



CITY OF KIRKLAND
Planning and Community Development Department
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Eric Shields, AICP, Planning Director
Nancy Cox, AICP, Development Review Manager

Date: August 21, 2014

Subject: State Environmental Policy Act (SEPA) Kirkland Municipal Code (KMC) Amendments

RECOMMENDATION

It is recommended that the City Council adopts an ordinance to amend the SEPA regulations for the City. The amendments correct an appeal process issue and update City SEPA rules in keeping with state legislative changes that went into effect between 2012 and 2014.

BACKGROUND DISCUSSION

Several updates to Chapter 24.02 KMC SEPA Procedures and Policies are recommended:

1. Amendment to KMC 24.02.230 Administrative appeals

As explained in the memo from the City Attorney (Exhibit 1), the SEPA administrative appeal procedures established in the Kirkland Municipal Code (KMC) are not now consistent with state law. State regulations allow local governments to provide an opportunity to appeal a SEPA determination only if there is also an appeal provided for the action to which the SEPA determination relates. If there is no appeal procedure established for the action itself, then there also should not be an appeal provided for the SEPA determination.

However, Kirkland's current SEPA regulations allow for a SEPA appeal, through the Hearing Examiner, regardless of whether there is an appeal provided for the action. For example, Kirkland doesn't provide a local appeal option for a building permit, but does allow a SEPA determination associated with the permit to be appealed.

The recommended amendment would remove the opportunity to appeal the SEPA determination in such an instance, but would retain the opportunity for public comment on the draft SEPA determination. SEPA rules require the responsible official to consider all timely comments made on a determination of nonsignificance (DNS). After considering comments, the City's Responsible

Official, the Planning Director, may choose to retain the DNS, issue a revised DNS, or – if significant adverse impacts have been identified – may withdraw the DNS and issue a determination of significance.

2. Threshold levels for categorical exemptions

The state SEPA rules establish a number of actions which are “categorically exempt” from SEPA review. The Department of Ecology (DOE) completed the first phase of rulemaking for categorical exemptions to comply with 2ESSB 6406 in 2012. In response, the City previously updated the threshold levels for categorical exemptions to the maximum allowed. The Washington Administrative Code (WAC) sections were subsequently amended and the WAC references in the KMC need to be changed accordingly.

3. Changes to Washington Administrative Code (WAC) SEPA rules effective May, 2014

The second phase of rulemaking by DOE led to rules effective earlier this year (Exhibit 2). Exhibit 3 is a matrix of the changes and an explanation of how the changes impact Kirkland’s SEPA rules. Because many WAC sections are adopted by reference in KMC Chapter 24.02, only four of the 24 WAC amendments result in recommended amendments to Chapter 24.02 KMC.

Some of the notable WAC amendments include:

- Clarification of “lands covered by water” in relation to SEPA exemptions (#8)
- Addition of new exemption for solar equipment (#12)
- Addition of new exemption for code text amendments if no substantive changes to environment (#18)
- Increase in the diameter of utility lines that are exempt from 8” to 12” (#19)
- Clarification of the exemption for wireless facilities (#20)

Exhibits

1. Memorandum from Robin Jenkinson, City Attorney
2. WAC amendments cross referenced to matrix in Exhibit 3
3. Matrix of state legislative changes to SEPA rules effective May 10, 2014

cc: File CAM14-00868



CITY OF KIRKLAND

City Attorney's Office

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MEMORANDUM

To: Kurt Triplett, City Manager

From: Robin S. Jenkinson, City Attorney

Date: July 17, 2014

Subject: SEPA Appeal Amendments

The recent Washington Supreme Court opinion in *Ellensburg Cement Products, Inc. v. Kittitas County*, ___ Wn.2d ___, (2014), pointed out an area where the City's State Environmental Policy Act (SEPA) procedures do not comport with state law.

Under SEPA, Ch. 43.21C RCW, and the SEPA rules promulgated by the Department of Ecology, the City's SEPA Responsible Official, the Planning Director, reviews project applications or other proposed actions (legislation) to determine whether the action will have a probable and significant adverse environmental impact. This is referred to as the threshold SEPA determination. If the Responsible Official concludes that a project or action will have a probable significant adverse impact, the Responsible Official issues a determination of significance and the preparation of an environmental impact is required. If the Responsible Official concludes that there will be no probable significant adverse impact on the environment, a determination of nonsignificance or a mitigated determination of nonsignificance is issued.

A local government is not required to provide any administrative appeal from a threshold determination. State law permits a local government to choose whether or not to provide an internal appeal. However, if a local government decides to provide an appeal of the threshold SEPA determination, that appeal must be consolidated with a hearing on the underlying government action to which the SEPA determination relates.

In reviewing the *Ellensburg Cement Products* opinion, staff realized that the Kirkland Municipal Code allows for the appeal of a threshold determination, in some instances, where there is no hearing or appeal provided on the underlying project permit. For example, if the City issues a threshold determination on a building permit, the KMC allows for a SEPA appeal even though

there is no hearing required for or administrative appeal available from the City decision to grant or deny a building permit.ⁱ This is contrary to state law.ⁱⁱ

As the *Ellensburg Cement Products* opinion makes clear, a local government may not create its own unique process that does not follow the statutory scheme described above. For this reason, staff is recommending that the administrative appeals process in the KMC be amended to comport with state law.

ⁱ An appeal of an order, decision and determination of the building official is available based on a claim that the Construction Administrative Code or the technical construction codes have been incorrectly interpreted or do not apply or that an equally good or better form of construction, method of protection or safety is proposed. KMC 21.06.570; KMC 21.06.572. The appeal available to challenge the grant or denial of a building permit is a Land Use Petition Action directly to superior court.

ⁱⁱ Washington Administrative Code 197-11-680(3)(a)(v) provides, in relevant part, as follows: "If an agency does not provide for a hearing or appeal on the underlying governmental action (either a hearing on the agency's recommendation or an agency appeal hearing after the decision is made), the agency may not hold a SEPA administrative appeal, except [list of circumstances not applicable to this memorandum]."

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

- #1 **WAC 197-11-158 SEPA/GMA project review—Reliance on existing plans, laws, and regulations.** (1) In reviewing the environmental impacts of a project and making a threshold determination, a GMA county/city may, at its option, determine that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules, provide adequate analysis of and mitigation for some or all of the specific adverse environmental impacts of the project.
- (2) In making the determination under subsection (1) of this section, the GMA county/city shall:
- (a) Review the environmental checklist and other information about the project;
 - (b) Identify the specific probable adverse environmental impacts of the project and determine whether the impacts have been:
 - (i) Identified in the comprehensive plan, subarea plan, or applicable development regulations through the planning and environmental review process under chapter 36.70A RCW or this chapter, or in other local, state, or federal rules or laws; and
 - (ii) Adequately addressed in the comprehensive plan, subarea plan, applicable development regulations, or other local, state, or federal rules or laws by:
 - (A) Avoiding or otherwise mitigating the impacts; or
 - (B) The legislative body of the GMA county/city designating as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW;
 - (c) Base or condition approval of the project on compliance with the requirements or mitigation measures in the comprehensive plan, subarea plan, applicable development regulations, or other local, state, or federal rules or laws; and
 - (d) Place the following statement in the threshold determination if all of a project's impacts are addressed by other applicable laws and no conditions will be required under SEPA: "The lead agency has determined that the requirements for environmental analysis, protection, and mitigation measures have been adequately addressed in the development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules, as provided by RCW 43.21C.240 and WAC 197-11-158. Our agency will not require any additional mitigation measures under SEPA."
- (3) Project specific impacts that have not been adequately addressed as described in subsection (2) of this section might be probable significant adverse environmental impacts requiring additional environmental review. Examples of project specific impacts that may not have been adequately addressed include, but are not limited to, impacts resulting from changed conditions, impacts indicated by new information, impacts not reasonably foreseeable in the GMA planning process, or impacts specifically reserved in a plan EIS for project review.
- (4) In deciding whether a project specific adverse environmental impact has been adequately addressed by an existing rule or law of another agency with jurisdiction, the GMA county/city shall consult orally or in writing with that agency and may expressly defer to that

agency. In making this deferral, the GMA county/city shall base or condition its project approval on compliance with these other existing rules or laws.

(5) If a GMA county/city's comprehensive plan, subarea plan, or development regulations adequately address some or all of a project's probable specific adverse environmental impacts, as determined under subsections (1) and (2) of this section, the GMA county/city shall not require additional mitigation under this chapter for those impacts.

(6) In making the determination in subsection (1) of this section, nothing in this section requires review of the adequacy of the environmental analysis associated with the comprehensive plans and development regulations that are being relied upon to make that determination.

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

#2

WAC 197-11-164 Planned actions—Definition and criteria. (1) Under RCW ((43.21C.031)) 43.21C.440, GMA counties/cities may designate a planned action. A planned action means one or more types of project action that:

(a) Are designated planned actions by an ordinance or resolution adopted by a GMA county/city;

(b) Have had the significant environmental impacts adequately addressed in an EIS prepared in conjunction with:

(i) A comprehensive plan or subarea plan adopted under chapter 36.70A RCW; or

(ii) A fully contained community, a master planned resort, a master planned development, or a phased project;

(c) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;

(d) Are located within an urban growth area, as defined in RCW 36.70A.030, or are located within a master planned resort;

(e) Are not essential public facilities, as defined in RCW 36.70A.200; and

(f) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.

(2) A GMA county/city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the GMA county/city.

(3) A GMA county/city may limit a planned action to a time period identified in the EIS or the designating ordinance or resolution adopted under WAC 197-11-168.

AMENDATORY SECTION (Amending WSR 95-07-023, filed 3/6/95, effective 4/6/95)

#3

WAC 197-11-235 SEPA/GMA integration documents. (1) "Integrating documents." Formal SEPA documents may be prepared as companion documents to accompany proposed GMA actions or may be integrated into the documentation of GMA actions. This section clarifies how WAC

197-11-640 (all SEPA documents) and WAC 197-11-425 through 197-11-442 (EISs) apply to integrated SEPA/GMA documents. The overriding consideration is the quality of information and analysis at the appropriate scope and level of detail for the particular GMA document, and not the format, length or bulk of the document.

(2) "Document format."

(a) There is no standard format for an integrated GMA document. For example an integrated comprehensive plan may look more like a plan preceded by an environmental summary (see WAC 197-11-235(5)), in contrast to a format described in WAC 197-11-430. Any separately bound supporting documents shall be clearly identified in the integrated document.

(b) An integrated GMA document is not required to contain a separate section on affected environment, significant impacts, and mitigation measures under WAC 197-11-440(6), as long as this information is summarized as required by this section, and the basis for this information can be readily found in the document and the supporting record.

(3) "Integrated non-EIS documents."

(a) If a proposed GMA action is not likely to have a significant adverse environmental impact, an integrated GMA document shall be prepared that combines the formal SEPA document (such as an environmental checklist/DNS, a notice of adoption or addendum) with the GMA document. The provisions of WAC 197-11-235 (1) and (2) apply to these integrated documents.

(b) If an environmental checklist is used and a DNS issued, only Parts A (which serves as a fact sheet), C (responsible official's signature), and D (nonproject checklist) need be prepared, plus an environmental summary as specified in WAC 197-11-235(5). Part D and the summary may be combined.

(c) If an addendum is to accompany or be incorporated into an integrated GMA document, it shall contain the information specified in WAC 197-11-235(5) for an environmental summary.

(4) "Plan/EIS documents." Because these documents need to contain sufficient environmental analysis for GMA actions, the same documents that meet GMA planning needs should constitute the SEPA documents for GMA actions and should provide a basis for future decisions on projects. An integrated document will constitute the necessary formal SEPA document, if accompanied by the following (as further specified by subsections (5) through (7) of this section):

- (a) Environmental summary and fact sheet;
 - (b) Concise analysis of alternatives;
 - (c) Comments and responses; and
 - (d) Appropriate technical and other materials.
- (5) "Environmental summary and fact sheet."

(a) The environmental summary includes the contents required in WAC 197-11-440(4). It should emphasize the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved, including the environmental choices to be made and the effectiveness of mitigation measures. The summary is not to be a summary of the GMA action.

(b) The summary should highlight from an environmental perspective the main options that would be preserved or foreclosed by the proposed GMA action. It should reflect SEPA's substantive policies and focus on any significant irreversible or irretrievable commitments of natural resources that would be likely to harm long-term environmental productivity, taking into account cumulative impacts. A summary of the principal environmental impacts may be presented in chart or matrix

form, summarizing the relevant elements of the environment and impact assessment required by WAC 197-11-440 (6)(b) through (e). The summary may discuss nonenvironmental factors and should do so if relevant to resolving issues concerning the main environmental choices facing decision makers.

(c) The summary should be no longer than necessary (generally fifteen to thirty pages for a plan/EIS, less for other integrated documents) and include tables or graphics to assist readability.

(d) At a minimum the fact sheet shall contain the information required in WAC 197-11-440(2). The fact sheet shall precede the summary in the integrated GMA document.

(6) "Concise analysis of alternatives."

(a) This analysis focuses on a comparative evaluation of the environmental consequences of the principal alternative courses of action that are or have been under consideration in the GMA planning process, as provided by WAC 197-11-440(5). The alternatives analysis shall evaluate the proposed GMA action compared to the principal alternative concepts and plan elements or regulatory options that were considered. This analysis allows decision makers, other agencies and the public to determine if the proposed GMA action can or should be revised before adoption to avoid or reduce environmental or other impacts. These alternatives may be:

(i) Those which are actively being considered; or

(ii) Those considered and screened earlier as part of a public GMA planning process.

(b) Descriptive material on the features of the alternatives (in contrast to comparing their impacts) should be kept to the minimum necessary to understand the comparative evaluation. If more description is necessary, it should be cited or located in the supporting record. Depending on the scope of the GMA action, the text of the alternatives analysis should be less than forty pages.

(7) "Comments and responses." The inclusion of comments and responses is not required for a draft integrated GMA document. For a final integrated document, comments (or a summary of comments) shall be compiled and response prepared as provided in WAC 197-11-560(3). A jurisdiction may include comments (or a summary of comments) received during the scoping process or on preliminary documents, as well as general or specific responses to these comments if any have been prepared, with the integrated GMA document on a proposed GMA action. If this approach is not used, these preliminary comments shall be included in the supporting record.

(8) "Supporting record, analyses, and materials."

(a) The integrated GMA document shall contain a list of the principal analytical documents and other materials (such as meeting minutes, maps, models, tapes or videos) that have been prepared, received, or used in developing the GMA action (see WAC 197-11-090). These materials shall be considered to be incorporated by reference under SEPA and part of the supporting record for SEPA compliance, and their contents need not be further described as required in WAC 197-11-635. Annotated lists are encouraged, but not required, to assist current and future reviewers.

(b) Materials in the supporting record should enable agencies and members of the public to identify and review the planning basis for the conclusions and analysis presented in the integrated GMA document as provided in the "procedural criteria" for preparing plan documents.

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

#4 **WAC 197-11-238 SEPA/GMA integration monitoring.** Monitoring information is important to maintain the usefulness of the environmental analysis in plans and development regulations for project-level review and to update plans under chapter 36.70A RCW. GMA counties/cities are encouraged to establish a process for monitoring the cumulative impacts of permit decisions and conditions, and to use that data to update the information about existing conditions for the built and natural environment. If a monitoring process is developed, it should be established at the time information on existing conditions is developed. Annual or periodic reports summarizing the data and documenting trends are encouraged.

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

#5 **WAC 197-11-508 SEPA register.** (1) The department of ecology shall prepare a SEPA register (~~(at least weekly)~~) that is web-based and updated daily, giving notice of all environmental documents required to be sent to the department of ecology under these rules, specifically:

- (a) DNSs under WAC 197-11-340(2);
 - (b) DSs (scoping notices) under WAC 197-11-408;
 - (c) EISSs under WAC 197-11-455, 197-11-460, 197-11-620, and 197-11-630;
 - (d) Notices of action under RCW 43.21C.080 and 43.21C.087; and
 - (e) Notices in the optional DNS process under WAC 197-11-355 (2)
- (d)(i) and (5).

(2) All agencies shall submit the environmental documents listed in subsection (1) of this section to the department promptly and in accordance with procedures established by the department.

(3) Agencies are encouraged to refer to the SEPA register for notice of SEPA documents which may affect them.

(4) The department:

(a) Shall establish the method for distributing the SEPA register, which may include listing on internet, publishing and mailing to interested persons, or any other method deemed appropriate by the department((-));

(b) May establish a reasonable format for the SEPA register;

(c) May charge a reasonable fee for the SEPA register as allowed by law, in at least the amount allowed by chapter 42.17 RCW, from agencies, members of the public, and interested organizations.

(5) Members of the public, citizen and community groups, and educational institutions are encouraged to refer to the SEPA register for notice of SEPA actions which may affect them.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

#6 **WAC 197-11-510 Public notice.** (1) When these rules require notice to be given under this section, the lead agency must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held. The agency may use its existing notice procedures.

Examples of reasonable methods to inform the public are:

- (a) Posting the property, for site-specific proposals;
- (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
- (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- (d) Notifying the news media;
- (e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; ~~((and/or))~~
- (f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas); and/or
- (g) Mailing or e-mailing notice to any person, group or agency who has requested notice.

(2) Each agency shall specify its method of public notice in its SEPA procedures, WAC 197-11-904 and 197-11-906. If an agency does not specify its method of public notice or does not adopt SEPA procedures, the agency shall use methods (a) and (b) in subsection (1).

(3) Documents which are required to be sent to the department of ecology under these rules will be published in the SEPA register, which will also constitute a form of public notice. However, publication in the SEPA register shall not, in itself, meet compliance with this section.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

#7 **WAC 197-11-610 Use of NEPA documents.** (1) An agency may adopt any environmental analysis prepared under the National Environmental Policy Act (NEPA) by following WAC 197-11-600 and 197-11-630.

(2) A NEPA environmental assessment (EA) or documented categorical exclusion may be adopted to ~~((satisfy requirements for))~~ support a determination of nonsignificance ~~((or EIS))~~ instead of preparing an environmental checklist, if the requirements of WAC 197-11-340, 197-11-600, and 197-11-630 ~~(and WAC 197-11-350 and 197-11-355 as applicable),~~ are met and elements of the environment in WAC 197-11-444 are adequately addressed.

(3) An agency may adopt a NEPA EIS as a substitute for preparing a SEPA EIS if:

- (a) The requirements of WAC 197-11-360, 197-11-600, and 197-11-630 are met (in which case the procedures in Parts Three ~~((through)),~~ Four, and Five of these rules for preparing an EIS shall not apply); and

(b) The federal EA or EIS is not found inadequate: (i) By a court; (ii) by the council on environmental quality (CEQ) (or is at issue in a predecision referral to CEQ) under the NEPA regulations; or (iii) by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C. 1857.

(4) Subsequent use by another agency of a federal EIS, adopted under subsection (3) of this section, for the same (or substantially the same) proposal does not require adoption, unless the criteria in WAC 197-11-600(3) are met.

(5) If the lead agency has not held a public hearing within its jurisdiction to obtain comments on the adequacy of adopting a federal environmental document as a substitute for preparing a SEPA EIS, a public hearing for such comments shall be held if, within thirty days of circulating its statement of adoption, a written request is received from at least fifty persons who reside within the agency's jurisdiction or are adversely affected by the environmental impact of the proposal. The agency shall reconsider its adoption of the federal document in light of public hearing comments.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

#8

WAC 197-11-756 Lands covered by water. (1) "Lands covered by water" means lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, (~~marshes, and swamps~~) and wetlands. As specified in Part Nine certain categorical exemptions do not apply ((to)) when a portion or all of a project or proposal is undertaken on lands covered by water((, as specified in Part Nine)).

(2) Wetlands - Wetlands are defined as areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.

(3) "Lands covered by water" does not include adjacent lands and designated buffers above the ordinary high water mark.

AMENDATORY SECTION (Amending WSR 13-02-065, filed 12/28/12, effective 1/28/13)

WAC 197-11-800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

Note: The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

#9 (1) **Minor new construction - Flexible thresholds.**

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question(~~(, except when a rezone or any license governing emissions to the air or discharges to water is required)~~). To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection apply except when the project:

(i) Is undertaken wholly or partly on lands covered by water;

(ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

#10 (b) The following types of construction shall be exempt(~~(, except when undertaken wholly or partly on lands covered by water)~~):

(i) The construction or location of four detached single family residential units.

(ii) The construction or location of four multifamily residential units.

(iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iv) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles. This exemption includes (~~stand-alone~~) parking lots for twenty or fewer automobiles not associated with a structure.

(v) Any (~~landfill~~) fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation (~~(not associated with an exempt project in subsection (b)(i), (ii), (iii), or (iv); and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder)~~) and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

#11 (c) Cities, towns or counties may raise the exempt levels up to the maximum specified in (d) of this subsection by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904). Separate maximum optional thresholds

are established in (d) of this subsection applying to both incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW 36.70A.040; other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the minimum and maximum level. An agency may adopt a system of several exempt levels ~~((+))~~, such as different levels for different geographic areas ~~((+))~~, and mixed use projects.

At a minimum, the following process shall be met in order to raise the exempt levels.

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations.

(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established ~~((project-level public))~~ notice and comment opportunities ~~((that are provided for proposals))~~ for the public, affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.

(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the ~~((local government))~~ agency shall provide a minimum of ~~((twenty-one))~~ sixty days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.

(iv) The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. The requirements for notice and opportunity to comment for the public, affected tribes, and agencies in (c)(i) and (ii) of this subsection and the requirements for protection and mitigation in (c)(i) of this subsection must be specifically documented. The local ordinance or resolution shall include, but not be limited to, the following:

- Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.

- Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.

- Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.

(d) The maximum exemption levels applicable to (c) of this subsection are:

Project types	Fully planning GMA counties		All other counties
	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential	30 units	20 units	20 units
Multifamily residential	60 units	25 units	25 units

Project types	Fully planning GMA counties		All other counties
	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Barn, loafing shed, farm equipment storage, produce storage or packing structure	40,000 square feet	40,000 square feet	40,000 square feet
Office, school, commercial, recreational, service, storage building, parking facilities	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
(Landfill) Fill or excavation	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

#12

(2) **Other minor new construction.** ~~((The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:))~~

(a) The exemptions in this subsection apply to all licenses required to undertake the following types of proposals except when the project:

(i) Is undertaken wholly or partly on lands covered by water;

(ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.

~~((b))~~ (c) The construction and/or installation of commercial on-premise signs, and public signs and signals.

~~((e))~~ (d) The construction or installation of minor road and street improvements by any agency or private party that include the following:

(i) Safety structures and equipment: Such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators((τ));

(ii) Transportation corridor landscaping (including the application of state of Washington ((state department of agriculture)) approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660)((τ));

(iii) Temporary traffic controls and detours((τ));

(iv) Correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required((τ));

(v) Adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required((τ));

(vi) Channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation((τ));

(vii) Installation of catch basins and culverts ~~((, and))~~ for the purposes of road and street improvements;

(viii) Reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders ~~((,))~~ where capacity is not increased and no new right of way is required;

(ix) Addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

~~((d))~~ (e) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

~~((e))~~ (f) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

~~((f))~~ (g) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance such as listing in a historic register.

~~((g))~~ (h) The installation or removal of impervious underground or above-ground tanks, having a total capacity of 10,000 gallons or less except on agricultural and industrial lands. On agricultural and industrial lands, the installation or removal of impervious underground or above-ground tanks, having a total capacity of 60,000 gallons or less.

~~((h))~~ (i) The vacation of streets or roads.

~~((i))~~ (j) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

~~((j))~~ (k) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(l) The installation of accessory solar energy generation equipment on or attached to existing structures and facilities whereby the existing footprint and size of the building is not increased.

#13

(3) **Repair, remodeling and maintenance activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging of over fifty cubic yards of material;

(b) Reconstruction ~~((,))~~ or maintenance of groins and similar shoreline protection structures; ~~((or))~~

(c) Replacement of utility cables that must be buried under the surface of the bedlands ~~((,))~~; or

(d) Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) **Water rights.** Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only the per-

mit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pump house reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.

#14 (5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to ~~((a))~~ a specifically designated and authorized public use established by the public landowner and used by the public for that purpose.

(c) ~~((The lease of real property when))~~ Leasing, granting an easement for, or otherwise authorizing the use of ((the)) real property ((for the term of the lease)) when the property use will remain essentially the same as the existing use for the term of the agreement, or when the use under the lease, easement or other authorization is otherwise exempted by this chapter.

#15 (6) ~~((Minor))~~ **Land use decisions.** The following land use decisions shall be exempt:

(a) Land use decisions for exempt projects, except that rezones must comply with (c) of this subsection.

(b) Other land use decisions not qualified for exemption under subsection (a) (such as a home occupation or change of use) are exempt provided:

(i) The authorized activities will be conducted within an existing building or facility qualifying for exemption under WAC 197-11-800 (1) and (2); and

(ii) The activities will not change the character of the building or facility in a way that would remove it from an exempt class.

(c) Where an exempt project requires a rezone, the rezone is exempt only if:

(i) The project is in an urban growth area in a city or county planning under RCW 36.70A.040;

(ii) The proposed rezone is consistent with and does not require an amendment to the comprehensive plan; and

(iii) The applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption; and the EIS adequately addressed the environmental impacts of the rezone.

(d) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, ~~((but not including further))~~ and short plats or short subdivisions ~~((or short platting within a plat or subdivision previously exempted under this subsection.~~

~~(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.~~

~~(c) Classifications of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW)) within the original short subdivision boundaries provided the cumulative divisions do not exceed the total lots allowed to be created under RCW 58.17.020. This exemption includes binding site plans authorized by RCW 58.17.035 up to the same number of lots allowed by the jurisdiction as a short subdivision.~~

(e) Granting of variance based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(f) Alteration of property lines as authorized by RCW 58.17.040(6).

(7) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(8) **Clean Air Act.** The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(9) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

(10) **Activities of the state legislature.** All actions of the state legislature are exempted. (~~(This subsection does not exempt the proposing of legislation by an agency (WAC 197-11-704).)~~)

(11) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(12) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(13) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities(~~(7)~~) including, but not limited to, cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of

public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities((7)) including, but not limited to, peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services((7)) including, but not limited to, detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities including, but not limited to, taxicabs, ambulances, and tow trucks: Provided, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution((7)) including, but not limited to, restaurants, liquor, and meat.

(h) All animal control licenses((7)) including, but not limited to, pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

#16

(14) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: Provided, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection.

(k) Classification of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(15) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

#17 (16) **Local improvement districts and special purpose districts.** The formation of local improvement districts and special purpose districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880. A special district or special purpose district is a local government entity designated by the Revised Code of Washington (RCW) and is not a city, town, township, or county.

(17) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

(18) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

#18 (19) **Procedural actions.** The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment ((shall be exempt)).

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

(c) Agency SEPA procedures ((shall be exempt)).

(20) ~~((**Building codes.** The adoption by ordinance of all codes as required by the state Building Code Act (chapter 19.27 RCW).))~~ **Reserved.**

(21) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations ~~((and thus requires approval of the department of ecology under RCW 70.107.060(4)))~~, SEPA compliance may be limited to those items which differ from state regulations.

(22) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

#19 (23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines (~~(eight)~~) twelve inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (up to and including 115,000 volts); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station vault, pipe, or well: (~~Provided, That~~) Additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, (~~That~~) the chemicals used are approved by (~~the~~) Washington state (~~department of agriculture~~) and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(24) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

(b) Licenses or approvals to remove firewood.

(c) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(d) Issuance of leases for Christmas tree harvesting or brush picking.

(e) Issuance of leases for school sites.

(f) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(g) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(h) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(i) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(j) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

(25) (~~Personal~~) **Wireless service facilities.**

(a) The siting of ~~((personal))~~ wireless service facilities are exempt if ~~((the facility))~~:

~~(i) ((Is a microcell and is to be attached to an existing structure that is not a residence or school and does not contain a residence or a school;~~

~~(ii) Includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence or school and does not contain a residence or school, and the existing structure to which it is to be attached is located in a commercial, industrial, manufacturing, forest, or agriculture zone; or~~

~~(iii)) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures that does not substantially change the physical dimensions of such structures; or~~

(ii) The siting project involves constructing a ((personal)) wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) "~~((Personal))~~ Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "~~((Personal))~~ Wireless service facilities" means facilities for the provision of ~~((personal))~~ wireless services.

~~(iii) ("Microcell" means a wireless communication facility consisting of an antenna that is either:~~

~~(A) Four feet in height and with an area of not more than five hundred eighty square inches; or~~

~~(B) If a tubular antenna, no more than four inches in diameter and no more than six feet in length)) "Collocation" means the mounting or installation of equipment on an existing tower, building, structure for the purposes of either transmitting or receiving, or both, radio frequency signals for communication purposes.~~

(iv) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(v) "Substantially change the physical dimensions" means:

(A) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(B) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

(26) The following Washington department of transportation projects and activities shall be exempt: The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation, as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

AMENDATORY SECTION (Amending WSR 03-16-067, filed 8/1/03, effective 9/1/03)

#22

WAC 197-11-820 Department of licensing. All licenses (~~required under programs administered by the department of licensing as of December 12, 1975~~) issued by the department of licensing are exempted, except the following:

(1) Camping club promotional permits under chapter 19.105 RCW.

(2) Motor vehicle wrecker licenses under chapter 46.80 RCW; WAC 197-11-800 (13)(i) shall apply to allow possible exemption of renewals of camping club promotional permits and motor vehicle wrecker licenses.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-825 Department of labor and industries. All licenses (~~required under programs administered by the department of labor and industries as of December 12, 1975~~) issued by the department of labor and industries are exempted, except the issuance of any license for the manufacture of explosives or the adoption or amendment by the department of any regulations incorporating general standards respecting the issuance of licenses authorizing the storage of explosives under chapter 70.74 RCW. The adoption of any industrial health or safety regulations containing noise standards shall be considered a major action under this chapter.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-830 Department of natural resources. The following actions and licenses of the department of natural resources are exempted:

(1) Forest closures, shutdowns and permit suspensions due to extreme unusual fire hazards.

(2) Operating permits to use power equipment on forest land.

(3) Permits to use fuse on forest land.

(4) Log patrol licenses.

(5) Permits for drilling for which no public hearing is required under RCW 79.76.070 (geothermal test drilling).

(6) Permits for the dumping of forest debris and wood waste in forested areas.

(7) Those sales of timber from public lands that the department of natural resources determines, by rules adopted pursuant to RCW 43.21C.120 do not have potential for a substantial impact on the environment.

(8) Except on aquatic lands under state control, leases for mineral prospecting under RCW 79.01.616 or 79.01.652, but not including issuance of subsequent contracts for mining.

(9) Sales of rock from public lands involving rock pits less than three acres in size that are used for activities regulated under a forest practices application that is exempt under RCW 43.21C.037.

AMENDATORY SECTION (Amending WSR 03-16-067, filed 8/1/03, effective 9/1/03)

WAC 197-11-835 Department of ((fisheries)) fish and wildlife.

The following activities of the department of ((fisheries)) fish and wildlife are exempted:

(1) The establishment of seasons, catch limits or geographical areas for fishing or shellfish removal.

~~(2) ((All hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice as defined in RCW 76.09.050 or regulations thereunder.~~

~~(3))~~ Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of ((game)) fish and wildlife) requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels which have been naturally abandoned within the twelve months previous to the hydraulic permit application.

~~((4))~~ (3) All clam farm licenses and oyster farm licenses, except where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands.

~~((5))~~ (4) All other licenses (other than those excepted in (2) and (3) above) authorized to be issued by the department as of December 12, 1975 except the following:

(a) Fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;

(b) Licenses for the mechanical and/or hydraulic removal of clams, including geoducks; and~~((7))~~

(c) Any license authorizing the discharge of explosives in water. WAC 197-11-800 (13)(i) shall apply to allow possible exemption of renewals of the above licenses.

~~((6))~~ (5) The routine release of hatchery fish or the reintroduction of endemic or native species into their historical habitat where only minor documented effects on other species will occur.

(6) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.

(7) The issuance of falconry permits.

- (8) The issuance of all hunting or fishing licenses, permits, or tags.
- (9) Artificial wildlife feeding.
- (10) The issuance of scientific collector permits.
- (11) Minor repair work to be done by hand tools. Examples include:
 - (a) Maintenance of fish screen or intake structures; or
 - (b) Silt and debris removal from boat launches, docks, and piers.
- (12) Collection of fish and wildlife for research.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-845 Department of social and health services and department of health. All department of social and health services and department of health actions (~~(under programs administered by the department of social and health services as of December 12, 1975,)~~) are exempted, except the following:

- (1) The adoption or amendment by the department of any regulations incorporating general standards for issuance of licenses authorizing the possession, use and transfer of radioactive source material under RCW 70.98.080, except that the issuance, revocation or suspension of individual licenses thereto shall be exempt. However, licenses to operate low level burial facilities or licenses to operate or expand beyond design capacity, mineral processing facilities or their tailings areas whose products or byproducts have concentrations of naturally occurring radioactive materials in excess of exempt concentrations, as specified in WAC 402-20-250, shall not be exempt.
- (2) The approval of a comprehensive plan for public water supply systems servicing one thousand or more units under WAC 248-54-065.
- (3) The approval of engineering reports or plans and specifications under WAC 248-54-085 and 248-54-095, for all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet located in new rights of way and major extensions to existing water distribution systems.
- (4) The approval of an application for a certificate of need under RCW 70.38.120 for construction of a new hospital or medical facility or for major additions to existing service capacity of such institutions.
- (5) The approval of an application for any system of sewerage and/or water general plan or amendments under RCW 36.94.100.
- (6) The approval of any plans and specifications for new sewage treatment works or major extensions to existing sewer treatment works submitted to the department under WAC 248-92-040.
- (7) The construction of any building, facility or other installation not exempt by WAC 197-11-800 for the purpose of housing department personnel, or fulfilling statutorily directed or authorized functions (~~((e.g.))~~ for example, prisons).
- (8) The approval of any final plans for construction of a nursing home pursuant to WAC 248-14-100, construction of a private psychiatric hospital pursuant to WAC 248-22-005 or construction of an alcoholism treatment center pursuant to WAC 248-22-510.

AMENDATORY SECTION (Amending WSR 03-16-067, filed 8/1/03, effective 9/1/03)

WAC 197-11-850 Department of agriculture. All department of agriculture actions (~~((under programs administered by the department of agriculture as of December 12, 1975))~~) are exempted, except for the following:

(1) The approval of any application for a commercial registered feedlot, quarantined registered feedlot under chapter 16.36 RCW, or chapters 16-28 and 16-30 WAC.

(2) The issuance or amendment of any regulation respecting restricted-use pesticides under chapter 15.58 RCW that would have the effect of allowing the use of a pesticide previously prohibited by Washington state.

(3) The removal of any pesticide from the list of restricted-use pesticides established in WAC 16-228-155 so as to permit sale of such pesticides to home and garden users, unless the pesticide is no longer manufactured and is not available.

(4) The removal of any pesticide from the list of highly toxic and restricted-use pesticides established under WAC 16-228-165 so as to authorize sale of such pesticides to persons not holding an annual user permit, an applicator certificate, or an applicator operator license, unless the pesticide is no longer manufactured and is not available.

(5) The removal of any pesticide from the category of highly toxic pesticide formulations established in WAC 16-228-165 so as to permit the sale of such pesticides by persons not possessing a pesticide dealer's license, unless the pesticide is no longer manufactured and is not available.

(6) The approval of any use of the pesticide DDT or DDD except for those uses approved by the centers for disease control of the United States Department of Health and Human Services (such as control of rabid bats).

(7) The issuance of a license to operate a public livestock market under RCW 16.65.030.

(8) The provisions of WAC 197-11-800 (13)(i) shall apply to allow possible exemption of renewals of the licenses in (1) through (7) above.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-860 Department of transportation. The following activities of the department of transportation shall be exempt:

(1) Approval of the annual highway safety work program involving the highway-related safety standards pursuant to 23 U.S.C. 402;

(2) Issuance of road approach permits and right of way rental agreements;

(3) Establishment and changing of speed limits of 55 miles per hour or less;

(4) Revisions of existing access control involving a single property owner;

(5) Issuance of a "motorist information signing permit," granting a private business person the privilege of having a sign on highway right of way which informs the public of the availability of his or her services;

(6) Issuance of permits for special units relative to state highways;

(7) Issuance of permits for the movement of over-legal size and weight vehicles on state highways;

(8) Issuance of encroachment permits for road approaches, fences and landfills on highway right of way; (~~and~~)

(9) Issuance of permits for utility occupancy of highway rights of way for use for distribution (as opposed to transmission).

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-865 Utilities and transportation commission. All utilities and transportation commission actions (~~of the utilities and transportation commission under statutes administered as of December 12, 1975,~~) are exempted, except the following:

(1) Issuance of common carrier motor freight authority under chapter 81.80 RCW that would authorize a new service, or extend an existing transportation service in the fields of petroleum and petroleum products in bulk in tank type vehicles, radioactive substances, explosives, or corrosives;

(2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;

(3) Regulation of oil and gas pipelines under chapter 81.88 RCW; and

(4) The approval of utility and transportation rates where the funds realized as a result of such approved rates will or are intended to finance construction of a project, approval of which would not be otherwise exempt under WAC 197-11-800, and where at the time of such rate approval no responsible official of any state or federal agency has conducted the environmental analysis prescribed by this chapter or the appropriate provisions of NEPA, whichever is applicable.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-870 Department of commerce (~~and economic development~~). The following activities of the department of commerce (~~and economic development~~) shall be exempt:

(1) The provisions of business consulting and advisory services that include tourist promotion under RCW 43.31.050.

(2) The promotion and development of foreign trade under RCW 43.31.370.

(3) The furnishing of technical and information services under RCW 43.31.060.

(4) The provision of technical assistance to applicants for loans and aid and/or grants by the community of economic revitalization board under chapter 43.160 RCW.

(5) The conduct of research and economic analysis under RCW 43.31.070, including the provision of consulting and advisory services and recommendations to state and local officials, agencies and governmental bodies as authorized under RCW 43.31.160, 43.31.200 and 43.31.210.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-875 Other agencies. Except for building construction (the majority of which is undertaken through the department of (~~general administration~~)) enterprise services, all activities of the following state agencies (~~(under programs they administer as of December 12, 1975,)~~) are exempted:

- (1) Office of the attorney general.
- (2) Office of the auditor.
- (3) Department of employment security.
- (4) Office of the insurance commissioner (~~(and state fire marshal)~~).
- (5) Department of (~~personnel~~) enterprise services.
- (6) (~~Department of printing.~~) Office of financial management.
- (7) Department of revenue.
- (8) Office of the secretary of state.
- (9) Office of the treasurer.
- (10) Arts commission.
- (11) Washington state patrol.
- (12) (~~Interagency committee for outdoor recreation.~~) Recreation and conservation office.
- (13) (~~Department of emergency services.~~) Emergency management division.
- (14) Department of (~~general administration, division of banking and division of savings and loan associations.~~
- (15) ~~Forest practices appeals board~~) financial institutions.
- (~~(16)~~) (15) Public employees' retirement system.
- (~~(17)~~) (16) Law enforcement officers' and firefighters' retirement board.
- (~~(18)~~) (17) Board for volunteer (fireman's retirement system board) firefighters and reserve officers.
- (~~(19)~~) (18) State department of retirement systems.
- (~~(20) Teachers' retirement system board.~~
- (~~21) Higher education personnel board.~~
- (~~22) Commission for vocational education.~~
- (~~23) State energy office.~~)
- (19) Pollution control hearings board.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-920 Agencies with environmental expertise. The following agencies shall be regarded as possessing special expertise relating to those categories of the environment under which they are listed:

- (1) Air quality.
 - (a) Department of ecology.
 - (b) Department of natural resources (only for burning in forest areas).
 - (c) Department of ~~((social and))~~ health ~~((services))~~.
 - (d) Regional air pollution control authority or agency.
- (2) Water resources and water quality.
 - (a) Department of ~~((game))~~ fish and wildlife.
 - (b) Department of ecology.
 - (c) Department of natural resources (state-owned tidelands, shorelands, harbor areas or beds of navigable waters).
 - (d) Department of ~~((social and))~~ health ~~((services))~~ (public water supplies, sewer systems, shellfish habitats).
 - ~~((e) Department of fisheries.)~~
- (3) Hazardous and toxic substances (including radiation).
 - (a) Department of ecology.
 - (b) Department of ~~((social and))~~ health ~~((services))~~.
 - (c) Department of agriculture (foods or pesticides).
 - (d) Department of ~~((fisheries))~~ fish and wildlife (introduction into waters).
 - ~~((e) Department of game (introduction into waters).)~~
- (4) Solid and hazardous waste.
 - (a) Department of ecology.
 - (b) Department of ~~((fisheries))~~ fish and wildlife (dredge spoils).
 - (c) Department of ~~((social and))~~ health ~~((services))~~.
 - ~~((d) Department of game (dredge spoils).)~~
- (5) Fish and wildlife.
 - ~~((a))~~ Department of ~~((game))~~ fish and wildlife.
 - ~~((b) Department of fisheries.)~~
- (6) Natural resources development.
 - (a) ~~((Department of commerce and economic development.~~
 - ~~(b))~~ Department of ecology.
 - ~~((e))~~ (b) Department of natural resources.
 - ~~((d))~~ (c) Department of ~~((fisheries))~~ fish and wildlife.
 - ~~((e) Department of game.)~~
- (7) Energy production, transmission and consumption.
 - (a) Department of ecology.
 - (b) Department of natural resources (geothermal, coal, uranium).
 - (c) ~~((State energy office.))~~ Department of commerce.
 - (d) Energy facility site evaluation council.
 - (e) Utilities and transportation commission.
- (8) Land use and management.
 - (a) Department of commerce ~~((and economic development))~~.
 - (b) Department of ecology.
 - (c) Department of ~~((fisheries))~~ fish and wildlife (affecting surface or marine waters).
 - (d) Department of natural resources (tidelands, shorelands, or state-owned or managed lands).

~~((e) Planning and community affairs agency.~~
~~(f) Department of game.))~~
 (9) Noise.
 (a) Department of ecology.
 (b) Department of ~~((social and))~~ health ~~((services))~~.
 (10) Recreation.
 (a) Department of commerce ~~((and economic development))~~.
 (b) Department of ~~((game))~~ fish and wildlife.
~~(c) ((Department of fisheries.~~
~~(d)) Parks and recreation commission.~~
~~((e))~~ (d) Department of natural resources.
 (11) Archaeological/historical.
~~((a) Office))~~ Department of archaeology and historic preservation.
~~((b) Washington State University at Pullman (Washington archaeological research center).))~~
 (12) Transportation.
 (a) Department of transportation.
 (b) Utilities and transportation commission.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

#23

WAC 197-11-936 Lead agency for private projects requiring licenses from more than one state agency. (1) For private projects which require licenses from more than one state agency, but require no license from a ~~((county/city))~~ local agency, the lead agency shall be one of the state agencies requiring a license, based upon the following order of priority:

- (a) Department of ecology.
- (b) Department of ~~((social and))~~ health ~~((services))~~.
- (c) Department of natural resources.
- (d) Department of ~~((fisheries))~~ fish and wildlife.
- (e) ~~((Department of game.~~
- ~~(f))~~ Utilities and transportation commission.
- ~~((g))~~ (f) Department of ~~((motor vehicles))~~ licensing.
- ~~((h))~~ (g) Department of labor and industries.

(2) When none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency that has the largest biennial appropriation.

(3) When, under subsection (1), an agency would be the lead agency solely because of its involvement in a program jointly administered with another agency, the other agency shall be designated the lead agency for proposals for which it is primarily responsible under agreements previously made between the two agencies for joint operation of the program.

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

WAC 197-11-938 Lead agencies for specific proposals. Notwithstanding the lead agency designation criteria contained in WAC 197-11-926 through 197-11-936, the lead agency for proposals within the areas listed below shall be as follows:

(1) For all governmental actions relating to energy facilities for which certification is required under chapter 80.50 RCW, the lead agency shall be the energy facility site evaluation council (EFSEC); however, for any public project requiring such certification and for which the study under RCW 80.50.175 will not be made, the lead agency shall be the agency initiating the project.

(2) For all private projects relating to the use of geothermal resources under chapter 79.76 RCW, the lead agency shall be the department of natural resources.

(3) For all private projects requiring a license or other approval from the oil and gas conservation committee under chapter 78.52 RCW, the lead agency shall be the department of natural resources; however, for projects under RCW 78.52.125, the EIS shall be prepared in accordance with that section.

(4) For private activity requiring a license or approval under the Forest Practices Act of 1974, chapter 76.09 RCW, the lead agency shall be either the department of natural resources or the city/county where the project is located, as set forth below:

(a) The interagency agreements authorized by WAC 222-50-030 between the department of natural resources and other governmental agencies may be used to identify SEPA lead agency status for forest practice applications. If used, this agreement shall meet the requirements for a lead agency agreement in WAC 197-11-942.

(b) If no interagency agreement exists, the SEPA lead agency determination shall be based on information in the environmental checklist required as part of the forest practice application requiring SEPA review. The applicant shall, as part of the checklist, submit all information on future plans for conversion, and shall identify any known future license requirements.

(c) For any proposal involving forest practices (i) (~~on lands platted after January 1, 1960, (ii)~~) on lands being(~~s~~) converted to another use, or (~~(iii)~~) (ii) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, the applicable county or city is the lead agency if the county or city will require a license for the proposal. Upon receipt of a forest practice application and environmental checklist, natural resources shall determine lead agency for the proposal. If insufficient information is available to identify necessary permits, natural resources shall ask the applicant for additional information. If a permit is not required from the city/county, natural resources shall be lead agency. If a city/county permit is required, natural resources shall send copies of the environmental checklist and forest practice application together with the determination of the lead agency to the city/county.

(d) Upon receipt and review of the environmental checklist and forest practice application, the city/county shall within ten business days:

(i) Agree that a city/county license is required, either now or at a future point, and proceed with environmental review as lead agency.

(ii) Determine that a license is not required from the city/county, and notify natural resources that the city/county is not lead agency; or

(iii) Determine there is insufficient information in the environmental checklist to identify the need for a license, and either:

(A) Assume lead agency status and conduct appropriate environmental analysis for the total proposal;

(B) Request additional information from the applicant; or

(C) Notify natural resources of the specific additional information needed to determine permit requirements, who shall request the information from the applicant.

(5) For all private projects requiring a license or lease to use or affect state lands, the lead agency shall be the state agency managing the lands in question; however, this subsection shall not apply to the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is required.

(6) For a pulp or paper mill or oil refinery not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology, when a National Pollutant Discharge Elimination System (NPDES) permit is required under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342).

(7) For proposals to construct a pipeline greater than six inches in diameter and fifty miles in length, used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, or for the transportation of synthetic or natural gas under pressure not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(8) For proposals that will result in an impoundment of water with a water surface in excess of forty acres, the lead agency shall be the department of ecology.

(9) For proposals to construct facilities on a single site designed for, or capable of, storing a total of one million or more gallons of any liquid fuel not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(10) For proposals to construct any new oil refinery, or an expansion of an existing refinery that shall increase capacity by ten thousand barrels per day or more not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(11) For proposed metal mining and milling operations regulated by chapter 78.56 RCW, except for uranium and thorium operations regulated under Title 70 RCW, the lead agency shall be the department of ecology.

(12) For proposals to construct, operate, or expand any uranium or thorium mill, any tailings areas generated by uranium or thorium milling or any low-level radioactive waste burial facilities, the lead agency shall be the department of ((social and)) health ((services)).

AMENDATORY SECTION (Amending WSR 13-02-065, filed 12/28/12, effective 1/28/13)

#24 **WAC 197-11-960 Environmental checklist.**

ENVIRONMENTAL CHECKLIST

Purpose of checklist:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for nonproject proposals:

For nonproject proposals complete this checklist and the supplemental sheet for nonproject actions (Part D). The lead agency may exclude any question for the environmental elements (Part B) which they determine do not contribute meaningfully to the analysis of the proposal.

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:

2. Name of applicant:
3. Address and phone number of applicant and contact person:
4. Date checklist prepared:
5. Agency requesting checklist:
6. Proposed timing or schedule (including phasing, if applicable):
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
10. List any government approvals or permits that will be needed for your proposal, if known.
11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)
12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

((TO BE COMPLETED BY APPLICANT EVALUATION FOR
 -AGENCY USE
 ONLY

B. ENVIRONMENTAL ELEMENTS

1. Earth

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.....
- b. What is the steepest slope on the site (approximate percent slope)?
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.
- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

2. Air

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.
- b. Are there any offsite sources of emissions or odor that may affect your proposal? If so, generally describe.
- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

3. Water

- a. Surface:
 - 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.
 - 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.
 - 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.
 - 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.
 - 5) Does the proposal lie within a 100-year flood plain? If so, note location on the site plan.
 - 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.
- b. Ground:
 - 1) Will groundwater be withdrawn, or will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.
 - 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.
- c. Water runoff (including storm water):
 - 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.
 - 2) Could waste materials enter ground or surface waters? If so, generally describe.
- d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

4. Plants

- a. Check or circle types of vegetation found on the site:
 - Deciduous tree: Alder, maple, aspen, other
 - Evergreen tree: Fir, cedar, pine, other
 - Shrubs
 - Grass
 - Pasture
 - Crop or grain
 - Wet soil plants: Cattail, buttercup, bullrush, skunk cabbage, other
 - Water plants: Water lily, eelgrass, milfoil, other
 - Other types of vegetation
- b. What kind and amount of vegetation will be removed or altered?
- c. List threatened or endangered species known to be on or near the site.
- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

5. Animals

- a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:
 - Birds: Hawk, heron, eagle, songbirds,
other:
 - Mammals: Deer, bear, elk, beaver,
other:
 - Fish: Bass, salmon, trout, herring, shellfish,
other:
- b. List any threatened or endangered species known to be on or near the site.
- c. Is the site part of a migration route? If so, explain.
- d. Proposed measures to preserve or enhance wildlife, if any:

6. Energy and natural resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

7. Environmental health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.
 - 1) Describe special emergency services that might be required.
 - 2) Proposed measures to reduce or control environmental health hazards, if any:

b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?
- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.
- 3) Proposed measures to reduce or control noise impacts, if any:

8. Land and shoreline use

- a. What is the current use of the site and adjacent properties?
- b. Has the site been used for agriculture? If so, describe.
- c. Describe any structures on the site.
- d. Will any structures be demolished? If so, what?
- e. What is the current zoning classification of the site?
- f. What is the current comprehensive plan designation of the site?
- g. If applicable, what is the current shoreline master program designation of the site?
- h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
- i. Approximately how many people would reside or work in the completed project?
- j. Approximately how many people would the completed project?
- k. Proposed measures to avoid or reduce displacement impacts, if any:
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
- c. Proposed measures to reduce or control housing impacts, if any:

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
- b. What views in the immediate vicinity would be altered or obstructed?
- c. Proposed measures to reduce or control aesthetic impacts, if any:

11. Light and glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?
- b. Could light or glare from the finished project be a safety hazard or interfere with views?

- e. ~~What existing offsite sources of light or glare may affect your proposal?~~
- d. ~~Proposed measures to reduce or control light and glare impacts, if any:~~

12. Recreation

- a. ~~What designated and informal recreational opportunities are in the immediate vicinity?~~
- b. ~~Would the proposed project displace any existing recreational uses? If so, describe.~~
- e. ~~Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:~~

13. Historic and cultural preservation

- a. ~~Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.~~
- b. ~~Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.~~
- e. ~~Proposed measures to reduce or control impacts, if any:~~

14. Transportation

- a. ~~Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.~~
- b. ~~Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?~~
- e. ~~How many parking spaces would the completed project have? How many would the project eliminate?~~
- d. ~~Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).~~
- e. ~~Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.~~
- f. ~~How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.~~
- g. ~~Proposed measures to reduce or control transportation impacts, if any:~~

15. Public services

- a. ~~Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.~~
- b. ~~Proposed measures to reduce or control direct impacts on public services, if any:~~

16. Utilities

- a. ~~Circle utilities currently available at the site: Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.~~
- b. ~~Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.~~

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature:

Date Submitted:

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

- 1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Proposed measures to avoid or reduce such increases are:

- 2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

- 3. How would the proposal be likely to deplete energy or natural resources?

Proposed measures to protect or conserve energy and natural resources are:

- 4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands?

Proposed measures to protect such resources or to avoid or reduce impacts are:

- 5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposed measures to avoid or reduce shoreline and land use impacts are:

- 6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Proposed measures to reduce or respond to such demand(s) are:

- 7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.)

B. ENVIRONMENTAL ELEMENTS

1. Earth

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.....
- b. What is the steepest slope on the site (approximate percent slope)?
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.
- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

2. Air

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.
- b. Are there any offsite sources of emissions or odor that may affect your proposal? If so, generally describe.
- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

3. Water**a. Surface:**

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

5) Does the proposal lie within a 100-year flood plain? If so, note location on the site plan.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

b. Ground:

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well? Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

c. Water runoff (including storm water):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

2) Could waste materials enter ground or surface waters? If so, generally describe.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

d. Proposed measures to reduce or control surface, ground, runoff water, and drainage pattern impacts, if any:

4. Plants

a. Check the types of vegetation found on the site:

- Deciduous tree: Alder, maple, aspen, other
- Evergreen tree: Fir, cedar, pine, other
- Shrubs
- Grass
- Pasture
- Crop or grain
- Orchards, vineyards or other permanent crops.
- Wet soil plants: Cattail, buttercup, bullrush, skunk cabbage, other
- Water plants: Water lily, eelgrass, milfoil, other
- Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

c. List threatened and endangered species known to be on or near the site.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

e. List all noxious weeds and invasive species known to be on or near the site.

5. Animals

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. Examples include:

Birds: Hawk, heron, eagle, songbirds, other:

Mammals: Deer, bear, elk, beaver, other:

Fish: Bass, salmon, trout, herring, shellfish, other:

b. List any threatened and endangered species known to be on or near the site.

c. Is the site part of a migration route? If so, explain.

d. Proposed measures to preserve or enhance wildlife, if any:

e. List any invasive animal species known to be on or near the site.

6. Energy and natural resources

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

7. Environmental health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

1) Describe any known or possible contamination at the site from present or past uses.

2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

4) Describe special emergency services that might be required.

5) Proposed measures to reduce or control environmental health hazards, if any:

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

3) Proposed measures to reduce or control noise impacts, if any:

8. Land and shoreline use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

c. Describe any structures on the site.

d. Will any structures be demolished? If so, what?

e. What is the current zoning classification of the site?

f. What is the current comprehensive plan designation of the site?

g. If applicable, what is the current shoreline master program designation of the site?

h. Has any part of the site been classified critical area by the city or county? If so, specify.

i. Approximately how many people would reside or work in the completed project?

j. Approximately how many people would the completed project displace?

k. Proposed measures to avoid or reduce displacement impacts, if any:

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:

9. Housing

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

c. Proposed measures to reduce or control housing impacts, if any:

10. Aesthetics

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

b. What views in the immediate vicinity would be altered or obstructed?

c. Proposed measures to reduce or control aesthetic impacts, if any:

11. Light and glare

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

b. Could light or glare from the finished project be a safety hazard or interfere with views?

c. What existing offsite sources of light or glare may affect your proposal?

d. Proposed measures to reduce or control light and glare impacts, if any:

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?

b. Would the proposed project displace any existing recreational uses? If so, describe.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

13. Historic and cultural preservation

a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe.

b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation. This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

14. Transportation

a. Identify public streets and highways serving the site or affected geographic area, and describe proposed access to the existing street system. Show on site plans, if any.

b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

c. How many additional parking spaces would the completed project or nonproject proposal have? How many would the project or proposal eliminate?

d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

h. Proposed measures to reduce or control transportation impacts, if any:

15. Public services

a. Would the project result in an increased need for public services (for example: Fire protection, police protection, public transit health care, schools, other)? If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any.

16. Utilities

a. Circle utilities currently available at the site: Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature:

Date Submitted:

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Proposed measures to avoid or reduce such increases are:

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

3. How would the proposal be likely to deplete energy or natural resources?

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands?

Proposed measures to protect such resources or to avoid or reduce impacts are:

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposed measures to avoid or reduce shoreline and land use impacts are:

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Proposed measures to reduce or respond to such demand(s) are:

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 197-11-840 Department of game.

SUMMARY OF STATE LEGISLATIVE CHANGES TO SEPA RULES EFFECTIVE MAY 10, 2014

	WAC amendatory section	Change in WAC	KMC location	Adopted in KMC by reference	Proposed amendment in KMC
1	197-11-158 GMA project review – Reliance on existing plans, laws, and regulations.	Change title of WAC 197-11-158 to <u>SEPA/GMA</u> project review...	24.02.010	No	Add “SEPA” to title of WAC 197-11-158
2	197-11-164 Planned actions – Definition and criteria.	Change RCW reference in section 1 to <u>43.21C.440</u>	24.02.180	Yes	None
3	197-11-235 Documents	Change title of WAC 197-11-235 to <u>SEPA/GMA integration</u> documents	24.02.190	No	Add “SEPA/GMA integration” to title of WAC 197-11-235
4	WAC 197-11-238 Monitoring	Change title of WAC 197-11-238 to <u>SEPA/GMA integration</u> monitoring	Not referenced in KMC	No	Add to 24.02.190 for adoption by reference
5	WAC 197-11-508 SEPA register	Edit to note that register is web-based and updated daily.	24.02.150	Yes	None
6	WAC 197-11-510 Public notice.	Edit to note that mailing or emailing notice is a reasonable method to inform the public.	24.02.150	Yes	None
7	WAC 197-11-610 Use of NEPA documents.	Edit to note that a NEPA environmental assessment may be adopted to support a DNS instead of preparing an environmental checklist in certain situations.	24.02.210	Yes	None

8	WAC 197-11-756 Lands covered by water.	Adds and defines wetlands to the definition of lands covered by water. States it does not include adjacent lands and designated buffers above the OHWM.	24.02.040	Yes	None
9	197-11-800 Categorical exemptions. (1) a Minor new construction – flexible thresholds.	Edits to clarify when exemptions do not apply.	24.02.060	Yes	None
10	197-11-800 Categorical exemptions. (1) b Minor new construction – flexible thresholds.	Adds exemption for parking lots for 20 or fewer automobiles not associated with a structure. Deletes the word landfill and replaces with <u>fill</u> and states that grading for an exempt project is exempt.	24.02.065	No	Deletes the word landfill and replaces with <u>fill</u> and states that grading for an exempt project is exempt.
11	197-11-800 Categorical exemptions. (1) c Minor new construction – flexible thresholds.	Process to raise exempt levels to the maximum specified in subsection d.	24.02.060	Yes	None
12	197-11-800 Categorical exemptions. (2) Other minor new construction.	Edits to clarify applicability. Edits to exemptions related to minor road and street improvements. Adds exemption for removal of tanks. Adds exemption for solar equipment.	24.02.060	Yes	None
13	197-11-800 Categorical exemptions. (3) Repair, remodeling and maintenance activities.	Specifies that dredging of over fifty cubic yards is not an exempt maintenance activity.	24.02.060	Yes	None

14	197-11-800 Categorical exemptions. (5) Purchase or sale of real property	Clarification when sale of publicly owned real estate is exempt from SEPA.	24.02.060	Yes	None
15	197-11-800 Categorical exemptions. (6) Minor Land use decisions.	Clarifies SEPA is not required for land use decisions for exempt projects. Lists when certain land use decisions not qualified for exemption still may be exempt. Clarifies exemptions for replats. Adds exemption for lot line alterations.	24.02.060	Yes	None
16	197-11-800 Categorical exemptions. (14) Activities of agencies.	Adds classification of land for current use taxation as an exemption.	24.02.060	Yes	None
17	197-11-800 Categorical exemptions. (16) Local Improvement districts.	Adds special purpose districts to exemption. The formation of a LID or special purpose district is exempt with some exceptions.	24.02.060	Yes	None
18	197-11-800 Categorical exemptions. (19) Procedural actions.	Adds exemption for code text amendments if no substantive changes to environment.	24.02.060	Yes	None
19	197-11-800 Categorical exemptions. (23) Utilities	Increases diameter of utility lines that are exempt from 8" to 12"	24.02.060	Yes	None
20	197-11-800 Categorical exemptions. (25) Personal wireless service facilities	Brings the exemption into line with FCC regulations. Addresses collocation and defines terms.	24.02.060	Yes	None
21	197-11-800 Categorical exemptions. (26) WSDOT activities	Adds exemptions for certain WSDOT projects.	24.02.060	Yes	None
22	197-11-820 Department of licensing; 197-11-825 Department of labor and industries; 197-11-830	Various edits and clarifications related to state agencies.	Not referenced in KMC	No	None

	Department of natural resources; 197-11-835 Department of fisheries; 197-11-845 Department of social and health services; 197-11-850 Department of agriculture; 197-11-860 Department of transportation; 197-11-865 Utilities and transportation commission; 197-11-870 Department of commerce and economic development; 197-11-875 Other agencies; 197-11-920 Agencies with environmental expertise.				
23	197-11-936 Lead agency for private projects requiring licenses from more than one state agency; 197-11-938 Lead agencies for specific proposals.	Edits related to state agencies.	24.02.050	Yes	None
24	197-11-960 Environmental Checklist	Adds links for "help." Deleted Section B Environmental Elements and redrafted some questions.	24.02.270	Yes	None

For Non-project actions, see RCW 43.21.450 (there are no corresponding WAC regs).

ORDINANCE O-4452

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA) AND AMENDING CHAPTER 24.02 SEPA PROCEDURES AND POLICIES OF THE KIRKLAND MUNICIPAL CODE; FILE NO. CAM14-00868.

WHEREAS, Washington's State Environmental Policy Act (SEPA) requires all state and local agencies consider the likely consequences before making decisions that affect the natural and built environment; and

WHEREAS, the 2012 legislature directed the Department of Ecology to modernize the rules that guide state and local agencies in conducting SEPA reviews in two rounds of rule updates; and

WHEREAS, the City of Kirkland ("City") adopted Ordinance No. 4361 to reflect SEPA rules updated by the Department of Ecology in 2012; and

WHEREAS, the Department of Ecology completed the second round of SEPA rules updates in 2014; and

WHEREAS, the City's SEPA rules need to be amended to take advantage of the streamlining of the SEPA process under the updated SEPA rules; and

WHEREAS, pursuant to WAC 197-11-800(19), amendments to SEPA procedures are categorically exempt;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Chapter 24.02 of the Kirkland Municipal Code is amended as set forth in Attachment A to this ordinance and incorporated by reference.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. This ordinance shall be in full force and effect five days from and after its passage by the Kirkland City Council and publication, pursuant to Kirkland Municipal Code 1.08.017, in summary form attach to the original of this ordinance and by this reference approved by the City Council as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2014.

Signed in authentication thereof this _____ day of _____, 2014.

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Attachment A

Title 24 ENVIRONMENTAL PROCEDURES

Chapters:

- 24.02** SEPA Procedures and Policies
- 24.05** *Repealed*
- 24.06** *Repealed*

Chapter 24.02 SEPA PROCEDURES AND POLICIES

Sections:

- Article I. Purpose—Authority
- 24.02.005 User guide.
- Article II. General Requirements
- 24.02.010 SEPA process.
- 24.02.020 Designation of responsible official.
- 24.02.025 Environmental coordinator.
- 24.02.030 Use of environmental documents.
- 24.02.035 SEPA timing.
- 24.02.038 SEPA policies.
- Article III. Definitions and Abbreviations
- 24.02.040 General—Definitions.
- 24.02.045 Definitions and abbreviations.
- Article IV. Lead Agency
- 24.02.050 General—Lead agency.
- Article V. Categorical Exemptions
- 24.02.060 General—Categorical exemptions.
- 24.02.065 Threshold levels for categorical exemptions.
- 24.02.070 Categorical exemptions in critical areas.
- 24.02.080 Critical areas maps adopted by reference.
- 24.02.090 Use of exemptions.
- Article VI. Threshold Determinations
- 24.02.100 General—Threshold determinations.
- 24.02.110 Environmental checklist.
- 24.02.120 Mitigated DNS.
- Article VII. Environmental Impact Statement
- 24.02.130 General—Environmental impact statement.
- 24.02.140 Preparation of EIS—Additional considerations.
- Article VIII. Public Notice and Commenting
- 24.02.150 General—Public notice and commenting.

- 24.02.160 Public notice.
- 24.02.170 Optional DNS process.
 - Article IX. Planned Actions
- 24.02.180 General—Planned actions.
 - Article X. SEPA/Growth Management Act Integration
- 24.02.190 General—SEPA/GMA integration.
 - Article XI. SEPA/Model Toxics Control Act Integration
- 24.02.200 General—SEPA/MTCA integration.
 - Article XII. Using Existing Environmental Documents
- 24.02.210 General—Using existing environmental documents.
 - Article XIII. Appeals
- 24.02.220 General—Appeals.
- 24.02.230 Administrative appeals.
- 24.02.240 Judicial review.
 - Article XIV. Fees
- 24.02.250 General—Fees.
- 24.02.260 Fees.
 - Article XV. Forms
- 24.02.270 General—Forms.

Article I. Purpose—Authority

24.02.005 User guide.

This chapter contains the city's laws that implement the State Environmental Policy Act (Chapter 43.21C RCW). This chapter contains several references to Chapter 197-11 WAC, which also implements the State Environmental Policy Act. At the beginning of each article of this chapter is a list of sections of Chapter 197-11 WAC that are adopted by reference. These WAC sections, as well as Chapter 43.21C RCW, should be consulted for complete information regarding SEPA.

Article II. General Requirements

24.02.010 SEPA process.

This article, Sections 24.02.010 through 24.02.038, contains information on the basic requirements that apply to the SEPA process. The city adopts by reference the following sections of the WAC which contain related information:

- 197-11-055 Timing of the SEPA process;
- 197-11-060 Content of environmental review;
- 197-11-070 Limitations on action during SEPA process;
- 197-11-080 Incomplete or unavailable information;
- 197-11-090 Supporting documents;
- 197-11-100 Information required of applicants;
- 197-11-158 [SEPA/GMA](#) project review—Reliance on existing plans, laws and regulations;
- 197-11-238 Monitoring;
- 197-11-300 Purpose of this part;
- 197-11-650 Purpose of this part;

197-11-655	Implementation;
197-11-900	Purpose of this part;
197-11-902	Agency SEPA policies;
197-11-904	Agency SEPA procedures;
197-11-906	Content and consistency of agency procedures;
197-11-910	Designation of responsible official;
197-11-912	Procedures of consulted agencies;
197-11-916	Application to ongoing actions;
197-11-920	Agencies with environmental expertise.

24.02.020 Designation of responsible official.

For all proposals for which the city is the lead agency, the responsible official shall be the director of the department of planning and community development, or his/her designee. For these proposals, the responsible official shall make the threshold determination, supervise scoping and preparation of any required EIS, and perform any other functions assigned to the “lead agency” or “responsible official” by this chapter.

24.02.025 Environmental coordinator.

(a) The director of the department of planning and community development shall designate an employee of the city to act as environmental coordinator. It shall be the responsibility of the environmental coordinator to:

(1) Assure that all SEPA-related city ordinances and policies are in compliance with corresponding regulations and policies at the state level;

(2) Assist all city departments in the interpretation and implementation of this chapter;

(3) Coordinate the review of and response to impact statements submitted to the city as a consulted agency by other governmental agencies;

(4) Be responsible for the city’s compliance with WAC 197-11-550 whenever the city is a consulted agency. The environmental coordinator is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city;

(b) In addition, the director of the department of planning and community development may designate one or more employees of the city to:

(1) Maintain all public information on SEPA;

(2) Assist the public with inquiries concerning environmental policy and other SEPA-related information;

(3) Determine whether or not a proposal is an exempt action, make certain the proposal is properly defined and identify the governmental licenses required (WAC 197-11-060);

(4) Review each environmental checklist submitted to the city and make a recommendation to the responsible official on each action or proposal;

(5) Coordinate the processing of appeals pursuant to Section 24.02.230 of this chapter;

(6) Coordinate the preparation and distribution of EIS’s and SEIS’s undertaken by the city or its consultant;

(7) Be responsible for preparation of written comments for the city in response to consultation requests prior to a threshold determination, scoping, and review of a draft EIS;

(8) Perform all other activities required to implement SEPA in the city except those performed by the responsible official or environmental coordinator.

24.02.030 Use of environmental documents.

For nonexempt proposals, the DNS or final EIS and SEIS for the proposal shall accompany the city's staff recommendation to the appropriate decisionmaker.

24.02.035 SEPA timing.

(a) If the city'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 city conduct environmental review prior to submission of detailed plans and specifications. A decision as to whether or not to do early environmental review, prior to receiving a complete application, shall be at the discretion of the responsible official.

(b) The responsible official may elect to do early environmental review if adequate information is available to determine the size and scope of the proposed action, including dimensions and use of all proposed improvements, project timing, and the extent of clearing and grading.

(c) The city may initiate preliminary environmental review and have informal conferences with applicants prior to receipt of a complete application. However, this review shall not be binding on the city or the applicant.

(d) Any request for early notice of whether or not a DS is likely under WAC 197-11-350 shall be in writing.

24.02.038 SEPA policies.

The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this chapter:

- (a) The policies of the State Environmental Policy Act—Chapter 43.21C RCW;
- (b) The most recent version of the Comprehensive Plan;
- (c) The most recent version of the Zoning Code;
- (d) The most recent version of the Zoning Map;
- (e) The Kirkland Municipal Code (KMC), including but not limited to Title 15 (Water and Sewage), Title 19 (Streets and Sidewalks), Title 21 (Buildings and Construction), Title 22 (Subdivisions), Title 24 (Environmental Procedures), Title 25 (Concurrency Management), and Title 28 (Landmarks);
- (f) The design guidelines documents adopted under Section 3.30.040;
- (g) The perpetual six-year transportation improvement program established by Section 19.08.051, including annual amendments;
- (h) The City of Kirkland Natural Resources Management Plan 2003, as amended;
- (i) The City of Kirkland Surface Water Master Plan 2005, as amended;
- (j) The Lake Washington/Cedar/Sammamish Watershed (WRIA8) Chinook Salmon Conservation Plan;
- (k) The most recent version of the City of Kirkland Sewer Comprehensive Plan;

- (l) The most recent version of the Water Comprehensive Plan;
- (m) The most recent version of the Non-Motorized Transportation Plan;
- (n) The most recent version of the Park and Open Space Plan.

Article III. Definitions and Abbreviations

24.02.040 General—Definitions.

This article, Sections 24.02.040 through 24.02.045, contains information on the usage and definition of terms under SEPA. The city adopts by reference the following sections of the WAC which contain related information:

197-11-040	Definitions;
197-11-220	SEPA/GMA definitions;
197-11-700	Definitions;
197-11-702	Act;
197-11-704	Action;
197-11-706	Addendum;
197-11-708	Adoption;
197-11-710	Affected tribe;
197-11-712	Affecting;
197-11-714	Agency;
197-11-716	Applicant;
197-11-718	Built environment;
197-11-720	Categorical exemption;
197-11-721	Closed record appeal;
197-11-722	Consolidated appeal;
197-11-724	Consulted agency;
197-11-726	Cost-benefit analysis;
197-11-728	County/city;
197-11-730	Decision maker;
197-11-732	Department;
197-11-734	Determination of nonsignificance (DNS);
197-11-736	Determination of significance (DS);
197-11-738	EIS;
197-11-740	Environment;
197-11-742	Environmental checklist;
197-11-744	Environmental document;
197-11-746	Environmental review;
197-11-750	Expanded scoping;
197-11-752	Impacts;
197-11-754	Incorporation by reference;
197-11-756	Lands covered by water;
197-11-758	Lead agency;
197-11-760	License;
197-11-762	Local agency;
197-11-764	Major action;
197-11-766	Mitigated DNS;
197-11-768	Mitigation;
197-11-770	Natural environment;

197-11-772	NEPA;
197-11-774	Nonproject;
197-11-775	Open record hearing;
197-11-776	Phased review;
197-11-778	Preparation;
197-11-780	Private project;
197-11-782	Probable;
197-11-784	Proposal;
197-11-786	Reasonable alternative;
197-11-788	Responsible official;
197-11-790	SEPA;
197-11-792	Scope;
197-11-793	Scoping;
197-11-794	Significant;
197-11-796	State agency;
197-11-797	Threshold determination;
197-11-799	Underlying governmental action.

24.02.045 Definitions and abbreviations.

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

(1) "City department" means any department of the city established by Chapter 3.16, Kirkland Municipal Code.

(2) "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.

(3) "Complete application," for the purposes of this chapter, means an application and supporting documentation which have been reviewed by the SEPA responsible official and other appropriate department(s) of the city and found to contain all information reasonably sufficient to evaluate the environmental impact of a proposal, based on standards developed by the city consistent with SEPA rules.

(4) "City" means the city of Kirkland.

(5) "Distribute" means to provide notice and information or the location of notice and information to persons via postal mail or electronically.

(6) "Improvement" means any structure or manmade feature.

(7) "Recognized historical significance" means listed in the state or national register of historic places, designation as an historic landmark overlay (b) The following abbreviations are used in this chapter:

(1) "DEIS" means draft environmental impact statement.

(2) "DNS" means determination of nonsignificance.

(3) "DOE" means Washington Department of Ecology.

(4) "DS" means determination of significance.

(5) "EIS" means environmental impact statement.

(6) "FEIS" means final environmental impact statement.

(7) "GMA" means Growth Management Act.

(8) "KMC" means Kirkland Municipal Code.

- (9) "LSM" means land surface modification.
- (10) "MTCA" means Model Toxics Control Act.
- (11) "NEPA" means National Environmental Policy Act.
- (12) "RCW" means Revised Code of Washington.
- (13) "SEIS" means supplemental environmental impact statement.
- (14) "SEPA" means State Environmental Policy Act.
- (15) "WAC" means Washington Administrative Code.

Article IV. Lead Agency

24.02.050 General—Lead agency.

This article, Section 24.02.050, contains information about determining lead agency for SEPA review. The city adopts by reference the following sections of the WAC which contain related information:

197-11-050	Lead agency;
197-11-900	Purpose of this part;
197-11-922	Lead agency rules;
197-11-924	Determining lead agency;
197-11-926	Lead agency for governmental proposals;
197-11-928	Lead agency for public and private proposals;
197-11-930	Lead agency for private projects with one agency with jurisdiction;
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city;
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city; and one or more state agencies;
197-11-936	Lead agency for private projects requiring licenses from more than one state agency;
197-11-938	Lead agencies for specific proposals;
197-11-940	Transfer lead agency status to a state agency;
197-11-942	Agreements on lead agency status;
197-11-944	Agreements on division of lead agency duties;
197-11-946	DOE resolution of lead agency disputes;
197-11-948	Assumption of lead agency status.

Article V. Categorical Exemptions

24.02.060 General—Categorical exemptions.

This article, Sections 24.02.060 through 24.02.090, contains information on the rules for categorical exemptions. The city adopts by reference the following sections of the WAC which contain related information:

197-11-305	Categorical exemptions;
197-11-800	Categorical exemptions;
197-11-880	Emergencies;
197-11-890	Petitioning DOE to change exemptions;
197-11-908	Critical areas.

24.02.065 Threshold levels for categorical exemptions.

WAC 197-11-800 establishes certain actions as exempt from SEPA. Under (1)(c) of that section, the city establishes raised levels of exemptions for the following types of actions as exempt from SEPA except as provided in WAC 197-11-305 and 197-11-800(1)(a):

- (a) The construction or location of any residential structures of twenty or fewer dwelling units (WAC 197-11-800(1)(b)(i));
- (b) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering ~~thirty thousand~~ 30,000 or fewer square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots (WAC 197-11-800(1)(b)(ii));
- (c) The construction of an office, school, commercial, recreational, service or storage building with ~~twelve thousand~~ 12,000 or fewer square feet of gross floor area, and with associated parking facilities designed for ~~forty~~ 40 or fewer automobiles (WAC 197-11-800(1)(b)(iii));
- (d) The construction of a parking lot designed for ~~forty~~ 40 or fewer automobiles not associated with a structure (WAC 197-11-800(1)(b)(iv));
- (e) Any landfill-fill or excavation of ~~five hundred~~ 500 or fewer cubic yards throughout the total lifetime of the fill or excavation, and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder and any excavation, fill or grading necessary for an exempt project in (a), (b), (c), or (d) of this subsection (WAC 197-11-800(1)(b)(v)).

24.02.070 Categorical exemptions in critical areas.

WAC 197-11-908 establishes that the city may select certain categorical exemptions that do not apply in one or more critical areas. WAC 197-11-800 establishes that certain actions are not exempt if undertaken wholly or in part on lands covered by water. The following is a supplementary list of actions that, while potentially categorically exempt, are not exempt if proposed in streams, lakes or wetlands:

- (a) All licenses to operate or engage in amusement devices and rides and entertainment activities, including but not limited to cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations (WAC 197-11-800(13)(c).)
- (b) The following natural resources management activities:
 - (1) Development of recreational sites, including campsites (WAC 197-11-800(24)(g).)
 - (2) Periodic use of chemical or mechanical means to maintain a public park and recreational land (WAC 197-11-800(24)(h).)

24.02.080 Critical areas maps adopted by reference.

The maps identifying the city's critical areas, as maintained and updated by the city's department of planning and community development, are adopted by reference as though fully set forth herein. The exemptions from SEPA that do not apply in streams, lakes or wetlands are stated in Section 24.02.070.

24.02.090 Use of exemptions.

Each city department receiving 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 subject to review by the environmental coordinator or an individual designated under Section 24.02.025(b). If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal.

Article VI. Threshold Determinations

24.02.100 General—Threshold determinations.

This article, Sections 24.02.100 through 24.02.120, contains information for deciding whether or not a proposal has a “probable significant, adverse environmental impact,” and for evaluating the impact of proposals not requiring an EIS. The city adopts by reference the following sections of the WAC which contain related information:

197-11-310	Threshold determination required;
197-11-315	Environmental checklist;
197-11-330	Threshold determination process;
197-11-335	Additional information;
197-11-340	Determination of nonsignificance (DNS);
197-11-350	Mitigated DNS;
197-11-360	Determination of significance (DS)/initiation of scoping;
197-11-390	Effect of threshold determination;
197-11-660	Substantive authority and mitigation.

24.02.110 Environmental checklist.

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

24.02.120 Mitigated DNS.

(a) For a mitigated DNS, the applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to “control noise” or “prevent storm water runoff” are inadequate, whereas proposals to “muffle machinery to X decibels” or “construct a two-hundred-foot storm water retention pond at Y location” are adequate.

(b) Mitigation measures incorporated in the mitigated DNS are deemed conditions of approval of the permit decision and shall be enforced in the same manner as any term or condition of the permit, or enforced in any manner available to the city.

(c) If the city's final decision on a proposed action does not include the mitigation measures that were incorporated in a mitigated DNS for the proposal, the city shall reevaluate the threshold determination to ensure that the DNS is still valid or determine if it should be withdrawn under WAC 197-11-340(3)(a).

Article VII. Environmental Impact Statement

24.02.130 General—Environmental impact statement.

This article, Sections 24.02.130 through 24.02.140, contains information on the rules for preparing EIS's. The city adopts by reference the following sections of the WAC which contain related information:

197-11-400	Purpose of EIS;
197-11-402	General requirements;
197-11-405	EIS types;
197-11-406	EIS timing;
197-11-408	Scoping;
197-11-410	Expanded scoping;
197-11-420	EIS preparation;
197-11-425	Style and size;
197-11-430	Format;
197-11-435	Cover letter or memo;
197-11-440	EIS contents;
197-11-442	Contents of EIS on nonproject proposals;
197-11-443	EIS contents when prior nonproject EIS;
197-11-444	Elements of the environment;
197-11-448	Relationship of EIS to other considerations;
197-11-450	Cost-benefit analysis;
197-11-455	Issuance of DEIS;
197-11-460	Issuance of FEIS.

24.02.140 Preparation of EIS—Additional considerations.

(a) The responsible official shall determine whether the draft, or final, EIS or SEIS will be prepared by the city or by a private consultant. If the action for which the EIS or SEIS is being prepared is one proposed by a private applicant, and if the responsible official determines that the draft and final EIS or SEIS will be prepared by a private consultant, that consultant shall be selected in the manner prescribed by subsection (c) of this section.

(b) Regardless of who prepares the EIS, the responsible official shall insure that the EIS or SEIS is prepared in accordance with all applicable laws, regulations, and ordinances. The responsible official shall determine the elements of the environment to be included in the document through the scoping process described in this section.

(1) Whenever the city issues a DS under WAC 197-11-360(3), the city shall provide notice as prescribed in Section 24.02.160(b) and shall circulate copies of the DS to the applicant; agencies with jurisdiction and expertise, if any; affected tribes and the public.

(2) All comments on a DS and scoping notices must be in writing and received within twenty-one days from the date of issuance of the DS, except where a public meeting on EIS scoping occurs, pursuant to WAC 197-11-410(1)(b).

(c) If the responsible official determines that the EIS or SEIS is to be prepared by a consultant, the city shall enter into any necessary agreements with the applicant and the

consultant in conformance with this chapter. The responsible official shall review the consultants recommended by the applicant and, if the responsible official finds one of the consultants suitable to prepare the EIS or SEIS, shall select that consultant for the preparation of the EIS or SEIS. In the event the responsible official does not find one of the consultants suitable to prepare the EIS or SEIS, he/she shall request the applicant to provide the names of additional consultants and/or interview additional consultants of the city's choosing.

(d) A consultant who prepares an EIS or SEIS for a proposal by a private applicant shall have no involvement in the proposed project other than the preparation of the EIS or SEIS.

(e) Cost of Preparation of EIS.

(1) The applicant shall deposit with the city the entire estimated cost of preparation of a draft and final EIS determined by the selected consultant within ten days of signing the agreement for preparation of those documents with the city and the consultant.

(2) If the city requires additional work beyond the terms of the agreement in order to complete the draft or final EIS or SEIS, the applicant shall deposit, with the city, the entire estimated cost of the additional work within ten days of signing an addendum to the agreement.

(3) The city will not authorize work on the draft or final EIS or SEIS until the applicant has made the required deposits.

(f) City Review and Processing.

(1) The applicant shall deposit with the city an amount for review and processing of the environmental impact statement or SEIS as required by Section 5.74.070.

(2) The city will not begin to review and process any EIS or SEIS until this deposit is received by the city.

(3) The city will send the applicant a monthly itemized billing for costs incurred in review and processing of an EIS or SEIS.

(4) If the amount deposited exceeds the cost of review and processing, the city will refund the excess to the applicant following issuance of the final EIS or SEIS.

(5) If the cost of review and processing exceeds the amount deposited, the applicant shall pay the full amount due within thirty days of receipt of an itemized billing by the city.

(6) The city will cease all work on the proposal, including review and processing of the EIS or SEIS, if the amounts due to the city have not been paid in full in the manner specified in this section.

(g) Before the city issues an EIS or SEIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

Article VIII. Public Notice and Commenting

24.02.150 General—Public notice and commenting.

This article, Sections 24.02.150 through 24.02.170, contains rules for consulting, commenting and responding to environmental documents including rules for public notices and hearings. The city adopts by reference the following sections of the WAC which contain related information:

197-11-355 Optional DNS process;

197-11-500	Purpose of this part;
197-11-502	Inviting comment;
197-11-504	Availability and cost of environmental documents;
197-11-508	SEPA register;
197-11-510	Public notice;
197-11-535	Public hearings and meetings;
197-11-545	Effect of no comment;
197-11-550	Specificity of comments;
197-11-560	FEIS response to comments;
197-11-570	Consultant agency costs to assist lead agency.

24.02.160 Public notice.

(a) Whenever the city issues a DNS under WAC 197-11-340(2), or DS under WAC 197-11-360(3), the city shall give public notice by publishing notice, or a summary thereof, in a newspaper of general circulation in the city where the proposal is located.

(b) Whenever the city issues a mitigated DNS for a site-specific proposal requiring installation of a public notice sign for the underlying permit, the city shall give public notice by publishing notice, or a summary thereof, in a newspaper of general circulation in the city where the proposal is located, by posting notice on the city's website, and by distributing notice to those receiving notice of the underlying permit.

(c) The responsible official may require notice by alternative methods, as specified in WAC 197-11-510, if deemed necessary to provide public notice of impending action.

(d) Whenever the city issues a draft EIS or SEIS under WAC 197-11-455(5) or WAC 197-11-620, notice of availability of those documents shall be given by:

(1) Posting the property for site-specific proposals, pursuant to the guidelines in subsection (b) of this section; and

(2) Publishing notice, or a summary thereof, in a newspaper of general circulation in the city; and

(3) Distributing notice for site-specific proposals, pursuant to the guidelines in subsection (b) of this section.

24.02.170 Optional DNS process.

The city may, pursuant to WAC 197-11-355, use a single, integrated comment period to obtain comments on a notice of application and the likely threshold determination for the proposal if the responsible official has a reasonable basis for determining that significant environmental impacts are unlikely. In the event that SEPA mitigation measures are proposed after the close of the integrated comment period, notice shall be given as required in Section 24.02.160.

Article IX. Planned Actions

24.02.180 General—Planned actions.

This article, Section 24.02.180, contains information on planned actions. The city adopts by reference the following sections of the WAC which contain related information:

197-11-164	Planned actions—Definition and criteria;
197-11-168	Ordinances or resolutions designating planned actions—Procedures for adoption;
197-11-172	Planned actions—Project review.

Article X. SEPA/Growth Management Act Integration

24.02.190 General—SEPA/GMA integration.

This article, Section 24.02.190, contains information on integrating SEPA and GMA actions. The city adopts by reference the following sections of the WAC which contain related information:

197-11-210	SEPA/GMA integration;
197-11-228	Overall SEPA/GMA integration procedures;
197-11-230	Timing of an integrated SEPA/GMA process;
197-11-232	SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping;
197-11-235	SEPA/GMA Integration documents.
197-11-238	SEPA/GMA integration monitoring.

Article XI. SEPA/Model Toxics Control Act Integration

24.02.200 General—SEPA/MTCA integration.

This article, Section 24.02.200, contains information on integrating SEPA and actions under the Model Toxics Control Act. The city adopts by reference the following sections of the WAC which contain related information:

197-11-250	SEPA/Model Toxics Control Act integration;
197-11-253	SEPA lead agency for MTCA actions;
197-11-256	Preliminary evaluation;
197-11-259	Determination of nonsignificance for MTCA remedial action;
197-11-262	Determination of significance and EIS for MTCA remedial actions;
197-11-265	Early scoping for MTCA remedial actions;
197-11-268	MTCA interim actions.

Article XII. Using Existing Environmental Documents

24.02.210 General—Using existing environmental documents.

This article, Section 24.02.210 contains information on using and supplementing the existing environmental documents prepared under SEPA or NEPA for the city's own environmental compliance. The city adopts by reference the following sections of the WAC which contain related information:

197-11-600	When to use existing environmental documents;
197-11-610	Use of NEPA documents;
197-11-620	Supplemental Environmental Impact Statement—Procedures;
197-11-625	Addenda procedures;

197-11-630	Adoption procedures;
197-11-635	Incorporation by reference procedures;
197-11-640	Combining documents.

Article XIII. Appeals

24.02.220 General—Appeals.

This article, Sections 24.02.220 through 24.02.240, contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts by reference the following sections of the WAC which contain related information:

197-11-680 Appeals.

24.02.230 Administrative appeals.

(a) Appealable Decisions. Administrative appeals of SEPA determinations are available only in instances where there is an open record hearing on the underlying governmental action. In addition, o Only the following decisions of the city are appealable under this section:

(1) The issuance of a determination of nonsignificance, including mitigation measures and conditions that are required as part of that determination of nonsignificance;

(2) The issuance of a determination of significance.

(b) Who May Appeal. Only the following may appeal:

(1) The applicant or proponent;

(2) Any agency with jurisdiction;

(3) Any individual or other entity who is specifically and directly affected by the proposed action.

(c) Time to Appeal.

(1) An appeal of a DNS must be filed with the environmental coordinator within fourteen days of the date the determination is issued by the responsible official.

(2) An appeal of a DS must be filed within seven days of the date it is published under Section 24.02.160 of this chapter.

(d) How to Appeal. The appeal must be in the form of a written notice of appeal, and must contain a brief and concise statement of the matter being appealed, the specific components or aspects that are being appealed, the appellant's basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include.

(e) Fees. The person filing the appeal shall include with the letter of appeal the fee as established by ordinance.

(f) Who Will Hear and Decide Upon the Appeal. Appeals of DNSs ~~and DSs~~ will be consolidated and considered simultaneously with an heard at the open record hearing ~~for on~~ the underlying project permit and decided upon by the hearing body hearing the underlying project permit using the provisions of subsections (g), (h) and (i) of this section. In the event that a project-land use permit does not include an open record

public hearing but provides for an open record appeal, the SEPA appeal will be consolidated with the open record appeal heard and decided upon by the hearing examiner using the provisions of subsections (g), (h) and (i) of this section unless the underlying project permit is a short subdivision that has been appealed to the city council pursuant to Section 22.20.245 of the Kirkland Municipal Code, in which case, the city council shall hear both the SEPA appeal and the appeal of the underlying project permit.

WAC 197-11-680(3)(vi) provides for instances where the appeals of SEPA procedural or substantive determinations need not be consolidated with a hearing or appeal on the underlying governmental action, including an appeal of a DS. In such cases, the City will follow the provisions of subsections (g), (h) and (i) of this section with the Hearing Examiner conducting the hearing for the appeal of the determination.

(g) Procedures for the Appeal.

(1) Notice of the Appeal Hearing.

(A) Content. The planning official shall prepare a notice of the appeal containing the following:

(i) The file number and a brief written description of the matter being appealed.

(ii) A statement of the scope of the appeal including a summary of the specific factual findings and conclusions disputed in the letter of appeal.

(iii) The time and place of the public hearing on the appeal.

(iv) A statement of who may participate in the appeal.

(v) A statement of how to participate in the appeal.

(B) Distribution. At least fourteen calendar days before the hearing on the appeal, the planning official shall distribute a copy of this notice to each person who received a copy of the threshold determination and any person who appealed the threshold determination.

(C) The notice of appeal may be combined with the hearing notice for the underlying project permit, if applicable.

(2) Participation in the Appeal. Only the applicant or proponent, city staff and persons who have appealed the threshold determination under subsection (b) of this section may participate in the appeal. These persons may participate in the appeal in either or both of the following ways:

(A) By submitting written testimony to the planning department within the timeline established by subsection (c) of this section.

(B) By appearing at the hearing and submitting oral or written testimony directly to the hearing body. The hearing body may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

(3) Staff Report on the Appeal.

(A) Content. The planning official shall prepare a staff report containing the following:

(i) The SEPA threshold determination.

(ii) All written comments submitted to the responsible official.

(iii) The letter of appeal.

(iv) All written comments on the appeal received by the planning department from persons entitled to participate in the appeal and within the scope of the appeal.

(v) An analysis of the specific factual findings and conclusions disputed in the letter of appeal.

(B) This report may be combined with the staff report on the underlying project permit, if applicable.

(C) Distribution. At least seven calendar days before the hearing, the planning official shall distribute the staff report as follows:

(i) To the hearing body hearing the appeal as specified under subsection (f) of this section.

(ii) To the applicant.

(iii) To the persons who filed appeals.

(4) Hearing on the Appeal.

(A) Hearing in General. The hearing body shall hold a public hearing on the appeal.

(B) Hearing Declared Open. The hearing of the hearing body is open to the public.

(5) Electronic Sound Recordings. The hearing body shall make a complete electronic sound recording of each hearing.

(6) Continuation of the Hearing. The hearing body may continue the hearing if, for any reason, it is unable to hear all of the public comments on the appeal or if it determines that it needs more information within the scope of the appeal. If, during the hearing, the hearing body announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

(h) Decision on the Appeal.

(1) General. The hearing body shall consider all information and material within the scope of the appeal submitted by persons entitled to participate in the appeal. The hearing body shall either affirm or change the findings and conclusions of the responsible official that were appealed. Based on the hearing body's findings and conclusions, it shall either:

(A) Affirm the decision being appealed; or

(B) Reverse the decision being appealed; or

(C) Modify the decision being appealed.

(2) Issuance of Written Decision. Within eight calendar days after the public hearing, the hearing body shall issue a written decision on the appeal. Within four business days after it is issued, the hearing body shall distribute the decision as follows:

(A) To the applicant.

(B) To the person who filed the appeal.

(C) To all other persons or agencies who participated in the appeal.

(i) Additional Appeal Procedures.

(1) The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.

(2) The decision of the responsible official shall be accorded substantial weight.

(3) All testimony will be taken under oath.

(4) The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of nonsignificance.

24.02.240 Judicial review.

Judicial review of SEPA determinations are by RCW 43.21C.075 required to be heard only at the time of judicial review of the underlying action, i.e. approval or disapproval of the proposal for which SEPA review was required. For rules on perfecting and timing of the SEPA determination and judicial appeal, see RCW 43.21C.075 and WAC 197-11-680(4). The notice required by WAC 197-11-680(5) shall be appended to the permit or “notice of appeal” at the time of final city action.

Article XIV. Fees

24.02.250 General—Fees.

This article, Sections 24.02.250 through 24.02.260, contains information on rules for charging fees under the SEPA process. The city adopts by reference the following sections of the WAC which contain related information:

197-11-914 Fees.

24.02.260 Fees.

The city shall require fees as set forth in Section 5.74.080 for its activities in accordance with provisions of this chapter.

Article XV. Forms

24.02.270 General—Forms.

This article, Section 24.02.270, contains information on forms. The city adopts by reference the following sections of the WAC which contain related information:

197-11-960 Environmental checklist;
197-11-965 Adoption notice;
197-11-970 Determination of nonsignificance (DNS);
197-11-980 Determination of significance and scoping
notice (DS);
197-11-985 Notice of assumption of lead agency status;
197-11-990 Notice of action.

PUBLICATION SUMMARY
OF ORDINANCE O-4452

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA) AND AMENDING CHAPTER 24.02 SEPA PROCEDURES AND POLICIES OF THE KIRKLAND MUNICIPAL CODE ; FILE NO. CAM14-00868.

SECTION 1. Identifies the specific amendments to the Kirkland Municipal Code as found in Attachment A.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes the publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as _____.

SECTION 4. Directs the City Clerk to certify and forward a complete certified copy of this ordinance to the King County Department of Assessments..

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2014.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk