ENVIRONMENTAL REVIEW / SEPA STRATEGIES

Clark County Rural Industrial Land Bank

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INTRODUCTION AND BACKGROUND

In 1996, the Growth Management Act (GMA), RCW 36.70A, was amended to allow major industrial developments to be sited outside of urban growth areas (UGAs). RCW 36.70A.367 allows counties to establish up to two rural industrial land banks (RILBs) with the intent that they develop as industrial properties. Key steps in the RILB process include the following:

- Identifying locations suited to major industrial use,
- Identifying the maximum size of the bank area,
- Developing a programmatic environmental review, and
- Developing comprehensive plan amendments and development regulations for the bank and future specific major industrial developments.

In 2014, Clark County received a docket application to establish an RILB on properties that straddle SR 503 north of the Vancouver UGA:

- Ackerland property west of 117th Avenue, 223.72 acres.
- Lagler property east of 117th Avenue, 378.71 acres.

Therefore the County is considering the docket sites and a programmatic environmental review approach that is to cover the following:

> *RCW 36.70a.367 (2) (b) The environmental review for amendment of the comprehensive plan must be at the programmatic level and, in addition to a threshold determination, must include:*
>
> *(i) An inventory of developable land as provided in RCW 36.70A.365; and*
>
> *(ii) An analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.*

This document provides options to meet the programmatic environmental review requirements.

INVENTORY, ALTERNATIVE SITES, AND PRIOR ENVIRONMENTAL STUDIES

Based on an inventory prepared by Berk Consulting et al. in March 2015, the following non-UGA sites are recommended to be carried forward as candidate alternative sites (see Exhibit 1):

- Site 1 is the subject docket site north of the Vancouver UGA.
- Site 2 is adjacent to the Ridgefield UGA.
- Site 3 lies between the Vancouver and Ridgefield UGAs.
- Site 4 is adjacent eastward of the Vancouver city limits.

All four non-UGA sites are in Industrial Land Reserve Overlays and have agricultural or rural zoning. All sites lie outside of a UGA but lie adjacent to one or more UGAs. All sites were considered for industrial or employment center purposes in the 2007 Comprehensive Plan Environmental Impact Statement (EIS); see the Alternative 3 map in Exhibit 2.

At least one UGA location is also under review. Two Section 30 properties are shown as Site 5 on Exhibit 1. The site was the subject of a subarea plan in 2004 and was annexed in 2008 and considered an employment center; a city led subarea plan and development agreements were prepared in 2009. See Exhibit 3 for a subarea plan map. Environmental review has occurred as developments have been proposed.

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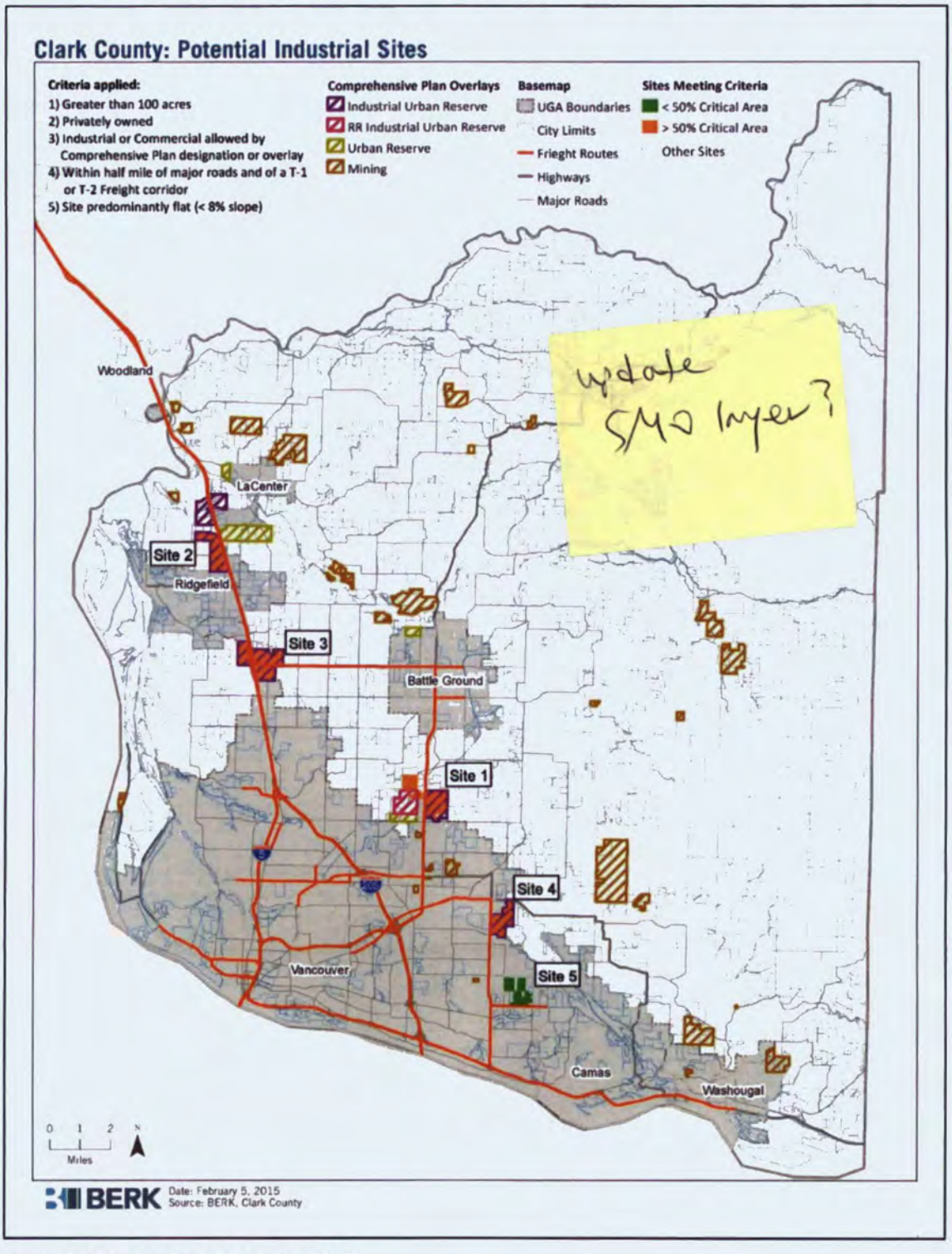
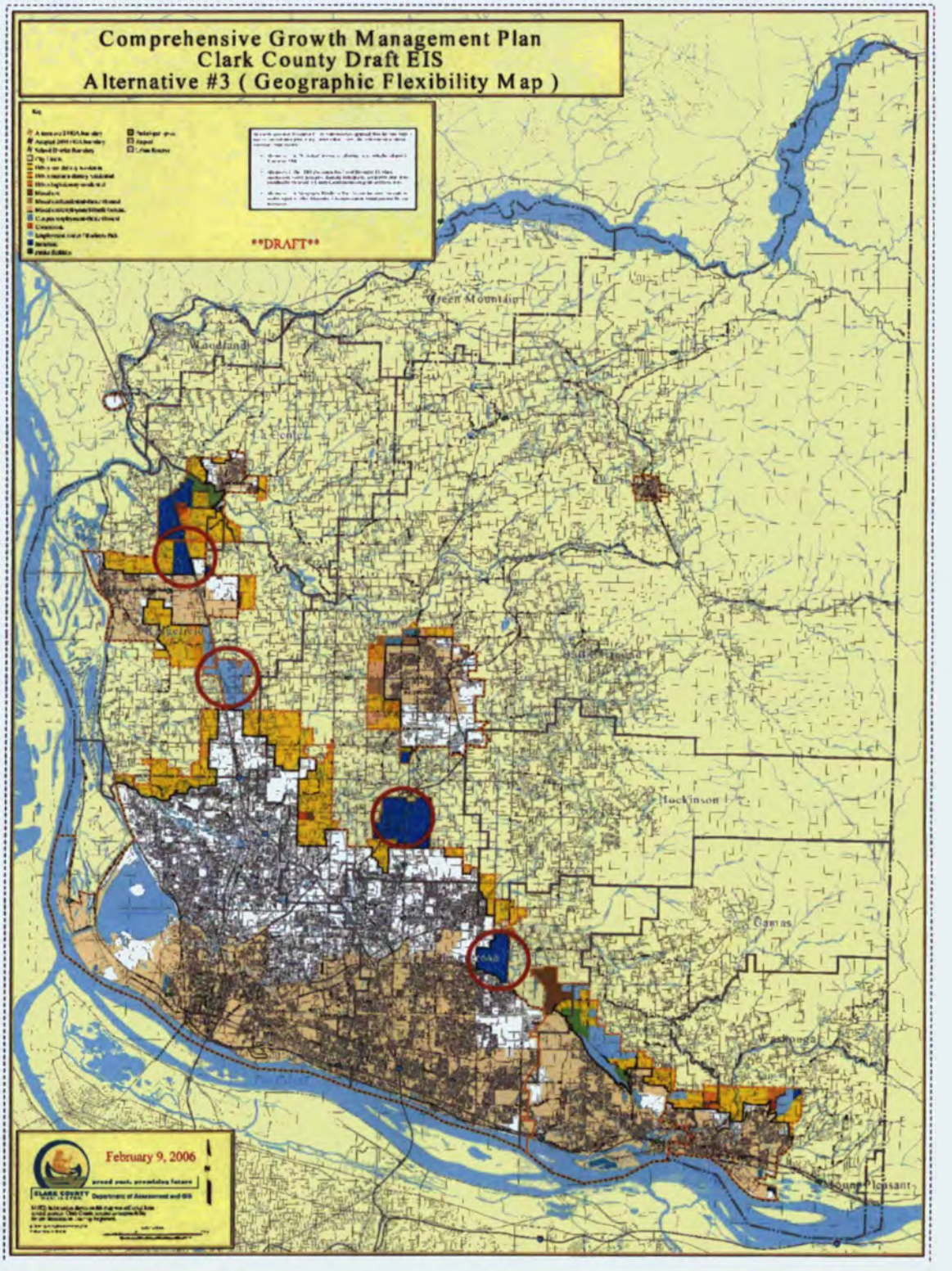
Exhibit 1. Second Screen and Candidate Sites Selected for Further Evaluation



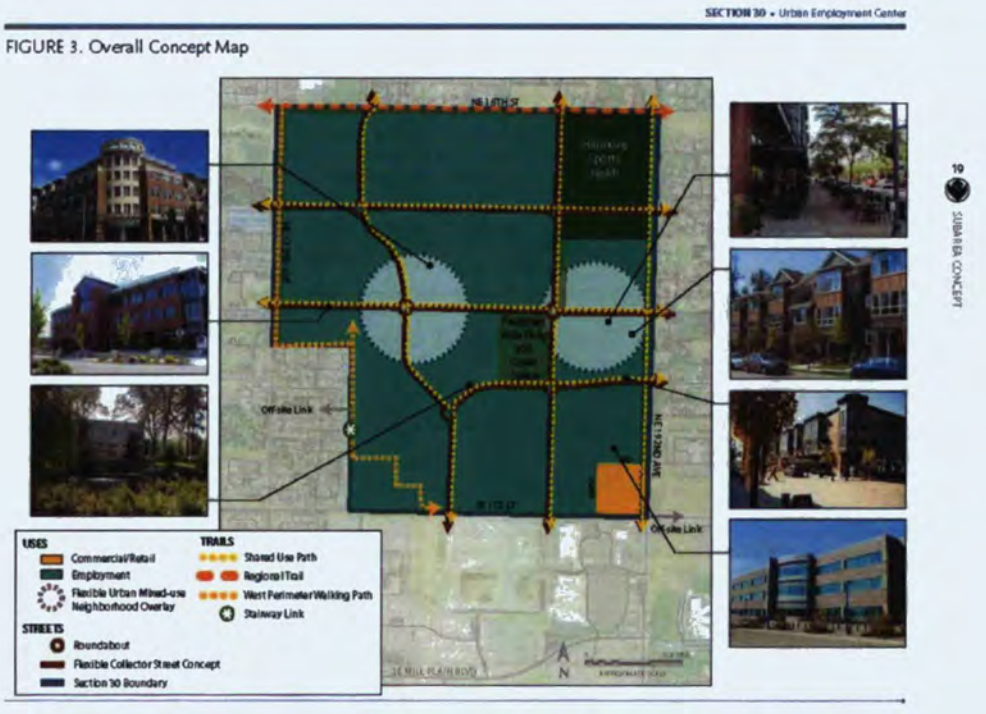
Source: Clark County GIS, BERK Consulting 2014

Exhibit 2. 2007 EIS Alternative 3



Source: Clark County 2006

Exhibit 3. Section 30 Subarea Plan Map, 2009



ENVIRONMENTAL REVIEW OPTIONS

The State Environmental Policy Act (SEPA) requires proposed project and non-project (plans, programs) actions be subject to environmental review. The RILB designation and master plan is considered non-project in nature.

An environmental document provides information on current study area conditions, potential alternatives, natural and built environment impacts, and mitigation measures.

There are generally two levels of SEPA review for proposals that are not exempt:

- **A determination of non-significance** (DNS) on the basis of a SEPA checklist that either indicates there are no significant adverse environmental impacts or that such impacts can be mitigated to a level that is less than adverse.
- **A determination of significance** (DS) and an environmental impact statement (EIS). An EIS is required for new legislation and other major actions significantly affecting the quality of the environment. An EIS is an informational document describing the affected environment, proposed actions and alternatives, potential impacts, and mitigation measures. It is typically used when the alternatives, impacts, or mitigation measures would require greater evaluation or because the level of significance of impacts is anticipated to be adverse despite mitigation.

Because a threshold determination (DNS or DS) can rely on existing SEPA documents or other relevant analysis, it is possible to issue either a DNS or DS and adopt or incorporate by reference prior documents The agency may also prepare new analysis in addition to adopted/incorporated documents For example a DNS could adopt a prior DNS or EIS and also rely on a new checklist adapted to the current proposal In the case of a DS, an agency can adopt a prior EIS and prepare an addendum The proposals may be the same as or different than those analyzed in the existing documents (WAC 197-11-600[2]) The value of using existing environmental documents is described in the SEPA Handbook, Section 2 7

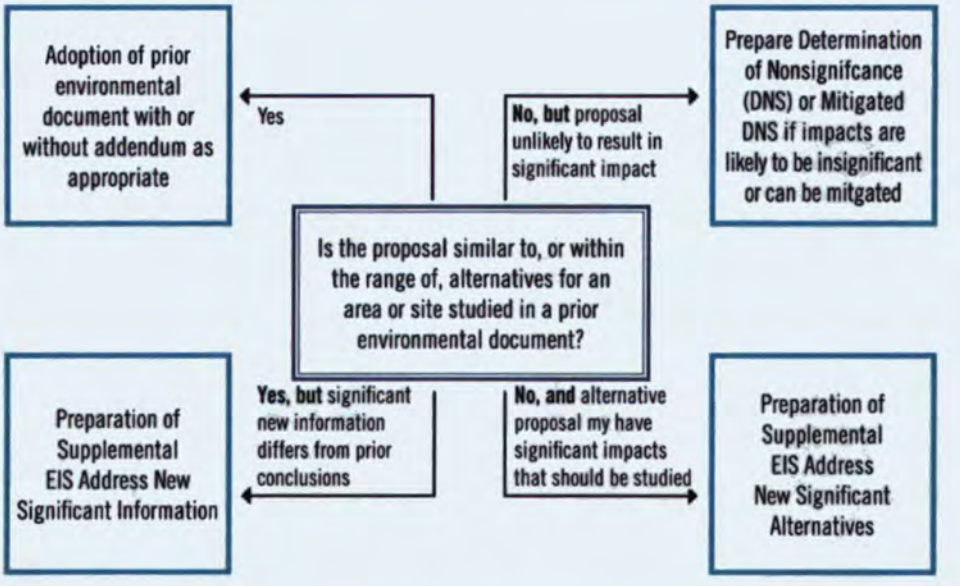
> *It is often possible to use existing documents to satisfy all or part of the requirements of SEPA Existing environmental documents that analyze all or part of the environmental impacts of a proposal may be adopted, addended, or incorporated by reference If there are any remaining environmental concerns, they can be addressed in supplemental analysis—such as a supplemental EIS or by an addendum issued with the new threshold determination*
>
> *The use of existing documents is particularly important for GMA cities and counties that have completed environmental analysis for their comprehensive plans and development regulations*

There are four possible approaches to adopting existing documents summarized in the SEPA Handbook Section 2 7 1 and specifically addressed in WAC 197-11-600(4) as well as -620, -625 and -630

> *Adoption/determination of significance (DS) Issued when an existing environmental impact statement addresses all probable significant adverse environmental impacts of a new proposal (A combined form is provided) A copy of the adoption notice must be circulated, but neither a comment period nor public notice is required There is a seven-day waiting period before an agency can take an action (e.g , issue/deny a permit)*
>
> *Adoption/DS and addendum· The same procedure as the adoption/DS applies, except that an addendum that adds minor new information is circulated with the adoption notice*
>
> *Adoption/Supplemental EIS If an existing EIS addresses some, but not all of the probable significant adverse environmental impacts of the new proposal, the EIS can be used as the basis for a new supplemental EIS The adoption notice must be included within the supplemental EIS [WAC 197-11-630(3)(b)] (See the discussion on supplemental EISs in Section 3 6)*
>
> *Adoption/Determination of Nonsignificance An existing environmental checklist or a NEPA environmental assessment may be adopted for a new proposal by using the combined adoption/DNS form The procedures for a DNS must be followed, including a comment period, distribution, and public notice, if required by WAC 197-11-340(2) (An addendum may be included to provide minor new information)*

A decision tree regarding the application of different SEPA documents is illustrated in Exhibit 4

Exhibit 4. Use of Prior SEPA Documents



Source: BERK Consulting 2011

Considering the County's prior environmental review in the 2007 Comprehensive Plan EIS addressing industrial and employment uses on the properties, and the proposed RILB designation, SEPA strategies include the following:

1. Adoption of the 2007 EIS and a Determination of Non-Significance supported by an expanded non-project SEPA Checklist (e.g. use of Ecology's non-project checklist that is optional for use).
2. Adoption of the 2007 EIS and a Determination of Significance supported by an Addendum.

Under either option the determinations will be supported by RILB inventory and alternatives analysis, de-designation analysis, and docket site studies (critical areas, transportation, utilities). These analyses will support either the expanded checklist or the addendum.

The recommended option is #2 given that it builds on the prior 2007 EIS, has a straightforward notice and 7-day waiting period.

Example notices and formats are listed below.

Notices

- Notice of Adoption / Determination of Non-Significance: http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbappd.html#dnsadopt
- Notice of Adoption / Determination of Significance: http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbappd.html#dsapdopt

Addenda

Addendum Examples

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- Notice of Adoption and Addendum for Kirkland Parkplace (relied on 2008 DS):
  Addendum Documents:
  - SEPA Addendum - Appendices (PDF 753kb)
- Kenmore Bastyr University Master Plan, DS/Adoption of Prior EIS with Addendum:
  http://archive.today/vw1qP
- Snohomish County, Various Non-Project Proposals with Addenda:
  http://www.snohomishcountywa.gov/1603/Environmental-Documents
- Non-Project Review Form (Could be used for Addendum Analysis):
  http://www.ecy.wa.gov/programs/sea/sepa/nprf61902.htm

SCHEDULE

Based on Section 40.510.040 (see attachment), Clark County is required to issue a Notice of Application at least two weeks ahead of a planning commission hearing. Also, a staff report must be provided at that time including a SEPA evaluation. The Determination of Significance may be appealed by proposal applicant or sponsor to the Board of County Councilors.

To allow for the appropriate time periods and to voluntarily allow for public review, the following sequence is recommended:

Develop the programmatic environmental evaluation of alternative sites / develop master plan concept and regulations	• June 2015: Preliminary Draft • July 2015, early: Draft
Public Workshop to review RILB proposals and preliminary environmental evaluation	• July 2015, late
Issue Notice of Application	• August 2015
Issue Determination of Significance / Notice of Adoption, and Staff Report	• September 2015
Planning Commission Hearing	• September or October 2015
BOCC Hearing	• November 2015

Attachment: Clark County Code
Section 40.510.040 Type IV Process – Legislative Decisions

A. Procedure.

A Type IV procedure may require one (1) or more hearings before the planning commission and does require one (1) or more hearings before the board.

B. Public Notice.

At least fifteen (15) calendar days before the date of the first planning commission hearing for an application subject to Type IV review, the responsible official shall:

1. Prepare a notice of application that includes the following information:

   a. The case file number(s);

   b. A description and map of the area that will be affected by the application, if approved, which is reasonably sufficient to inform the reader of its location;

   c. A summary of the proposed application(s);

   d. The place, days and times where information about the application may be examined and the name and telephone number of the county representative to contact about the application;

   e. A statement that the notice is intended to inform potentially interested parties about the hearing and to invite interested parties to appear orally or by written statement at the hearing;

   f. The designation of the review authority, the date, time and place of the hearing, and a statement that the hearing will be conducted in accordance with the rules of procedure adopted by the review authority;

   g. A statement that a staff report and, whenever possible, a consolidated SEPA review or integrated growth management document, will be available for inspection at no cost at least fifteen (15) calendar days before the hearing and will be provided at reasonable cost; and

   h. A general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings.

2. Mail a copy of a notice prepared under Section 40.510.040(B)(1) to:

   a. Parties who request notice of such matters;

   b. The neighborhood association in whose area the property in question is situated, based on the list of county recognized neighborhood associations kept by the responsible official; and

   c. To other people the responsible official believes may be affected by the proposed action;

3. Publish in a newspaper of general circulation a summary of the notice, including the date, time and place of the hearing and a summary of the subject of the Type IV process; and

4. Provide other notice deemed appropriate and necessary by the responsible official based on the subject of the Type IV process.

C. Staff Report.

At least fifteen (15) calendar days before the date of the first hearing, the responsible official shall issue a written staff report, SEPA evaluation and recommendation regarding the application(s), shall make available to the public a copy of the staff report and consolidated SEPA evaluation for review and inspection, and shall mail a copy of the consolidated recommendation to the review authority. The responsible official shall mail or provide a copy of the staff report at reasonable charge to other parties who request it.

D. Public Hearings.

1. Public hearings shall be conducted in accordance with the rules of procedure adopted by the review authority, except to the extent waived by the review authority. A public hearing shall be recorded electronically.

2. At the conclusion of a planning commission hearing, the planning commission shall announce one (1) of the following actions:

   a. That the hearing is continued. If the hearing is continued to a place, date and time certain, then additional notice of the continued hearing is not required to be mailed, published or posted. If the hearing is not continued to a place, date and time certain, then notice of the continued hearing shall be given as though it was the initial hearing before the planning commission; or

   b. That the planning commission recommends against or in favor of approval of the application(s) with or without certain changes, or that the planning commission will recommend neither against nor for approval of the application(s), together with a brief summary of the basis for the recommendation.

3. At least fifteen (15) calendar days before the date of the first board hearing, the responsible official shall:

   a. Prepare a notice that includes the information listed in Section 40.510.040(B)(1) except the notice shall be modified as needed:

      (1) To reflect any changes made in the application(s) during the planning commission review,

      (2) To reflect that the board will conduct the hearing and the place, date and time of the board hearing, and

      (3) To state that the planning commission recommendation, staff report, and SEPA evaluation are available for inspection at no cost and copies will be provided at reasonable cost;

   b. Mail a copy of that notice to the parties identified in Section 40.510.040(B)(2) and to parties who request it in writing;

   c. Publish in a newspaper of general circulation a summary of the notice, including the date, time and place of the hearing and a summary of the subject of the Type IV process; and

   d. Provide other notice deemed appropriate and necessary by the responsible official based on the subject of the Type IV process.

4. At the conclusion of its initial hearing, the board may continue the hearing or may adopt, modify or give no further consideration to the application or recommendations. If the hearing is continued to a place, date and time certain, then additional notice of the continued hearing is not required to be provided. If the hearing is not continued to a place, date and time certain, then notice of the continued hearing shall be given as though it was the initial hearing before the board.

(Amended: Ord. 2007-11-13)

E. Appeal of Board's Decision.

The action of the board in approving or rejecting a recommendation of the planning commission shall be final and conclusive unless a land use petition is timely filed in superior court pursuant to RCW 36.70C.040 (Section 705 of Chapter 347, Laws of 1995); provided, that no person having actual prior notice of the proceedings of the planning commission or the board's hearings shall have standing to challenge the board's action unless such person was a party of record at the planning commission hearing.

40.570.020 General Requirements

C. Additional SEPA Timing Considerations.

1. The following time limits (expressed in calendar days) shall apply when the county processes licenses for all private projects and those governmental proposals submitted to the county by other agencies requesting the county to perform lead agency functions:

   a. The county should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen (15) calendar days of determining that an application is fully complete pursuant to Section 40.510.020(C) for Type II decisions or Section 40.510.030(C) for Type III decisions, but no sooner than the end of the comment period on any notice of application required pursuant to Section 40.510.020(E) for Type II decisions or Section 40.510.030(E) for Type III decisions.

   b. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdiction:

      (1) The county should request such further information within fifteen (15) calendar days of determining that an application is fully complete;

      (2) The county shall wait no longer than thirty (30) days for a consulted agency to respond;

      (3) The responsible official should complete the threshold determination within fifteen (15) calendar days of receiving the requested information from the applicant or the consulted agency; provided, that a threshold determination shall not be issued until the expiration of the comment period on the notice of application, and shall be issued at least fifteen (15) calendar days prior to any open record pre-decision hearing required pursuant to Section 40.510.030(C).

   c. When the county must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the county should complete the studies within thirty (30) days of determining that the application is fully complete.

2. For nonexempt proposals, the determination of nonsignificance (DNS) or final EIS for the proposal shall be combined with the county's staff recommendation to any appropriate advisory or decision-making body, such as the planning commission, hearing examiner, or board.

3. 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 point at which environmental review may be initiated for specific permits or other licenses requiring detailed project plans and specifications is upon filing of a fully complete application, including an environmental checklist, and preliminary or conceptual site development plans.

40.570.080 SEPA and County Decisions

D. Appeals.

1. The appellate procedures provided for by RCW 43.21C.060, which provides for an appeal to a local legislative body of any decision by a non-elected official conditioning or denying a proposal under authority of SEPA, are formally eliminated. Clark County establishes the following administrative appeal procedures which are to be construed consistently with RCW 43.21C.075 and WAC 197-11-680:

   a. All appeals under this title shall be in writing, filed with the responsible official and accompanied by an appellate fee pursuant to Chapter6.110A; provided, no additional appellate fee shall be charged for appeals under this section filed in conjunction with an available administrative hearing on the underlying permit or approval.

   b. Appeals under this section are limited to the following:

      (1) The responsible official's procedural compliance with SEPA and Chapter 197-11 WAC in issuing the following determinations or documents:

         (a) Determination of nonsignificance (DNS),

         (b) Determination of significance (DS),

         (c) Environmental impact statement (EIS);

      (2) The conditioning or denial of a proposal under the authority of SEPA by a non-elected county official.

2. Appeals under this section shall be processed as follows:

   a. Determination of Significance (DS). An appeal may only be made by the proposal applicant or sponsor, and shall be filed within fourteen (14) calendar days of the issuance of the DS/scoping notice. The appeal shall be heard and decided by a hearing examiner appointed pursuant to Chapter 2.51 of this code, whose decision shall be final and not subject to further administrative appeal.

   b. Determination of Nonsignificance (DNS)/Environmental Impact Statement (EIS). An appeal may be filed by any agency or person in conjunction with the first nonexempt action on the proposal by a non-elected administrative official, as follows:

      (1) For proposals which may be approved by an administrative official without public hearing, including but not limited to building permits, site plan approvals, floodplain permits, shoreline permits, grading permits, wetland permits, habitat conservation permits, short plats, mobile home parks and residential planned unit developments, SEPA appeals must be filed in conjunction with, and within the limitation period applicable to, an available administrative appeal of the applicable permit or approval; provided, that if no administrative appeal of the underlying administrative permit or approval is otherwise provided for, an appeal under this section shall be filed within fourteen (14) calendar days of the issuance of the permit or approval, and shall be heard and decided by a hearing examiner appointed pursuant to Chapter 2.51 of this code. The decision of the hearing examiner or other initial appeal body on the SEPA appeal shall be final and not subject to further administrative appeal.

      (2) For proposals which may only be recommended for approval following a public hearing by the planning commission, including but not limited to comprehensive plan amendments and rezones, SEPA appeals shall be filed in writing with the board within fourteen (14) calendar days of issuance of said recommendation, which appeal shall be decided by the board in conjunction with its decision on the underlying recommendation.

(3) For proposals which may only be approved following a public hearing by the hearing examiner, including but not limited to rezones, conditional use permits, subdivisions, and mixed use planned unit developments, SEPA appeals of a procedural determination under SEPA shall be filed within fourteen (14) calendar days after a notice of SEPA determination. Such procedural and substantive SEPA appeal shall be decided by the examiner in conjunction with the examiner's final order on the proposal. The examiner's procedural SEPA decision is final and not subject to further administrative appeal.

c. Substantive SEPA Determination.

(1) For proposals subject to final administrative action by a non-elected administrative official or tribunal for which no administrative appeal is otherwise provided, any agency or person may appeal conditions or denials, or the failure to condition or deny, based upon substantive SEPA authority within fourteen (14) calendar days of the issuance of the administrative decision. Such appeal shall be heard and decided by a hearing examiner appointed pursuant to Chapter 2.51 of this code, whose decision shall be final and not subject to further administrative appeal. The examiner's open record appeal hearing shall be held within ninety (90) days, unless parties to the appeal agree to extend this time period.

(2) For proposals subject to final administrative action by a non-elected administrative official or tribunal for which an administrative appeal is otherwise provided, any agency or person may appeal conditions or denials, or the failure to condition or deny, based upon substantive SEPA authority by utilizing such otherwise available administrative appeal process.

3. For any appeal under this subsection, the county shall provide for a record that shall consist of the following:

a. Findings and conclusions;

b. Testimony under oath; and

c. A taped or written transcript.

4. The procedural determination by the county's responsible official shall carry substantial weight in any appeal proceeding.

5. The county shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.