

ORDINANCE NUMBER 125-98

AMENDMENTS TO THE MASON COUNTY ENVIRONMENTAL POLICY ORDINANCE

AN ORDINANCE amending the following parts of the Mason County Environmental Policy Ordinance [Ord. No. 758 (5/77), Ord. 77-84 (10/84), Ord. 17-95 (2/95), and Ord. 55-97 (5/97)]: Parts Two, Three, Four, Six, Eight, Nine, and Ten.

WHEREAS, the Board of County Commissioners did adopt the above-mentioned ordinances as the Mason County Environmental Policy Ordinance and did adopt Title 8, Environmental Policy, in October 1978 as part of the Mason County Code;

WHEREAS, RCW 36.70B (Local Project Review) was codified in 1996 and set forth project review procedures which emphasize concurrent review and timely appeal processes, and also adopted amendments to RCW 43.21C, the State Environmental Policy Act, in 1997;

WHEREAS, the Washington Department of Ecology issued new Rules, WAC Chapter 197-11, that became effective in November of 1997, and issued a new draft Model Ordinance in March of 1998;

WHEREAS, the changes to the state law become effective and must be implemented by local governments;

WHEREAS, the county adopted Interim Ordinance 117-98 to implement the changes to the state law until such time as the county is able to take final action;

WHEREAS, the county Planning Commission and Board of Commissioners held public hearings and approved findings of fact;

NOW THEREFORE, BE IT HEREBY ORDAINED, that the Mason County Board of Commissioners hereby ADOPTS the attached amended Mason County Environmental Policy Ordinance, dated December 1, 1998, which also supersedes Interim Ordinance 117-98.

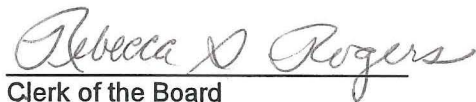
DATED this 1st day of December, 1998.

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON

ATTEST:



John A. Bolender, COMMISSIONER




Clerk of the Board




Mary J. Cady, COMMISSIONER

APPROVED AS TO FORM:



CHIEF DPA
Prosecuting Attorney



Cynthia D. Olsen, COMMISSIONER

c: Community Development
Prosecutor

ORDINANCE NO. 125-98
ORDINANCE - ENVIRONMENTAL POLICY

This ordinance supersedes Mason County Code, Title 8, Environmental Policy dated October 15, 1978; County Environmental Policy Ordinance 758, dated May 9, 1977; Ordinance - Environmental Policy (Ordinance 99-84) dated October 1, 1984; Ordinance 17-95, dated February 28, 1995; and Ordinance 55-97, dated May 13, 1997; and interim Ordinances 48-98 and 117-98.

PART ONE - AUTHORITY

- 1.1 The County of Mason adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

This ordinance contains this county's SEPA procedures and policies.

The SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this ordinance. [Statutory Authority; RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-010, filed 6/15/84. Formerly WAC 173-805-010.]

PART TWO - DEFINITIONS

- 2.1 Purpose of this Part and Adoption by Reference. This part contains uniform usage and definitions of terms under SEPA. The county adopts the following sections by reference:

197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum.
197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.
197-11-714 Agency.
197-11-716 Applicant
197-11-718 Built environment.
197-11-720 Categorical exemption.
197-11-721 Closed record appeal.
197-11-722 Consolidated appeal.
197-11-724 Consolidated agency.
197-11-726 Cost-benefit analysis.

197-11-728 County/city.
197-11-730 Decision maker.
197-11-732 Department.
197-11-734 Determination of Nonsignificance (DNS).
197-11-736 Determination of Significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Non-project.
197-11-775 Open record hearing.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.

[Statutory Authority: RCW 43.21C.130.84-13.036 (Order DE 84-25), §173-806-175, filed 6/15/84. Formerly, WAC 173-805-020.]

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

- (1) "Department" means any division, subdivision or organizational unit of the county established by ordinance, rule or order.
- (2) "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.
- (3) "Ordinance" means the ordinance, resolution, or other procedure used by the county to adopt regulatory requirements.
- (4) "Early notice" means the county's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated Determination of Nonsignificance (DNS) procedures). [Statutory Authority: RCW 43-21C.130.84-13-036 (Order DE 84-25), §173-706-030, filed 6/15/84. Formerly WAC 173-805-030.]
- (5) "Urban Growth Area". Those such areas designated in the county comprehensive plan or other land control ordinances.

PART THREE - GENERAL REQUIREMENTS

3.1 Purpose of this Part and Adoption by Reference. This part contains the basic requirements that apply to the SEPA process. The county adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

- 197-11-040 Definitions.
- 197-11-050 Lead Agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 GMA project review.
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial actions.

- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-020, filed 6/15/84. Formerly WAC 173-805-020.]

3.2 Designation of Responsible Official.

- (1) For public proposals, the head (administrative official) of the department making the proposal shall be the responsible official. For private proposals, the head (administrative official) of the department with primary responsibility for approving the permits and licenses for the proposal shall be the responsible official. When multiple officials have permitting authority, the assignment of responsibility shall be reached by agreement.
- (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 paragraph 3.1 above.
- (3) For any proposal as defined in (1) and (2) above, the Mason County Board of Commissioners may assume the status of "Decision maker" as defined in WAC 197-11-730 in which case the responsible official shall be subject to the directions of the County Commissioners.
- (4) 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. [Statutory Authority: RCW 43-21C.130. 84-13.036 (Order DE 84-25), §173-806-040, filed 6/15/84. Formerly WAC 173-805-115.]

3.4 Lead Agency Determination and Responsibilities.

- (1) The department within the county receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.

- (2) When the county is the lead agency for a proposal, the department receiving the application shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.
- (3) When the county is not the lead agency for a proposal, all departments of the county shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No county department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the county may conduct supplemental environmental review under WAC 197-11-600.
- (4) If the county or any of its departments receive a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 19-11-253 or WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the county may be initiated by the Mason County Commissioners.
- (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 Mason County Board of Commissioners approves the agreements.
- (6) Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (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 one 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. [Statutory Authority: RCW 43.21C.130.84-13-036 (Order DE 84-25), §173-806-050, filed 6/15/84. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-050, filed 6/15/84. Formerly WAC 173-805-070.]

3.5 Additional Considerations.

- (1) SEPA review shall be conducted concurrently with development project review.
- (2) 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.
- (3) If the county's only action on a proposal is a decision on a building permit or other license that requires a detailed project plan and specifications, the applicant may request in writing that the county conduct environmental review prior to submission of the detailed plans and specifications. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-058, filed 6/15/84. Formerly WAC 173-805 WAC.]

PART FOUR CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

- 4.1 Purpose of this Part and Adoption by Reference. This part contains the rules for deciding whether a proposal has a "probably 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 supplemental in this part:

WAC

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

[Statutory Authority: RCW 43.21C.130. 84-13.036 (Order DE 84-25), §173-806-065, filed 6/15/84. Formerly WAC 173-805-020 WAC.]

4.2 Flexible Thresholds for Categorical Exemptions.

- (1) Mason County establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions:
 - (a) For residential dwelling, units in WAC 197-11-800(1)(b)(i): Up to 20 dwelling units.
 - (b) For agricultural structures in WAC 197-11-800(1)(b)(ii): Up to 30,000 square feet.
 - (c) For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): Up to 12,000 feet and up to 40 parking spaces.
 - (d) For parking lots in WAC 197-11-800(1)(b)(iv): Up to 40 parking spaces.
 - (e) For landfills and excavations in WAC 197-11-800(1)(b)(v): Up to 500 cubic yards.
- (2) Whenever the county establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington 98504 under WAC 197-11-800(1)(c). [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-070, filed 6/15/84. Formerly WAC 173-805 WAC.]

4.3 Use of Exemptions.

- (1) Each department within the county that receives an application for a license or, in the case of governmental proposals, the department initiates the proposal, shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this ordinance apply to the proposal. The county shall not require completion of an environmental checklist for an exempt proposal.
- (2) In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead

agency, even if the license application that triggers the department's consideration is exempt.

- (3) If a proposal includes both exempt and nonexempt actions, the county may authorize exempt actions prior to compliance with the procedural requirements of this ordinance, except that:
 - (a) The county shall not give authorization for:
 - (i) any nonexempt action;
 - (ii) any action that would have an adverse environmental impact; or
 - (iii) any action that would limit the choice of alternatives.
 - (b) A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and
 - (c) A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-080, filed 6/15/84. Formerly WAC 173-805-060 WAC.]

4.4 Environmental Checklist.

- (1) A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this ordinance; except, a checklist is not needed if the county and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The county shall use the environmental checklist to determine the lead agency and, if the county is the lead agency, for determining the responsible official and for making the threshold determination.
- (2) For private property, the county will require the applicant to complete the environmental checklist providing assistance as necessary. For county proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

- (3) The county may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:
 - (a) The county has technical information on a question or question that is unavailable to the private applicant; or
 - (b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-090, filed 6/15/84. Formerly WAC 173-805-090.]

4.5 Mitigated DNS.

- (1) As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.
- (2) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:
 - (a) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is the 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 fifteen working days. The response shall:
 - (a) Be written;
 - (b) State whether the county currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the county to consider a DS; and
 - (c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

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

proposal, the county should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

- (9) The county's written response under Subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the county to consider the clarifications or changes in its threshold determination. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-100, filed 6/15/84. formerly Chapter 173-805 WAC.]

PART FIVE ENVIRONMENTAL IMPACT STATEMENT (EIS)

- 5.1 Purpose of this Part and Adoption by Reference. This part contains the rule for preparing environmental impact statements. The county adopts the following sections by reference, as supplemented by this part:

WAC

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

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-110, filed 6/15/84. Formerly Chapter 173-805-020.]

5.2 Preparation of EIS -- Additional Considerations.

- (1) Preparation or draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the responsible official. Before the county issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and Chapter 197-11 WAC.
- (2) The DEIS and FEIS or draft and final SEIS shall be prepared by county staff, the applicant, or by a consultant 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 immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the county's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.
- (3) The county may require an applicant to provide information the county does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this ordinance or that is being requested from another agency. (This does not apply to information the county may request under another ordinance or statutes.) [Statutory Authority: RCW 43.21C.130. 84-13.036 (Order DE 84-25), §173-806-120, filed 6/15/84. Formerly Chapter 173-805-100.]

PART SIX - COMMENTING

- 6.1 Adoption by Reference. This part contains the 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.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA Register.
- 197-11-510 Public Notice.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.

197-11-570 Consulted agency costs to assist lead agency.

6.2 Public Notice.

- (1) Whenever Mason 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 nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
 - (b) If no public notice is 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) Notice by publication for commercial and industrial projects.
 - (c) Whenever the county issues a DS under WAC 197-11-360(3), the county shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
 - (d) For site specific proposal located in the urban growth area or within 1,000 feet of its boundary, the county shall provide notice to any adjoining city whenever it issues a DS or DNS.
 - (e) 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).
- (2) 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).
- (3) Whenever the county issues a DEIS under 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, and
 - (b) Posting the property, for site-specific proposals;

- (c) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered.
- (4) 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.
- (5) The county may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

[Statutory Authority: RCW 43.21C.130. 84-13.036 (Order DE 84-25), §173-806-130, filed 6/15/84. Formerly WAC 173-805-39.]

6.3 Designation of Official to Perform Consulted Agency Responsibilities for the County.

- (1) The Department of Community Development 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) This department 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. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-140, filed 6/15/84. Formerly Chapter 173-805-110.]
- (3) The department's actions are subject to the review and approval of the Mason County Commissioners.

**PART SEVEN
USING EXISTING ENVIRONMENTAL DOCUMENTS**

- 7.1 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 county's own environmental compliance. The county adopts the following sections by reference:

WAC
197-11-600 When to use existing environmental documents.

- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement - Procedures.
- 197-11-625 Addenda - Procedures.
- 197-11-630 Adoption - Procedures.
- 197-11-635 Incorporation by reference - Procedures.
- 197-11-640 Combining documents.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-150, filed 6/15/84. Formerly Chapter 173-805-020.]

PART EIGHT - SEPA AND AGENCY DECISIONS

- 8.1 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 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.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-155, filed 6/15/84. Formerly Chapter 173-805-020.]

- 8.2 Substantive Authority.

- (1) The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of Mason 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 ordinance; and
 - (b) Such conditions are in writing; and

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

- (vi) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - (vii) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
- (b) The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
 - (c) The county adopts by reference the policies in the following county codes and plans: Uniform Building Code; Mason County Shoreline Master Plan; The Mason County Comprehensive Plan.
- (5) Except for permits and variances issued pursuant to Title Seven Mason County Code (Mason County Shoreline Master Plan), when any proposal or action not requiring a decision of the County Commission is conditioned or denied on the basis of SEPA by a non-elected official, the decision shall be appealable to the County Commission. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-160, filed 6/15/84. Formerly Chapter 173-805 WAC.]

8.3 Appeals.

- (1) Mason County establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:
- (a) Any agency or person may appeal the county's procedural compliance with Chapter 197-11 WAC for issuance of the following:
 - (i) A final DNS: Appeal must be made to the Board of County Commissioners within fourteen days of the date the DNS is final.
 - (ii) A DS: The appeal must be made to the Board of County Commissioners within fourteen days of the date the DS is issued (14 days after issuance of the threshold determination).
 - (iii) An EIS: Appeal of the FEIS must be made to the Board of County Commissioners within fourteen days of the date the FEIS or supplemental EIS is issued.
 - (b) Provided, however, that the appeal periods stated in subsection (a) above shall be extended for an additional seven days if state or local

rules adopted pursuant to chapter 43.21c RCW allow public comment on a determination of nonsignificance.

- (c) Such appeal shall be reviewed in accordance with the requirements stated in Mason County Code, Title 15, Section 15.11.020.
- (2) The 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.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-170, filed 6/15/84. Formerly Chapter 173-805 WAC.]

8.4 Notice/Statute of Limitations.

- (1) The county, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.
- (2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the county auditor, applicant or proponent pursuant to RCW 43.21C.080. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-173, filed 6/15/84. Formerly Chapter 173-805-135.]

PART NINE - CATEGORICAL EXEMPTIONS

- 9.1 Adoption by Reference. The county adopts by reference the following rules for categorical exemptions, as supplemented in this ordinance, including Part Four, 4.2 (Flexible Thresholds), Part Four, 4.3 (Use of Exemptions), and Part Ten, 10.2 (Critical Areas):

WAC

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

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-180, filed 6/15/84. Formerly WAC 173-805-020.]

PART TEN - AGENCY COMPLIANCE

- 10.1 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, protecting critical areas, listing agencies with environmental expertise, selecting the lead agency, and applies these rules to current agency activities. The county adopts the following sections by reference, as supplemented by WAC 173-806-045 through 173-806-043 and this part:

WAC

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

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-185, filed 6/15/84. Formerly WAC 173-805-020.]

10.2 Critical Areas.

- (1) Frequently flooded areas, erosion hazard areas, seismic hazard areas, landslide hazard areas, wetlands, and aquatic management areas, as established by Mason County Ordinance #77-93 (as amended) are designated as critical areas for the purposes of this section.
- (2) The following map(s) available at the Mason County Department of Community Development, provide information on the location of critical areas within the county and are adopted by reference.

- a. "Mason County Geologic Hazards Map" and associated buffers as established in Section 17.01.100 of the Mason County Interim Resource Ordinance, Chapter 17.01 Mason County Code.
- b. "The Flood Insurance Study, Mason County" with accompanying Flood Insurance Rate Maps. Federal Emergency Management Agency, 1988.
- c. National Wetlands Inventory Maps. U.S. Department of the Interior, and all Mason County maps referencing wetlands and associated vegetation areas as established in Section 17.01.070 of the Mason County Interim Resource Ordinance.
- d. Type II, III, IV and V waters identified on the Water Type Reference Maps, Washington Department of Natural Resources, for all of Mason County, and associated vegetation areas as identified in Section 17.01.110 of the Mason County Interim Resource Ordinance.

For each critical area, the exemptions within WAC 197-11-800 that are inapplicable for that area are: (1), (2)(a) through (h), (3), (5), (6)(a), (14)(c), (24)(a) through (g), and (25)(d), (f), (h), (i). Unidentified exemptions shall continue to apply within critical areas of the county.

- (3) The county shall treat proposals located wholly partially within a critical area no differently than other proposals under the ordinance, 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.
- (4) Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.
- (5) The scope of environmental review of actions within these areas shall be limited to:
 - (a) Documenting whether the proposal is consistent with the requirements of the critical areas ordinance, #77-93; and
 - (b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws. [Statutory Authority: RCW 43.21C.130.

10.3 Fees. The county shall require the following fees for its activities in accordance with the provisions of this ordinance:

- (1) **Threshold determination.** For every environmental checklist the county will review when it is the lead agency, the county shall collect a fee of \$110.00 from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this ordinance for making a threshold determination shall not begin to run until payment of the fee. When the county completes the environmental checklist at the applicant's request or under WAC 173-806-090(3) of this ordinance, an additional \$25.00 shall be collected.
- (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 (a) or (b) of this subsection 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 ordinance 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 ordinance, and for mailing the document, in a manner provided by Chapter 42.17 RCW. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-200, filed 6/15/84. Formerly WAC 173-805-130.]

10.4 Effective Date.

The effective date of this ordinance is October 1, 1984. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-205, filed 6/15/84. Formerly WAC 173-805 WAC.]

- 10.5 Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected. [Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), §173-806-220, filed 6/15/84. Formerly WAC 173-805-140.]

MASON COUNTY ORDINANCE # 125-98
ATTACHMENT A

Mason County Board of Commissioners
Public Hearing - December 1, 1998

FINDINGS OF FACT

1. Under consideration is the adoption of amendments to the Mason County Environmental Policy Ordinance. The amendments were proposed principally to ensure consistency with the state laws Chapter 36.70B and Chapter 43.21C, RCW, as amended by the Legislature.
2. The proposal amends the county ordinance consistent with the Washington Department of Ecology's Model Ordinance.
3. The Mason County Planning Commission held a public hearing on October 19, 1998, and recommended approval of the amendments.
4. The Board held a public hearing on December 1, 1998, and considered the testimony given along with the record before it.
6. The proposal is consistent with and balances the goals of the Growth Management Act. The proposal is consistent with and implements the Mason County Comprehensive Plan.

From the preceding findings, it is concluded the amendments proposed should be adopted and replace interim Ordinance 117-98.



Chair, Mason County Board of Commissioners

12-1-98
Date