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# Kittitas County Code

## Title 15 | ENVIRONMENTAL POLICY\*

### Chapters

15.04 State Environmental Policy Act

15.08 Burn Bans

\* Prior ordinance history for Chapter 15.4: Ordinance 84-5; 93-19; 96-19; 97-10; 98-10 (part), 1998; 2009-25, 2009

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### Chapter 15.04

#### STATE ENVIRONMENTAL POLICY ACT\*

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#### **Article I. Authority**

##### **15.04.010 Authority.**

The county adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA procedures, WAC 197-11-904. This chapter contains this county's SEPA procedures and policies. The SEPA Rules, Chapter 197-11 WAC, must be used in conjunction with this chapter. (Ord. 2011-013, 2011)

#### **Article II. General Requirements**

##### **15.04.020 Purpose of this part and adoption by reference.**

This article 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, except as modified by additional definitions under KCC 15.04.030.

## **WAC**

197-11-040 Definitions

197-11-050 Lead agency.

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197-11-164 Planned actions - Definitions and criteria.

197-11-168 Ordinances or resolutions designating planned actions - Procedures for adoption.

197-11-172 Planned actions - Project review

197-11-210 SEPA/GMA integration.

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197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.

197-11-235 SEPA/GMA integration documents.

197-11-238 SEPA/GMA integration 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 of MTCA remedial actions.

197-11-268 MTCA interim actions.

( Ord. 2014-015, 2014;  Ord. 2011-013, 2011)

### **15.04.030 Additional definitions.**

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

#### **Department**

Any division, subdivision or organizational unit of the county established by ordinance, rule, or order.


#### **SEPA rules**

Chapter 197-11 WAC adopted by the Department of Ecology.

#### **Ordinance**

The ordinance, resolution, or other procedure used by the county to adopt regulatory requirements.

#### **Early notice**

The county's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (DNS) procedures). ( Ord. 2011-013, 2011)

### **15.04.040 Designation of responsible official.**

1. For those proposals for which the county is the lead agency, the responsible official shall be the ~~d~~Director of the ~~d~~Department of ~~community development~~ Public Services or his appointed designee.
2. For all proposals for which the county is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in Section 15.04.020.
3. The county shall retain all documents required by the SEPA rules (WAC Chapter 197-11) and make them available in accordance with RCW Chapter 42.56. (Ord. 2011-013, 2011)

#### **15.04.050 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 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 must be initiated by the responsible official.
5. Departments of the county are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944: Provided, That the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.
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.
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. (Ord. 2011-013, 2011)

#### **15.04.060 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. (Ord. 2011-013, 2011)

#### **15.04.070 Additional timing considerations.**

1. For nonexempt proposals, the DNS or the final EIS for the proposal shall accompany the county's staff recommendation to any appropriate advisory body, such as the planning commission.
2. If the county's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the county conduct environmental review prior to submission of the detailed plans and specifications. ( Ord. 2011-013, 2011)

### **Article III. Categorical Exemptions and Threshold Determinations**

#### **15.04.080 Purpose of this part and adoption by reference.**

This article 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:

#### **RCW**

43.21C.410 Battery charging and exchange station installation.

#### **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. ( Ord. 2011-013, 2011)

#### **15.04.090 Flexible thresholds for categorical exemptions.**

1. The 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 residential dwelling units.
  - b. For agricultural structures in WAC 197-11-800(1)(b)(ii):
    - i. up to 10,000 square feet of ground coverage within the boundaries of an urban growth area; or
    - ii. up to 30,000 square feet of ground coverage outside the boundaries of an urban growth area. This exemption shall not apply to feed lots ;
  - c. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): up to 12,000 square feet with associated parking 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). ( Ord. 2012-009, 2012; Ord. 2011-013, 2011)

#### **15.04.110 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 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 chapter apply to the proposal. The county shall not require completion of an environmental checklist for an exempt proposal.
2. In determining whether or not a proposal is exempt, the 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 chapter, except that:
  - a. The county shall not give authorization for:
    - i. Any nonexempt action;
    - ii. Any action that would have an adverse environmental impact; or
    - iii. Any action that would limit the choice of alternatives.
  - b. A 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. (Ord. 2011-013, 2011)

#### **15.04.115 Environmental checklist.**

1. Except as provided in subsection (4) of this section, a completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the county and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The county shall use the environmental checklist to determine the lead agency, and if the county is the lead agency, for determining the responsible official and for making the threshold determination.
2. For private proposals, the county will require the applicant to complete the environmental checklist, providing assistance as necessary. For county proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.
3. 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 questions that is unavailable to the private applicant; or
  - b. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.
4. For projects submitted as planned actions under WAC 197-11-164, the county shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance, or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the department of ecology to allow at least a thirty-day review prior to use. (Ord. 2011-013, 2011)

#### **15.04.120 Mitigated DNS.**

1. As provided in this section and 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 lead agency; and
  - b. Precede the county's actual threshold determination for the proposal.
  - c. The responsible official should respond to the request for early notice within thirty working days. The response shall:
    - i. Be written;
    - ii. 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
    - iii. 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 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:
    - i. 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).
    - ii. 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.
    - iii. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibels" or "construct 200-foot storm water retention pond at Y location" are adequate.
    - iv. 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.
3. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice.
4. 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.
5. 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).
6. 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. (Ord. 2011-013, 2011)

## **Article IV. Environmental Impact Statement (EIS)**

### **15.04.125 Purpose of this part and adoption by reference.**

This article 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.

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 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. (Ord. 2011-013, 2011)

### **15.04.130 Preparation of EIS - Additional considerations.**

1. Preparation of draft and final EIS's (DEIS and FEIS) and draft and final supplemental EIS's (SEIS) is the responsibility of the ~~Department of community development~~ Public Services under the direction of the responsible official. Before the county issues an EIS, the responsible official shall be satisfied that it complies with this chapter and WAC Chapter 197-11.
2. The DEIS and FEIS or draft and final SEIS may be "prepared" by county staff or by a consultant selected by the county or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the county will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the county's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.
  - a. The Kittitas County planning department shall prepare and maintain a list of qualified environmental consultants and firms. Any proposed consultant whose name is not on the list must submit a statement of qualifications including information on experience in the preparation of environmental impact statements. Upon approval of the submitted qualifications, the planning director shall add the name to the list of qualified consultants.
3. The county may require an applicant to provide information the county does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the county may request under another ordinance or statutes). (Ord. 2011-013, 2011)

### **15.04.140 Additional elements to be covered in EIS.**



1. The analysis of the following additional elements may be included as part of the environment for the purpose of EIS content, but does not add to the criteria for threshold determinations or perform any other function or purpose under this chapter:
  - a. Economy;
  - b. Social policy analysis;
  - c. Cost-benefit analysis;
  - d. Any other element that may be dictated by special circumstances associated with the proposal.
2. Inclusion of these elements in an EIS will be at the discretion of the responsible official as determined by the scoping process. (Ord. 2011-013, 2011)

## **Article V. Commenting**

### **15.04.150 Adoption by reference.**

This article 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. (Ord. 2011-013, 2011)

### **15.04.160 Public notice.**

1. Whenever possible, the county shall integrate the public notice required under this section with existing notice procedures for the county's nonexempt permit(s) or approval(s) required for the proposal.
2. Whenever the 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 the nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
  - b. 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).
  - c. If no public notice is otherwise required for the permit or approval, the county shall give notice of the DNS or DS by:
    - i. Publishing notice on the same day of each week for two consecutive weeks in a legal newspaper of record in the county; and
    - ii. 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.
    - iii. Mailing or emailing notice to all parties on the notice of application listing, as described in KCC Chapter 15A.03.

3. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1)(b).
4. Whenever the county issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:
  - a. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and
  - b. Posting the property, for site-specific proposals;
  - c. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located; and
  - d. Mailing a copy of the notice to property owners within five hundred feet of the proposal.
5. Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).
6. The county may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

(📄 Ord. 2014-015, 2014; 📄 Ord.2011-013, 2011)

#### **15.04.170 Designation of official to perform consulted agency responsibilities for the county.**

1. The ~~d~~Director of the ~~d~~Department of ~~community development~~ Public Services or his/her appointed designee shall be responsible for preparation of written comments for the county in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.
2. The ~~d~~Department of ~~community development~~ Public Services shall be responsible for the county's compliance with WAC 197-11-550 whenever the county is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the county. (📄 Ord. 2011-013, 2011)

### **Article VI. Using Existing Environmental Documents**

#### **15.04.180 Purpose of this part and adoption by reference.**

This article 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 of Chapter 197-11 by reference:

#### **WAC**

- 197-11-164 Planned actions - Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions - Procedures for adoption.
- 197-11-172 Planned actions - Project review.
- 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. (📄 Ord. 2011-013, 2011)

### **Article VII. SEPA and Agency Decisions**

#### **15.04.190 Purpose of this article and adoption by reference.**

This article contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This article 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. (Ord. 2011-013, 2011)

#### **15.04.200 Substantive authority.**

1. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the 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 pursuant to this chapter;
  - b. Such conditions are in writing;
  - c. The mitigation measures included in such conditions are reasonable and capable of being accomplished;
  - d. The county has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
  - e. Such conditions are based on one or more policies in subsection (4) of 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 pursuant to this chapter 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 historical, 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 ordinances, resolutions, plans, rules, and regulations by reference:
  - i. The Kittitas County Comprehensive Floodplain Hazard Management Plan; adopted December 1996, as may hereby be amended;
  - ii. The Kittitas County Shoreline Management Master Program, as may hereafter be amended;
  - iii. The Kittitas County Comprehensive Plan adopted December 2010, as may hereafter be amended;
  - iv. Kittitas County Noise Ordinance, Chapter 9.45 of this code;
  - v. Kittitas County Zoning Code, Title 17 of this code, as may hereafter be amended;
  - vi. The Kittitas County Flood Damage Prevention Ordinance,
  - vii. The Kittitas County Recreation Plan/Outdoor Recreation Inventory, as may hereafter be amended
  - viii. The Kittitas County Building and Construction Code, Title 14 of this code, as may hereafter be amended;
  - ix. The Kittitas County Board of Health regulations, Title 8 of this code;
  - x. Kittitas County Subdivision Code, Title 16 of this code, as may hereafter be amended;
  - xi. The Kittitas County Roads and Bridges Code, Title 12 of this code, as may hereafter be amended;
  - xii. The Kittitas County Critical Areas Ordinance, Title 17A of this code, as may hereafter be amended;
  - xiii. Kittitas County-wide planning policies, adopted July 26, 2010, as may hereafter be amended.


 Ord. 2014-015, 2014;  Ord. 2011-013, 2011)

#### **15.04.210 Appeals.\***


1. The county establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:
  - a. An administrative appeal relating to a FEIS or DNS for a nonexempt action that does not require a public hearing shall be heard by the board of county commissioners.
  - b. An administrative appeal relating to a FEIS or DNS for a nonexempt action that requires a public hearing shall be combined with and heard by the recommending body for the underlying action.
  - c. Administrative appeals relating to a DS shall be heard by the hearing examiner.
  - d. For any appeal under this subsection, the county shall provide for a record in compliance with KCC 15A.07.
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.
3. Subsequent appeals of SEPA determinations, after the Open Record appeal to either the Hearing Examiner or board of county commissioners, shall be made to Superior Court, or hearings board, as appropriate, as part of an appeal of the associated decision, and shall be made to the appropriate appellate body within ten (10) working days to the Kittitas County Board of Commissioners. Such appeals shall be filed pursuant to Chapter 15A.07 KCC. The agency shall give official notice stating the date and place for commencing an appeal. If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals shall be commenced within the time period specified by RCW 43.21C.080.
4. Appeals shall be of the governmental action together with its accompanying environmental determinations. Kittitas County shall consolidate an appeal of procedural issues made under Chapter 43.21C RCW and Chapter 15.04 KCC (such as a decision to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing body to consider the agency decision on a proposal and any environmental determinations made, with the exception of the appeal, if any, of a threshold determination of significance.

5. Appeals on SEPA procedures shall be limited to review of a final threshold determination and final EIS. These appeals may occur prior to an agency's final decision on a proposed action. Appeal of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.
6. Kittitas County shall provide for only one appeal of a threshold determination or of the adequacy of an EIS. Successive appeals on these issues shall be to Superior Court of Hearing Board, as appropriate

 Ord. 2014-015, 2014;  Ord. 2014-008, 2014;  Ord. 2011-013, 2011)

\* Publisher's note: This section was mistakenly referred to as 15A.04.210 in  Ordinance 2014-008.

#### **15.04.220 Notice/statute of limitation.**

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. ( Ord. 2011-013, 2011)


### **Article VIII. Definitions**

#### **15.04.230 Purpose of this article and adoption by reference.**

This article contains uniform usage and definitions of terms under SEPA. The county adopts the following sections by reference, as supplemented by WAC 173-806-040, except as modified by additional definitions under KCC 15.04.030:

#### **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.
- 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 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. ( Ord. 2011-013, 2011)

## **Article IX. Categorical Exemptions**

### **15.04.240 Adoption by reference.**

The county adopts by reference the following rules for categorical exemptions, as supplemented in this ordinance, including KCC 15.04.090 (Flexible thresholds), KCC 15.04.110 (Use of exemptions).

### **WAC**

197-11-800 Categorical exemptions.  
197-11-880 Emergencies.  
197-11-890 Petitioning DOE to change exemptions. ( Ord. 2011-013, 2011)

## **Article X. Agency Compliance**

### **15.04.250 Purpose of this article and adoption by reference.**

This article 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 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. (📄 Ord. 2011-013, 2011)

## **15.04.260 Fees.**

1. For every environmental checklist the county will review when it is lead agency, the county shall establish a fee by resolution as referenced in Chapter 4.08 and shall collect the fee prior to undertaking a threshold determination.
2. For every environmental impact statement, the county shall require fees for its activities in accordance with the provisions of this chapter:
  - a. When the county is the lead agency for a proposal requiring an EIS and the responsible official determines that an EIS shall be prepared by employees of the county, a development agreement will be established between the county and the applicant to insure that the county collects reasonable fee from any applicant to cover costs incurred by the county in preparing the EIS.
  - 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 insure 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.
    - i. The county may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by chapter 42.17 RCW.  
(📄 Ord. 2017-001, 2017; 📄 Ord. 2011-013, 2011)

#### **15.04.270 Administrative guidelines.**

The responsible official is authorized to adopt further administrative guidelines to provide processing, administration and interpretation of these regulations. All such policies shall be in writing and available to the public in the offices of the ~~eD~~Department of ~~community development~~Public Services. ( Ord. 2011-013, 2011)

#### **15.04.280 Title.**

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. ( Ord. 2011-013, 2011)

### **Article XI. Forms**

#### **15.04.290 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. ( Ord. 2011-013, 2011)

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## **Chapter 15.08**

### **BURN BANS**

#### **Sections**

15.08.010 Established when.

15.08.020 Open burning prohibited.

15.08.030 Violation - Penalty.

#### **15.08.010 Established when.**

1. The Kittitas County fire marshal may, after a written determination to the Kittitas County board of commissioners that there is an extreme fire hazard in the county, establish a prohibition against burning in incinerators, open burning, and recreational fires as such are defined in 1997 Uniform Fire Code, Article 11, Section 1102. The Kittitas County fire marshal shall notify the Kittitas County board of commissioners, in writing, when such a burning ban should be lifted because the period of extreme fire hazard has ceased.
2. The Kittitas County board of commissioners may rescind the establishment of a burn ban or modify the condition of a burn ban upon petition to the board or upon the request for a meeting by a member of the board. Such rescission or modification by the board shall occur only after holding a public meeting on this matter. The issuance of a burn ban by the fire marshal is presumed valid and shall only be rescinded or modified upon entry of finding of facts from the record which clearly demonstrate that there is not an extreme fire hazard warranting the issuance of a burn ban or that the limitation of the burn ban are excessive under the circumstances.
3. The Kittitas County fire marshal may grant campgrounds or special events an exemption to a burn ban upon application to the county fire marshal and the payment of a processing fee in the amount of forty dollars per



hour with a minimum of one hour. Any exemption shall contain such conditions as the fire marshal deems necessary to mitigate the concerns for extreme fire hazard (1997 Uniform Fire Code, Appendix II-A, Section 13). Such exemptions and conditions shall be in writing. A copy of such exemption (with conditions) shall be prominently posted at the burning site and shall be provided to the Kittitas County board of commissioners. Any party feeling aggrieved by a denial of a burn ban exemption or the conditions imposed as part of the grant of an exemption may appeal such decision to the Kittitas County board of commissioners. (Ord. 2002-08 (part), 2002: Ord. 94-17 § 1, 1994).

#### **15.08.020 Open burning prohibited.**

It is unlawful to engage in burning in any unincorporated area in Kittitas County in an incinerator, open fire or recreational fire after the Kittitas County fire marshal has established the burn bans and prior to the bans being lifted unless such burning is conducted in accordance with a written exemption pursuant to Section 15.08.010(c). (Ord. 2002-08 (part), 2002: Ord. 94-17 § 2, 1994).

#### **15.08.030 Violation - Penalty.**

Any person, company, firm, corporation or other legal entity who:

1. Violates Section 15.08.020 shall be guilty of an infraction, punishable by a fine of two hundred fifty dollars.
2. Violates Section 15.08.020 a second time within any twelve-month period shall be guilty of a misdemeanor, punishable by up to ninety days in jail and/or a fine of up to one thousand dollars.
3. Violates Section 15.08.020 three or more times within ten years shall be guilty of a gross misdemeanor, punishable by up to three hundred sixty-five days in jail and/or a fine of five thousand dollars. (Ord. 2002-08 (part), 2002: Ord. 94-17 § 3, 1994).

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