become null and void if building permit (or a grading permit consistent with MMC 15.16) is not obtained within the required time frame:
 - 1. Short Plats and Subdivisions – 5 years (with a single 1-year extension allowed)
 - 2. Type I and Type II permits not otherwise listed – 2 years (with a single 1-year extension allowed)
 - 3. Shoreline Permits – See 17B.13.160

4. All other permits – 4 years (with a single 1-year extension allowed)
- E. Minor modifications. The director may authorize minor modifications (generally changes of less than 15% for any given standard) to an approved land use development permit, provided the modifications do not add additional unmitigated impacts or affect the conditions of the original approval.

17.13.100 Appeals

- A. Timely filing.
 1. Administrative appeals. Administrative appeals must be filed at City Hall within 14 calendar days after the notice of decision. The date the notice of decision was issued does not count in the 14 days. When the last day of the appeal period falls on a Saturday, Sunday, or designated a legal holiday by RCW 1.16.050, the filing must be completed no later than 4:30pm the next business day.
 2. Judicial appeals. After all administrative appeals have been exhausted, the city's final decision may be appealed as designated in 17.13.030 by a party of record. Such petition must be filed within 21 calendar days. Land use appeals are filed pursuant to Chapter 36.70C RCW. Shoreline appeals are filed pursuant to Chapter [90.58](#) RCW.
 3. Stay. The timely filing of an appeal will stay the effective date of the decision until such time as the appeal is adjudicated by the appropriate body.
- B. Standing. Only parties of record may initiate an administrative appeal. Parties of record include: the applicant, any person who testified at the open record hearing on the application, and/or any person who submitted written comments concerning the application (excluding persons who have only signed petitions or mechanically produced form letters).
- C. Content. Appeals shall be in writing, include the city's required form(s), and be accompanied by an appeal fee as outlined in the city's most current fee resolution.
- D. Consolidation. All appeals of land use development permit application decisions shall be considered together in a consolidated appeal. Appeals of an environmental determination under SEPA, Chapter 17.84, shall proceed as provided in that chapter.
- E. Administrative appeal procedures. The hearing examiner shall establish the hearing procedures for appeals of administrative decisions, including setting the hearing date, time and location, with a pre-hearing order or similar document. The appeal shall be considered and decided within 90 days of a notice of decision for open record appeals and within 60 days of a notice of decision for closed record appeals unless the parties involved mutually agree to extend these time periods. The city shall issue a written decision of appeal within ten calendar days of the appeal body's final action to the parties of record disclosing whether the appeal is upheld or denied.