

20.44 COUNTY ENVIRONMENTAL PROCEDURES

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20.44.010 Definitions and abbreviations.

A. King County adopts by reference the definitions contained in WAC 197-11-700 through 197-11-799.

In addition, the following definitions are adopted for this chapter:

1. "County council" means the county council described in Article 2 of the Home Rule Charter for King County or its duly authorized designee.
2. "County department" means any administrative office or executive department of King County, as described in K.C.C. 2.16.
3. "County executive" means any county executive described in Article 3 of the Home Rule Charter for King County or his or her duly authorized designee.

B. The following abbreviations are used in this chapter:

1. SEPA -- State Environmental Policy Act
2. DNS -- Determination of Non-Significance
3. DS -- Determination of Significance
4. EIS -- Environmental Impact Statement

(Ord. 6949 § 3, 1984).

20.44.020 Lead agency. The procedures and standards regarding lead agency responsibility contained in WAC 197-11-050 and WAC 197-11-922 through 197-11-948 are adopted, subject to the following:

A. The county department exercising initial jurisdiction over a private proposal or sponsoring a county project shall be responsible for performing the duties of the lead agency. The director of such department shall serve as the responsible official. Department directors may transfer lead agency and responsible official responsibility to any county department which agrees to perform as lead agency or may delegate such responsibility to divisions within their own departments.

B. With respect to actions initiated by the county council, the council shall refer such proposals to the county executive for designation of a county department as lead agency.

C. In the event of uncertainty or disagreement regarding lead agency status, the county executive shall designate the county department responsible for performing the function of lead agency. (Ord. 6949 § 4, 1984).

20.44.030 Purpose and general requirements. The procedures and standards regarding the timing and content of environmental review specified in WAC 197-11-055 through 197-11-100 are adopted subject to the following:

A. The optional provision of WAC 197-11-060(3)(c) is adopted.

B. Under WAC 197-11-100, the applicant shall prepare the initial environmental checklist, unless the lead agency specifically elects to prepare the checklist. The lead agency shall make a reasonable effort to verify the information in the environmental checklist and shall have the authority to determine the final content of the environmental checklist.

C. The department of development and environmental services may set reasonable deadlines for the submittal of information, studies, or documents necessary for, or subsequent to, threshold determinations. Failure to meet such deadlines shall cause the application to be deemed withdrawn, and plans or other data previously submitted for review may be returned to the applicant together with any unexpended portion of the application review fees. (Ord. 14449 § 4, 2002: Ord. 8998 § 1, 1989: Ord. 8236 § 1, 1987: Ord. 7990 § 35, 1987: Ord. 6949 § 5, 1984).

20.44.040 Categorical exemptions and threshold determinations.

A. King County adopts the standards and procedures specified in WAC 197-11-300 through 197-11-390 and 197-11-800 through 197-11-890 for determining categorical exemptions and making threshold determinations subject to the following:

1. The following exempt threshold levels are hereby established in accordance with WAC 197-11-800(1)(c) for the exemptions in WAC 197-11-800(1)(b):

a. The construction or location of any residential structures of twenty dwelling units within the boundaries of an urban growth area, or of any residential structures of eight dwelling units outside of the boundaries of an urban growth area;

b. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering thirty thousand square feet on land zoned agricultural, or fifteen thousand square feet in all other zones, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;

c. The construction of an office, school, commercial, recreational, service or storage building with twelve thousand square feet of gross floor area, and with associated parking facilities designed for forty automobiles;

d. The construction of a parking lot designed for forty automobiles;

e. Any fill or excavation of five hundred cubic yards throughout the total lifetime of the fill or excavation and any fill or excavation classified as a class I, II, or III forest practice under RCW 76.09.050 or regulation thereunder: The categorical exemption threshold shall be one hundred cubic yards for any fill or excavation that is in an aquatic area, wetland, steep slope or landslide hazard area. If the proposed action is to remove from or replace fill in an aquatic area, wetland, steep slope or landslide hazard area to correct a violation, the threshold shall be five hundred cubic yards.

2. The determination of whether a proposal is categorically exempt shall be made by the county department that serves as lead agency for that proposal.

B. The mitigated DNS provision of WAC 197-11-350 shall be enforced as follows:

1. If the department issues a mitigated DNS, conditions requiring compliance with the mitigation measures which were specified in the application and environmental checklist shall be deemed conditions of any decision or recommendation of approval of the action.

2. If at any time the proposed mitigation measures are withdrawn or substantially changed, the responsible official shall review the threshold determination and, if necessary, may withdraw the mitigated DNS and issue a DS. (Ord. 16263 § 10, 2008: Ord. 14449 § 5, 2002: Ord. 12196 § 46, 1996: Ord. 11792 § 16, 1995: Ord. 9103, 1989: Ord. 8236 § 2, 1987: Ord. 6949 § 6, 1984).

20.44.042 Planned actions. The procedures and standards of WAC 197-11-164 through WAC 197-11-172 are adopted regarding the designation of planned actions. (Ord. 13131 § 4, 1998: Ord. 12196 § 47, 1996).

20.44.050 Environmental impact statements and other environmental documents. The procedures and standards for preparation of environmental impact statements and other environmental documents pursuant to WAC 197-11-400 through 197-11-460 and 197-11-600 through 197-11-640 are adopted, subject to the following:

A. Pursuant to WAC 197-11-408(2)(a), all comments on determinations of significance and scoping notices shall be in writing, except where a public meeting on EIS scoping occurs pursuant to WAC 197-11-410(1)(b).

B. Pursuant to WAC 197-11-420, 197-11-620, and 197-11-625, the county department acting as lead agency shall be responsible for preparation and content of EIS's and other environmental documents. The department shall contract with consultants as necessary for the preparation of environmental documents. The department may consider the opinion of the applicant regarding the qualifications of the consultant but the department shall retain sole authority for selecting persons or firms to author, co-author, provide special services or otherwise participate in the preparation of required environmental documents.

C. Consultants or subconsultants selected by King County to prepare environmental documents for a private development proposal shall not: act as agents for the applicant in preparation or acquisition of associated underlying permits; have a financial interest in the proposal for which the environmental document is being prepared; perform any work or provide any services for the applicant in connection with or related to the proposal.

D. The department shall establish and maintain one or more lists of qualified consultants who are eligible to receive contracts for preparation of environmental documents. Separate lists may be maintained to reflect specialized qualifications or expertise. When the department requires consultant services to prepare environmental documents, the department shall select a consultant from the lists and negotiate a contract for such services. The department director may waive these requirements as provided for in rules adopted to implement this section. Subject to K.C.C. 20.44.145 and pursuant to K.C.C. 2.98, the department of development and environmental services shall promulgate administrative rules prior to the effective date of Ordinance 8998* that establish processes to: create and maintain a qualified consultant list; select consultants from the list; remove consultants from the list; provide a method by which applicants may request a reconsideration of selected consultants based upon costs, qualifications, or timely production of the environmental document; and waive the consultant selection requirements of this chapter on any basis provided by K.C.C. 4.16.

E. All costs of preparing the environment document shall be borne by the applicant. Subject to K.C.C. 20.44.145 and pursuant to K.C.C. 2.98, the department of development and environmental services shall promulgate administrative rules which establish a trust fund for consultant payment purposes, define consultant payment schedules, prescribe procedures for treating interest from deposited funds, and develop other procedures necessary to implement this chapter.

F. In the event an applicant decides to suspend or abandon the project, the applicant must provide formal written notice to the department and consultant. The applicant shall continue to be responsible for all monies expended by the division or consultants to the point of receipt of notification to suspend or abandon, or other obligations or penalties under the terms of any contract let for preparation of the environmental documents.

G. The department shall only publish an environmental impact statement (EIS) when it believes that the EIS adequately disclose: the significant direct, indirect, and cumulative adverse impacts of the proposal and its alternatives; mitigation measures proposed and committed to by the applicant, and their effectiveness in significantly mitigating impacts; mitigation measures that could be implemented or required; and unavoidable significant adverse impacts. Unless otherwise agreed to by the applicant, a final environmental impact statement shall be issued by the department within 270 days following the issuance of a DS for the proposal, except for public projects and nonproject actions, unless the department determines at the time of issuance of the DS that a longer time period will be required because of the extraordinary size of the proposal or the scope of the environmental impacts resulting therefrom; provided that the additional time shall not exceed ninety days unless agreed to by the applicant.

H. The following periods shall be excluded from the two hundred seventy day time period for issuing a final environmental impact statement:

1. Any time period during which the applicant has failed to pay required environmental review fees to the department;

2. Any period of time during which the applicant has been requested to provide additional information required for preparation of the environmental impact statement, and

3. Any period of time during which the applicant has not authorized the department to proceed with preparation of the environmental impact statement. (Ord. 12196 § 48, 1996: Ord. 8998 § 2, 1989: Ord. 6949 § 7, 1984).

*Reviser's note: The language in Ordinance 8998 read "the effective date of this ordinance." Ordinance 8998, Section 6, read in part "section 1, 3, 4, 6 and 7 of this ordinance shall become effective 10 days after enactment [enacted June 14, 1989, effective June 24, 1989]. Sections 2 and 5 shall become effective January 1, 1990."

20.44.060 Comments and public notice.

A. The procedures and standards of WAC 197-11-500 through 197-11-570 are adopted regarding public notice and comments.

B. For purposes of WAC 197-11-510, public notice shall be required as provided in K.C.C. Title 20. Publication of notice in a newspaper of general circulation in the area where the proposal is located also shall be required for all nonproject actions and for all other proposals that are subject to the provisions of this chapter but are not classified as land use permit decisions in K.C.C. Title 20.

C. The responsible official may require further notice if deemed necessary to provide adequate public notice of a pending action. Failure to require further or alternative notice shall not be a violation of any notice procedure. (Ord. 12196 § 49, 1996: Ord. 9540 § 3, 1990: Ord. 8998 § 3, 1989: Ord. 6949 § 8, 1984).

20.44.070 Use of existing environmental documents. The procedures and standards of WAC 197-11-600 through 197-11-640 are adopted regarding use of existing environmental documents. (Ord. 6949 § 9, 1984).

20.44.075 Department of natural resources and parks procedural SEPA decisions. The Department of natural resources and parks by public rule may authorize procedural SEPA administrative appeals of threshold determinations or determinations of the adequacy of a final EIS made by one or more of the department's divisions. The public rule shall establish procedures for the administrative appeal, which shall be governed by K.C.C. 20.44.120. (Ord. 14449 § 6, 2002).

20.44.080 Substantive authority.

A. The procedures and standards of WAC 197-11-650 through 197-11-660 regarding substantive authority and mitigation, and WAC 197-11-158, regarding reliance on existing plans, laws and regulations, are adopted.

B. For the purposes of RCW 43.21C.060 and WAC 197-11-660, the following policies, plans, rules and regulations, and all amendments thereto, are designated as potential bases for the exercise of King County's substantive authority under SEPA, subject to RCW 43.21C.240 and subsection C of this section:

1. The policies of the state Environmental Policy Act, RCW 43.21C.020.
2. As specified in K.C.C. chapter 20.12, the King County Comprehensive Plan, its addenda and revisions and community and subarea plans and housing report, and as specified in K.C.C. chapter 20.14, surface water management program basin plans.
3. The King County Zoning Code, as adopted in K.C.C. Title 21A.
4. The King County Agricultural Lands Policy, as adopted in K.C.C. chapter 20.54 and K.C.C. Title 26.
5. The King County Landmarks Preservation Code, as adopted in K.C.C. chapter 20.62.
6. The King County Shoreline Management Master Plan, as adopted in K.C.C. Title 25.
7. The King County Surface Water Runoff Policy, as adopted in K.C.C. chapter 9.04, including the Covington Master Drainage Plan, as adopted in K.C.C. chapter 20.14.
8. The King County Road Standards, as adopted in K.C.C. chapter 14.42.
9. The Comprehensive Plan for Transportation adopted by Resolution No. 6617 of the council of the Municipality of Metropolitan Seattle and readopted and ratified by the county council in K.C.C. 28.01.030.

10. The Comprehensive Sewerage Disposal Plan adopted by Resolution No. 23 of the council of the Municipality of Metropolitan Seattle and readopted and ratified by the county council in K.C.C. 28.01.030.

11. The rules and regulations for construction and use of local sewage facilities set forth in K.C.C. chapters 28.81 through 28.84.

12. The rules and regulations on the consistency of sewer projects with local land use plans and policies set forth in Ordinance 11034, as amended.

13. The rules and regulations for the disposal of industrial waste into the sewerage system set forth in Ordinance 11034, as amended.

14. The Duwamish Clean Water Plan adopted by the council of the Municipality of Metropolitan Seattle and readopted and ratified by the county council by Ordinance 11032, Section 28, as amended*.

15. The Washington Department of Ecology's Best Management Practices for the Use of Municipal Sludge.

C. Within the urban growth area, substantive SEPA authority to condition or deny new development proposals or other actions shall be used only in cases where specific adverse environmental impacts are not addressed by regulations as set forth below or unusual circumstances exist. In cases where the county has adopted the following regulations to systematically avoid or mitigate adverse impacts, those standards and regulations will normally constitute adequate mitigation of the impacts of new development: K.C.C. chapter 9.04, Surface Water Runoff Policy, K.C.C. chapter 9.08, Surface Water Management Program, K.C.C. chapter 9.12, Water Quality, K.C.C. chapter 14.42, King County Road Standards, K.C.C. chapter 16.82, Clearing and Grading, K.C.C. chapter 21A.12, Development Standards - Density and Dimensions, K.C.C. chapter 21A.14, Development Standards - Design Requirements, K.C.C. chapter 21A.16, Development Standards - Landscaping and Water Use, K.C.C. chapter 21A.18, Development Standards - Parking and Circulation, K.C.C. chapter 21A.20, Development Standards - Signs, K.C.C. chapter 21A.22, Development Standards - Mineral Extraction, K.C.C. chapter 21A.24, Critical Areas, K.C.C. chapter 21A.26, Development Standards - Communication Facilities, K.C.C. chapter 21A.28, Development Standards - Adequacy of Public Facilities and Services. Unusual circumstances related to a site or to a proposal, as well as environmental impacts not mitigated by the regulations listed in this subsection, will be subject to site-specific or project-specific SEPA mitigation.

This subsection shall not apply if the county's development regulations cited in this subsection are amended after April 22, 1996, unless the amending ordinance contains a finding, supported by documentation, that the requirements for environmental analysis, protections and mitigation measures in this chapter, provide adequate analysis of and mitigation for the specific adverse environmental impacts to which the requirements apply.

D. Outside the urban growth area, in the course of project review, including any required environmental analysis, the responsible official may determine that requirements for environmental analysis, protection and mitigation measures in the county's development regulations or comprehensive plans adopted under chapter 36.70A RCW and in other applicable local, state or federal laws and rules provide adequate analysis and mitigation for specific adverse environmental impacts of the project, if the following criteria are met:

1. In the course of project review, the responsible official shall identify and consider the specific probable adverse environmental impacts of the proposed action and then make a determination whether these specific impacts are adequately addressed by the development regulations. If they are not, the responsible official shall apply mitigation consistent with the applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan or other local, state or federal rules or laws; and

2. The responsible official bases or conditions its approval on compliance with these requirements or mitigation measures.

E. Any decision to approve, deny or approve with conditions pursuant to RCW 43.21C.060 shall be contained in the responsible official's decision document. The written decision shall contain facts and conclusions based on the proposal's specific adverse environmental impacts, or lack thereof, as identified in an environmental checklist, EIS, threshold determination, other environmental document including an executive department's staff report and recommendation to a decision maker, or findings made pursuant to a public hearing authorized or required by law or ordinance. The decision document shall state the specific plan, policy or regulation that supports the SEPA decision and, if mitigation beyond existing development

regulations is required, the specific adverse environmental impacts and the reasons why additional mitigation is needed to comply with SEPA.

F. This chapter shall not be construed as a limitation on the authority of King County to approve, deny or condition a proposal for reasons based upon other statutes, ordinances or regulations. (Ord. 16263 § 11, 2008: Ord. 14449 § 7, 2002: Ord. 13131 § 5, 1998: Ord. 12196 § 50, 1996: Ord. 11961 § 2, 1995: Ord. 11792 § 17, 1995: Ord. 10293 § 3, 1992: Ord. 9142, 1989: Ord. 8380 § 2, 1988: Ord. 6949 § 10, 1984).

*Reviser's note: Ordinance 11032, Section 28, as amended, was codified as K.C.C. 28.48.010. The section was repealed by Ordinance 12074, Section 1.

20.44.085 SEPA/GMA Integration. The procedures and standards regarding the timing and content of environmental review specified in WAC 197-11-210 through WAC 197-11-235 are hereby adopted. (Ord. 13131 § 7, 1998).

20.44.090 Ongoing actions. Unless otherwise provided herein, the provisions of WAC 197-11 shall be applicable to all elements of SEPA compliance, including the modification or supplementation of an EIS, initiated after the effective date of the Ordinance. (Ord. 6949 § 11, 1984).

20.44.100 Responsibility as consulted agency. All requests from other agencies that King County consult on threshold investigations, the scope process, EIS's or other environmental documents shall be submitted to the department of development and environmental services. The department shall be responsible for coordination with other affected county departments and for compiling and transmitting King County's response to such requests for consultation. (Ord. 12196 § 51, 1996: Ord. 6949 § 12, 1984).

20.44.120 Appeals.

A. The administrative appeal of a threshold determination or of the adequacy of a final EIS is a procedural SEPA appeal that is conducted by the hearing examiner under K.C.C. 20.24.080 and is subject to the following:

1. A procedural SEPA appeal to the hearing examiner is authorized only for an action classified as a Type 2, 3 or 4 land use decision in K.C.C. 20.20.020 or as provided for by public rule adopted under K.C.C. 20.44.075;

2. Only one appeal of each threshold determination shall be allowed on a proposal;

3. As provided in RCW 43.21C.075(3)(d), the decision of the responsible official shall be entitled to substantial weight;

4. An appeal of a DS must be filed with the department issuing the DS as provided in K.C.C. 20.24.090;

5. An appeal of a DNS or of the adequacy of an EIS must be filed with the department issuing the DNS or EIS as provided in K.C.C. 20.24.090. The appeal period for a DNS shall be extended for an additional seven calendar days if WAC 197-11-340(2)(a) applies;

6. Except as otherwise provided in this section, SEPA appeals are subject to K.C.C. 20.24.090C; and

7. The hearing examiner shall make a final decision on all procedural SEPA appeals.

B. Except for a procedural SEPA appeal authorized pursuant to K.C.C. 20.44.075, the hearing examiner's consideration of a procedural SEPA appeal shall be consolidated in all cases with the substantive SEPA appeal, if any, involving a decision to condition or deny an application pursuant to RCW 43.21C.060 and with the public hearing or appeal, if any, on the proposal, except for an appeal of a DS.

C. A procedural or substantive SEPA appeal authorized by subsection A of this section on a Type 2, 3 or 4 land use decision shall be consolidated with any administrative appeal on the merits of that decision, as provided in K.C.C. chapter 20.24 and this section. A procedural SEPA appeal authorized by a public rule adopted under K.C.C. 20.44.075 shall not be consolidated with the administrative appeal on the merits of the decision. If a Type 3 or 4 land use decision is appealed to the county council as provided in K.C.C. 20.24.210B or D, the appeal of the recommendation or decision of the examiner to condition or deny the proposal pursuant to RCW 43.21C.060 shall be made to the council, which shall make a final decision.

D. Notwithstanding of subsections A through C of this section, a department may adopt procedures under which an administrative appeal shall not be provided if the director of that department finds that consideration of an appeal would be likely to cause the department to violate a compliance, enforcement or other specific mandatory order or specific legal obligation. The director's determination shall be included in the notice of the SEPA determination, and the director shall provide a written summary upon which the determination is based within five days of receiving a written request. Because there would be no administrative appeal in such situations, review may be sought before a court of competent jurisdiction under RCW 43.21C.075 and applicable regulations, in connection with an appeal of the underlying governmental action. (Ord. 14449 § 8, 2002: Ord. 13573 § 4, 1999: Ord. 13131 § 6, 1998: Ord. 12196 § 52, 1996: Ord. 11961 § 4, 1995: Ord. 8998 § 4, 1989: Ord. 6949 § 14, 1984).

20.44.130 Department procedural rules.

A. County departments which administer activities subject to SEPA may prepare rules and regulations pursuant to K.C.C. chapter 2.98 for the implementation of SEPA, WAC chapter 197-11 and this chapter.

B. The rules and regulations prepared by the department of development and environmental services, which exercises initial jurisdiction over a private proposal, shall not become effective until approved by the council by motion. (Ord. 14498 § 26, 2002: Ord. 6949 § 15, 1984).

20.44.145 Effective date - procedures for rules. K.C.C. 20.44.030, 20.44.060, 20.44.120, 20.44.140* and this section shall become effective June 24, 1989. K.C.C. 20.44.050 and 4.16.080 shall become effective January 1, 1990. Draft rules developed to implement this chapter shall be transmitted to the county council by September 15, 1989 for review and approval prior to filing with the clerk of the council. Subsequent modifications or amendments of the rules shall be in accordance with K.C.C. 2.98. (Ord. 8998 § 6, 1989).

*Reviser's note: K.C.C. 20.44.140 was decodified in accordance with K.C.C. 1.03.030 in 2011.