

SEPA ORDINANCE

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CHAPTER ONE AUTHORITY

Sections:

Section 1.1 Authority

Section 1.1 Authority

The County of Franklin, Washington adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This ordinance contains this County's SEPA procedures and policies. The SEPA rules, chapter 197-11 WAC, must be used in conjunction with this ordinance.

CHAPTER TWO GENERAL REQUIREMENTS

Sections:

Section 2.1 Purpose
Section 2.2 Adoption by reference
Section 2.3 Additional definitions
Section 2.4 Designation of responsible official
Section 2.5 Lead agency determination and responsibilities
Section 2.6 Transfer of lead agency status to a state agency
Section 2.7 Additional timing considerations

Section 2.1 Purpose

This article contains the basic requirements that apply to the SEPA process.

Section 2.2 Adoption by reference

The County adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

197-11-040 Definitions.
197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.
197-11-158 GMA project review—reliance on existing plans and regulations.
197-11-210 SEPA/GMA integration.
197-11-220 SEPA/GMA definitions.
197-11-228 Overall SEPA/GMA integration procedures.

- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 Documents.
- 197-11-238 Monitoring.
- 197-11-250 SEPA/Model Toxics Control Act (MTCA) integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial actions.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.

Section 2.3 Additional definitions

In addition to those definitions contained within WAC 197-11-700 through 197-11-799 and WAC 197-11-220, when used in this ordinance, the following terms shall have the following meanings, unless the context indicates otherwise:

- (1) "Department" means any division, subdivision or organizational unit of the County established by ordinance, rule, or order.
- (2) "SEPA rules" means chapter 197-11 WAC adopted by the Department of Ecology.
- (3) "Ordinance" means the ordinance, resolution, or other procedure used by the County to adopt regulatory requirements.
- (4) "Early notice" means the County's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (DNS) procedures).

Section 2.4 Designation of responsible official

- (1) For those proposals for which the County is the lead agency, the responsible official shall be the County Planning Director.
- (2) For all proposals for which the County is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020.
- (3) The County shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with chapter 42.17 RCW.

Section 2.5 Lead agency determination and responsibilities

- (1) The department within the County receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.
- (2) When the County is the lead agency for a proposal, the department receiving the application shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.
- (3) When the County is not the lead agency for a proposal, all departments of the County shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No County department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the County may conduct supplemental environmental review under WAC 197-11-600.
- (4) If the County or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the County must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the County may be initiated by the County Planning Director.
- (5) Departments of the County are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944 : Provided, That the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.
- (6) Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.
- (7) When the County is lead agency for a Model Toxics Control Act (MTCA) remedial action, the Department of Ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the County shall decide jointly with the Department of Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

Section 2.6 Transfer of lead agency status to a state agency

For any proposal for a private project where the County would be the lead agency and for which one or more state agencies have jurisdiction, the County's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the County shall be an agency with jurisdiction. To transfer lead agency duties, the County's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the County shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

Section 2.7 Additional timing considerations

For nonexempt proposals, the DNS or Final EIS for the proposal shall accompany the County's staff recommendation to any appropriate advisory body, such as the planning commission.

CHAPTER THREE CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATION

Sections:

- Section 3.1 Purpose
- Section 3.2 Adoption by reference
- Section 3.3 Flexible thresholds for categorical exemptions
- Section 3.4 Use of exemptions
- Section 3.5 Environmental checklist
- Section 3.6 Mitigated DNS

Section 3.1 Purpose

This section contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS.

Section 3.2 Adoption by reference

The County adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.

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| 197-11-355 | Optional DNS process. |
| 197-11-360 | Determination of significance (DS)/initiation of scoping. |
| 197-11-390 | Effect of threshold determination. |

Section 3.3 Flexible thresholds for categorical exemptions

- (1) The County establishes the following exempt levels for minor new construction under WAC 197-11-800 (1)(b) based on local conditions:
- (a) For residential dwelling units in WAC 197-11-800 (1)(b)(i): Up to 20 dwelling units.
 - (b) For agricultural structures in WAC 197-11-800 (1)(b)(ii): Up to 30,000 square feet.
 - (c) For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800 (1)(b)(iii): Up to 12,000 square feet and up to 40 parking spaces.
 - (d) For parking lots in WAC 197-11-800 (1)(b)(iv): Up to 40 parking spaces.
 - (e) For landfills and excavations in WAC 197-11-800 (1)(b)(v): Up to 500 cubic yards.
- (2) Whenever the County establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504 under WAC 197-11-800 (1)(c).

Section 3.4 Use of exemptions

- (1) Each department within the County that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this ordinance apply to the proposal. The County shall not require completion of an environmental checklist for an exempt proposal.
- (2) In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.
- (3) If a proposal includes both exempt and nonexempt actions, the County may authorize exempt actions prior to compliance with the procedural requirements of this ordinance, except that:
- (a) The County shall not give authorization for: (i) Any nonexempt action; (ii) Any action that would have an adverse environmental impact; or (iii) Any action that would limit the choice of alternatives.

- (b) A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and
- (c) A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

Section 3.5 Environmental checklist

- (1) Except as provided in subsection (4) below, a completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this ordinance; except, a checklist is not needed if the County and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The County shall use the environmental checklist to determine the lead agency and, if the County is the lead agency, for determining the responsible official and for making the threshold determination.
- (2) For private proposals, the County will require the applicant to complete the environmental checklist, providing assistance as necessary. For County proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.
- (3) The County may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs: (a) The County has technical information on a question or questions that is unavailable to the private applicant; or (b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.
- (4) For projects submitted as planned actions under WAC 197-11-164, the County shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a thirty-day review prior to use.

Section 3.6 Mitigated DNS

- (1) As provided in this section and in WAC 197-11-350 , the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.
- (2) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350 . The request must: (a) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and (b) Precede the County's actual threshold determination for the proposal.
- (3) The responsible official should respond to the request for early notice within 15 working

days. The response shall: (a) Be written; (b) State whether the County currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the County to consider a DS; and (c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

- (4) As much as possible, the County should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- (5) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the County shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal: **(a)** If the County indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the County shall issue and circulate a DNS under WAC 197-11-340 (2). **(b)** If the County indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the County shall make the threshold determination, issuing a DNS or DS as appropriate. **(c)** The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate. **(d)** Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- (6) A mitigated DNS is issued under either WAC 197-11-340 (2), requiring a fourteen-day comment period and public notice, or WAC 197-11-355, which may require no additional comment period beyond the comment period on the notice of application.
- (7) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the County.
- (8) If the County's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the County should evaluate the threshold determination to assure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).
- (9) The County's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the County to consider the clarifications or changes in its threshold determination.

CHAPTER FOUR

ENVIRONMENTAL IMPACT STATEMENT (EIS)

Sections:

- Section 4.1 Purpose
- Section 4.2 Adoption by reference
- Section 4.3 Preparation of EIS--Additional considerations

Section 4.1 Purpose

This article contains the rules for preparing environmental impact statements.

Section 4.2 Adoption by reference

The County adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

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| 197-11-400 | Purpose of EIS. |
| 197-11-402 | General requirements. |
| 197-11-405 | EIS types. |
| 197-11-406 | EIS timing. |
| 197-11-408 | Scoping. |
| 197-11-410 | Expanded scoping. |
| 197-11-420 | EIS preparation. |
| 197-11-425 | Style and size. |
| 197-11-430 | Format. |
| 197-11-435 | Cover letter or memo. |
| 197-11-440 | EIS contents. |
| 197-11-442 | Contents of EIS on nonproject proposals. |
| 197-11-443 | EIS contents when prior nonproject EIS. |
| 197-11-444 | Elements of the environment. |
| 197-11-448 | Relationship of EIS to other considerations. |
| 197-11-450 | Cost-benefit analysis. |
| 197-11-455 | Issuance of DEIS. |
| 197-11-460 | Issuance of FEIS. |

Section 4.3 Preparation of EIS--Additional considerations

- (1) Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the County under the direction of the responsible official. Before the County issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and chapter 197-11 WAC.
- (2) The DEIS and FEIS or draft and final SEIS shall be prepared by County staff, the applicant, or by a consultant retained by the private applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the County will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the County's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

- (3) The County may require an applicant to provide information the County does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this ordinance or that is being requested from another agency (This does not apply to information the County may request under another ordinance or statute).

CHAPTER FIVE COMMENTING

Sections:

- Section 5.1 Purpose
Section 5.2 Adoption by reference
Section 5.3 Public notice
Section 5.4 Designation of official to perform consulted agency responsibilities for County

Section 5.1 Purpose

This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings.

Section 5.2 Adoption by reference

The County adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

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| 197-11-500 | Purpose of this part. |
| 197-11-502 | Inviting comment. |
| 197-11-504 | Availability and cost of environmental documents. |
| 197-11-508 | SEPA register. |
| 197-11-510 | Public notice. |
| 197-11-535 | Public hearings and meetings. |
| 197-11-545 | Effect of no comment. |
| 197-11-550 | Specificity of comments. |
| 197-11-560 | FEIS response to comments. |
| 197-11-570 | Consulted agency costs to assist lead agency. |

Section 5.3 Public notice

- (1) Whenever possible, the County shall integrate the public notice required under this section with existing notice procedures for the County's nonexempt permit(s) or approval(s) required for the proposal.
- (2) Whenever the County issues a DNS under WAC 197-11-340 (2) or a DS under WAC 197-11-360 (3) the County shall give public notice as follows:

- (a) If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).
 - (b) If no public notice is otherwise required for the permit or approval, the County shall give notice of the DNS or DS by: (i) Posting the property, for site-specific proposals; or posting in the County Courthouse at 1016 N. 4th Avenue, Pasco, WA., for non-site-specific proposals; and (ii) Publishing notice in the County's newspaper of record;
 - (c) Whenever the County issues a DS under WAC 197-11-360 (3), the County shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
- (3) If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(b).
 - (4) Whenever the County issues a DEIS under WAC 197-11-455 or a SEIS under WAC 197-11-620 , notice of the availability of those documents shall be given by: (a) Indicating the availability of the DEIS in any public notice required for a nonexempt license; and (b) Posting the property, for site-specific proposals; or posting in the County Courthouse at 1016 N. 4th Avenue, Pasco, WA., for non-site-specific proposals; and (c) Publishing notice in the County's newspaper of record.
 - (5) Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).
 - (6) The County may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

Section 5.4 Designation of official to perform consulted agency responsibilities for the County

- (1) The Planning Director shall be responsible for preparation of written comments for the County in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.
- (2) The Planning Director shall be responsible for the County's compliance with WAC 197-11-550 whenever the County is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the County.

CHAPTER SIX USING EXISTING ENVIRONMENTAL DOCUMENTS

Sections:

- Section 6.1 Purpose
- Section 6.2 Adoption by reference

Section 6.1 Purpose

This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the County's own environmental compliance.

Section 6.2 Adoption by reference

The County adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

- 197-11-164 Planned actions--Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions--Procedures for adoption.
- 197-11-172 Planned actions--Project review.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement--Procedures.
- 197-11-625 Addenda--Procedures.
- 197-11-630 Adoption--Procedures.
- 197-11-635 Incorporation by reference--Procedures.
- 197-11-640 Combining documents.

CHAPTER SEVEN SEPA AND AGENCY DECISIONS

Sections:

- Section 7.1 Purpose
- Section 7.2 Adoption by reference
- Section 7.3 Substantive authority
- Section 7.4 Notice/statute of limitations
- Section 7.5 Appeals

Section 7.1 Purpose

This article contains rules and policies for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This article also contains procedures for appealing SEPA determinations to agencies or the courts.

Section 7.2 Adoption by reference

The County adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

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| 197-11-650 | Purpose of this part. |
| 197-11-655 | Implementation. |
| 197-11-660 | Substantive authority and mitigation. |
| 197-11-680 | Appeals. |

Section 7.3 Substantive authority

- (1) The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the County of Franklin.
- (2) The County may attach conditions to a permit or approval for a proposal so long as:
 - (a) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and
 - (b) Such conditions are in writing; and
 - (c) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
 - (d) The County has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 - (e) Such conditions are based on one or more policies in subsection (4) of this section and cited in the license or other decision document.
- (3) The County may deny a permit or approval for a proposal on the basis of SEPA so long as:
 - (a) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this ordinance; and
 - (b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact(s); and
 - (c) The denial is based on one or more policies identified in subsection (4) of this section and identified in writing in the decision document.
- (4) The County designates and adopts by reference the following policies as the basis for the County's exercise of authority pursuant to this section:
 - (a) The County shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - (i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - (ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - (iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - (iv) Preserve important historic, cultural, and natural aspects of our national heritage;

- (v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - (vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - (vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
- (b) The County recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
- (c) The County adopts by reference the policies in the following County plans: Franklin County Comprehensive Plan; Franklin County Shoreline Master Program; Franklin County Development Regulations; Franklin County Building and Fire Codes; and any other policies of the County which have been incorporated in resolutions, regulations, ordinances, or plans as they now exist or hereafter amended or adopted, and which provide a reasonable basis for conditioning or denying a proposal in order to mitigate environmental impacts.
- (d) The County establishes the following additional policies:
- (i) Require land development to include appropriate measures to prevent air pollution and deterioration of ambient air quality.
 - (ii) Require land development where necessary to employ dust abatement, wind erosion and/or site restoration methods where construction or subsequent operations involve grading or excavation activities.
 - (iii) Require Geo-technical Engineered Reports for all new development proposals on lands designated as Geologically Hazardous (defined in County Ordinance #4-95, as amended).
 - (iv) Require land development to utilize vegetation, topography and on-site drainage systems or methods sufficient to prevent runoff onto public ways.
 - (v) Utilize the noise standards set forth in WAC Chapter 173-60 for proposals not covered by county standards, to regulate noise levels generated directly or indirectly by the use of lands.
 - (vi) Recognize the intrinsic value of riparian wildlife habitat and, to the extent possible, prevent its deterioration.

Section 7.4 Notice/Statute of limitations

- (1) The County, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.
- (2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the County, applicant or proponent pursuant to RCW 43.21C.080.

Section 7.5 Appeals

- (1) Except for permits and variances issued pursuant to RCW 90.58 (Shoreline Management Act), when any nonexempt action, not requiring a decision of the County Commissioners, is

conditioned or denied on the basis of SEPA by a non-elected official, the decision may be appealed to the County Commissioners.

- (2) Such appeal may be perfected by the proponent or an aggrieved party by giving notice to the responsible official. Appeals on threshold determinations shall be filed within ten (10) days or prior to the lapse of any comment period on a threshold determination under WAC 197-11-340(20). All other appeals shall be filed within ten (10) days.
 - (a) The appeal shall be filed in writing on appropriate appeal forms provided by the Planning Department and shall contain the name and address of the person filing the appeal and the name of the organization or agency represented, if any; and
 - (b) The appeal shall set forth the specific reason, rationale, and/or basis for the appeal; and
 - (c) Payment of the appeal fee in the amount of \$200.00 shall occur at the time the appeal is filed.
- (3) If the appeal has been timely filed and complies with the requirements of (1) above, the County Commissioners shall conduct an open appeal hearing into the merits of the appeal at which time the County Commissioners shall hear and receive testimony, documentary evidence, and arguments from the appellants(s) solely on the issues raised or identified by the appeal.
 - (a) The person(s) filing the appeal shall have the burden of going forward with the evidence and the ultimate burden of persuasion.
 - (b) The County Commissioners shall maintain an electronic record of the testimony and arguments presented and a record of any physical evidence/documents presented.
 - (c) The County Commissioner's decision shall be rendered within ten (10) working days of the conclusion of an open appeal hearing unless a longer period is agreed to by the appellant. This will be the effective date of the decision.
 - (d) The County Commissioner's decision shall include findings of fact and conclusions in support of the decision.
 - (e) The County Commissioner's decision under this section may be to grant or deny the appeal in whole or in part, or to remand the threshold determination to the responsible official for reconsideration.
 - (f) The County Commissioners decision shall become final unless appealed by an aggrieved party within ten (10) working days of the effective date of the decision.
 - (g) Appeal of the final decision of the County Commissioners under this section shall be to the superior court of Franklin County.
- (4) The procedural determinations made by the County's responsible official shall carry substantial weight in any appeal proceeding under this chapter.
- (5) For any appeal to the superior court under this chapter, the County shall provide for a record that shall consist of the following:
 - (a) Findings and conclusions;
 - (b) Testimony under oath; and
 - (c) A taped or written transcript, the cost of which shall be borne by the appellant.
- (6) Exhaustion of Remedies. SEPA appeal procedures, as provided herein, must be utilized prior to judicial review of the SEPA decision.

CHAPTER EIGHT DEFINITIONS

Sections:

- Section 8.1 Purpose
- Section 8.2 Adoption by reference

Section 8.1 Purpose

This article contains uniform usage and definitions of terms under SEPA.

Section 8.2 Adoption by reference

The County adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

| | |
|------------|---|
| 197-11-700 | Definitions. |
| 197-11-702 | Act. |
| 197-11-704 | Action. |
| 197-11-706 | Addendum. |
| 197-11-708 | Adoption. |
| 197-11-710 | Affected tribe. |
| 197-11-712 | Affecting. |
| 197-11-714 | Agency. |
| 197-11-716 | Applicant. |
| 197-11-718 | Built environment. |
| 197-11-720 | Categorical exemption. |
| 197-11-721 | Closed record appeal |
| 197-11-724 | Consulted agency. |
| 197-11-726 | Cost-benefit analysis. |
| 197-11-728 | County/city. |
| 197-11-730 | Decision maker. |
| 197-11-732 | Department. |
| 197-11-734 | Determination of nonsignificance (DNS). |
| 197-11-736 | Determination of significance (DS). |
| 197-11-738 | EIS. |
| 197-11-740 | Environment. |
| 197-11-742 | Environmental checklist. |
| 197-11-744 | Environmental document. |
| 197-11-746 | Environmental review. |
| 197-11-750 | Expanded scoping. |
| 197-11-752 | Impacts. |
| 197-11-754 | Incorporation by reference. |
| 197-11-756 | Lands covered by water. |
| 197-11-758 | Lead agency. |
| 197-11-760 | License. |
| 197-11-762 | Local agency. |

| | |
|------------|---------------------------------|
| 197-11-764 | Major action. |
| 197-11-766 | Mitigated DNS. |
| 197-11-768 | Mitigation. |
| 197-11-770 | Natural environment. |
| 197-11-772 | NEPA. |
| 197-11-774 | Nonproject. |
| 197-11-775 | Open record hearing |
| 197-11-776 | Phased review. |
| 197-11-778 | Preparation. |
| 197-11-780 | Private project. |
| 197-11-782 | Probable. |
| 197-11-784 | Proposal. |
| 197-11-786 | Reasonable alternative. |
| 197-11-788 | Responsible official. |
| 197-11-790 | SEPA. |
| 197-11-792 | Scope. |
| 197-11-793 | Scoping. |
| 197-11-794 | Significant. |
| 197-11-796 | State agency. |
| 197-11-797 | Threshold determination. |
| 197-11-799 | Underlying governmental action. |

CHAPTER NINE CATEGORICAL EXEMPTIONS

Sections:

- Section 9.1 Purpose
- Section 9.2 Adoption by reference

Section 9.1 Purpose

The purpose of this article is to designate categorical exemptions for review under the State Environmental Policy Act.

Section 9.2 Adoption by reference

The County adopts by reference the following rules for categorical exemptions, as supplemented in this ordinance, including WAC 173-806-070 (Flexible thresholds), WAC 173-806-080 (Use of exemptions), and WAC 173-806-190 (Critical areas):

| | |
|------------|---------------------------------------|
| 197-11-800 | Categorical exemptions. |
| 197-11-880 | Emergencies. |
| 197-11-890 | Petitioning DOE to change exemptions. |

CHAPTER TEN AGENCY COMPLIANCE

Sections:

- Section 10.1 Purpose
- Section 10.2 Adoption by reference
- Section 10.3 Critical Areas
- Section 10.4 Fees

Section 10.1 Purpose

This article contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities.

Section 10.2 Adoption by reference

The County adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals. 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

Section 10.3 Critical Areas

- (1) The scope of environmental review of actions within critical areas shall be limited to:

- (a) Documenting whether the proposal is consistent with the requirement of the Franklin County Critical Areas Ordinance and;
- (b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by Growth Management Act (GMA) planning document and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

Section 10.4 Fees

The County shall require the following fees for its activities in accordance with the provisions of this ordinance:

- (1) Threshold determination. For every environmental checklist the County will review when it is lead agency, the County shall collect a fee as required by the County fee schedule from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this ordinance for making a threshold determination shall not begin to run until payment of the fee.
- (2) Environmental impact statement.
 - (a) When the County is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the County, the County may charge and collect a reasonable fee as required by the County fee schedule from any applicant to cover costs incurred by the County in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.
 - (b) The responsible official may determine that the County will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the County and may bill such costs and expenses directly to the applicant. The County may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the County and applicant after a call for proposals.
 - (c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid. The County may collect from the applicant the cost of meeting the public notice requirements of this ordinance relating to the applicant's proposal.
- (3) The County shall not collect a fee for performing its duties as a consulted agency.
- (4) The County may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.17 RCW.

CHAPTER ELEVEN CRITICAL LANDS PROTECTION

Sections:

- Section 11.1 General Provision
- Section 11.2 Application

Section 11.1 General Provision

The provisions of the State Environmental Policy Act and Shoreline Management Act and their attendant rules are recognized as the regulatory vehicle through which the County meets its obligations to protect critical lands as required by RCW 36.78.030 and .060.

Section 11.2 Application

All proposed land development projects shall be reviewed for critical lands protection utilizing the regulations and processes of the State Environmental Policy Act, the State Shoreline Management Act and attendant rules.

CHAPTER TWELVE MISCELLANEOUS

Sections:

- Section 12.1 Purpose
- Section 12.2 Adoption by reference
- Section 12.3 General Severability
- Section 12.4 Repealer
- Section 12.4 Effective Date

Section 12.1 Purpose

The purpose of this article is to provide for uniform submittal of information on standardized forms and applications.

Section 12.2 Adoption by reference

The County adopts the following forms and sections of the Washington Administrative Code by reference:

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

Section 12.3 General Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 12.4 Repealer

This ordinance repeals Franklin County Ordinance Number #13-84.

Section 12.5 Effective Date

This ordinance shall be effective from and after its passage and publication as required by law.

PASSED AND ADOPTED THIS _____ DAY OF _____, 1999.

Board of County Commissioners
Franklin County, Washington

Chairman

Member

Member

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Steve Lowe
Prosecuting Attorney