

CHAPTER 6.35

ENVIRONMENTAL POLICY

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6.35.010 AUTHORITY. This chapter is adopted in accordance with the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, Chapter 197-11 WAC, and is to be applied in conjunction therewith.

[Ord. 182 (1984) ▪ 2]

6.35.015 ADOPTION BY REFERENCE. The following sections of Chapter 197-11 WAC containing basic requirements that apply to the SEPA process, are adopted by reference:

- WAC
 - 197-11-040 Definitions
 - 197-11-050 Lead agency.
 - 197-11-055 Timing of the SEPA process.
 - 197-11-060 Content of environmental review.
 - 197-11-070 Limitations on actions during SEPA process.
 - 197-11-080 Incomplete or unavailable information.
 - 197-11-090 Supporting documents.
 - 197-11-100 Information required of applicants.
 - 197-11-158 GMA project review--Reliance on existing plans, laws, and regulations.
 - 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.
- [Ord. 182 (1984) ▪ 3; Ord. 321 (1998) ▪ 1]

6.35.020 DEFINITIONS - ADOPTION BY REFERENCE. The following sections of Chapter 197-11 WAC, containing definitions of terms under SEPA, are adopted by reference, as supplemented by WAC 173-806-040:

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.
197-11-748	Environmentally sensitive area.
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. 182 (1984) ▪ 4; Ord. 321 (1998) ▪ 2]

[NOTE: This chapter is continued on the following page.]

6.35.025 ADDITIONAL DEFINITIONS. In addition to those definitions contained in Chapter 197-11 WAC, as adopted by reference in BCC 6.35.020, the following terms, when used in this chapter, shall have the meanings set forth unless the context indicates otherwise:

(a) "County Department" means any division, subdivision or organizational unit of Benton 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.)
[Ord. 182 (1984) ■ 5]

6.35.030 DESIGNATION OF RESPONSIBLE OFFICIAL. (a) For those proposals for which the county is the lead agency, the responsible official shall be the Director of the Benton County Planning Department.

(b) For all proposals for which the county is 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 WAC 173-806-020.

(c) The county shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.17 RCW.
[Ord. 182 (1984) ■ 6]

6.35.035 RESPONSIBILITY OF COUNTY DEPARTMENTS. Any county department receiving an application for or initiating a proposal

that involves a nonexempt action shall refer said application or proposal to the Benton County Planning Department for processing by the responsible official.

[Ord. 182 (1984) § 7]

6.35.040 ADDITIONAL CONSIDERATIONS IN TIME LIMITS APPLICABLE TO SEPA PROCESS. The following time limits (expressed in calendar days) shall apply when the county processes project permit applications as defined in Chapter 17.10 BCC for private projects and those governmental proposals submitted to the county by other agencies:

(a) Threshold determinations.

(1) Except for a Determination of Significance, the county may not issue a threshold determination, or issue a decision or a recommendation on a project permit application until the expiration of the public comment period as set forth in the notice of application issued pursuant to BCC 17.10.100.

(2) If an open record hearing is required and the threshold determination requires public notice under RCW 43.21C, the county shall issue its threshold determination at least fifteen (15) days prior to the open record hearing.

(b) If a Determination of Significance is made and an Environmental Impact Statement (EIS) is required, the EIS shall be completed within one (1) year of the date of the Determination of Significance or within such other time period as the Planning Director and the applicant may agree. The one (1) year time period may be extended by the Planning Director if it is determined that the applicant has shown substantial work on the EIS and additional time is needed to complete the EIS.

(c) The responsible official shall issue any required final EIS and send notice thereof in compliance with the methods prescribed by WAC 197-11-460 at least thirty-two (32) days before any open record hearing held under Chapter 17.10 BCC.

[Ord. 182 (1984) § 8; Ord. 285 (1996) § 1; Ord. 321 (1998) § 3; Ord. 406 (2004) § 1]

6.35.045 ADDITIONAL TIMING CONSIDERATIONS. (a) For nonexempt proposals, the DNS or final EIS for the proposal shall accompany county's staff recommendation to any appropriate advisory body, such as the planning commission.

(b) 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

[NOTE: This section is continued on the following page.]

detailed plans and specifications.
[Ord. 182 (1984) ▪ 9]

6.35.050 CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS - ADOPTION BY REFERENCE. The following sections of Chapter 197-11 WAC relating to categorical exemptions; relating to determinations whether a proposal has a "probable significant, adverse environmental impact" requiring preparation of an EIS; providing for an optional DNS process; and containing rules for evaluating impacts of proposals not requiring an EIS, as supplemented or revised by BCC 6.35.055, BCC 6.35.060 and BCC 6.35.130 hereof, are adopted by reference.

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.
197-11-350	Determination of significance (DS)/initiation of scoping.
197-11-355	Optional DNS process.
197-11-390	Effect of threshold determination.
197-11-800	Categorical exemptions.
197-11-880	Emergencies.
197-11-890	Petitioning DOE to change exemptions.

[Ord. 182 (1984) ▪ 10; Ord. 321 (1998) ▪ 4]

6.35.055 FLEXIBLE THRESHOLD FOR CATEGORICAL EXEMPTIONS. (a) The following exempt levels for minor new construction are established under WAC 197-11-800(1)(b) based on local conditions:

- (1) For residential dwelling units in WAC 197-11-800(1)(b)(i): Up to twenty (20) dwelling units.
- (2) For agricultural structures in WAC 197-11-800(1)(b)(ii): Up to thirty thousand (30,000) square feet.
- (3) For office, school, commercial, recreational, service or storage building in WAC 197-11-800(1)(b)(iii): Up to twelve

thousand (12,000) square feet and up to forty (40) parking spaces.

(4) For parking lots in WAC 197-11-800(1)(b)(iv): Up to forty (40) parking spaces.

(5) For landfills and excavations in WAC 197-11-800(1)(b)(v): Up to five hundred (500) cubic yards.

(b) Whenever the county establishes new exempt levels under this section, it shall send them to the Department of Ecology.
[Ord. 182 (1984) ▪ 11; Ord. 321 (1998) ▪ 5]

6.35.060 USE OF EXEMPTIONS. Each county department that receives an application for a license, permit or in the case of governmental proposal, the county department initiating the proposal, shall notify the Benton County Planning Director for a determination whether the proposal is exempt.

The Planning Director'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.
[Ord. 182 (1984) ▪ 12]

6.35.065 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 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, to determine the responsible official and to make 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.
[Ord. 182 (1984) ▪ 13]

6.35.070 MITIGATED DETERMINATION OF NONSIGNIFICANCE (DNS).

(a) As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of non-significance (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.

(b) An applicant may request in writing early notice of whether a determination of significance (DS) is likely under WAC 197-11-350. The request must:

(1) follow submission of a complete project 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 ten (10) working days. The response shall:

(1) be written;

(2) state whether the county currently considers issuance of a determination of significance (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 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.

(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 (clarification, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond on 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) 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.

(g) 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).

(h) The county's written response under subsection (c) 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. 182 (1984) § 14; Ord. 321 (1998) § 6]

6.35.075 ENVIRONMENTAL IMPACT STATEMENT (EIS) - ADOPTION BY REFERENCE. The following sections of Chapter 197-11 WAC, containing rules for preparation of environmental impact statements, are adopted by reference.

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.

[Ord. 182 (1984) ▪ 15]

6.35.080 PREPARATION OF EIS - ADDITIONAL CONSIDERATIONS. (a)

Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the Planning Department 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 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 also notify the applicant of the county's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(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 chapter or that is being requested from another agency. (This does not apply to information the county may request under another chapter or statute.)

[Ord. 182 (1984) ▪ 16]

6.35.085 ADDITIONAL ELEMENTS TO BE COVERED IN AN EIS.

Additional elements may be required by the responsible official to be part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter. Such additional elements may include, but are not limited to, the

[NOTE: This section is continued on the following page.]

following:

- (a) Economy.
 - (b) Social policy analysis.
 - (c) Cost-benefit analysis.
- [Ord. 182 (1984) ▪ 17]

6.35.090 COMMENTING - ADOPTION BY REFERENCE. The following sections of Chapter 197-11 WAC, containing rules for consulting, commenting and responding on all environmental documents under SEPA, including rules for public notice and hearings are adopted by reference.

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.
197-11-535	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. 182 (1984) ▪ 18]

6.35.095 PUBLIC NOTICE. Determination of Significance, Determination of Non-Significance, and Draft Environmental Impact Statement. (a) Whenever Benton County issues a Determination of Significance under WAC 197-11-360(3) the county shall give notice as follows:

(1) If public notice is required for a nonexempt license, that notice shall state whether a Determination of Significance has been issued. This notice will be in addition to the notice required by subsection (2) below.

(2) Regardless of whether public notice is required for the permit or approval, the county shall give notice of the Determination of Significance by:

- (i) Mailing a notice to public and private groups which have requested such notice on this proposal or on all proposals of this type, or that have

previously commented in writing on the proposal; and

(ii) Providing electronic e-mail notice to the local news media that have requested notice and that have provided electronic e-mail addresses; and

(iii) by posting the notice on the Internet at www.co.benton.wa.us/planning.htm.

(3) Whenever the county issues a Determination of Significance under WAC 197-11-360(3), the county shall state the scoping procedure for the proposal in the Determination of Significance as required in WAC 197-11-408 and in the public notice.

(b) Whenever the county issues a Draft Environmental Impact Statement under WAC 197-11-455(5) or a Supplemental Environmental Impact Statement under WAC 197-11-620, the county shall distribute copies in accordance with WAC 197-11-455 and provide notice of the availability of those documents by:

(1) Mailing a notice to public and private groups which have requested such notice on this proposal or on all proposals of this type, or that have previously commented in writing on the proposal; and

(2) Providing electronic e-mail notice to the local news media that have requested notice and that have provided electronic e-mail addresses; and

(3) by posting the notice on the Internet at www.co.benton.wa.us/planning.htm.

(c) Whenever Benton County issues a Determination of Non-Significance under WAC 197-11-340(2), the county, in addition to the notice required in WAC 197-11-340(b)(2), shall give notice as follows unless the optional process in WAC 197-11-355 is used:

(1) If public notice is required for a nonexempt license, that notice shall state whether a Determination of Non-Significance has been issued and when comments are due. This notice will be in addition to the notice required by subsection (2) below.

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(2) Regardless of whether public notice is required for the permit or approval, the county shall give notice of a Determination of Non-Significance by:

- (i) Mailing a notice to public and private groups which have requested such notice on this proposal or on all proposals of this type, or that have previously commented in writing on the proposal; and
- (ii) Providing electronic e-mail notice to the local news media that have requested notice and that have provided electronic e-mail addresses; and
- (iii) by posting the notice on the Internet at www.co.benton.wa.us/planning.htm.

(d) The county may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

[Ord. 182 (1984) ▪ 19; Ord. 321 (1998) ▪ 7; Ord. 414 (2005) § 1]

6.35.100 DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE COUNTY. (a) The Planning Director 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 Planning Director 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. 182 (1984) ▪ 20]

6.35.105 USING EXISTING ENVIRONMENTAL DOCUMENTS - ADOPTION BY REFERENCE. The following sections of Chapter 197-11 WAC containing rules for using and supplementing existing environmental documents prepared under SEPA or the National Environmental Policy Act (NEPA) for the county's own environmental compliance, are adopted 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.

[Ord. 182 (1984) ▪ 21]

6.35.110 SEPA AND AGENCY DECISIONS AND APPEALS THEREFROM - ADOPTION BY REFERENCE. The following sections of Chapter 197-11 WAC, containing rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA and procedures for appealing SEPA determinations to agencies or the courts are adopted 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. 182 (1984) ▪ 22]

6.35.115 APPEALS FROM THRESHOLD DETERMINATION--NON-REFUNDABLE FEE. (a) Any interested citizen, administrative official, agency, or applicant may appeal to the Board of County Commissioners a Determination of Significance made by the responsible official by filing a written notice of appeal with the responsible official within fourteen (14) days from the date of the Determination of Significance. The appeal will be processed as follows:

(1) Upon receiving a written notice of appeal, the responsible official shall transmit all documents constituting the record upon which the Determination of Significance appealed from was made to the Board of County Commissioners.

(2) The Board of County Commissioners shall hold an open record hearing to consider the appeal of a Determination of Significance following the publication of notice of said hearing not less than ten (10) days prior to the date of hearing in a paper of general circulation within the county. At the hearing the Board may receive such evidence as it deems relevant. Following the public hearing, the Board of County Commissioners shall have the power to affirm the Determination of Significance, to remand the determination to the responsible official for further consideration, or to revise the threshold determination, provided its revision is in compliance with policies and provisions of Chapter 43.21C RCW and Chapter 197-11 WAC.

(3) All persons filing an appeal under BCC 6.35.115(a) shall at the time of filing submit a non-refundable fee as established by prior resolution of the Benton County Board of Commissioners.

(b) Appeals of mitigated determinations of non-significance must be made to the local authority that will hold an open record hearing on the related project permit applications, if such an open record hearing is required. This appeal must be made by filing a written notice of appeal with the responsible official within fourteen (14) days from the date of the threshold determination. If no open record hearing is required on the project permit application, the appeal will be filed and processed as required in BCC 6.35.115(a). If an open record hearing is required for the project permit application, the appeal of a mitigated determination of non-significance shall be processed as follows:

(1) Upon receiving a written notice of appeal, the responsible official making the threshold determination shall transmit all documents constituting the record upon which the threshold determination was made to the local authority conducting the open record hearing on the project permit application.

(2) At the open record hearing, such local authority shall consider the appeal of the mitigated determination of non-significance. The public hearing notice for the project permit application shall include the threshold determination appeal and shall be published as required for the project permit application. Following the open record hearing, the local authority shall have the power to affirm the threshold determination, to remand the determination to the responsible official for further consideration, or to revise the threshold determination, provided its revision is in compliance with policies and provisions of RCW 43.21C and WAC 197-11.

(c) Administrative appeals of threshold determinations of non-significance are not allowed.
[Ord. 182 (1984) § 23; Ord. 285 (1996) § 2; Ord. 334 (1998) § 1; Ord. 406 (2004) § 2]

6.35.118 APPEAL OF ENVIRONMENTAL IMPACT STATEMENT (EIS) ADEQUACY--NON-REFUNDABLE FEE. (a) An open record hearing on appeals of the adequacy of a Final or Supplemental Environmental Impact Statement (EIS) issued in connection with a Type III, Type IV, Type V, Type VI and/or Type VII project permit application as set forth in BCC 17.10.050, will be heard by the local authority that will hold the open record hearing on the permit application. The appeal must be made by filing a written notice of appeal with the responsible official within twenty (20) days from the date the Final or Supplemental EIS is issued. The decision on an appeal of the adequacy of a Final or Supplemental EIS made under BCC 6.35.118(a) will be made in writing by the local authority that has authority pursuant to BCC 17.10.060 to make the last administrative decision on the project permit application that necessitated the EIS preparation. If this decision-making body does not hold the open record hearing on the EIS appeal, it will hold a closed record hearing before making its decision.

(b) Appeals of the adequacy of a Final or Supplemental EIS that is not issued in conjunction with any project permit application must be made to the Board of Benton County Commissioners. This appeal must be made by filing a written notice of appeal with the Clerk of

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the Board of Benton County Commissioners within twenty (20) days from the date the Final or Supplemental EIS is issued. The Board of Benton County Commissioners shall hold an open record hearing to consider the appeal following the publication of notice of said hearing not less than ten (10) days prior to the date of hearing in a paper of general circulation within the county. The Board of Benton County Commissioners shall make its final decision by resolution, and such decision shall be effective on the date the decision is mailed to the party initiating the appeal.

(c) There shall be no administrative appeal of the adequacy of a Final or Supplemental EIS issued in connection with a Type I or Type II project permit application, unless the applicant's project also requires submission of a Type III, Type IV, Type V, Type VI or Type VII project permit application. In such case, the appeal of the adequacy of the Final or Supplemental EIS must be appealed in accordance with BCC 6.35.118(a).

(d) All persons filing an appeal under BCC 6.35.118 shall at the time of filing submit a non-refundable fee as established by prior resolution of the Benton County Board of Commissioners.
[Ord. 406 (2004) § 3]

6.35.120 SUBSTANTIVE AUTHORITY. (a) The policies and goals set forth in this chapter are supplementary to those in the existing authorization of Benton 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 chapter; and

(2) Such conditions are in writing; and

(3) The mitigation measures included in such conditions are reasonable and capable of 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 BCC 6.35.120(d) and cited in the license or other decision document.

(c) The county may deny a permit or so the approval for a proposal on the basis of SEPA so long as:

(1) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; 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 BCC 6.35.120(d) 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 BCC 6.35.120:

(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:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

- (iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (iv) Preserve important historic, cultural, and natural aspects of our national heritage;
- (v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(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. The policies contained in the following plans, ordinances and codes, as currently adopted or hereafter amended or replaced, are adopted by reference:

- (i) Benton County Comprehensive Plan
- (ii) Benton County Zoning Ordinance, Title 11 BCC
- (iii) Benton County Shoreline Management Plan
- (iv) Benton County Manufactured Home Park Ordinance, Chapter 3.22 BCC
- (v) Benton County Short Plat Subdivisions Ordinance, Chapter 9.04 BCC
- (vi) Benton County Platting and Subdivisions Ordinance, Chapter 9.08 BCC
- (vii) Benton County Flood Damage Prevention Ordinance, Chapter 6.50 BCC

- (viii) Benton County Building Code Ordinance, Chapter 3.04 BCC
- (ix) Benton County Fire Code Ordinance, Chapter 3.16 BCC

(e) Except for permits and variances issued pursuant to the Benton County Shoreline Management Plan, when any proposal or action not requiring a decision of the Board of Benton County Commissioners is expressly conditioned or denied by a non-elected official pursuant to BCC 6.35.120(c) on the basis of SEPA, the decision to so condition or deny shall be appealable to the Board of Benton County Commissioners. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within ten (10) days of the decision being appealed. Review by the Board of Benton County Commissioners shall be on a de novo basis. [Ord. 182 (1984) § 24; Ord. 406 (2004) § 4]

6.35.125 NOTICE - STATUTE OF LIMITATIONS. (a) The county, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(b) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the county auditor, applicant or proponent pursuant to RCW 43.21C.080. [Ord. 182 (1984) § 25]

6.35.130 AGENCY COMPLIANCE - ADOPTION BY REFERENCE. The following sections of Chapter 197-11 WAC, containing rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities are adopted by reference, as supplemented by BCC 6.35.035.

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/city.
197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

[NOTE: This section is continued on the following page.]

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. 182 (1984) ▪ 26]

6.35.140 FEES. The following fees shall be imposed in accordance with the provisions of this chapter:

(a) Threshold determination. For every environmental checklist the county will review when it is lead agency, the county shall collect a non-refundable fee as established by resolution of the Board of Benton County Commissioners from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee.

(b) Environmental impact statement.

(1) 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 the 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.

(2) 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 persons or entities 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.

(3) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (1) and (2) of this subsection which remain after incurred costs are paid.

(c) The county may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

(d) The county shall not collect a fee for performing its duties as a consulted agency.

(e) 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. 182 (1984) ▪ 28; Ord. 185 (1985) ▪ 3]

6.35.145 FORMS - ADOPTION BY REFERENCE. The following forms and sections are adopted 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. 182 (1984) ▪ 29]	