

FERRY COUNTY ORDINANCE 94-05
STATE ENVIRONMENTAL POLICY ACT

TO AMMEND REGULATIONS ADOPTED ON OCTOBER 1, 1984

September 6, 1994
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PART ONE - AUTHORITY

Section 1 - AUTHORITY:

The County of Ferry 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.

PART TWO - GENERAL REQUIREMENTS

Section 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:

WAC

197-11-040	Definitions
197-11-050	Lead agency
197-11-060	Content of environmental review
197-11-070	Limitations on actions during SEPA process
197-11-080	Incomplete or unavailable information
197-11-090	Supporting documents
197-11-100	Information required of applicants
197-11-158	GMA project review—Reliance on existing plans, laws, and regulations
197-11-210	SEPA/GMA integration
197-11-220	SEPA/GMA definitions
197-11-228	Overall SEPA/GMA integration procedures
197-11-230	Timing of an integrated GMA/SEPA process
197-11-232	SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping
197-11-235	Documents
197-11-238	Monitoring
197-11-250	SEPA/Model Toxics Control Act 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

Section 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:

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

Section 3 - DESIGNATION OF RESPONSIBLE OFFICIAL:

- A. For public proposals, the Building, Planning or Public Works Department Head making or reviewing the proposal or their appointee shall be the responsible official. For private proposals, the Building, Planning or Public Works Department Head with primary responsibility for approving the permits and licenses for the proposal or their appointee shall be the responsible official. When multiple officials have permitting authority, the assignment of responsibility shall be reached by their mutual agreement. If agreement cannot be reached by multiple officials, the Board of County Commissioners shall designate the responsible official.
- B. 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 PART TWO Section 1.
- C. The County shall retain all documents as property of the county required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.17 RCW.

Section 4 - LEAD AGENCY DETERMINATION AND RESPONSIBILITIES:

A. The department within the County receiving an application for or initiating a proposal that involves a nonexempt action shall determine whether or not Ferry County is 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.

B. 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.

C. 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, DEIS or FEIS 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.

D. If the County or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the County must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen day time period. Any such petition on behalf of the County may be initiated by the Building, Planning, or Public Works Department Head or their appointee.

E. Departments of the County are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944: Provided, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

F. 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.

G. 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 environment 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.

Section 5 - TRANSFER OF LEAD AGENCY STATUS TO A STATE AGENCY:

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

Section 6 - ADDITIONAL CONSIDERATIONS IN TIME LIMITS APPLICABLE TO THE SEPA PROCESS:

The following time limits (expressed in calendar days) shall apply when the County processes licenses for all private projects and those governmental proposals submitted to the County by other agencies:

- A. Categorical exemptions. The responsible official shall identify whether an action is categorically exempt within fourteen working days of receiving a completed application.
- B. Determination of Completeness. The responsible official shall determine whether the application is complete enough to begin processing within 28 days of submittal.
 - 1. If the application is complete, it is documented in a “determination of completeness” and sent to the applicant.
 - 2. If the application is not complete, the responsible official may request additional information from the applicant. Once this information is submitted, the responsible official has 14 days to determine whether the application is now complete and to notify the applicant in writing.
 - 3. Even though the County has determined an application to be complete, it is not precluded from later requesting additional information or studies.
- C. Notice of Application. The responsible official must issue a notice of application (NOA) within 14 days after determining the permit application is complete and at least 15 days prior to any required open record public hearing for project permits.
 - 1. If the County has made a threshold determination under Chapter 43.21.C RCW concurrently with the notice of application, the notice of application may be combined with the threshold determination and the scoping notice for a determination of significance.

2. The County shall give notice of the NOA by publishing notice once a week for two consecutive weeks in a newspaper of general circulation in the County, City, or general area where the proposal is located, and posting the property for site specific proposals.

D. Threshold Determination. Once the public comment period on the notice of application ends, the County will review the comments and complete the project review process, including environmental analysis.

1. If the optional DNS process is being used, the comment period on the DNS will be combined with the NOA.

2. On threshold determinations that are issued other through the optional DNS process, the County shall give a fourteen day comment period for a DNS and a twenty-one day public notice for a DS.

3. The County shall give notice of the threshold determination by publishing notice once a week of two consecutive weeks in a newspaper of general circulation in the County, City, or general area where the proposal is located.

E. Notice of Final Decision. Once the public comment period on the notice of threshold determination ends, the County will review the comments and complete the project review process, including environmental analysis. At the end of the review, a note of final decision on the permit is issued.

1. The Notice of Decision must be issued within 120 days of the determination of completeness.

2. Pursuant to RCW 36.70B.130 and 36.70B.110(4), the Notice of Decision shall be published in the official county newspaper for one week, mailed to the applicant and any other person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.

Section 7 - ADDITIONAL TIMING CONSIDERATIONS:

A. For nonexempt proposals, the DNS, DEIS or FEIS for the proposal shall accompany the County's staff recommendation to any appropriate advisory body.

B. If the County's only action on a proposal is a decision on an approval that requires detailed project plans and specification, the County may conduct environmental review prior to submission of the detailed plans and specifications, provided that such request is submitted by the applicant in writing.

**PART THREE - CATEGORICAL EXEMPTIONS
AND THRESHOLD DETERMINATIONS**

Section 1 - 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 environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The County adopts the following sections by reference, as supplemented in this part:

WAC

197-11-300	Purpose of this part
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

Section 2 - FLEXIBLE THRESHOLDS FOR CATEGORICAL EXEMPTIONS:

A. Ferry County establishes the following exempt levels for minor new construction under WAC 197-11-800 (1) (b) based on local conditions:

B. The following types of construction shall be exempted, except when undertaken wholly or partly on lands covered by water:

1. The construction or location of any residential structures of up to four (4) dwelling units. WAC 197-11-800 (1) (b) (i)
2. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agriculture structure, covering up to 30,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots. WAC 197-11-800 (1) (b) (ii)

3. The construction of an office, school, commercial, recreational, service or storage building with up to 12,000 square feet of first floor gross floor area, or with associated parking facilities up to 20 spaces. WAC 197-11-800 (1) (b) (iii)
4. The construction of a parking lot up to 20 spaces. WAC 197-11-800 (1) (b) (iv)
5. For landfills and excavations of up to 500 cubic yards throughout the lifetime of the fill or excavation; and any fill or excavation classified as a class I, II or III Forest Practice under RCW 76.09.050 or regulations thereunder. WAC 197-11-800 (1) (b) (v)

C. Whenever the County establishes new exempt levels under this section, it shall send them to the Department of Ecology, Environmental Review Section.

Section 3 - CRITICAL AREAS:

A. Certain categorical exemptions shall not apply when located in identified critical areas:

1. The categorical exemptions set forth in WAC 197-11-800 (1) (b) (i); (except for single family residential and accessory structures)
2. The categorical exemptions set forth in WAC 197-11-800 (1) (b) (iii); (construction of an office, school, commercial, recreational, service or storage building)
3. The categorical exemptions set forth in WAC 197-11-800 (1) (b) (iv); (construction of a parking lot)
4. The categorical exemptions set forth in WAC 197-11-800 (1) (b) (v); (any landfill or excavation)
5. The categorical exemption set forth in WAC 197-11-800 (2) (g); (the installation of impervious underground tanks having a capacity of 10,000 gallons or less)
6. The categorical exemption set forth in WAC 197-11-800 (6) (a); (the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060)
7. The categorical exemption set forth in WAC 197-11-800 (24) (b); (all storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter)

8. The categorical exemption set forth in WAC 197-11-800 (24) (d); (natural gas lines distribution lines and necessary appurtenant facilities and hook ups)

9. The categorical exemptions set forth in WAC 197-11-800 (25) (h); (development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites)

10. and, where a shoreline development permit is required for a communication or electrical line crosses over a body of water subject to the shoreline management act.

11. WAC 197-11-800 (24) (a) and (c), shall not apply when the proposed activity is located within any of the following critical areas:

a. Rural, conservancy and natural environment, as designated by the Ferry County Shoreline Management Master Program;

b. All lands designated agricultural lands of long-term commercial significance, and all lands designated environmentally sensitive by Ferry County Comprehensive Plans.

12. The categorical exemption set forth in WAC 197-11-800 (1) (b) (i) for single family residential structures shall not apply when the proposed activity is located within any of the following critical areas:

a. Conservancy and natural environment, as designated by the Ferry County Shoreline Management Master Program.

b. Any site disturbance taking place within a wetland or its associated buffer or lands designated environmentally sensitive by Ferry County Comprehensive Plans.

13. In the event of conflict between the definitions and sources referenced above, the actual presence or absence of the characteristics of such sensitive areas shall govern. In determining whether a proposal is, or is not located in a critical area, an acting department may use detailed project site surveys, soil reports and other data which it may require an applicant to furnish.

14. The County shall treat proposals located wholly or partially within an critical area no differently than any other proposals under this ordinance when making a threshold determination for all such proposals however the proposal should be consistent with the requirements of the critical areas ordinance and other County ordinance that apply. The County shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

Section 4 - USE OF EXEMPTIONS:

A. Each department within the County that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this ordinance apply to the proposal. The County shall not require completion of an environmental checklist for an exempt proposal.

B. 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.

C. 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:

1. The County 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 choices of alternatives.

2. 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

3. A department may withhold approval of exempt action 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 5 - ENVIRONMENTAL CHECKLIST:

A. 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 any 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 to show required county permit. Also, the

County is the lead agency for determining the responsible official, and for making the threshold determination.

B. For private proposals, the County will require the applicant to complete the environmental checklist providing assistance as necessary. For County proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

C. 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:

1. The County 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.

Section 6 - MITIGATED DNS AND DS

A. 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. Upon the discretion of the responsible official, the checklist may be forwarded to an appropriate advisory committee for review.

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 department is lead agency; and
2. Precede the County's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within fifteen working days. The response shall:

1. Be written;
2. State whether the responsible official 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

3. 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.

D. As much as possible, the County should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When an applicant submits a change 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 fourteen days of receiving the changed or clarified proposal:

1. If the County indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the County shall issue and circulate a DNS under WAC 197-11-340 (2).

2. 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.

3. 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 decibel" or "construct 200 foot storm water retention pond at Y location" are adequate.

4. 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.

F. 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.

G. 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.

H. 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).

I. The County's written response under subsection (B) 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.

J. If the responsible official determines that a proposal may have a probable significant adverse environmental impact, the responsible official shall prepare and issue a determination of significance (DS) in accordance with WAC 197-11-360.

K. When the responsible official makes a threshold determination, it is final and binding on all agencies, subject to the provisions of WAC 197-11-340, WAC 197-11-390 and Part Six of the SEPA rules.

1. The responsible official's threshold determination:

a. Shall not be final until fourteen days after issuance, for purposes listed in WAC 197-11-340 (2).

b. Shall not apply if another agency with jurisdiction assumes lead agency status under WAC 197-11-948.

c. Shall not apply when withdrawn by the responsible official in accord with WAC 197-11-340 or 197-11-360.

d. Shall not apply when reversed on appeal.

2. Regardless of any appeals, a DS or DNS issued by the responsible official may be considered final for purposes of other agencies planning and decision making unless subsequently changed, reversed or withdrawn.

PART FOUR - ENVIRONMENTAL IMPACT STATEMENTS (EIS)

Section 1 - PURPOSE OF THIS PART AND ADOPTION BY REFERENCE:

This part contains the rules 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 or memo
197-11-440	EIS contents
197-11-442	Contents of EIS on nonproject proposals
197-11-443	EIS contents when prior nonproject EIS
197-11-444	Elements of the environment
197-11-448	Relationship of EIS to other considerations
197-11-450	Cost-benefit analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS

Section 2 - PREPARATION OF EIS -- ADDITIONAL CONSIDERATIONS:

A. Preparation of draft and final EIS's (DEIS and FEIS) and draft and final supplement EIS (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.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by County staff, the applicant, or by a consultant selected by the County or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the County will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution. The County shall have final authority in all matters concerning the DEIS, FEIS, and SEIS.

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

PART FIVE - COMMENTING

Section 1 - 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 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

Section 2 - PUBLIC NOTICE:

A. 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.

B. Whenever the County issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360 (3) the County shall give a fourteen day public notice for a DNS and a twenty one day public notice for a DS as follows:

1. If public notice is required for a nonexempt approval, the notice shall state whether a DNS or DS 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 County shall give notice of the DNS or DS by:
 - a. Publishing notice once a week for two consecutive weeks in a newspaper of general circulation in the County, City, or general area where the proposal is located; and
 - b. Posting the property for site specific proposals.

4. 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.

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(10)(b).

D. Whenever the County issues a DEIS under WAC 197-11-455(5) or a SEIS under WAS 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
3. Publishing notice once a week for two consecutive weeks in a newspaper of general circulation in the County or general area where the proposal is located.

E. The County may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

F. 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.

Section 3 - DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE COUNTY

A. The responsible official 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.

B. The responsible official 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.

PART SIX - USING EXISTING ENVIRONMENTAL DOCUMENTS

Section 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

PART SEVEN - SEPA AND AGENCY DECISIONS

Section 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

Section 2 - SUBSTANTIVE AUTHORITY:

- A. The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of Ferry County.
- B. The County 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 prepared pursuant to this ordinance; and
 - 2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable to being accomplished; and
4. The County 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 County 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 DEIS, FEIS or final SEIS prepared pursuant to this ordinance; 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 County designates and adopts by reference the following policies as the basis for the 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 Ferry County safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - c. Attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or undesirable and unintended consequences;
 - d. Preserve important historic, 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 County Codes and Ordinance and any amended updates:

a. Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code

b. On-Site Sewage Regulations 04-1978

c. Ferry County Flood Damage Prevention Ordinance 99-02

d. Ferry County Shorelines Master Program

e. Ferry County Comprehensive Plan

f. Ferry County Interim Ordinance 93-02

g. Ferry County Short Subdivision Ordinance 72-01

h. Ferry County Long Subdivision Ordinance 73-01

i. Ferry County Binding Site Plan 89-04

j. Ferry County Mining Ordinance 90-02

k. Ferry County Natural Resource Policy Plan

l. Ferry County Timber and Forest Practice Ordinance

Section 3 - APPEALS

A. APPEALS TO BE HEARD BY THE BOARD OF COMMISSIONERS

1. Introduction. RCW 36.70B specifies that there shall not be more than one open record hearing and one closed record appeal. In all cases in which there has been no predecision open record hearing, the appeal shall be an open record appeal hearing. In all cases in which there has been an open record predecision hearing, the appeal shall be a closed record appeal. An appeal under this section must be brought before judicial review can occur.

2. Appeal of Threshold Determination. The decision of the responsible official making a threshold determination of non-significance (DNS) may be appealed to the Board of County Commissioners within fourteen days of issuance. When a threshold determination results in a determination of significance (DS), it shall not be appealable. Review by the Board of County Commissioners shall be on a de novo basis but substantial weight shall be given to any procedural decision by a responsible official.

3. Appeal of a Decision Denying or Attaching Conditions to a Proposal. The decision of the responsible official approving a proposal subject to conditions or denying a proposal under SEPA's substantive authority may be appealed to the Board of County Commissioners within fourteen days of issuance. Issues relating to the adequacy of the EIS and other procedural issues may not be appealed under this section.

4. Filing Fee. There shall be a \$100.00 filing fee required for an appeal.

5. Notice of Appeal. The notice of appeal shall contain the following:

- a. The decision being appealed;
- b. The name and address of appellant(s);
- c. Facts demonstrating the appellant has standing to appeal;
- d. All findings, determinations and decisions of any nature which are alleged to be erroneous;
- e. The specific reasons appellant believes them to be erroneous;
- f. The outcome or changes to the decision sought by appellant.

Failure of appellants to perfect the appeal shall result in the appeal being rejected by the Board of County Commissioners.

6. Merger of Appeals. Appeals of a similar nature or with similar issues may be combined into one common appeal for ease of time at the discretion of the Board of County Commissioners. Appellate of respondent may petition the Board for merger at anytime.

7. Standing to Bring Appeal. Standing to file an appeal under this section is limited. An avowed interest in the welfare of the environment by a non-landowner shall not constitute standing by itself. Standing shall be limited to the following persons:

a. The applicant and the owner of property to which the land use decision is directed;

b. Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

i. The land use decision has prejudiced or is likely to prejudice that person;

ii. That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision.

iii. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision.

8. Staff Response to Appeal. Upon receipt of a notice of appeal, staff should report to the Board of County Commissioners within 14 days with a written response to the appeal. Staff shall not have contact with any commissioner as to the subject of the appeal except for in an open public meeting of the full quorum of the Board. The staff shall forward a copy of the entire public record file to the Board.

9. Scheduling of Hearing. Within 30 days of receipt of the notice of appeal, the Board of County Commissioners shall set a date for a public hearing on the appeal. The Board may reschedule the hearing date upon its own initiative or upon a showing of good cause by any party to the action or member of the public. Upon the request for a stay of proceedings, the Board may delay the setting of a hearing date.

B. RULES OF APPELATE PROCEDURE

1. Rules of Order: Power Vested with Chairman. The Chairman of the Board of County Commissioners shall preside over all hearings, and shall have complete discretion to set rules of order not inconsistent with the rules below. He or she shall call the hearing to order, swear in witnesses, collect exhibits, maintain order, rule on objections, direct the sheriff to eject unruly persons, and ensure that an adequate audio recording of the proceedings is made. He or she shall have the power to administer oaths, to issue subpoenas, and to commit for contempt any witness refusing to testify before him or her. He or she shall be charged with examining witnesses and parties on behalf of the Board, but may permit other Board members to do so, or may delegate the questioning to the prosecuting attorney.

2. Parties. The parties shall consist of the respondent and the appellant. The respondent shall be comprised of the entire non-elected staff of the planning department. The appellant shall be the signatory on the notice of appeal unless the signatory is signing for a registered corporation. If the signatory is signing for an entity other than a corporation, the signatory appellant shall disclose the membership of the unregistered entity insofar as the signatory appellant offers the other persons as having any standing. Any undisclosed persons of an unregistered entity will not be recognized. No person may testify that any other person is aggrieved or adversely affected by a land use decision without naming that person ten days before the hearing to permit the respondent or Chairman to call that person to testify first hand.

3. Representation. The appellants may be represented by an attorney, though there shall be no requirement that they be represented by an attorney. The Board of County Commissioners shall be represented by the prosecuting attorney. The respondent planning department will not be represented by an attorney at the time of the hearing unless it requests the assistance or the presence of a deputy prosecuting attorney. The deputy

prosecuting attorney shall isolate himself from the activity of the prosecuting attorney consistent with the "Chinese wall" model.

4. Rules of Evidence. Except for the laws of privileges and self-incrimination, the rules of evidence shall not apply to an open record hearing. However, all evidence shall be reliable and should be based on first-hand knowledge. The Washington Rules of Evidence may be alluded to as persuasive authority on what is reliable.

5. Presentation of the case.

a. Opening Argument. Each side shall be permitted opening argument for times of equal amount not less than ten minutes. The appellant shall argue first. The Chairman may ask questions of law and procedure to the parties during the opening argument, but may not ask questions of fact. Either side may waive argument.

b. Witnesses and Exhibits. Witnesses shall be sworn in by the Chairman, and may be limited in number or in duration of testimony at the discretion of the board. The attendance of witnesses may be compelled by a request for an issuance of a subpoena by the Chairman. Witnesses and exhibits are permitted in open review hearings only.

Appellant: Following the opening argument, the appellant shall call his or her witness, and shall afford an opportunity for the respondent to also examine the witnesses, and shall afford the Chairman an opportunity to examine the witness. The appellant may also seek the admission of exhibits which must be marked by the Clerk of the Board to be made part of the record. When the appellant has called all his or her witnesses, and has sought admission of all his or her exhibits, he or she shall so state.

Respondent: Following such declaration, the respondent shall call his or her witnesses, and shall afford an opportunity for the appellant to also examine the witnesses, and shall afford the Chairman an opportunity to examine the witness. The respondent may also seek the admission of exhibits which must be marked by the Clerk of the Board to be

made part of the record. When the respondent has called all his or her witnesses, and has sought admission of all his or her exhibits, he or she shall so state. Respondent may waive examination of witnesses.

Chairman: Following such declaration, the Chairman may call his or her witnesses, and shall afford an opportunity for the appellant and respondent to also examine the witnesses. The Chairman may also seek the admission of exhibits which must be marked by the Clerk of the Board to be made part of the record.

Rebuttal: Rebuttal witnesses and exhibits shall be permitted at the discretion of the Chairman.

c. Concluding Statement: Each side shall be permitted a concluding statement for times of equal amount not less than fifteen minutes. The appellant shall argue first, but may speak further in rebuttal at the discretion of the Chairman. The Chairman shall be permitted to ask questions of law and procedure to the parties during the concluding statement, but may not ask questions of fact. Either side may waive the concluding statement.

6. Decision by the Board. A decision to affirm or reverse a determination shall be made by majority vote. The Board shall give substantial weight to procedural determinations made by the responsible official below. A decision by the Board may be announced orally at the conclusion of the proceedings, or shall distributed in writing within ten working days of the hearing. In all cases, written findings of fact and conclusions of law shall be made by the Board and circulated within twenty days of the hearing's end. A transcript of the proceedings may be obtained for further appeal at a cost that is fair and reasonable.

7. Financial Assessment for Frivolous Appeals: To accompany the decision on the merits, the Board shall decide whether the legal position of the appellants was frivolous and without reasonable basis. If so, the Board shall determine the costs, and may include an assessment of one thousand dollars against appellants to be enforced by Superior Court in a later action.

8. Review of the Boards Decision: An appeal of the Board's decision must be brought to the Ferry County Superior Court. The Shorelines Hearings Board shall have no jurisdiction to review the Boards Decision.

PART EIGHT - DEFINITIONS

Section 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:

WAC

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	Consulted agency
197-11-726	Cost-benefit analysis
197-11-728	County/City
197-11-730	Decision maker
197-11-732	Department
197-11-734	Determination of nonsignificance (DNS)
197-11-736	Determination of significance (DS)
197-11-738	EIS
197-11-740	Environment
197-11-742	Environmental checklist
197-11-744	Environmental document
197-11-746	Environmental review
197-11-750	Expanded scoping
197-11-752	Impacts
197-11-754	Incorporation reference
197-11-756	Lands covered by water
197-11-758	Lead agency

197-11-760	License
197-11-762	Local agency
197-11-764	Major action
197-11-766	Mitigated DNS
197-11-768	Mitigation
197-11-770	Natural environment
197-11-772	NEPA
197-11-774	Nonproject
197-11-775	Open record hearing
197-11-776	Phased review
197-11-778	Preparation
197-11-780	Private project
197-11-782	Probable
197-11-784	Proposal
197-11-786	Reasonable alternative
197-11-788	Responsible official
197-11-790	SEPA
197-11-792	Scope
197-11-793	Scoping
197-11-794	Significant
197-11-796	State agency
197-11-797	Threshold determination
197-11-799	Underlying governmental action

PART NINE - CATEGORICAL EXEMPTIONS

Section 1 - ADOPTION BY REFERENCE:

The County adopts by reference the following rules for categorical exemptions, as supplemented and/or revised in this ordinance.

WAC

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

PART TEN - AGENCY COMPLIANCE

Section 1 - PURPOSE OF THIS PART AND ADOPTION:

This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The County adopts the following sections by reference:

WAC

- 197-11-900 Purpose 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 government 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

Section 2 - FEES

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

1. Threshold determination. For every environmental checklist the County will review when it is lead agency, the County shall collect a fee of \$100.00 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 fee 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 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.

Section 3 - 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.

PART ELEVEN - FORMS

Section 1 - ADOPTION BY REFERENCE:

The County adopts the following forms and sections by reference:

WAC

197-11-960 Environmental checklist

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

FERRY COUNTY RESOLUTION # 99-18

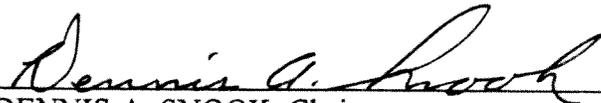
FERRY COUNTY
ORDINANCE NO. 94-05

STATE ENVIRONMENTAL POLICY ACT (SEPA) REGULATIONS
PER CHAPTER 173-806 WAC

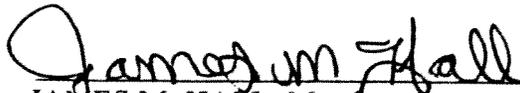
TO AMEND REGULATIONS ADOPTED ON
OCTOBER 1, 1984

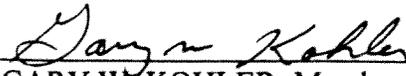
APPROVED this 5th day of April, 1999.

FERRY COUNTY BOARD OF COMMISSIONERS
FERRY COUNTY, WASHINGTON


DENNIS A. SNOOK, Chairman




JAMES M. HALL, Member


GARY W. KOHLER, Member

ATTEST:


Lynne Baldwin
Clerk of the Board