

Ordinance No. _____ - 2008

**ORDINANCE AMENDING PORTIONS OF KITSAP COUNTY CODE
TITLE 18 (SEPA-ENVIRONMENT) RELATING TO PHASE II CODE DEVELOPMENT**

BE IT ORDAINED:

Section 1. General Findings. The Kitsap County Board of Commissioners makes the following findings:

1. On May 7, 1998, the Board of County Commissioners (Board) adopted the 1998 Kitsap County Comprehensive Plan. Adoption of the 1998 plan satisfied the requirements set forth in the Growth Management Act (GMA). The Comprehensive Plan has been subsequently amended during the period of 2000 through 2007.
2. The Kitsap County Code Chapter 21.08 provides guidance on the process and procedures for amending Kitsap County's development code.
3. In 2006, through the ten year update to its comprehensive plan and development regulations, Kitsap County made substantial revisions to its development code (Phase I revisions).
4. On January 9 and 23, 2007, February 13, 2007, March 27, 2007, April 24, 2007, June 12 and 28, 2007, July 10 and 24, 2007, the Kitsap County Planning Commission (Planning Commission) held work-study sessions to discuss the schedule, scope and issues pertaining to further amendments to Kitsap County's development code (Phase II revisions).
5. Over the course of 2006-2008, an ad-hoc stakeholders group, made up of developers, community advisory council members, land use attorneys and citizens met to discuss proposed revisions to and provide comment on various titles to Kitsap County's development code.
6. On August 15, 2007, Kitsap County released a First Draft for the Phase II Code Development process. The First Draft contained proposed amendments to Titles 16 (Subdivision), 17 (Zoning), and 18 (SEPA-Environment) of the Kitsap County Code (KCC). This draft was distributed to the Board, Planning Commission, stakeholders and county departments, as well as posted on the County's project web page. The intent of the First Draft was to solicit preliminary comments and discussion. The deadline for preliminary comments was December 1, 2007.
7. On May 16, 2008, Kitsap County released Second Draft amendments for the Phase II Code Development process. Amendments included revisions to Title 17 (Zoning) and 18 (SEPA-Environment). These documents were posted on the project web page and distributed to the Board, Planning Commission, stakeholders, local tribes and agencies.
8. On May 17, 2008, Kitsap County issued a Determination of Non-Significance (DNS) and adoption of existing environmental documents in the legal publication of record in regards to the Phase II Code Development amendments. The comment and appeal period closed on June 2, 2008. No comments or appeals were submitted.

9. On May 17, 2008, Kitsap County issued the Notice of Application and Notice of Planning Commission Public Hearing in the legal publication of record in regards to the Phase II Code Development amendments. A 60-day public and agency comment period was also established and ends July 17, 2008.
10. On May 17, 2008, Kitsap County submitted a 60-day notice of intent to adopt to the Washington State Department of Community, Trade and Economic Development (CTED). A letter of acknowledgment of receipt was received on May 19, 2008.
11. On May 27, 2008, following timely and effective public notice, the Planning Commission held a work-study session to review and discuss components of the Second Draft amendments for the Phase II Code Development process.
12. On June 3, 2008, Kitsap County Special Projects issued a staff report on the proposed amendments consistent with the schedule identified in Kitsap County Code Title 21, Type IV Legislative Procedures.
13. On June 10, 2007, the Kitsap County Special Projects presented an Errata Matrix for the Second Draft amendments and posted on its project web page.
14. On June 10, 2008, following timely and effective public notice, the Planning Commission held a public hearing to consider testimony on the Second Draft Phase II Code Development amendments. The Planning Commission closed its written record on June 17, 2008.
15. On June 24, 2008, the Planning Commission, following timely and effective notice, deliberated on the Second Draft amendments contained in Titles 17 (Zoning) and 18 (SEPA-Environment).
16. On July 8, 2008, the Planning Commission, following timely and effective notice, approved their Findings of Fact and recommendation on the Second Draft amendments.
17. On July 14, 2008, the Board, following timely and effective notice, held a public hearing to consider testimony on the Second Draft amendments contained in Titles 17 (Zoning) and 18 (SEPA-Environment) and Planning Commission recommendations.
18. On August 4, 2008, September 29, 2008 and September 30, 2008, the Board, following timely and effective notice, deliberated on the Second Draft amendments contained in Titles 17 (Zoning) and 18 (SEPA-Environment) and the Planning Commission recommendations.
19. The opportunities provided for citizen participation used in the preparation of the Phase II Code Development amendments are consistent with the requirements of the GMA and the State Environmental Policy Act.
20. The Board has considered the following criteria consistent with Kitsap County Code Sections 21.08.160 and 21.08.170, and makes the following findings:
 - a. Circumstances in Kitsap County have substantially changed since the adoption of the 1998 Comprehensive Plan and/or subsequent amendments;
 - b. New information is available that was not considered in the adoption of the 1998 Comprehensive Plan and/or subsequent amendments;

- c. The proposed amendments are consistent with or support other plan elements and/or development regulations;
- d. The proposed amendments reflect the goals, objectives and policies of the Comprehensive Plan;
- e. The proposed amendments are consistent with the Countywide Planning Policies; and
- f. The proposed amendments are compliant with the requirements of the Growth Management Act.

Section 2. Kitsap County Code Section 18.04.010, last amended by Ordinance 368-2006, is amended as follows:

18.04.010 Authority.

- A. The eCounty of Kitsap adopts this eChapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, WAC 197-11-904.
- B. This eChapter contains this eCounty’s SEPA procedures and policies.
- C. The SEPA Rules, Chapter 197-11 WAC, must be used in conjunction with this eChapter and may be used to supplement this Chapter where needed.

Section 3. Kitsap County Code Section 18.04.020, last amended by Ordinance 368-2006, is amended as follows:

18.04.020 Purpose of this part and adoption by reference.

This part contains the basic requirements that apply to the SEPA process. The eCounty adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference, except as modified by additional definitions under KCC 18.04.030.

WAC 197-11-030 Policy

- 040 Definitions.
- 050 Lead agency.
- 055 Timing of the SEPA process.
- 060 Content of environmental review.
- 070 Limitations on actions during SEPA process.
- 080 Incomplete or unavailable information.
- 090 Supporting documents.
- 100 Information required of applicants.
- 158 GMA project review- Reliance on existing plans, laws, and regulations.
- 164 Planned actions – Definitions and criteria.
- 168 Ordinances or resolutions designating planned actions – Procedures for adoption.
- 172 Planned actions – Project review.
- 210 SEPA/GMA integration.
- 220 SEPA/GMA definitions.
- 228 Overall SEPA/GMA integration procedures.
- 230 Timing of an integrated GMA/SEPA process.
- 232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 235 Documents.
- 250 SEPA/Model Toxics Control Act integration.
- 253 SEPA lead agency for MTCA actions.
- 256 Preliminary evaluation.
- 259 Determination of nonsignificance for MTCA remedial actions.

- 262 Determination of significance and EIS for MTCA remedial actions.
- 265 Early scoping of MTCA remedial actions.
- 268 MTCA interim actions.

Section 4. Kitsap County Code Section 18.04.030, last amended by Ordinance 368-2006, is amended as follows:

18.04.030 Additional definitions.

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

- A. "Department" means any division, subdivision or organizational unit of the **e**County established by ordinance, rule, or order.
- B. "Development units" means the proposed quantity of development measured by dwelling units for residential development and square feet for specific nonresidential use categories.
- C. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.
- D. "Ordinance" means the ordinance, resolution, or other procedure used by the **e**County to adopt regulatory requirements.
- E. "Early notice" means the **e**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 (MDNS) procedures).~~

Section 5. Kitsap County Code Section 18.04.040, last amended by Ordinance 368-2006, is amended as follows:

18.04.040 Designation of **rResponsible **e**Official.**

- A. For those proposals for which the **e**County is the lead agency, the **r**Responsible **e**Official shall be the **e**Director of the **e**Department of **e**Community **e**Development or his/**her** appointed designee.
- B. For all proposals for which the **e**County is the lead agency, the **r**Responsible **e**Official shall make the threshold determination, supervise scoping and preparation of any required **e**Environmental **i**mpact **s**tatement (EIS), and perform any other functions assigned to the "lead agency" or "**r**Responsible **e**Official" by those sections of the SEPA rules that were adopted by reference in Section 18.04.020.
- C. The **e**County shall retain all documents required by the SEPA rules (WAC Chapter 197-11) and make them available in accordance with RCW Chapter 42.17.

Section 6. Kitsap County Code Section 18.04.050, last amended by Ordinance 368-2006, is amended as follows:

18.04.050 Lead agency – determination -and responsibilities.

- A. The **e**Department within the **e**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 **e**Department is aware that another **e**Department or agency is in the process of determining the lead agency.
- B. When the **e**County is the lead agency for a proposal, the **e**Department receiving the application shall determine the **r**Responsible **e**Official who shall supervise compliance with

the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

- C. When the eCounty is not the lead agency for a proposal, all dDepartments of the eCounty shall use and consider, as appropriate, either the DNS, MDNS or the final EIS of the lead agency in making decisions on the proposal. No eCounty dDepartment 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. This provision does not preclude additional environmental analysis pursuant to WAC 197-11-600. In some cases, the eCounty may conduct supplemental environmental review under WAC 197-11-600.
- D. If the eCounty or any of its dDepartments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 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 eCounty must petition the dDepartment of eEcology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the eCounty must be initiated by the rResponsible eOfficial.
- E. Departments of the eCounty 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 rResponsible eOfficial and any dDepartment that will incur responsibilities as the result of such agreement approve the agreement.
- F. Any dDepartment 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.
- G. When the eCounty is lead agency for a MTCA remedial action, the dDepartment of eEcology 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 eCounty shall decide jointly with the Department of eEcology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

Section 7. Kitsap County Code Section 18.04.060, last amended by Ordinance 368-2006, is amended as follows:

18.04.060 Transfer of lead agency status to a state agency.

If the County elects to transfer the lead agency duties to another agency, consistent with this chapter and Chapter 197-11 WAC, the County shall provide written notice of such transference to all interested parties of record.

~~For any proposal for a private project where the eCounty would be the lead agency and for which one or more state agencies have jurisdiction, the eCounty's rResponsible eOfficial 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 eCounty shall be an agency with jurisdiction. To transfer lead agency duties, the eCounty's rResponsible eOfficial must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The rResponsible eOfficial of the eCounty shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.~~

Section 8. Kitsap County Code Section 18.04.070, last amended by Ordinance 368-2006, is amended as follows:

18.04.070 Additional timing considerations.

- A. For nonexempt proposals, the DNS or the final EIS for the proposal shall accompany the eCounty's staff recommendation to any appropriate advisory body, such as the pPlanning eCommission.

Section 9. Kitsap County Code Section 18.04.080, last amended by Ordinance 368-2006, is amended as follows:

18.04.080 Purpose of this part and adoption by reference.

This part contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an eEnvironmental iImpact sStatement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The eCounty adopts the following sections by reference, as supplemented in this part:

- RCW 43.21C.229 Infill Development – Categorical exemptions from chapter.
- WAC 197-11-300 Purpose of this part.
 - 305 Categorical exemptions.
 - 310 Threshold determination required.
 - 315 Environmental checklist.
 - 330 Threshold determination process.
 - 335 Additional information.
 - 340 Determination of nonsignificance (DNS).
 - 350 Mitigated DNS.
 - 355 Optional DNS process.
 - 360 Determination of significance (DS)/ initiation of scoping.
 - 390 Effect of threshold determination.

Section 10. Kitsap County Code Section 18.04.090, last amended by Ordinance 368-2006, is amended as follows:

18.04.090 Flexible thresholds for categorical exemptions.

The exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any license governing emissions to the air or discharges to water is required.

- A. The eCounty establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(bc)-based on local conditions:
1. For the construction or location of residential dwelling units in WAC 197-11-800(1)(b)(i):
 - a. up to 9 residential dwelling units within the boundaries of an urban growth area; or
 - b. up to 4 residential dwelling units outside the boundaries of an urban growth area;
 2. For agricultural structures in WAC 197-11-800(1)(b)(ii): up to 15,000 square feet of ground coverage. This exemption shall not apply to feed lots;
 3. For the construction or location of office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): up to 8,000 square feet with associated parking up to 40 parking spaces;
 4. For the construction or location of parking lots in WAC 197-11-800(1)(b)(iv): up to 40 parking spaces;
 5. For any landfills or and excavations in WAC 197-11-800(1)(b)(v):
 - a. up to 500 cubic yards; or
 - b. up to 150 cubic yards if the proposal is located on property subject to the provisions in Title 22, Shoreline Management Master Program.

- B. Whenever the eCounty 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 11. Kitsap County Code Section 18.04.100, last amended by Ordinance 368-2006, is amended as follows:

18.04.100 Categorical exemptions for infill development.

- A. In order to accommodate infill development in the Silverdale Infill Area, except for in the Urban Low Residential (UL) and Urban Restricted (UR) zones, the eCounty establishes the following exempt levels for construction of residential developments and mixed use developments under RCW 43.21C.229:.
1. For residential developments in the Urban Medium Residential (UM) and Urban High Residential (UH) zones, up to the maximum total number of available trips in the Silverdale Mixed Use Infill Trip Bank, as established by the Department of Public Works; or
 2. For mixed use developments in the Neighborhood Commercial (NC), Highway/Tourist Commercial (HTC), Regional Commercial (RC), and Mixed Use (MU) zones, up to the maximum total number of available trips in the Silverdale Mixed Use Infill Trip Bank, as established by the Department of Public Works. [The Silverdale Mixed Use Infill Trip Bank referred to in this Part was established with the Kitsap County 2006 Comprehensive Plan Update \(Ordinances 368-2006 & 370-2006\).](#)
- B. In determining whether or not a proposal is exempt, the dDepartment shall consider a traffic analysis based on the quantity of development units and the related applicable trip generation. The traffic analysis shall be filed by the applicant at the same time as an application for a permit, license, certificate or other approval. Traffic analysis will follow Traffic Impact Analysis guidelines as set forth in KCC Chapter 20.04. Developments that qualify for this SEPA exemption would still be subject to the Transportation Facilities Concurrency Ordinance (KCC Chapter 20.04). Development will be allowed under this exemption up to the point that all the trips in the trip bank have been taken, unless denied by concurrency.
- C. Upon approval of the proposal according to the provisions of Title 21, the dDepartment shall document the change in total available trips in accordance with adopted administrative guidelines. These exempt levels are not applicable once the total available trips have been utilized.
- D. The Department of Public Works will monitor the total number of trips taken from the Silverdale Mixed Use Infill Trip Bank as part of the development approval process.

Section 12. Kitsap County Code Section 18.04.110, last amended by Ordinance 368-2006, is amended as follows:

18.04.110 Use of exemptions.

- A. Each dDepartment within the eCounty that receives an application for a license or, in the case of governmental proposals, the dDepartment initiating the proposal shall determine whether the license and/or the proposal is exempt. The dDepartment'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 eChapter apply to the proposal. The eCounty shall not require completion of an environmental checklist for an exempt proposal.

- B. In determining whether or not a proposal is exempt, the **eD**epartment 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 **eD**epartment shall determine the lead agency, even if the license application that triggers the **eD**epartment's consideration is exempt.
- C. If a proposal includes both exempt and nonexempt actions, the **eC**ounty may authorize exempt actions prior to compliance with the procedural requirements of this **eC**hapter, except that:
 - 1. The **eC**ounty shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of alternatives.
 - 2. A **eD**epartment 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
 - 3. A **eD**epartment 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 13. Kitsap County Code Section 18.04.115, last amended by Ordinance 368-2006, is amended as follows:

18.04.115 Environmental checklist.

- A. Except as provided in subsection (D) 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 **eC**hapter; except, a checklist is not needed if the **eC**ounty and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The **eC**ounty shall use the environmental checklist to determine the lead agency, and if the **eC**ounty is the lead agency, for determining the **eR**esponsible **eO**fficial and for making the threshold determination.
- B. For private proposals, the **eC**ounty will require the applicant to complete the environmental checklist, providing assistance as necessary. For **eC**ounty proposals, the **eD**epartment initiating the proposal shall complete the environmental checklist for that proposal.
- C. The **eC**ounty 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:
 - 1. The **eC**ounty has technical information on a question or questions that is unavailable to the private applicant; or
 - 2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.
- D. For projects submitted as planned actions under WAC 197-11-164, the **eC**ounty 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 **eD**epartment of **eE**cology to allow at least a thirty-day review prior to use.

Section 14. Kitsap County Code Section 18.04.120, last amended by Ordinance 368-2006, is amended as follows:

18.04.120 Mitigated DNS.

- A. As provided in this section and WAC 197-11-350, the **fR**esponsible **eO**fficial may issue a DNS based on conditions attached to the proposal by the **fR**esponsible **eO**fficial or on changes to, or clarifications of, the proposal made by the applicant.
- B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:
1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the **eD**epartment is lead agency; and
 2. Precede the **eC**ounty's actual threshold determination for the proposal.
 3. The **fR**esponsible **eO**fficial should respond to the request for early notice within thirty working days. The response shall:
 - a. Be written;
 - b. State whether the **eC**ounty currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the **eC**ounty 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 **eC**ounty 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 **eC**ounty 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 **eC**ounty 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 **eC**ounty shall issue and circulate a DNS under WAC 197-11-340(2).
 - b. If the **eC**ounty indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the **eC**ounty 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 storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibels" or "construct 200-foot storm water 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.
- C. The County shall reconsider the mitigated DNS based on timely comments and may retain or modify the MDNS or, if the county determines that significant adverse impacts are likely, withdraw the mitigated DNS or supporting documents. When a mitigated DNS is modified, the lead agency shall send the modified mitigated DNS to agencies, local tribes and jurisdictions.

A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen day comment period and public notice.

- D. 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 **eC**ounty.

- E. If the eCounty’s tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the eCounty should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).
- F. The eCounty’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 eCounty to consider the clarifications or changes in its threshold determination.

Section 15. Kitsap County Code Section 18.04.125, last amended by Ordinance 368-2006, is amended as follows:

18.04.125 Purpose of this part and adoption by reference.

This part contains the rules for preparing eEnvironmental iImpact sStatements (EISs). The eCounty adopts the following sections by reference, as supplemented by this part:

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

Section 16. Kitsap County Code Section 18.04.130, last amended by Ordinance 368-2006, is amended as follows:

18.04.130 Preparation of EIS – Additional considerations.

- A. Preparation of draft and final EIS’s (DEIS and FEIS) and draft and final supplemental EIS’s (SEIS) is the responsibility of the eDepartment of eCommunity eDevelopment under the direction of the fResponsible eOfficial. Before the eCounty issues an EIS, the fResponsible eOfficial shall be satisfied that it complies with this eChapter and WAC Chapter 197-11.
- B. The DEIS and FEIS or draft and final SEIS may be “prepared” by eCounty staff or by a consultant selected by the eCounty or the applicant. If the fResponsible eOfficial requires an

EIS for a proposal and determines that someone other than the eCounty will prepare the EIS, the fResponsible eOfficial shall notify the applicant immediately after completion of the threshold determination. The fResponsible eOfficial shall also notify the applicant of the eCounty's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution. The applicant is responsible for paying the costs associated with preparation of the EIS.

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

Section 17. Kitsap County Code Section 18.04.140, last amended by Ordinance 368-2006, is amended as follows:

18.04.140 Additional elements to be covered in EIS.

- A. The analysis of the following additional 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 function or purpose under this eChapter:
1. Economy;
 2. Social policy analysis;
 3. Cost-benefit analysis;
 4. Any other element that may be dictated by special circumstances associated with the proposal.
- B. Inclusion of these elements in an EIS will be at the discretion of the fResponsible eOfficial as determined by the scoping process.

Section 18. Kitsap County Code Section 18.04.150, last amended by Ordinance 368-2006, is amended as follows:

18.04.150 Adoption by reference.

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

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

Section 19. Kitsap County Code Section 18.04.160, last amended by Ordinance 368-2006, is amended as follows:

18.04.160 Public notice.

- A. Whenever possible, the eCounty shall integrate the public notice required under this section with existing notice procedures for the eCounty's nonexempt permit(s) or approval(s) required for the proposal.
- B. Whenever Kitsap County issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the eCounty shall give public notice as follows:
 - 1. If public notice is required for the nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
 - 2. 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).
 - 3. If no public notice is otherwise required for the permit or approval, the eCounty shall give notice of the DNS or DS by:
 - a. Posting the property, for site-specific proposals
 - b. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located; and
 - c. Mailing a copy of the notice to property owners within four hundred feet of the proposal.
 - 4. Whenever the eCounty issues a DS under WAC 197-11-360(3), the eCounty shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
- C. 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(1)(b).
- D. Whenever the eCounty 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:
 - 1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and
 - 2. Posting the property, for site-specific proposals;
 - 3. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located; and
 - 4. Mailing a copy of the notice to property owners within four hundred feet of the proposal.
- E. Public notice for projects that qualify as planned actions shall be tied to the ~~tot-eh~~ underlying permit as specified in WAC 197-11-172(3).
- F. The eCounty may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

Section 20. Kitsap County Code Section 18.04.170, last amended by Ordinance 368-2006, is amended as follows:

18.04.170 Designation of official to perform consulted agency responsibilities for the eCounty.

- A. The eDirector of the eDepartment of eCommunity eDevelopment or his/her appointed designee shall be responsible for preparation of written comments for the eCounty in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.
- B. The eDepartment of eCommunity eDevelopment shall be responsible for the eCounty's compliance with WAC 197-11-550 whenever the eCounty 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 ~~e~~D~~e~~partment s of the ~~e~~C~~e~~ounty.

Section 21. Kitsap County Code Section 18.04.180, last amended by Ordinance 368-2006, is amended as follows:

18.04.180 Purpose of this part and adoption by reference.

This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the ~~e~~C~~e~~ounty's own environmental compliance. The ~~e~~C~~e~~ounty adopts the following sections of Chapter 197-11 by reference:

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

Section 22. Kitsap County Code Section 18.04.190, last amended by Ordinance 368-2006, is amended as follows:

18.04.190 Purpose of this part and adoption by reference.

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 ~~a~~r~~t~~i~~c~~l~~e~~~~p~~a~~r~~t also contains procedures for appealing SEPA determinations to agencies or the courts. The ~~e~~C~~e~~ounty adopts the following sections by reference:

Section 23. Kitsap County Code Section 18.04.200, last amended by Ordinance 368-2006, is amended as follows:

18.04.200 Substantive authority.

- A. The policies and goals set forth in this ~~e~~C~~e~~hapter are supplementary to those in the existing authorization of Kitsap ~~e~~C~~e~~ounty.
- B. The ~~e~~C~~e~~ounty may attach conditions to a permit or approval for a proposal so long as:
 - 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents pursuant to this ~~e~~C~~e~~hapter;
 - 2. Such conditions are in writing;
 - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;
 - 4. The ~~e~~C~~e~~ounty has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 - 5. Such conditions are based on one or more policies in subsection (D) of this section and cited in the license or other decision document.
- C. The ~~e~~C~~e~~ounty may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. 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 pursuant to this ~~e~~Chapter 7, and
 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
 3. The denial is based on one or more policies identified in subsection (D) of this section and identified in writing in the decision document.
- D. The ~~e~~County designates and adopts by reference the policies set forth in RCW 43.21C.020, and the policies in the following County ordinances, plans, rules, and regulations as now existing or hereafter amended, following policies as the basis for the ~~e~~County's exercise of authority pursuant to this section:
- ~~1. 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:~~
 - ~~a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;~~
 - ~~b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;~~
 - ~~c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;~~
 - ~~d. Preserve important historical, cultural, and natural aspects of our national heritage;~~
 - ~~e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;~~
 - ~~f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and~~
 - ~~g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.~~
 - ~~2. 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.~~
 - ~~3. The county adopts by reference the policies in the following ~~e~~County ordinances, plans, rules, and regulations by reference:~~
 - ~~a1. The Kitsap County Comprehensive wWater and sSewerage pPlans;~~
 - ~~b2. The Kitsap County Shoreline Management Master Program, Title 22 of this ~~e~~Code, as may hereafter be amended;~~
 - ~~c3. The Kitsap County Comprehensive Plan adopted May 7, 1998, as may hereafter be amended;~~
 - ~~d4. The Kitsap County View Blockage Resolution, Chapter 17.450 of this ~~e~~Code, as may hereafter be amended;~~
 - ~~e5. Kitsap County Noise Ordinance, Chapter 10.28 of this ~~e~~Code;~~
 - ~~f6. Kitsap County Zoning Ordinance, Title 17 of this ~~e~~Code, as may hereafter be amended;~~
 - ~~g7. The Kitsap County Building Code, Chapter 14.04 of this ~~e~~Code, as may hereafter be amended;~~
 - ~~h8. The Kitsap County Flood Damage Prevention Ordinance, Title 15 of this ~~e~~Code, as may hereafter be amended;~~
 - ~~i9. The Kitsap County Parks, Recreation & Open Space Planpark and recreation plan, as may hereafter be amended;~~
 - ~~j10. The Kitsap County Bicycle Facilities Planbicycle plan;~~
 - ~~k11. The Bremerton-Kitsap County Health District board of health regulations;~~

~~12.~~ Kitsap County Subdivision Ordinance, Chapters 16.04 through 16.44 of this ~~e~~Code, ~~as may hereafter be amended~~;

~~m~~13. The Kitsap County Short Subdivision Ordinance, Chapter 16.48 of this ~~e~~Code, ~~as may hereafter be amended~~;

~~n~~14. The Kitsap County Storm Water Management Ordinance, Title 12 of this ~~e~~Code, ~~as may hereafter be amended~~;

~~e~~15. The Kitsap County Critical Areas Ordinance, Title 19 of this ~~e~~Code, ~~as may hereafter be amended~~;

~~p~~16. Kitsap County-wide planning policy, adopted November 22, 2004, as may hereafter be amended.

E. The following State laws, policies, ordinances, resolutions, programs and master site plans as now existing or hereafter amended, shall supplement this Chapter:

1. Biosolids Management, WAC chapter 173-308;

2. Solid Waste Handling Standards, WAC chapter 173-350; and

3. Criteria for Municipal Solid Waste Landfills, WAC chapter 173-351.

Section 24. Kitsap County Code Section 18.04.210, last amended by Ordinance 368-2006, is amended as follows:

18.04.210 Appeals.

A. In addition to the procedures set forth in Title 21 of this code, ~~T~~the ~~e~~County establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

1. An administrative appeal relating to a FEIS or threshold determination DNS for a nonexempt action that does not require a public hearing shall be heard by the Hearing Examiner.
2. An administrative appeal relating to a FEIS or threshold determination DNS for a nonexempt action that requires a public hearing shall be combined with and heard by the reviewing body for the underlying action.
3. Administrative appeals relating to ~~a DS or a~~ threshold determination DNS shall be heard by the hearing examiner.
4. For any appeal under this subsection, the ~~e~~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 may be borne by the appellant.
5. The ~~e~~County may require the appellant to provide an electronic transcript.
6. The procedural determination by the ~~e~~County's ~~r~~Responsible ~~e~~Official shall carry substantial weight in any appeal proceeding.

B. Any appeal of the County's final administrative appeal under (A) shall be to the applicable reviewing court or administrative agency as provided under Washington State law.

B.C. The ~~e~~County shall give official notice under 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.

Section 25. Kitsap County Code Section 18.04.220, last amended by Ordinance 368-2006, is amended as follows:

18.04.220 Notice of action/statute of limitations.

A. The ~~e~~County, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the ~~eCounty-auditor~~, applicant or proponent pursuant to RCW 43.21C.080.

Section 26. Kitsap County Code Section 18.04.230, last amended by Ordinance 368-2006, is amended as follows:

18.04.230 Purpose of this part and adoption by reference.

This part contains uniform usage and definitions of terms under SEPA. The ~~eCounty~~ adopts the following sections by reference, as supplemented by WAC 173-806-040, except as modified by additional definitions under KCC 18.04.030:

- WAC 197-11-700 Definitions.
- 702 Act.
- 704 Action.
- 706 Addendum.
- 708 Adoption.
- 710 Affected tribe.
- 712 Affecting.
- 714 Agency.
- 716 Applicant.
- 718 Built environment
- 720 Categorical exemption.
- 721 Closed record appeal.
- 722 Consolidated appeal.
- 724 Consulted agency.
- 726 Cost benefit analysis.
- 728 County.
- 730 Decision maker.
- ~~-732 Department.~~
- 734 Determination of nonsignificance (DNS).
- 736 Determination of significance (DS).
- 738 EIS.
- 740 Environment
- 742 Environmental checklist
- 744 Environmental document.
- 746 Environmental review.
- 750 Expanded scoping.
- 752 Impacts.
- 754 Incorporation by reference.
- 756 Lands covered by water.
- 758 Lead agency.
- 760 License.
- 762 Local agency.
- 764 Major action.
- 766 Mitigated DNS.
- 768 Mitigation.
- 770 Natural environment.
- 772 NEPA.
- 774 Nonproject.
- 775 Open record hearing.
- 776 Phased review.

- 778 Preparation.
- 780 Private project.
- 782 Probable.
- 784 Proposal.
- 786 Reasonable alternative.
- 788 Responsible official.
- 790 SEPA.
- 792 Scope.
- 793 Scoping.
- 794 Significant.
- 796 State agency.
- 797 Threshold determination.
- 799 Underlying governmental action.

Section 27. Kitsap County Code Section 18.04.250, last amended by Ordinance 368-2006, is amended as follows:

18.04.250 Purpose of this part and adoption by reference.

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 eCounty adopts the following sections by reference:

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

Section 28. Kitsap County Code Section 18.04.260, last amended by Ordinance 368-2006, is amended as follows:

18.04.260 Fees.

- A. The eCounty shall require the applicable fees listed in KCC 21.06.100.

- B. The eCounty may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this ordinance relating to the applicant's proposal.
- C. The eCounty may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by eChapter 42.17 RCW.
- D. As set forth in KCC 18.04.130, the applicant is responsible for paying the costs associated with preparation of an EIS where one is required.

Section 29. Kitsap County Code Section 18.04.270, last amended by Ordinance 368-2006, is amended as follows:

18.04.270 Administrative guidelines.

The fResponsible eOfficial is authorized to adopt further administrative guidelines to provide processing, administration and interpretation of these regulations. All such policies shall be in writing and available to the public in the offices of the eDepartment of eCommunity eDevelopment.

Section 30. Kitsap County Code Section 18.04.290, last amended by Ordinance 368-2006, is amended as follows:

18.04.290 WAC 173-806-230 – Adoption by reference.

The eCounty adopts the following forms and sections by reference:

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

Section 31. Should any amendment to Kitsap County Code Title 17 that was passed by the Board during its deliberations on August 4, 2008, September 29, 2008 and September 30, 2008 be inadvertently left out upon publication, the explicit action of the Board as discussed and passed shall prevail upon subsequent review and verification by the Board.

Section 32 Effective Date. This ordinance is effective immediately.

Section 33 Severability. If any provision of this ordinance, or its application to any person, entity or circumstance is for any reason held invalid, the remainder of the ordinance, or the application of the provision to other persons, entities or circumstances, is not affected.

DATED this _____ day of _____, 2008.

BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

ATTEST:

STEVE BAUER, Chair

JAN ANGEL, Commissioner

Opal Robertson
Clerk of the Board

JOSH BROWN, Commissioner

Approved as to form:

Deputy Prosecuting Attorney