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SUPREME COURT  
OF THE STATE OF WASHINGTON

C/A No. 68048-0-I (Consolidated with Case No. 68049-8-I)

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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TOWN OF WOODWAY and SAVE RICHMOND BEACH,  
Petitioners/Respondents

vs.

BSRE POINT WELLS, LP and SNOHOMISH COUNTY,  
Respondents/Appellants

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RESPONDENT SNOHOMISH COUNTY'S ANSWER TO  
*AMICUS CURIAE* BRIEF OF FUTUREWISE

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## I. INTRODUCTION

This Answer is filed by Respondent Snohomish County (“County”) in response to the Amicus Curiae Brief of Futurewise in Support of Petitioners (“Amicus Brief”).

Futurewise’s Amicus Brief is chock-full of dire predictions of the death of SEPA<sup>1</sup> if this Court affirms the Court of Appeals’ Opinion (“Opinion”).<sup>2</sup> However, the Amicus Brief falls short on analysis and lacks any realistic relationship to relevant case law or the facts in this case. As with its earlier amicus brief in support of this Court accepting review (“Prior Amicus Brief”), Futurewise once again merely complains that it does not like the Opinion and wishes the law were different. That is not grounds to reverse the Court of Appeals. This Court should affirm the Opinion.

## II. ARGUMENT

Futurewise repeats a fundamental error from its Prior Amicus Brief, even though the County had already highlighted that error. Futurewise once again claims it “knows the facts of this case because [it] commented against adoption of the ordinance in question here[.]”<sup>3</sup> As the

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<sup>1</sup> State Environmental Policy Act, ch. 43.21C RCW.

<sup>2</sup> Town of Woodway v. BSRE, 172 Wn. App. 643, 291 P.3d 278 (2013).

<sup>3</sup> Amicus Brief at 2; Prior Amicus Brief at 2. Futurewise makes a similar reference to “the ordinance in question” on its Amicus Brief at 5.

County previously pointed out,<sup>4</sup> there was no “ordinance” in question; this case was an action for declaratory and injunctive relief to halt the County’s processing of a vested land use permit application. In addition, as the County previously stated,<sup>5</sup> the only “ordinances” having any relevance to this dispute are those the County adopted to amend its comprehensive plan and development regulations, which re-designated and re-zoned Point Wells as an “Urban Center” and adopted development regulations to implement the new Urban Center zone. As the County stated before,<sup>6</sup> Futurewise had in fact *supported* those ordinances and even submitted favorable written testimony to the County. Once again, Futurewise fails *even to acknowledge* – let alone explain – why it now opposes the same County actions that it actively promoted in the past.

Futurewise’s failure in its duty as a “friend of the court” to factually represent what happened below is symptomatic of the balance of its argument.

**A. Futurewise’s Alleged “Unfair Two-Track System” for Vesting is a False Dichotomy.**

Futurewise alleges that if this Court affirms the Opinion, then there will be an “unfair two-track system,” which would allow early vesting in

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<sup>4</sup> County’s Answer to Prior Amicus Brief, p. 2.

<sup>5</sup> Id.

<sup>6</sup> Id. and Appendix A thereto.

GMA<sup>7</sup> counties, but in the more rural counties not fully planning under the GMA, SEPA would void such early vesting, citing Eastlake Community Council v. Roanoke Assocs., Inc., 82 Wn.2d 475, 513 P.2d 36 (1973).<sup>8</sup> This is a false dichotomy for several reasons.

First, Eastlake is inapposite. As the Opinion recognized, Eastlake held only that “no rights may vest where either the [building permit] application submitted or the permit issued fails to conform to the zoning or building regulations.”<sup>9</sup> The SEPA violation in that case was a complete failure to consider SEPA at all, which is not the case here.

Second, Futurewise ignores the fact that SEPA is already integrated into the GMA,<sup>10</sup> and the Opinion recognizes the importance of integrating the two statutes.<sup>11</sup>

Third, counties fully planning under the GMA must consider many other required elements that are lacking in non-GMA counties. For example, GMA counties (and cities therein) must develop county-wide planning policies to establish a regional framework for these counties and cities to establish population projections, designate urban growth areas (UGAs) promote the orderly provision of urban services, assure affordable

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<sup>7</sup> Growth Management Act, chapter 36.70A RCW.

<sup>8</sup> Amicus Brief at 2-4.

<sup>9</sup> Woodway, supra, 172 Wn. App. at 663, fn. 26.

<sup>10</sup> Laws of 1995, ch. 347, Sec. 1.

<sup>11</sup> Woodway, supra, 172 Wn. App. at 655.

housing and encourage economic development.<sup>12</sup> Larger counties, such as Snohomish, King, Kitsap and Pierce, must develop multi-county planning policies to deal with such regional issues.<sup>13</sup> All comprehensive plans in GMA counties must provide a framework and policy direction for land use decisions, and must address all of the following elements: land use; transportation; housing; capital facilities; utilities; shorelines; and rural areas.<sup>14</sup>

Fourth, Futurewise's alleged dichotomy is based on a false premise. Even in a GMA county, an aggrieved party may seek an order of invalidity with respect to a county's comprehensive plan or development regulations on SEPA grounds if such noncompliance substantially interferes with the GMA goal of environmental protection.<sup>15</sup> But such a

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<sup>12</sup> RCW 36.70A.210.

<sup>13</sup> RCW 36.70A.210(7).

<sup>14</sup> RCW 36.70A.070(1)-(6) and RCW 36.70A.480(1).

<sup>15</sup> See, e.g., Davidson Serles & Assocs. v. Central Puget Sound Growth Management Hearings Bd., 159 Wn. App. 148, 157, 244 P.3d 1003 (2010)(On appropriate facts, SEPA noncompliance may substantially interfere with fulfilling GMA's environmental protection goal, thus allowing growth board to issue order of invalidity).

Interestingly, Davidson Serles, supra, 159 Wn. App. at 158, fn. 8, observed, based on language in the Growth Board decision on appeal in that case, that "no Board has ever invalidated an ordinance based solely on SEPA compliance." However, Woodway, supra, 172 Wn. App. at 660-61, further opined that "[a] violation of SEPA alone is not a sufficient ground for invalidity." Subsequently (and after briefing was submitted in this case), the Court of Appeals, Div. 3, upheld a Growth Board determination of invalidity on SEPA grounds. See Spokane County v. Eastern Washington Growth Management Hearings Bd., - Wn. App. -, - P.3d -, 2013 WL 5082077, \*12 (Sept. 10, 2013). This seeming incongruity does not impugn the outcome of Woodway, however, because the Growth Board did not base its determination of invalidity on SEPA grounds in this case. And even if it had done so, the effect of any such determination of invalidity would have been prospective in nature. RCW 36.70A.302(2). Nonetheless, this Court may wish to clarify that portion of the Opinion.

request must be brought on direct appeal to the growth management hearings board (“Growth Board”) as authorized by the GMA, not in a collateral proceeding to superior court as was done here.<sup>16</sup> And even then, any Growth Board determination of invalidity would be prospective in nature and would not affect rights that became vested prior to any such determination of invalidity. RCW 36.70A.302(2).

**B. SEPA is Not an Overarching Consideration Under GMA.**

Futurewise cites to Seattle v. Hinckley, 40 Wn. 468, 471, 82 P. 747 (1907), for the proposition that “[t]here is no such thing as an inherent or vested right to imperil the health or impair the safety of the community.”<sup>17</sup> From that century-old case, Futurewise generalizes that environmental concerns trump every other interest. However, not only does the Hinckley case involve the life and safety issue of requiring fire escapes on tall buildings, it also pre-dates all of the modern-era case law at issue here, *i.e.*, the vested rights doctrine, SEPA and the GMA. Furthermore, as the County explained previously,<sup>18</sup> SEPA directs no substantive outcome,<sup>19</sup>

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<sup>16</sup> See Davidson Serles & Assocs. v. City of Kirkland, 159 Wn. App. 616, 625-26, 246 P.3d 822 (2011) (Growth board has exclusive subject matter jurisdiction over SEPA claims in GMA challenges, citing RCW 36.70A.280(1)).

<sup>17</sup> Amicus Brief at 4.

<sup>18</sup> County’s Answer to Petitions for Discretionary Review at 18-19.

<sup>19</sup> Moss v. City of Bellingham, 109 Wn. App. 6, 14, 31 P.3d 703 (2001).

but only imposes procedural requirements.<sup>20</sup> And, as the Opinion recognized, the County's only SEPA violation in this case amounted to a procedural error of failing to consider a sufficient number of alternatives in its environmental review.<sup>21</sup>

Futurewise argues that this case should somehow receive different treatment because here, a single property owner, *i.e.*, BSRE Point Wells, LP ("BSRE"), requested a re-designation and rezone of its own property to "Urban Center" and then sought to obtain a vested permit application.<sup>22</sup> Thus, its argument goes, BSRE's vesting in this case exceeded the scope of what the Legislature contemplated when it studied the impacts of vesting in 1998.<sup>23</sup> However, there is nothing sinister in a property owner requesting an amendment to a comprehensive plan or to development regulations. In fact, GMA jurisdictions are required to allow for such procedures in their development regulations.<sup>24</sup> The Legislature enacted this requirement in the same 1995 legislation that integrated SEPA with

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<sup>20</sup> SORE v. Snohomish County, 99 Wn.2d 363, 371, 662 P.2d 816 (1983).

<sup>21</sup> Woodway, *supra*, 172 Wn. App. at 661, fn. 23.

<sup>22</sup> Amicus Brief at 5-7.

<sup>23</sup> Amicus Brief at 5-7.

<sup>24</sup> RCW 36.70A.470(2) provides in pertinent part: "Each county and city planning under [the GMA] shall include in its development regulations a procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest plan or development regulation amendments. The suggested amendments shall be docketed and considered on at least an annual basis[.]"

The County has implemented this statutory provision by adopting chapter 30.74 of the Snohomish County Code ("SCC") ("Growth Management Act Public Participation Program Docketing"). Attached hereto as Appendix A.

the GMA,<sup>25</sup> three years before the Land Use Study Commission issued its 1998 report on the impacts of vesting that Futurewise cites. Futurewise asks nothing more than for this Court to second guess what the Legislature already considered at great length.

This Court should not give credence to Futurewise's generalized statements regarding the importance of SEPA in light of the Legislature's intended purpose of instituting regulatory reform and integrating SEPA with the GMA in 1995, and particularly in light of the express language in RCW 30.70A.302(2) regarding the vesting of development applications prior to a Growth Board's determination of invalidity.

**C. Futurewise's Argument Against "Further Expand[ing] Already-Liberal Vesting Rules" Flies in the Face of the Legislature's Conscious Policy Choice.**

Futurewise begs this Court to stop expanding this state's "already-liberal" vesting rules, citing to a law review article that notes the obvious: Washington is one of the very few states that allows a land use application to vest to the rules in place at the time of filing a complete application.<sup>26</sup> Futurewise then argues that expanding these vesting rules will lead to "uncoordinated and unplanned growth," which is antithetical to the GMA.<sup>27</sup> In recognizing that Washington has liberal vesting policies,

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<sup>25</sup> Laws of 1995, ch. 347, Sec. 102.

<sup>26</sup> Amicus Brief at 7-8.

<sup>27</sup> Id.

Futurewise does nothing more than confirm the analysis in the Opinion,<sup>28</sup> which outlines the development of the vested rights doctrine in this state.

As the County has argued previously,<sup>29</sup> Futurewise simply does not like the law as it is plainly written and would like this Court to change it. But as the Court of Appeals painstakingly explained,<sup>30</sup> allowing those applications to vest development rights was a conscious policy choice of the State Legislature, made after years of study. It is not for courts to second guess policy decisions made by the Legislature. State v. Jackson, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999).

**D. Futurewise's Examples of Potential GMA Violations in Other Counties Are Outside the Record and Are Irrelevant.**

Futurewise injects into this case alleged instances where other counties have either expanded UGAs or de-designated agricultural or rural lands, all in seeming violation of the GMA, and which has resulted in a "vesting frenzy."<sup>31</sup> After itemizing alleged GMA violations elsewhere, Futurewise then speculates as follows: because those GMA actions involve SEPA review, there are "tens or hundreds of potential similar situations to Point Wells presented statewide every year[.]"<sup>32</sup>

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<sup>28</sup> Woodway, supra, 172 Wn. App. at 651-52.

<sup>29</sup> County's Answer to Prior Amicus Brief at 3-4.

<sup>30</sup> Woodway, supra, 172 Wn. App. at 652-59.

<sup>31</sup> Amicus Brief at 8-10.

<sup>32</sup> Id. at 10.

Aside from going beyond the record in this case, Futurewise's examples simply reflect what the GMA allows: that a property owner is entitled to have its complete development application considered under the development regulations in effect on the date of submittal – even if those regulations are on appeal – so long as the permit application is submitted prior to any determination of invalidity by the Growth Board. RCW 36.70A.302(2). Futurewise's complaint should be to the Legislature to change the law, not to this Court to ignore it and let counties incur liability for not enforcing it by denying or refusing to accept timely land use applications.<sup>33</sup>

If Futurewise's worldview were in vogue, there would be near-zero certainty for local governments and developers. Under Futurewise's scheme, all it would take to bring development to a halt – even for many meritorious projects – would be for any person to bring a SEPA challenge to any development regulations, long after a project application has been submitted, as was done here, no matter how properly the regulations were adopted. Further, if such a SEPA challenge were brought, then the challenger could argue that the developer and local government were “on notice” that the regulations *might* be voided at some later date far into the future, and any ruling that voids those regulations would relate back to

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<sup>33</sup> See chapter 64.40 RCW.

when the regulations were first adopted. Such would be the end of fairness and certainty that the vested rights doctrine was designed to address.

**E. Potential Future Annexation of Point Wells is Irrelevant.**

Futurewise alleges that the “County has made a mess for either the City of Woodinville (sic) or Shoreline.”<sup>34</sup> In support, Futurewise cites to RCW 36.70A.110(4) and RCW 35.13.010, and to the Growth Board decision<sup>35</sup> in this case referencing the “ill effects” of traffic and other strains on urban services for the City of Shoreline (“Shoreline”) and the Town of Woodway (“Woodway”) as a result of re-designating and re-zoning Point Wells as an “Urban Center.”<sup>36</sup> Futurewise’s claims are irrelevant to the issue in this case, *i.e.*, whether BSRE’s application for a project permit is vested to the County’s development regulations. In addition, Futurewise’s argument fails on several other grounds.

First, nothing in the GMA or annexation laws *requires* a city or town to annex land that is within a UGA. RCW 36.70A.110(4) merely states, in pertinent part, that: “*In general*, cities are the units of local government most appropriate to provide urban governmental services.”

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<sup>34</sup> Amicus Brief at 10.

<sup>35</sup> The underlying decision of the Growth Management Hearings Board is not on appeal here.

<sup>36</sup> Id. at 10-12.

(Emphasis added.)<sup>37</sup> Further, RCW 35.13.010, also cited by Futurewise, provides only that a city or town *may* annex certain contiguous unincorporated areas. Hence, nothing in the GMA or annexation laws requires either the City of Shoreline or the Town of Woodway to annex Point Wells.

Second, Futurewise has mischaracterized the Growth Board's discussion of traffic and other impacts from Point Wells in the underlying decision as being grounded in SEPA. The relevant section of Growth Board decision Futurewise references here deals with the issue of internal consistency of the County's comprehensive plan, which is a GMA issue<sup>38</sup> – not a SEPA issue.<sup>39</sup> To the extent that the referenced language in the Growth Board decision has any relationship with SEPA, *i.e.*, because it discusses (in Futurewise's words) "environmental problems Snohomish County failed to address,"<sup>40</sup> then those problems *were* in fact addressed in

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<sup>37</sup> The Court of Appeals, Div. 3, held in Spokane County v. City of Spokane, 148 Wn. App. 120, 131, 197 P.3d 1228 (2009), that RCW 36.70A.110(4) "contains only recommendations [and] does not require that the County establish a strategy for the transformation of government." The Spokane County court also stated that "RCW 36.70A.110(4) merely indicates that cities should provide government services to urban growth areas (as opposed to rural areas)." Id. at 130.

<sup>38</sup> RCW 36.70A.070 (preamble).

<sup>39</sup> CP 104-114, Town of Woodway, et al. v. Snohomish County (Shoreline III and IV), CPSGMHB Case Nos. 09-3-0013c and 10-3-0011c (Corrected Final Decision and Order, May 17, 2011) at 12-22.

<sup>40</sup> Amicus Brief at 11.

the County's SEPA documents, but for the minor procedural violations the Court of Appeals recognized.<sup>41</sup>

Futurewise's commentary on the future annexation of Point Wells is of no assistance to the Court in this case. Accordingly, the Court should reject Futurewise's injection of this collateral issue.

**F. The Opinion Does Not Eviscerate SEPA.**

Futurewise argues that the Legislature "did not act blindly" when it integrated SEPA with the GMA, and it "did not consider the possibility that a project might vest even if SEPA review was not complete."<sup>42</sup> Here, Futurewise merely rehashes its prior arguments. If the Legislature had been concerned about projects vesting to development regulations adopted pursuant to the GMA when a SEPA violation had occurred in their adoption, the Legislature could have changed the law to say otherwise, rendering a determination of invalidity for SEPA violations retroactive to the date of adoption of development regulations. In fact, as the County has shown previously,<sup>43</sup> several attempts have been made in recent years to amend the statute and make it harder for development permit applications to vest, but the language in RCW 36.70A.302(2) has remained unchanged (albeit recodified) since it was first enacted in 1995.

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<sup>41</sup> Woodway, *supra*, 172 Wn. App. at 661, fn. 23.

<sup>42</sup> Amicus Brief at 12-13.

<sup>43</sup> See County's Opening Brief to the Court of Appeals at 22-23.

Futurewise claims that repeated references to SEPA throughout the GMA indicate a legislative intent to keep prior SEPA case law intact.<sup>44</sup> If that were so, Futurewise fails to explain why the Legislature created a presumption of validity of GMA actions<sup>45</sup> and a sole forum for appealing SEPA violations to the Growth Board<sup>46</sup> as well as the remedies available when a GMA county or city is found noncompliant with SEPA.<sup>47</sup> Far from Futurewise's predictions, SEPA has hardly been eviscerated. Even if a development application receives vested status, this does not equate to automatic approval. BSRE's application for an urban center permit is still subject to the County's review process prior to any approval.<sup>48</sup> In addition, it must still undergo project-level SEPA review.<sup>49</sup> Further, BSRE's application could be denied.<sup>50</sup> Finally, even if the permit were approved, an aggrieved party could appeal the permit approval to superior court under SEPA<sup>51</sup> and LUPA<sup>52</sup> to obtain the relief they seek.

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<sup>44</sup> Amicus Brief at 12-13.

<sup>45</sup> RCW 36.70A.320(1).

<sup>46</sup> RCW 36.70A.280(1)(a).

<sup>47</sup> RCW 36.70A.300, .302.

<sup>48</sup> *See former* SCC 30.34A.180. Attached hereto as Appendix B. When BSRE submitted its application for an urban center development, the development regulations in effect were those originally adopted by Amended Ordinance No. 09-079. Since then (and not relevant to these proceedings), SCC 30.34A.180 has been amended by Amended Ordinance Nos. 13-050 and 13-007.

<sup>49</sup> RCW 43.21C.031 (Environmental impact statement required for major actions having probable significant, adverse environmental impact); Ch. 30.61 SCC (Environmental Review (SEPA)). Attached hereto as Appendix C.

<sup>50</sup> *See former* SCC 30.34A.180.

<sup>51</sup> RCW 43.21C.075; *See, also*, SCC 30.61.300, .330.

<sup>52</sup> The Land Use Petition Act, ch. 36.70C RCW.

Futurewise has provided no persuasive legal analysis or authorities that the Court of Appeals' Opinion was incorrectly decided.

**III. CONCLUSION**

Futurewise has added nothing to the analysis of this simple case involving the plain meaning of RCW 36.70A.302(2). The Court of Appeals' Opinion should be affirmed.

Respectfully submitted this 10th day of October, 2013.

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# Appendix A

chapter 30.74 SCC

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**Chapter 30.74**  
**GROWTH MANAGEMENT ACT PUBLIC PARTICIPATION PROGRAM**  
**DOCKETING**

Sections:

- 30.74.010 Purpose and applicability.
- 30.74.015 Annual Docket Process
- 30.74.020 Submittal requirements.
- 30.74.030 Initial review and evaluation.
- 30.74.040 Initial review of rezone requests.
- 30.74.050 Council setting of final docket.
- 30.74.060 Processing of final docket.
- 30.74.070 Cost of environmental studies.
- 30.74.080 Timing for submittal of proposals.
- 30.74.090 Violation not grounds for invalidation.

**30.74.010 Purpose and applicability.**

(1) The purpose of this chapter is to establish procedures for persons to propose amendments and revisions to the comprehensive plan and implementing development regulations adopted under the Growth Management Act (GMA) and the Shoreline Management Act (SMA).

(2) Any person may propose amendments to the comprehensive plan and implementing development regulations adopted under the GMA and the SMA. This chapter applies to proposed amendments to:

- (a) The goals, objectives, policies, and implementation measures of the comprehensive plan;
- (b) The future land use map;
- (c) The urban growth area boundaries;
- (d) The transportation element;
- (e) The capital facilities element;
- (f) The county park plan;
- (g) Subarea plans;
- (h) The Shoreline Management Program as specified in SCC 30.67.110;
- (i) Any part of the Snohomish County Code adopted to meet the requirements of the GMA and the SMA; and
- (j) The zoning map if concurrent with a requested future land use map amendment.

(3) This chapter is intended to supplement, and not to limit or replace, existing county authority and procedures for adoption of legislation, including, but not limited to, the county charter and chapter 30.73 SCC. Nothing in this chapter shall be constructed to limit the legislative authority of the county to consider and adopt amendments and revisions to the comprehensive plan and development regulations.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 12-025, June 6, 2012, Eff date July 27, 2012)

#### **30.74.015 Annual Docket Process**

(1) The department shall give initial consideration to proposed amendments every year according to the procedures and criteria in SCC 30.74.030 and SCC 30.74.040.

(2) The county council shall determine which amendments should be processed further according to the procedures in SCC 30.74.050 and the following schedule:

(a) In the first year and fifth year following a ten-year update of the comprehensive plan as required by RCW 36.70A.130(3)(a), the county council shall determine which amendments should be processed further on a docket of minor amendments.

(b) In the second year and sixth year following a ten-year update of the comprehensive plan as required by RCW 36.70A.130(3)(a), the county council shall determine which amendments should be processed further on a docket that may include major and minor amendments.

(c) In the eighth year following a ten-year update of the comprehensive plan as required by RCW 36.70A.130(3)(a), the county council shall determine which amendments should be processed further concurrently with the next ten-year update and may include major and minor amendments.

(3) The county council has the legislative discretion to place a proposed amendment on the final docket for further consideration or to direct that the proposed amendment not be processed further.

(4) The department shall process the final docket of proposed amendments according to the procedures and the criteria in SCC 30.74.060.

(Added Amended Ord. 04-094, November 17, 2004, Eff Date December 10, 2004; Amended by Amended Ord. 10-022, Sept. 8, 2010, Eff date Oct. 3, 2010)

#### **30.74.020 Submittal requirements.**

(1) Any person proposing amendments to the comprehensive plan or development regulations under this chapter must submit the following to the department:

(a) A description of the proposed amendment including proposed map or text changes;

(b) The location of the property that is the subject of amendment on an assessor map dated and signed by the applicant, if the proposal is for a future land use map amendment;

- (c) A legal description and a notarized signature of one or more owners, if a rezone is requested by owners concurrent with a requested future land use map amendment;
- (d) An explanation of why the amendment is being proposed;
- (e) An explanation of how the proposed amendment is consistent with the GMA, the countywide planning policies, and the goals and objectives of the comprehensive plan;
- (f) If applicable, an explanation of why existing comprehensive plan language should be added, modified, or deleted; and
- (g) A SEPA checklist.

(2) If a proposal includes an expansion of an Urban Growth Area that would result in a net increase in residential or employment land capacity and the most recent Buildable Lands Report indicates that no additional land capacity of that type is needed in that Urban Growth Area, the proposal must also include removal of land from that Urban Growth Area so that the land capacity is not increased. The properties proposed for removal from the Urban Growth Area must be contiguous with the Urban Growth Area boundary and be rural in character with rural densities.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 10-022, Sept. 8, 2010, Eff date Oct. 3, 2010; Amended by Amended Ord. 11-050, Sept. 28, 2011, Eff date Oct. 16, 2011)

\*Code Reviser Note: Amendments to SCC 30.74.020 were adopted by the County Council in Amended Ordinance No. 11-050 but not all amendments were incorporated into the ordinance in underline/strikeout format.

(2) If a proposal includes an expansion of an Urban Growth Area that would result in a net increase in residential or employment land capacity and the most recent Buildable Lands Report indicates that no additional ((residential)) land capacity of that type is needed in that Urban Growth Area, the proposal must also include removal of land from that Urban Growth Area so that the ((residential)) land capacity is not increased. The properties proposed for removal from the Urban Growth Area must be contiguous with the Urban Growth Area boundary and be rural in character with rural densities.

The correct material is included pursuant to SCC 1.02.020(2)(g).

### **30.74.030 Initial review and evaluation.**

(1) The department shall conduct an initial review and evaluation of proposed amendments and assess the extent of review that would be required under the State Environmental Policy Act (SEPA). The initial review and evaluation shall include any review by other county departments deemed necessary by the department, and shall be made in writing. The department shall recommend to the county council that an amendment be further processed only if all of the following criteria are met, except as provided in SCC 30.74.040:

- (a) The proposed amendment is consistent with the countywide planning policies, the multicounty planning policies, the GMA, and other applicable state and federal laws;

(b) Any proposed change in the designation of agricultural lands, forest lands, and mineral resource lands is consistent with the designation criteria of the GMA and the comprehensive plan;

(c) If the proposed amendment has been reviewed by the planning commission or county council as part of a previous proposal, circumstances related to the current proposal have significantly changed and support a plan or regulation change at this time; and

(d) If the next docket cycle to be set is limited to minor amendments by SCC 30.74.015(2)(a), the proposal satisfies all of the following conditions:

(i) The time required to analyze environmental impacts of the proposed amendment is available within the time frame for processing minor amendments;

(ii) The time required for additional analysis to determine the need for additional capital improvements and revenues to maintain level of service, when applicable to the proposal, is available within the time frame for processing minor amendments;

(iii) The time required for processing any required additional amendments not anticipated by the proponent is available within the time frame for processing minor amendments;

(iv) The proposed amendment does not alter the urban growth area boundary;

(v) The proposed amendment does not make or require substantial changes to comprehensive plan policy language; and

(vi) The proposed amendment does not change land capacity to an extent that would require compensating changes in other areas in order to maintain consistency with policies and growth allocations established at the county and regional level.

(2) If the department finds that a proposal does not meet initial evaluation criteria, the department will, if appropriate, make recommendations to the applicant of the proposal regarding possible modifications to the proposal in order to meet criteria.

(3) Any person may resubmit a proposal to the department at any time, subject to the timelines contained in this chapter.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 10-022, Sept. 8, 2010, Eff date Oct. 3, 2010)

#### **30.74.040 Initial review of rezone requests.**

The department shall recommend to the county council that a rezone be further processed only if all the following criteria are met:

(1) The rezone request is for an implementing zone consistent with a concurrent proposed amendment to the future land use map that meets the criteria of SCC 30.74.030;

(2) Public facilities and services necessary for development of the site, as defined in applicable capital facilities plans, are available or programmed to be provided consistent with the comprehensive plan and development regulations as determined by applicable service providers; and

(3) Site plan approval would not be required concurrent with the rezone under chapters 30.31A, 30.31B, or 30.31F SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

#### **30.74.050 Council setting of final docket.**

(1) On or before the last business day of March of each year the department shall prepare its recommendation on each of the amendments proposed for consideration under SCC 30.74.030, and forward the recommendations to the county council.

(2) The county council will review the recommendations according to the schedule established in SCC 30.74.015(2) and determine in a public hearing which of the proposed amendments should be further processed as minor amendments, which should be processed as major amendments, and which amendments should not be processed further.

(3) Notice of the council hearing shall be given as required by SCC 30.73.070. The applicant shall be responsible for the costs associated with printing, publishing, and mailing of notice for any public hearing required for the applicant's docket proposal by chapter 30.73 SCC.

(4) The proposed amendments approved for further processing by the council shall be known as the final docket.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 06-077, Oct. 2, 2006, Eff date Oct. 14, 2006; Amended by Amended Ord. 10-022, Sept. 8, 2010, Eff date Oct. 3, 2010)

#### **30.74.060 Processing of final docket.**

(1) The department shall distribute the final docket to any state or local agency which is required by law to review and evaluate proposed amendments and revisions to the comprehensive plan and implementing development regulations. The department shall also conduct any review required by SEPA of the proposed amendments and revisions listed on the final docket.

(2) The department will process the final docket in accordance with chapter 30.73 SCC, except as provided to the contrary in this section. The department shall prepare a report including a recommendation on each proposed amendment and forward the report to the planning commission. The department will recommend approval if all the following criteria are met:

(a) The proposed amendment and any related proposals on the current final docket maintain consistency with other plan elements or development regulations;

(b) All applicable elements of the comprehensive plan, including but not limited to the capital plan and the transportation element, support the proposed amendment;

(c) The proposed amendment more closely meets the goals, objectives and policies of the comprehensive plan than the relevant existing plan or code provision;

(d) The proposed amendment is consistent with the countywide planning policies;

(e) The proposed amendment complies with the GMA; and

(f) New information is available that was not considered at the time the relevant comprehensive plan or development regulation was adopted that changes underlying assumptions and supports the proposed amendment.

(3) Unless otherwise directed by the county council, any county department that conducts review and evaluation of the proposed amendments, including any necessary environmental review pursuant to SEPA, shall complete its evaluation prior to action by the planning commission on the proposed amendments, except that a final or final supplemental environmental impact statement must be completed no later than seven days prior to final action by the county council.

(4) For final dockets that are limited to minor proposals by SCC 30.74.015(2)(a), the department and the planning commission shall complete their processing of the final docket and transmit final recommendations to the county council within twelve months of the date the county council sets the final docket, except as provided by SCC 30.74.060(6).

(5) For final dockets that may include major or minor proposals under SCC 30.74.015(2)(b), the department and the planning commission shall complete their processing of the final docket and transmit final recommendations to the county council within twenty-four months of the date the county council sets the final docket, except as provided by SCC 30.74.060(6).

(6) If the department determines that a proposed amendment on the final docket requires additional time for processing, the department shall seek direction from the county council on whether to shift that proposed amendment to a future batch or whether to keep it in its current batch and delay final action on the entire batch.

(7) Consistent with SCC 30.73.070(1), the county council is not required to take action on any proposed amendment on the final docket. The options available to the county council include, but are not limited to:

(a) Removing the proposed amendment from the final docket by motion;

(b) Not introducing an ordinance to approve the proposed amendment; (c) Delaying consideration of the proposed amendment to a future docket; or

(d) Otherwise not taking action on the proposed amendment.

(8) If the county council removes a proposed amendment from the final docket by motion under SCC 30.74.060(7)(a), it shall refund to the applicant the unspent portion of the money the applicant paid to the county for SEPA environmental review and studies in connection with the proposed amendment being on the final docket.

(9) If the county council does not take action on a proposed amendment within one year of the planning commission hearing on that proposed amendment, the proposed amendment shall be removed from the final docket and not processed further.

(10) The applicant shall be responsible for the cost of printing, publishing, and mailing of any SEPA notification required for the applicant's final docket proposal by chapter 30.61 SCC.

(11) The applicant shall be responsible for the cost of printing, publishing, and mailing of notice for any public hearing required for the applicant's final docket proposal by chapter 30.73 SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 10-022, Sept. 8, 2010, Eff date Oct. 3, 2010)

#### **30.74.070 Cost of environmental studies.**

Any person with a proposal on the final docket shall pay the cost of environmental review and studies under SEPA for proposed amendments with probable significant adverse environmental impacts that have not been previously analyzed, as required under chapter 30.61 SCC. The person may contribute to the cost of other studies required by existing plan policies or development regulations in order to facilitate the preparation of these studies in a timely manner. The person may, at his or her own expense and to the extent determined appropriate by the responsible official, provide additional studies or other information.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

#### **30.74.080 Timing for submittal of proposals.**

(1) The department will accept proposals for amendments at any time; however, proposals received after the last business day of October of each year will be processed in the next initial review and evaluation cycle.

(2) The department may establish administrative procedures necessary to administer this chapter.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 06-077, Oct. 4, 2006, Eff date Oct. 14, 2006; Amended by Amended Ord. 10-022, Sept. 8, 2010, Eff date Oct. 3, 2010)

#### **30.74.090 Violation not grounds for invalidation.**

Violation of this chapter shall not constitute grounds for invalidation of any comprehensive plan amendment, implementing development regulation, or other legislation.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

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# Appendix B

*former* SCC 30.34A.180

1 phase of the development if the overall development is to be phased unless the  
2 applicant demonstrates that site characteristics or constraints make compliance  
3 impractical in which case such improvements shall be installed in compliance with any  
4 timing requirements set forth in the terms and conditions of the urban center approval.  
5

6 **30.34A.175 Design Review Board**

7 (1) A design review board shall be convened for the purpose of reviewing urban  
8 center developments. The design review board shall be comprised of five persons  
9 nominated by the Snohomish County Executive and appointed by the Snohomish  
10 County Council. Members of the design review board:

11 (a) shall reside in Snohomish County;

12 (b) shall possess experience in neighborhood land use issues and demonstrate by  
13 their experience sensitivity in understanding the effect of design decisions on  
14 neighborhoods and the development process; and

15 (c) should possess familiarity with land use processes and standards as applied in  
16 Snohomish County.

17 (2) No member of the design review board shall have a financial or other private  
18 interest, direct or indirect, personally or through a member of his or her immediate  
19 family, in a project under review by the design review board on which that member sits.  
20

21 **30.34A.180 Review process and decision criteria.**

22 (1) Development Agreement Process: Approval under this subsection shall be as  
23 follows:

24 (a) Upon submittal of a complete application meeting the requirements of SCC  
25 30.34A.170, the applicant shall immediately initiate negotiations of one agreement with  
26 the city or town in whose urban growth area or MUGA the proposed development will be  
27 located and any city or town whose municipal boundaries border the proposed urban  
28 center development site.

29 (i) The parties shall have forty-five (45) days to reach an agreement on elements  
30 of the urban center development such as design, location, density or other aspects of  
31 the proposed development. The agreement must be consistent with Snohomish County  
32 development regulations.

33 (ii) If the parties cannot reach agreement within forty-five (45) days, the parties  
34 may mutually agree in writing to extend the deadline.

35 (iii) If the parties cannot reach agreement and do not agree to an extension, the  
36 applicant shall notify the department in writing and the application shall be reviewed as  
37 a Type 2 process under subsection (2) of this section.

38 (iv) Any party may withdraw from negotiations at any time and any party may  
39 decide that an agreement is not possible, the applicant shall notify the department in  
40 writing of the withdrawal and the application shall be reviewed as a Type 2 process  
41 under subsection (2) of this section.

- 1 (v) If the parties reach agreement, the agreement shall be memorialized in  
2 writing and submitted to the department. The department shall review the agreement  
3 for consistency with the Snohomish County Code.
- 4 (b) Following review of the agreement reached under subsection (1)(a) of this  
5 section, the department shall negotiate a development agreement with the applicant  
6 and process the application under chapter 30.75 SCC. If the department and the  
7 applicant cannot reach agreement on a development agreement, the applicant may  
8 choose to have the application reviewed under subsection (2) of this section.
- 9 (2) Type 2 Permit Decision Process: If any party withdraws from the negotiation of an  
10 agreement under subsection (1)(a) above, the forty-five (45) day period expires without  
11 the parties agreeing to an extension, or if the department and applicant cannot reach  
12 agreement for a development agreement, the application shall be reviewed as follows:
- 13 (a) The design review board established by SCC 30.34A.175 shall hold one open  
14 public meeting with urban center project applicants, county staff, neighbors to the  
15 project, members of the public, and any city or town whose municipal boundaries are  
16 within one mile of the proposed urban center development or whose urban growth area  
17 includes the subject site or whose public utilities or services would be used by the  
18 proposed urban center development to review and discuss proposed site plans and  
19 project design.
- 20 (b) Following the public meeting held pursuant to subsection (2)(a) of this section,  
21 the design review board shall provide written recommendations to the department and  
22 the applicant on potential modifications regarding the project, such as: scale, density,  
23 design, building mass and proposed uses of the project. The recommendations shall  
24 become part of the project application and they should:
- 25 (i) Synthesize community input on design concerns and provide early design  
26 guidance to the development team and community; and
- 27 (ii) Ensure fair and consistent application of the design standards of this chapter  
28 and any neighborhood-specific design guidelines.
- 29 (c) The urban center development application shall then be processed as a Type 2  
30 application as described in chapter 30.72 SCC and the hearing examiner may approve  
31 or approve with conditions the proposed development when all the following are met:
- 32 (i) The development complies with the requirements in this chapter, chapters 30.24  
33 and 30.25 SCC, and requirements of other applicable county code provisions;
- 34 (ii) The proposal is consistent with the comprehensive plan;
- 35 (iii) The proposal will not be materially detrimental to uses or property in the  
36 immediate vicinity; and
- 37 (iv) The development demonstrates high quality design by incorporating elements  
38 such as:
- 39 (A) Superior pedestrian- and transit-oriented architecture;
- 40 (B) Building massing or orientation that responds to site conditions;
- 41 (C) Use of structural articulation to reduce bulk and scale impacts of the  
42 development;
- 43 (D) Use of complementary materials; and

1 (E) Use of lighting, landscaping, street furniture, public art, and open space to  
2 achieve an integrated design;

3 (v) The development features high density residential and/or non-residential uses;

4 (vi) Buildings and site features are arranged, designed, and oriented to facilitate  
5 pedestrian access, to limit conflict between pedestrians and vehicles, and to provide  
6 transit linkages; and

7 (vii) Any urban center development abutting a shoreline of the State as defined in  
8 RCW 90.58.030(2)(c) and SCC 30.91S.250 shall provide for public access to the water  
9 and shoreline consistent with the goals, policies and regulations of the Snohomish  
10 County Shoreline Management Master Program.

11 (d) Whenever an urban center development application is reviewed as a Type 2  
12 permit decision process under subsection (2) of this section, the county shall involve the  
13 cities or towns in the review of urban center development permit applications proposed  
14 within their urban growth area or MUGA or whose municipal boundaries border the  
15 proposed urban center development site using the following procedures:

16 (i) The county shall notify any such city or town and provide contact information for  
17 the applicant;

18 (ii) Following notice the relevant city(ies) or town(s) shall contact the county on their  
19 need for level of involvement and issues of particular concern;

20 (iii) The county shall invite a staff representative from any city or town who contacts  
21 the county pursuant to subsection (2)(d)(ii) of this section to attend pre-application,  
22 submittal and re-submittal meetings;

23 (iv) The city's or town's recommendation shall:

24 (A) Contain the name, mailing address, and daytime telephone number of the  
25 city's or town's representative;

26 (B) Identify proposed changes to the application, specific requirements, actions,  
27 and/or conditions that are recommended in response to impacts identified by the city or  
28 town;

29 (C) State the specific grounds upon which the recommendation is made; and

30 (D) Where applicable, identify and provide documentation of the newly-discovered  
31 information material to the decision.

32 (v) The county shall respond to a city's or town's comments and recommendations  
33 in its final decision reached pursuant to this section.

34 (e) An applicant may sign a concomitant agreement in a form approved by the  
35 county. The concomitant agreement shall reference the required conditions of approval,  
36 including the site plan, design elements and all other conditions of project approval.  
37 The concomitant agreement shall be recorded, run with the land, and shall be binding  
38 on the owners, heirs, assigns, or successors of the property.

39 (f) The hearing examiner may deny an urban center development application without  
40 prejudice pursuant to SCC 30.72.060. If denied without prejudice, the application may  
41 be reactivated under the original project number and without additional filing fees or loss  
42 of project vesting if a revised application is submitted within six months of the date of  
43 the hearing examiner's decision. In all other cases a new application shall be required.

- 1 (3) All urban center development applications shall be subject to the following  
2 requirements:
- 3 (a) In addition to the notice required by chapter 30.70 SCC and subsection (2)(d)(i) of  
4 this section, the department shall distribute copies of the urban center development  
5 application to each of the following agencies and shall allow 21 days from the date of  
6 published notice for the agencies to submit comments on the proposal:
- 7 (i) Snohomish Health District;
  - 8 (ii) Department of public works;
  - 9 (iii) Washington State Department of Transportation; and
  - 10 (iv) Any other federal, state, or local agencies as may be relevant.
- 11 (b) Any revision which substantially alters the approved site plan is no longer vested  
12 and re-submittal of a complete application is required pursuant to SCC 30.34A.170.  
13 Revisions not requiring re-submittal are vested to the regulations in place as of the date  
14 the original application was submitted. Revisions after approval of the development  
15 which cause an increase in traffic generated by the proposed development shall be  
16 reviewed pursuant to SCC 30.66B.075.
- 17 (c) Urban center project approval expires after six years from the date of approval  
18 unless a complete application for construction of a project or for installation of the main  
19 roads and utilities has been submitted to the department.

20  
21 **30.34A.190 Public spaces and amenities.**

22  
23 On-site recreation required in SCC 30.34A.070 and pedestrian circulation required in  
24 SCC 30.34A.080 must be installed with completion of the first building or first phase of  
25 the development if the overall development is to be phased.

26  
27 **30.34A.200 Priority permit processing.**

28  
29 Applications that include public or nonprofit housing will receive priority for expedited  
30 site plan review as authorized in chapter 30.76 SCC.

31  
32 **30.34A.210 City or town review**

33  
34 (1) Within 60 days of the adoption of this ordinance, the county shall contact any city  
35 or town whose municipal boundaries are within one mile of the proposed urban center  
36 development or whose urban growth area includes the subject site or whose public  
37 utilities or services would be used by the proposed urban center development for the  
38 purpose of determining if the city or town wishes to consult with the county regarding  
39 the preparation of generalized design principles and development review procedures for  
40 the urban center.

41 (2) If the city or town responds affirmatively in writing within 60 days of receiving such  
42 notice, the county and city or town shall consult and may negotiate the terms and  
43 provisions of an interlocal agreement to define the terms related to the preparation of

# Appendix C

chapter 30.61 SCC

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## Chapter 30.61 ENVIRONMENTAL REVIEW (SEPA)

### Sections:

- 30.61.005 Legislative objectives.
- 30.61.010 Purpose and applicability.
- 30.61.020 SEPA rules - adoption by reference.
- 30.61.030 Use of exemptions.
- 30.61.035 Exemption thresholds for minor new construction.
- 30.61.040 Lead agency.
- 30.61.045 Lead department.
- 30.61.055 Designation of responsible officials and consultation.
- 30.61.057 Completeness determination.
- 30.61.060 Time limits.
- 30.61.065 Additional timing considerations.
- 30.61.070 Expiration of all applications subject to SEPA.
- 30.61.100 Environmental checklist.
- 30.61.110 Public notice.
- 30.61.112 Environmental review of building or land disturbing activity permit subsequent to environmental review of land use proposal.
- 30.61.115 Early notice of whether a determination of significance is likely.
- 30.61.120 Mitigated determination of nonsignificance (MDNS).
- 30.61.122 State Environmental Policy Act (SEPA) requirements relating to stormwater management.
- 30.61.130 EIS preparation.
- 30.61.140 EIS public hearing.
- 30.61.150 No action for seven days after publication.
- 30.61.200 Authority to condition.
- 30.61.210 Authority to deny.
- 30.61.220 Denial without EIS.
- 30.61.230 SEPA policies.
- 30.61.300 SEPA appeals - general.
- 30.61.305 Appeal of threshold determination-filing of affidavit or declaration.
- 30.61.307 Mandatory settlement conference.
- 30.61.310 Standard of review and hearing procedure for SEPA appeals.
- 30.61.330 Judicial review.

### **30.61.005 Legislative objectives.**

(1) In order to carry out the objectives set out in chapter 43.21C RCW, the county shall use all practicable means consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

- (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
  - (b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
  - (c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
  - (d) Preserve important 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.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

#### **30.61.010 Purpose and applicability.**

The purpose of this chapter is to establish the process for environmental review pursuant to chapter 43.21C RCW, the State Environmental Policy Act (SEPA). The requirements of this chapter are applicable to all actions as defined by the SEPA rules (chapter 197-11 of the Washington Administrative Code (WAC)) of the county and its departments, officers, boards, commissions, and councils.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

#### **30.61.020 SEPA rules - adoption by reference.**

This section adopts, by reference, the SEPA rules as set forth in chapter 197-11 WAC as now existing or hereafter amended and as supplemented by this chapter.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

#### **30.61.030 Use of exemptions.**

(1) Each department 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, the procedural requirements of this chapter shall not apply. The county shall not require completion of an environmental checklist for an exempt action.

(2) In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined (WAC 197-11-060) and shall identify the governmental licenses required. 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 reasonable alternatives;

(b) A department may withhold approval of an exempt action linked to a nonexempt action that would lead to modification of the physical environment, when such modification would have no purpose if nonexempt action(s) were not approved; and

(c) A department may withhold approval of exempt actions linked to a nonexempt 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.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

### **30.61.035 Exemption thresholds for minor new construction.**

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(1) In accordance with WAC 197-11-800(1)(c), the exempt levels for minor new construction are as follows:

- (a) The construction or location of any residential structures of 20 dwelling units or less;
- (b) The construction of agricultural structures referenced in WAC 197-11-800(1)(b)(ii) covering 30,000 square feet or less;
- (c) The construction of an office, school, commercial, recreational, service, or storage buildings in WAC 197-11-800(1)(b)(iii) of 12,000 square feet or less and associated parking facilities designed for 40 or fewer automobiles, if the project site is:
  - (i) zoned for commercial use;
  - (ii) designated for commercial use by the comprehensive plan; and
  - (iii) served by public water and sanitary sewer;
- (d) The construction of a parking lot designed for 40 or fewer parking spaces; and
- (e) Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation.

(2) The exempt levels established in SCC 30.61.035(1) are based upon local conditions.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 03-034, May 7, 2003, Eff date May 19, 2003)

### **30.61.040 Lead agency.**

(1) Lead agency responsibilities. The lead agency shall be the only agency responsible for complying with the threshold determination procedures, the supervision or actual preparation and circulation of draft and final environmental impact statements (EISs), and the conduct of any public hearings required by the SEPA rules.

(2) Lead agency determination.

(a) Any department receiving or initiating a nonexempt proposal, shall determine the lead agency for that proposal pursuant to the criteria set forth under WAC 197-11-050 and WAC 197-11-922 through WAC 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. To make the lead agency (and lead department) determination, such acting department must determine to the best of its ability the other agencies (and departments) with jurisdiction over the proposal. This can be done by requesting information from a private applicant and through consultation with the department.

(i) If the acting department determines that the county is the lead agency, it shall additionally determine the lead department for the proposal in accordance with SCC 30.61.045. If the lead department is not the acting department, the acting department shall transmit to the lead department the application it received together with the completed environmental checklist and its lead agency and lead department determination and explanation therefore. If not disputed pursuant to SCC 30.61.045(2), the lead department shall immediately mail a copy of the lead agency determination and explanation thereof to all other agencies with jurisdiction. The lead department shall then proceed to the threshold determination procedures in WAC 197-11-300 through WAC 197-11-390. If another agency with jurisdiction objects to the lead agency determination, and the dispute cannot be resolved by agreement, such agency may within 15 days of receipt of the determination, petition the department of ecology for a lead agency determination pursuant to WAC 197-11-946.

(ii) If the acting department determines that another agency is the lead agency, it shall mail to the lead agency a copy of the application it received, together with the completed environmental checklist and its determination of lead agency and explanations therefore. If the agency receiving this determination does not agree that it is the lead agency, and the dispute cannot be resolved by agreement, the department of ecology shall be petitioned for a lead agency determination pursuant to WAC 197-11-946.

(b) Upon receipt by the county of a lead agency determination for a proposal from another agency, the determination shall immediately be transmitted to the lead department for such proposal if the county was determined to be the lead agency or to departments with jurisdiction over the proposal if another agency was determined to be the lead agency. In the event that

such determination is inconsistent with the criteria of WAC 197-11-922 through 197-11-940, the county or lead department may object thereto. Any such objection must be made and resolved within 15 days of receipt of the determination, or the county must petition the department of ecology for a lead agency determination pursuant to WAC 197-11-946 within the 15-day time period. Any such petition shall be initiated by the county executive.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

#### **30.61.045 Lead department.**

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- (1) Lead department responsibilities. The lead department shall be responsible for undertaking lead agency duties where the county is the lead agency.
- (2) Procedure. The lead department shall be determined for projects for which the county is the lead agency in accordance with the criteria of this chapter. Interdepartmental disputes over the application of such criteria, which cannot be settled by agreement, shall be determined by the county executive. In addition, the county executive upon request therefore may waive the criteria and designate a special lead department for a proposal where strict application of such criteria would result in interdepartmental budgetary or manpower inequities.
- (3) Governmental proposals - project. The lead department for all proposals for governmental action of a project nature shall be the department which would have primary administrative responsibility for such action.
- (4) Governmental proposals - non-project. The lead department for all proposals for governmental action of a non-project nature shall be the department initiating the proposal.
- (5) Private projects.
  - (a) For proposed private projects over which only one department has jurisdiction, the lead department shall be the department with jurisdiction.
  - (b) For private projects which require licenses from more than one department, the lead department shall be one of the departments with jurisdiction, based upon the following order of priority:
    - (i) the department;
    - (ii) department of public works;
    - (iii) auditor;
    - (iv) county council; and
    - (v) other departments.
  - (c) The "responsible official" for purposes of receiving a notice of intent to commence a judicial appeal is the clerk of the county council.

(6) Agreements as to lead department status. Nothing herein shall prohibit a department from assuming the role of lead department as a result of an agreement among all departments with jurisdiction.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

### **30.61.055 Designation of responsible officials and consultation.**

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(1) The responsible official shall be designated as follows:

(a) For those proposals for which the county is the lead agency, the responsible official shall be the director of the lead department as determined in SCC 30.61.045.

(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 EIS, and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that are adopted by reference in this title.

(2) The department shall be responsible for the preparation of written comments for the county in response to a consultation request prior to a threshold determination, participation in scoping, or reviewing a draft EIS. All consultation requests shall be forwarded to the department who shall distribute them to appropriate departments with expertise or jurisdiction for their timely preparation of written responses.

(3) Departments when responding to consultation requests from a lead agency through the department pursuant to SCC 30.61.055(1)(b), or from a lead department where the county is the lead agency, shall provide to the director or lead department in writing such responsive data, comments, information, test results, and other material which it possesses relevant to its area of jurisdiction or expertise.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

### **30.61.057 Completeness determination.**

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(1) The following information is necessary for a complete application and the completion of adequate environmental review, and shall be submitted by the applicant at the time of permit application submittal:

(a) A signed and completed environmental checklist, including written responses to all questions; and

(b) Supporting documentation, including any additional information necessary to comprehensively disclose and evaluate whether the proposal is likely to have significant adverse environmental impacts.

(2) The information required in subsection (1)(a) of this section shall also be included as part of the information necessary for a complete application pursuant to SCC 30.70.040.

(3) A SEPA completeness determination shall be consolidated with the completeness determination for the underlying project permit application and shall be subject to the provisions of SCC 30.70.040.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

### **30.61.060 Time limits.**

The following time limits (expressed in calendar days) shall apply to the SEPA process for all project permit applications.

(1) Categorical exemptions. A determination that a project is categorically exempt shall be made within 28 days of the date of application submittal.

(2) Threshold determinations.

(a) Threshold determinations made for proposed actions subject to the time periods established for project permit review in SCC 30.70.110, shall be made as early as possible in the permit review process as is necessary to meet permit review time limitations specified in SCC 30.70.110, and for Type 2 project permit applications, on or before day 49 of the 120-day permit review period. If a proposal is substantially revised and/or altered so as to require the county to conduct a complete re-evaluation of proposal impacts in conjunction with a substantial project redesign, the revised proposal shall be processed as a new application for the purposes of meeting the review time period requirements of this chapter and SCC 30.70.040.

(b) No threshold determination for a Type 1 or Type 2 project permit application, shall be issued until the expiration of the public comment period established for the notice of application pursuant to SCC 30.70.060 except for a determination of significance.

(3) EIS preparation. The time period necessary for EIS preparation will vary on a case-by-case basis and is dependent upon the nature of the proposed action, and the number and complexity of the environmental elements to be included in the document. The time period for preparing an EIS shall be consistent with the time period specified by the department pursuant to SCC 30.70.110, or consistent with time periods mutually agreed to by the lead department and project applicant.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

### **30.61.065 Additional timing considerations.**

(1) A DNS or final EIS for a proposal shall accompany the report of the applicable department pursuant to SCC 30.72.040 and 30.73.040.

(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. The lead department may conduct the environmental review if the proposal's impacts upon the environment can be reliably identified without the submittal of detailed plans.

(3) For nonexempt proposals where the county is the lead agency and also the project proponent, the review required under this chapter may be conducted prior to submitting a project permit application.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.070 Expiration of all applications subject to SEPA.**

(1) If the responsible official determines that the information initially supplied is not reasonably sufficient to evaluate the environmental impacts of the proposal and make a threshold determination, further information may be required of the applicant in conformance with WAC 197-11-100 and WAC 197-11-335. The requirement of SCC 30.70.140 shall also apply.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.100 Environmental checklist.**

(1) A completed environmental checklist, 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; except that 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 complete all or part of the environmental checklist for a private project if either of the following occurs:

(a) The county has technical information on a question that is unavailable to the private applicant; or

(b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.110 Public notice.**

(1) The county shall give public notice of the issuance of a DNS, a determination of significance (DS), a draft EIS, and a draft supplemental EIS for site specific project actions by posting, publishing, and mailing as provided in SCC 30.70.045, except that when the optional DNS process of WAC 197-11-355 is used, notice shall be given by mailing a copy of the DNS to the department of ecology, agencies with jurisdiction, persons who commented, and any person who requests a copy. Notice of environmental documents for nonproject actions, including but not limited to, comprehensive plan adoption and amendments, and development regulation adoptions and amendments shall be given by publication pursuant to SCC 30.70.045(2).

(2) Whenever a DS is issued under WAC 197-11-360(3), the scoping procedures for the proposal shall be included as required in WAC 197-11-408.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 03-068, July 9, 2003, Eff date July 28, 2003)

**30.61.112 Environmental review of building or land disturbing activity permit subsequent to environmental review of land use proposal.**

Environmental review of a land use proposal should include all environmental impacts of the proposal known at the time of review, including environmental impacts for subsequent permits required for the same proposal. The applicable department must adopt the environmental documents used in the environmental review for the land use proposal for environmental review of subsequent permits required for the same proposal unchanged unless:

- (1) Another agency with jurisdiction is dissatisfied with the environmental documents, in which case it must assume lead agency status;
- (2) There are substantial changes to the proposal such that the proposal is likely to have significant adverse environmental impacts that were not previously considered; or
- (3) There is new information indicating the proposal's probable significant adverse environmental impacts that was not previously considered in the environmental review for the land use proposal.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 10-023, June 9, 2010, Eff date Sept. 30, 2010)

**30.61.115 Early notice of whether a determination of significance is likely.**

(1) 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.

(2) The responsible official shall respond to the request for early notice within 60 days of receipt of a complete application. The response shall:

- (a) State whether the county currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that are leading the county to consider a DS; and
- (b) 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.

(3) The county may assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.120 Mitigated determination of nonsignificance (MDNS).**

(1) As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(2) When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the county shall base its threshold determination on the changed or clarified proposal and shall make the determination within the time periods established for making a threshold determination in SCC 30.61.060.

(a) If the county indicated specific mitigation measures which would remove all probable significant adverse environmental impacts in its response to the request for early notice pursuant to SCC 30.61.115, and the applicant changed or clarified the proposal to include those specific mitigation measures, the county shall issue and circulate an MDNS under WAC 197-11-350(2).

(b) If the county indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the county shall make the threshold determination, issuing a DNS or DS as appropriate.

(c) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate.

(d) Mitigation measures which justify issuance of an MDNS may be incorporated in the DNS by reference to agency staff reports, studies, or other documents.

(3) An MDNS issued under WAC 197-11-350(2) requires a 14-day comment period and public notice.

(4) Mitigation measures incorporated in the MDNS shall be conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit.

(5) A decision maker or a reviewing body on an appeal shall not be bound by the designation of mitigation measures contained in an MDNS and may change the mitigation measures or impose additional conditions of approval as authorized by law. If at any time the proposed mitigation measures are withdrawn or substantially changed, the responsible official shall make a new threshold determination and, if necessary may withdraw the MDNS and issue a DS.

(6) The county's written response under SCC 30.61.115 shall not be construed as a DS. In addition, preliminary discussion of clarifications or changes to a proposal shall not bind the county to issue an MDNS.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

#### **30.61.122 State Environmental Policy Act (SEPA) requirements relating to stormwater management.**

SEPA review shall include consideration of the specific probable adverse environmental impacts of a development activity with regard to on-site and off-site changes to stormwater volume, release rate, erosion, sedimentation, stream channel stability and water quality. When the director determines that the requirements of chapters 30.43C, 30.43D, 30.44, 30.62A, 30.62B, 30.62C, 30.63A, 30.63B, 30.63C, 30.64, 30.65 and 30.67 SCC ensure that the development activity will not result in any probable significant adverse environmental impacts, compliance with those requirements shall

constitute adequate analysis and mitigation of the specific significant probable adverse environmental impacts of the development activity with regard to on-site and off-site changes to stormwater volume, release rate, erosion, sedimentation, stream channel stability and water quality, as provided by RCW 43.21C.240.

(Added by Amended Ord. 10-026, June 9, 2010, Eff date Sept. 30, 2010; Amended by Amended Ord. 12-025, June 6, 2012, Eff date July 27, 2012; Amended by Amended Ord. 13-042, July 10, 2013, Eff date July 22, 2013)

### **30.61.130 EIS preparation.**

(1) The content of a draft or final EIS prepared pursuant to this chapter is determined by and the responsibility of the responsible official. EISs are to be prepared in a responsible manner and with appropriate methodologies; they are to be objective and unbiased; they are to be done in a timely and economical manner; and they must avoid a conflict of interest or the appearance of a conflict of interest.

(2) A draft or final EIS for a county proposal will be prepared by the county or an approved consultant, as determined by and under the supervision of the responsible official. A draft or final EIS for a private project will be prepared by an approved consultant, as determined by and under the supervision of the responsible official.

(3) The preparation of a draft or final EIS for a private project is subject to the following:

(a) Upon issuance of a determination of significance, the responsible official shall notify the applicant of the county's procedure for EIS preparation;

(b) The applicant shall present its proposed consultant (or consultant team) for EIS preparation, selected from the county roster of approved consultants, to the responsible official. The responsible official shall approve or reject the proposed consultant. Any selected consultant may not have acted as an advocate for the applicant in seeking to demonstrate to the responsible official that the project does not require an EIS;

(c) The applicant, in consultation with the county, shall prepare a contract with the consultant or consulting team for consultant services. The scope of work for the contract shall be subject to county review, comment and approval; provided however, that any contract prepared pursuant to this chapter shall require the consultant to produce a document which allows the average reader to understand the significant and material information concerning the proposed action, impacts and alternatives, and that maintains a neutral and objective position in relation to the proposal. Such contract shall also specify that consultants who participate in preparing a county-directed EIS are considered an agent for the county in achieving an adequate document; that when adequacy of an EIS is challenged the consultant shall continue in its capacity as an agent for the county; and the consultant shall not act as an advocate for the project in any circumstances, including all SEPA appeals;

(d) The responsible official shall oversee and direct the consultant's preparation of a draft or final EIS, including but not limited to: advice regarding areas of research and the organization of the draft and final EIS, and requirements regarding appropriate scientific methodology;

(e) The responsible official shall permit the applicant to participate in the preparation of a draft or final EIS, including but not limited to providing relevant project information and data for any area covered by the draft or final EIS. Preliminary drafts of the EIS or sections of the EIS prepared by consultants shall be submitted directly to the responsible official for review. A concurrent submittal may be made to the applicant. Consultant communication with the applicant outside the presence of county staff is limited to factual matters. No discussion of preliminary environmental analysis or conclusions is allowed without written authorization by the responsible official. If the applicant fails or refuses to provide adequate information or data required for preparation of the document, including adequate response to comments on a draft EIS, the responsible official may refuse to further process or consider the application until such information or data is provided, or until the application has expired pursuant to the county code provisions for the underlying project permit application, whichever is first; and

(f) The applicant shall bear and secure all consultant and county costs incurred in the preparation of a draft or final EIS, including associated studies as determined by the responsible official. The applicant shall pay all costs prior to issuance of a final EIS. The applicant's obligation to pay for costs shall not be affected by the expiration of the application or if the application is not otherwise approved.

(4) The director is authorized to develop administrative guidelines and procedures to interpret and implement this section, including but not limited to, a form consultation contract, a system for collection of money from the applicant and distribution to the consultant for services rendered, requirements for requests for qualifications to establish a consultant roster, timelines for completion of a draft or final EIS, and an outline for EIS format and requirements for EIS content.

(5) This section shall not apply to projects for which a determination of significance has been issued and a consultant has been selected before July 16, 2000.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

#### **30.61.140 EIS public hearing.**

(1) Whenever a public hearing on the environmental impact of a proposed project action is required pursuant to WAC 197-11-535(2), and the county is the lead agency for the proposal, the hearing examiner shall preside at the hearing, and representatives from departments with jurisdiction shall attend.

(2) When a public hearing or meeting is conducted by the county for the proposed non-project action, the hearing or meeting may be used to satisfy the requirements of WAC 197-11-535(2).

(3) Notice of a public hearing conducted pursuant to this section shall be given at least 14 days prior to the hearing as follows:

(a) For project actions, in the manner specified in SCC 30.70.050; and

(b) For non-project actions, in the official county newspaper.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.150 No action for seven days after publication.**

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The county shall not act on a proposal for which an EIS has been required prior to seven days following the issuance of the final EIS.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.200 Authority to condition.**

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(1) The county may attach conditions to a permit or approval for a proposal. The conditions shall be related to specific adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decision maker. The decision maker shall cite the county SEPA policy that is the basis of any condition under this chapter. A written document shall state the mitigation measures, if any, that will be implemented as a part of the decision, including any monitoring of environmental impacts. The document may be the permit or approval itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.

(2) The mitigation measures included in the conditions shall be reasonable and capable of being accomplished.

(3) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of the proposal. Voluntary additional mitigation may occur.

(4) The county, before requiring mitigation measures, shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

(5) The conditions shall be based on one or more policies in SCC 30.61.230 and cited in the permit or approval, or other decision document.

(6) If, during project review, the county determines under RCW 43.21C.240 that the requirements for environmental analysis, protection, and mitigation measures in the county's development regulations, comprehensive plan, or in other applicable local, state, or federal laws or rules, provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action, the county shall not impose additional mitigation under this chapter.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.210 Authority to deny.**

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The county may deny a permit or approval for a proposal on the basis of SEPA if the following are met:

(1) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS prepared pursuant to this chapter;

(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 SCC 30.61.230, and identified in writing in the decision document.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

### **30.61.220 Denial without EIS.**

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When denial of a non-county proposal can be based on grounds which are ascertainable without preparation of an environmental impact statement, the responsible official may deny the application and/or recommend denial thereof by other departments or agencies with jurisdiction without preparing an EIS in order to avoid incurring needless county and applicant expense, subject to the following:

- (1) The proposal is one for which a DS has been issued or for which early notice of the likelihood of a DS has been given;
- (2) Any such denial or recommendation of denial shall be supported by express written findings and conclusions of substantial conflict with adopted plans, ordinances, regulations or laws; and
- (3) When considering a recommendation of denial made pursuant to this section, the decision-making body may take one of the following actions:
  - (a) Deny the application; or
  - (b) Find that there is reasonable doubt that the recommended grounds for denial are sufficient and remand the application to the responsible official for compliance with the procedural requirements of this chapter.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

### **30.61.230 SEPA policies.**

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The county designates and adopts by reference the following SEPA policies as currently adopted or hereafter amended as the basis for the county's exercise of authority pursuant to this chapter:

- (1) The comprehensive plan;
- (2) Shoreline management program;
- (3) Unified development code, Title 30 SCC;
- (4) Noise ordinance (chapter 10.01 SCC);
- (5) SR-527 Traffic Impact Mitigation Policy; and
- (6) The formally designated SEPA policies of other affected agencies or jurisdictions when there is an agreement with the affected agency or jurisdiction which specifically addresses Impact identification, documentation, and mitigation and which references the environmental policies formally designated by the agency or jurisdiction for the exercise of SEPA authority.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 10-072, Sept. 8, 2010, Eff date Oct. 3, 2010; Amended by Amended Ord. 12-025, June 6, 2012, Eff date July 27, 2012)

### **30.61.300 SEPA appeals - general.**

- (1) An aggrieved party of record may file an appeal of a DNS, MDNS, DS, or the adequacy of a final EIS as set forth in this section and SCC 30.71.050.
- (2) An appeal made pursuant to this section is processed as an appeal of a Type 1 decision in accordance with chapter 30.71 SCC, except as otherwise provided in this section.
- (3) An appeal of a DNS, MDNS, or EIS adequacy associated with an underlying Type 1 decision shall be combined with appeal of the underlying Type 1 decision and considered together at a combined appeal hearing, except as provided in SCC 30.61.300(10).
- (4) An appeal of a DNS, MDNS, or EIS adequacy associated with an underlying Type 2 application shall be considered at an appeal hearing that is combined with the open record hearing for the Type 2 application, except as provided in SCC 30.61.300(10).
- (5) An appeal of a DNS, MDNS, or EIS adequacy associated with a commercial building or land disturbing activity permit not related to single family residential development shall be processed as an appeal of a Type 1 decision.
- (6) An appeal of a DS associated with a project permit application shall be adjudicated prior to a decision on the project permit, and for a Type 2 application, prior to convening an open record hearing for the Type 2 application.
- (7) There is no administrative appeal of a DNS, MDNS, DS, or EIS adequacy associated with a Type 3 or other legislative decision.
- (8) Administrative appeals shall be limited to one review of a threshold determination and to one review of the adequacy of a final EIS. An appeal shall not be allowed following remand from an appeal under this chapter, except that an appeal challenging the adequacy of a final EIS shall be allowed if the adequacy of a final EIS was not the subject of the prior appeal.
- (9) Appeals of intermediate steps under this chapter, including but not limited to, lead agency determination, scoping, and draft EIS adequacy shall not be allowed.
- (10) Appeal of a DNS, MDNS, or EIS adequacy related to a Type 1 or Type 2 shoreline substantial development, shoreline variance and shoreline conditional use permit shall be submitted to the state shorelines hearings board together with appeal of the underlying permit.
- (11) An appeal of the conditioning or denial of a proposal pursuant to RCW 43.21C.060 shall not be made to the county council as a separate appeal under this chapter but may be considered as part of an underlying permit appeal filed pursuant to SCC 30.72.070.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 03-068, July 9, 2003, Eff Date July 28, 2003; Amended by Amended Ord. 10-023, June 9, 2010, Eff date Sept. 30, 2010)

**30.61.305 Appeal of threshold determination-filing of affidavit or declaration.**

(1) In addition to the requirements of chapter 30.71 SCC, any person filing an appeal of a threshold determination made pursuant to this chapter shall file with the hearing examiner, within seven days of filing the appeal, a sworn affidavit or declaration demonstrating facts and evidence, that, if proven, would demonstrate that the issuance of the threshold determination was clearly erroneous.

(2) The examiner shall summarily dismiss an appeal of a threshold determination pursuant to SCC 30.71.060 if the an appellant fails to file an affidavit or declaration pursuant to SCC 30.61.305(1), or if the examiner determines that the affidavit or declaration fails to demonstrate facts and evidence that, if proven, would demonstrate that the issuance of the threshold determination was clearly erroneous.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.307 Mandatory settlement conference.**

The hearing examiner shall schedule a settlement conference including the applicable director, the appellant, and the applicant (if not the appellant) within seven days of receipt of an appeal.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.310 Standard of review and hearing procedure for SEPA appeals.**

(1) An appeal of a DNS or an MDNS is reviewed under the clearly erroneous standard. Under the clearly erroneous standard, the hearing examiner may only overturn the decision of the responsible official if, after reviewing the entire record, the examiner is left with the definite and firm conviction that a mistake has been made.

(2) An appeal of an EIS adequacy determination is reviewed under the rule of reason standard. Under the rule of reason standard, the hearing examiner may only find the EIS inadequate if it fails to provide a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the proposed action.

(3) In any appeal, the environmental determination made by the responsible official shall be entitled to substantial weight. The appellant shall have the burden of proof.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

**30.61.330 Judicial review.**

(1) No person may seek judicial review of environmental determinations made pursuant to this chapter unless the person has first appealed the environmental determinations using the procedures set forth in the preceding sections of this chapter, where applicable.

(2) Proceedings for judicial review shall be governed by RCW 43.21C.075(4), (5), (6), (7), (8), and (9) and 43.21C.080. Judicial review under this section shall without exception be of the county's final decision on the underlying application or proposal, together with its accompanying environmental determinations as required by RCW 43.21C.075(6)(c).

(3) The official notice required pursuant to the requirements of RCW 43.21C.075(5)(a), shall state the date and place for commencing an appeal.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

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**The Snohomish County Code is current through Ordinance  
No. 13-069, passed September 18, 2013.**

The Clerk of the Council's Office retains the official version of the  
Snohomish County Code. Users should contact the Clerk of the  
Council's Office for legislation passed subsequent to the  
ordinance cited above.

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## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Thursday, October 10, 2013 2:42 PM  
**To:** 'McManus, Regina'  
**Cc:** 'wtanaka@omwlaw.com'; 'keick@omwlaw.com'; 'adecker@grahamdunn.com'; 'mjohnsen@karrtuttle.com'; 'dluetjen@karrtuttle.com'; 'ghuff@karrtuttle.com'; 'keith@newmanlaw.com'; 'michele@alliedlawgroup.com'; Rollins, Martin; Moffat, John; Otten, Matthew  
**Subject:** RE: E-Filing - Woodway, et al. v. BSRE Point Wells, LP, et al. - Supreme Court No. 88405-6

Rec'd 10-10-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** McManus, Regina [<mailto:rmcmanus@co.snohomish.wa.us>]  
**Sent:** Thursday, October 10, 2013 2:27 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** 'wtanaka@omwlaw.com'; 'keick@omwlaw.com'; 'adecker@grahamdunn.com'; 'mjohnsen@karrtuttle.com'; 'dluetjen@karrtuttle.com'; 'ghuff@karrtuttle.com'; 'keith@newmanlaw.com'; 'michele@alliedlawgroup.com'; Rollins, Martin; Moffat, John; Otten, Matthew  
**Subject:** E-Filing - Woodway, et al. v. BSRE Point Wells, LP, et al. - Supreme Court No. 88405-6

Attached for filing in Woodway, et al. v. BSRE Point Wells, LP, et al. (Supreme Court No. 88405-6) are the following documents:

1. Respondent Snohomish County's Answer to Amicus Curiae Brief of Futurewise; and
2. Certificate of Service

Please let me know if you have any trouble opening the document. Thank you.

Filed by Regina McManus (425-388-6347), on behalf of:

Martin Rollins, WSBA No. 14676  
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