

Chapter 14.12

SEPA

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Part One: Authority

14.12.010 Authority.

Skagit County adopts this Chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This Chapter contains Skagit County's SEPA procedures and policies. The SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this Chapter. (Ord. 17938 Attch. F (part), 2000)

Part Two: General Requirements

14.12.020 Purpose.

This part contains the basic requirements that apply to the SEPA process. The County adopts the following sections of Chapter 197-11 WAC by reference:

- WAC 197-11-040 Definitions.
- WAC 197-11-050 Lead agency.
- WAC 197-11-060 Content of environmental review.
- WAC 197-11-070 Limitations on actions during SEPA process.
- WAC 197-11-080 Incomplete or unavailable information.
- WAC 197-11-090 Supporting documents.
- WAC 197-11-100 Information required of applicants.
- WAC 197-11-158 GMA project review-reliance on existing plans and regulations.
- WAC 197-11-210 SEPA/GMA integration.
- WAC 197-11-220 SEPA/GMA definitions.
- WAC 197-11-228 Overall SEPA/GMA integration procedures.
- WAC 197-11-230 Timing of an integrated SEPA/GMA process.
- WAC 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- WAC 197-11-235 Documents.
- WAC 197-11-238 Monitoring.
- WAC 197-11-250 SEPA/Model Toxics Control Act integration.
- WAC 197-11-253 SEPA lead agency for MTCA actions.
- WAC 197-11-256 Preliminary evaluation.
- WAC 197-11-259 Determination of Nonsignificance for MTCA remedial actions.
- WAC 197-11-262 Determination of Significance and EIS for MTCA remedial actions.
- WAC 197-11-265 Early scoping for MTCA remedial actions.

WAC 197-11-268 MTCA interim actions.
(Ord. 17938 Attch. F (part), 2000)

14.12.030 Additional definitions.

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

- (1) "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.
- (2) "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).
(Ord. 17938 Attch. F (part), 2000)

14.12.040 Designation of Responsible Official.

- (1) For those proposals for which the County is the lead agency, the Responsible Official shall be the Director of Skagit County Planning and Development Services or his/her designee.
- (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 SCC 14.12.020.
- (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. (Ord. O20070009 (part); Ord. 17938 Attch. F (part), 2000)

14.12.050 Lead agency determination and responsibilities.

- (1) The County Department 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 and 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the County Department is aware that another agency is in the process of determining the lead agency.
- (2) When the County is the lead agency for a proposal, the County Department receiving the application shall notify 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 County Departments 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 an 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 any County Department receives a lead agency determination made by another agency that appears inconsistent with the criteria of 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 15 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 15-day time period. Planning and Development Services may initiate any such petition on behalf of the County.
- (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 County Department that will incur responsibilities as the result of such agreement approve the agreement.
- (6) Any County 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 (That is: Which agencies require nonexempt licenses?).
- (7) When the County is lead agency for a 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 1 public comment period under WAC 197-11-253(6), the County shall decide jointly with Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency. (Ord. O20070009 (part); Ord. 17938 Attch. F (part), 2000)

14.12.060 Additional timing considerations.

- (1) For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the County's staff recommendation to any appropriate advisory body, such as the Planning Commission.
- (2) If the County's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request, in writing, that the County conduct environmental review prior to submission of the detailed plans and specifications. (Ord. 17938 Attch. F (part), 2000)

Part Three: Categorical Exemptions and Threshold Determinations

14.12.070 Purpose.

This part 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. The County adopts the following sections by reference, as supplemented in this part:

- WAC 197-11-300 Purpose of this part.
 - WAC 197-11-305 Categorical exemptions.
 - WAC 197-11-310 Threshold determination required.
 - WAC 197-11-315 Environmental checklist.
 - WAC 197-11-330 Threshold determination process.
 - WAC 197-11-335 Additional information.
 - WAC 197-11-340 Determination of Nonsignificance (DNS).
 - WAC 197-11-350 Mitigated DNS.
 - WAC 197-11-355 Optional DNS process.
 - WAC 197-11-360 Determination of significance (DS)/initiation of scoping.
 - WAC 197-11-390 Effect of threshold determination.
- (Ord. 17938 Attch. F (part), 2000)

14.12.080 Flexible thresholds for categorical exemptions.

- (1) Skagit County establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b), based on local conditions, except when undertaken wholly or partly on lands covered by water:
 - (a) For the construction or location of any residential dwelling units in WAC 197-11-800(1)(b)(i): Up to 20 dwelling units.
 - (b) For the construction of agricultural structures in WAC 197-11-800(1)(b)(ii): Up to 30,000 square feet.
 - (c) For office, school, commercial, recreational, public service or storage buildings including places of worship 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 up to 500 cubic yards throughout the total lifetime of the fill or excavation and any fill or excavation classified as a Class 1, 2, or 3 Forest Practice under RCW 76.09.050 or regulations thereunder.
- (2) These categorical exemptions from SEPA shall not exempt these projects from review under the County's Critical Areas Ordinance.
- (3) 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). (Ord. 17938 Attch. F (part), 2000)

14.12.090 Use of exemptions.

- (1) Each County Department 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 are exempt. The County 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 Chapter 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 County 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 County Department shall determine the lead agency, even if the license application that triggers the County 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 Chapter, 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 County 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) was/were not approved; and
 - (c) A County 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) was/were not approved. (Ord. 17938 Atch. F (part), 2000)

14.12.100 Environmental checklist.

- (1) Except as provided in Subsection (3) of this Section, 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 Chapter; 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) 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 30-day review prior to use. (Ord. 17938 Atch. F (part), 2000)

14.12.110 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 County 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 5 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 15 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 that 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 14-day comment period and public notice, or WAC 197-11-355(5), 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 (3) 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. (Ord. 17938 Attch. F (part), 2000)

Part Four: Environmental Impact Statement (EIS)

14.12.120 Purpose.

This part contains the rules for preparing Environmental Impact Statements (EISs). The County adopts the following Sections by reference, as supplemented by this part:

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

WAC 197-11-460 Issuance of FEIS.
(Ord. 17938 Attch. F (part), 2000)

14.12.130 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 Planning and Development Services under the direction of the Responsible Official. Before the County issues an EIS, the Responsible Official shall be satisfied that it complies with this Chapter 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 selected by the County or the 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 Chapter or that is being requested from another agency. (This does not apply to information the County may request under another chapter, title, or statute.) (Ord. O20070009 (part); Ord. 17938 Attch. F (part), 2000)

14.12.140 Additional elements to be covered in an EIS.

The analysis of the following elements may be included as part of the environment for the purpose of EIS content, but does not add to the criteria for threshold determinations or perform any other functions or purposes under this Chapter.

- (1) Economy.
- (2) Social policy analysis.
- (3) Cost-benefit analysis; and
- (4) Any other element that may be dictated by special circumstances associated with the project. (Ord. 17938 Attch. F (part), 2000)

Part Five: Commenting

14.12.150 Purpose.

This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The County adopts the following sections by reference, as supplemented in this part:

- WAC 197-11-500 Purpose of this part.
- WAC 197-11-502 Inviting comment.
- WAC 197-11-504 Availability and cost of environmental documents.
- WAC 197-11-508 SEPA register.
- WAC 197-11-535 Public hearings and meetings.
- WAC 197-11-545 Effect of no comment.
- WAC 197-11-550 Specificity of comments.
- WAC 197-11-560 FEIS response to comments.
- WAC 197-11-570 Consulted agency costs to assist lead agency.
(Ord. 17938 Attch. F (part), 2000)

14.12.160 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 Skagit 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 public notice is required for a non-exempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
- (b) If a SEPA document is issued concurrently with the notice of application, the public notice requirements for the notice of application will suffice to meet the SEPA public notice requirements.
- (c) 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;
 - (ii) Publishing notices in a newspaper of general circulation in the County, city, or general area where the proposal is located; and
 - (iii) Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered.
- (d) 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 the notice of application as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements.
- (4) Whenever the County issues a DEIS under WAC 197-11-455(5) 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;
 - (b) Posting the property, for site-specific proposals;
 - (c) Publishing notices in a newspaper of general circulation in the County, city, or general area where the proposal is located; and
 - (d) Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered.
- (5) The County may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.
- (6) Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3). (Ord. 17938 Atch. F (part), 2000)

14.12.170 Designation of official to perform consulted agency responsibilities for the County.

- (1) The Director of Skagit County Planning and Development Services or his/her designee 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 Director of Skagit County Planning and Development Services 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. (Ord. O20070009 (part); Ord. 17938 Atch. F (part), 2000)

Part Six: Using Existing Environmental Documents

14.12.180 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. The County adopts the following sections by reference:

- WAC 197-11-164 Planned actions—Definition and criteria.
- WAC 197-11-168 Ordinances or resolutions designating planned actions—Procedures for adoption.
- WAC 197-11-172 Planned actions—Project review.
- WAC 197-11-600 When to use existing environmental documents.
- WAC 197-11-610 Use of NEPA documents.
- WAC 197-11-620 Supplemental Environmental Impact Statement—Procedures.
- WAC 197-11-625 Addenda—Procedures.
- WAC 197-11-630 Adoption—Procedures.

WAC 197-11-635 Incorporation by reference— Procedures.
WAC 197-11-640 Combining documents.
(Ord. 17938 Attch. F (part), 2000)

Part Seven: SEPA and Agency Decisions

14.12.190 Purpose.

This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The County adopts the following sections by reference:

WAC 197-11-650 Purpose of this part.
WAC 197-11-655 Implementation.
WAC 197-11-660 Substantive authority and mitigation.
WAC 197-11-680 Appeals.
(Ord. 17938 Attch. F (part), 2000)

14.12.200 Substantive authority.

- (1) The policies and goals set forth in this Chapter are supplementary to those in the existing authorization of Skagit County.
- (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 Chapter;
 - (b) Such conditions are in writing;
 - (c) The mitigation measures included in such conditions are reasonable and capable of being accomplished;
 - (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 1 or more policies in Subsection (4) of this Section and cited in the 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 Chapter;
 - (b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
 - (c) The denial is based on 1 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 State 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 Codes, Ordinances, resolutions, and plans:
 - (i) 1997 Skagit County Comprehensive Plan, as now adopted or as hereafter amended;
 - (ii) 1997 Comprehensive Plan Map Portfolio, as now adopted or as hereafter amended;
 - (iii) All studies and appendices referenced by the 1997 Comprehensive Plan, as now existing or as hereafter amended;
 - (iv) SCC Title 12, Title 14, and Title 15; and
 - (v) The Skagit County Shoreline Management Master Program, as now existing or hereafter amended;
 - (vi) All municipal ordinances adopted by Skagit County pertaining to the development of those lands contained in an urban growth area (under RCW 36.70A.110) from and after the effective date of a County Ordinance adopting such municipal Ordinances.
- (d) The County further adopts as substantive authority those interlocal agreements that the County has entered into with the individual cities within its jurisdiction. Those interlocal agreements outline the scope and general procedure for joint County-city cooperation. (Ord. 17938 Attch. F (part), 2000)

14.12.210 Appeals.

Skagit County establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

- (1) A final environmental threshold determination for a project proposal is administratively appealable as a Level I decision, pursuant to Chapter 14.06 SCC. No administrative appeals of threshold determinations relating to legislative actions shall be available. Otherwise, appeals shall be allowed consistent with Chapter 43.21C RCW.
- (2) A decision by a non-elected official to condition or deny a project on the basis of SEPA may be appealed to the appropriate hearing body pursuant to Chapter 14.06 SCC.
- (3) For any appeal under this Subsection, 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.
- (4) The procedural determination by the County's Responsible Official shall carry substantial weight in any appeal proceeding.
- (5) The County shall give official notice consistent with WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. The notice shall include:
 - (a) The time limit for commencing appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limits;
 - (b) Where the appeal may be filed; and
 - (c) Notice shall be given following the County's normal methods of notice found in Chapter 14.06 or 14.08 SCC, as appropriate. (Ord. O20070009 (part); Ord. 17938 Attch. F (part), 2000)

14.12.220 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 County Auditor, applicant or proponent pursuant to RCW 43.21C.080 shall publish the notice. (Ord. 17938 Attch. F (part), 2000)

Part Eight: Definitions

14.12.230 Purpose.

This part contains uniform usage and definitions of terms under SEPA. The County adopts the following sections by reference:

- WAC 197-11-700 Definitions.
- WAC 197-11-702 Act.

WAC 197-11-704 Action.
WAC 197-11-706 Addendum.
WAC 197-11-708 Adoption.
WAC 197-11-710 Affected tribe.
WAC 197-11-712 Affecting.
WAC 197-11-714 Agency.
WAC 197-11-716 Applicant.
WAC 197-11-718 Built environment.
WAC 197-11-720 Categorical exemption.
WAC 197-11-721 Closed record appeal.
WAC 197-11-722 Consolidated appeals.
WAC 197-11-724 Consulted agency.
WAC 197-11-726 Cost-benefit analysis.
WAC 197-11-728 County/city.
WAC 197-11-730 Decision-maker.
WAC 197-11-732 Department.
WAC 197-11-734 Determination of Nonsignificance (DNS).
WAC 197-11-736 Determination of Significance (DS).
WAC 197-11-738 EIS.
WAC 197-11-740 Environment.
WAC 197-11-742 Environmental checklist.
WAC 197-11-744 Environmental documents.
WAC 197-11-746 Environmental reviews.
WAC 197-11-750 Expanded scoping.
WAC 197-11-752 Impacts.
WAC 197-11-754 Incorporation by reference.
WAC 197-11-756 Lands covered by water.
WAC 197-11-758 Lead agency.
WAC 197-11-760 License.
WAC 197-11-762 Local agency.
WAC 197-11-764 Major action.
WAC 197-11-766 Mitigated DNS.
WAC 197-11-768 Mitigation.
WAC 197-11-770 Natural environment.
WAC 197-11-772 NEPA.
WAC 197-11-774 Nonproject.
WAC 197-11-775 Open record hearing.
WAC 197-11-776 Phased reviews.
WAC 197-11-778 Preparation.
WAC 197-11-780 Private projects.
WAC 197-11-782 Probable.
WAC 197-11-784 Proposal.
WAC 197-11-786 Reasonable alternative.
WAC 197-11-788 Responsible Official.
WAC 197-11-790 SEPA.
WAC 197-11-792 Scope.
WAC 197-11-793 Scoping.
WAC 197-11-794 Significant.
WAC 197-11-796 State agency.
WAC 197-11-797 Threshold determination.
WAC 197-11-799 Underlying governmental action.

(Ord. 17938 Attch. F (part), 2000)

Part Nine: Categorical Exemptions

14.12.240 Adoption by reference.

The County adopts by reference the following rules for categorical exemptions, as supplemented in this Chapter, including SCC 14.12.080 (Flexible thresholds), SCC 14.12.090 (Use of exemptions), and SCC 14.12.260 (Critical areas):

WAC 197-11-800 Categorical exemptions.

WAC 197-11-880 Emergencies.

WAC 197-11-890 Petitioning Department of Ecology to change exemptions.

(Ord. 17938 Attch. F (part), 2000)

Part Ten: Agency Compliance

14.12.250 Purpose.

This part 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. The County adopts the following sections by reference:

WAC 197-11-900 Purpose.

WAC 197-11-902 Agency SEPA policies.

WAC 197-11-916 Application to ongoing actions.

WAC 197-11-920 Agencies with environmental expertise.

WAC 197-11-922 Lead agency rules.

WAC 197-11-924 Determining the lead agency.

WAC 197-11-926 Lead agency for governmental proposals.

WAC 197-11-928 Lead agency for public and private proposals.

WAC 197-11-930 Lead agency for private projects with one agency with jurisdiction.

WAC 197-11-932 Lead agency for private projects requiring licenses from more than 10 agencies, when one of the agencies is a County/city.

WAC 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

WAC 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.

WAC 197-11-938 Lead agencies for specific proposals.

WAC 197-11-940 Transfer of lead agency status to a state agency.

WAC 197-11-942 Agreements on lead agency status.

WAC 197-11-944 Agreements on division of lead agency duties.

WAC 197-11-946 DOE resolution of lead agency disputes.

WAC 197-11-948 Assumption of lead agency status.

(Ord. 17938 Attch. F (part), 2000)

14.12.260 Critical areas.

- (1) The County shall treat proposals located wholly or partially within a critical area or its buffer no differently from other proposals under this Chapter, making a threshold determination for all such proposals. The County shall not automatically require an EIS for a proposal merely because it is proposed for location in a critical area or its buffer.
- (2) Critical Areas Exemptions. The categorical exemptions listed under SCC 14.12.080 and WAC 197-11-800 do not exempt projects from review under the Skagit County Critical Areas Ordinance, Chapter 14.24 SCC. (Ord. 17938 Attch. F (part), 2000)

14.12.270 Fees.

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

- (1) **Threshold Determination.** For every environmental checklist the County will review when it is lead agency, the County shall collect a fee in the amount established by resolution of the Board of Commissioners from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this Chapter 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 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 Subsection (2)(a) or (b) of this Section which remain after incurred costs are paid.
- (3) The County may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this Chapter relating to the applicant's proposal.
- (4) The County shall not collect a fee for performing its duties as a consulted agency.
- (5) The County may charge any person for copies of any document prepared under this Chapter, and for mailing the document, in a manner provided by Chapter 42.17 RCW. (Ord. 17938 Attch. F (part), 2000)

Part Eleven: Forms

14.12.280 Adoption by reference.

The County adopts the following forms and sections by reference:

- WAC 197-11-960 Environmental checklist.
 - WAC 197-11-965 Adoption notices.
 - WAC 197-11-970 Determination of nonsignificance (DNS).
 - WAC 197-11-980 Determination of significance and scoping notice (DS).
 - WAC 197-11-985 Notice of assumption of lead agency status.
 - WAC 197-11-990 Notice of action.
- (Ord. 17938 Attch. F (part), 2000)