



CITY OF KIRKLAND

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To: Planning Commission

From: Nancy Cox, AICP, Development Review Manager
Lauri Anderson, AICP, Consultant

Date: July 23, 2008

Subject: State Environmental Policy Act (SEPA), Land Surface Modification (LSM), and Cottage Housing Code Amendments, File No. ZON08-00007

I. RECOMMENDATION

Review the proposed amendments, conduct a public hearing on them, and make a recommendation to the City Council.

II. INTRODUCTION

Amendments to both the Zoning and Municipal Code are being proposed to update the City's State Environmental Policy Act (SEPA) rules and to consolidate the City's regulations for land surface modification (LSM), or grading and clearing. Along with these amendments, other minor Zoning and Municipal Code amendments are moving forward to clarify parts of the Cottage Housing rules adopted last year.

The Planning Commission will hold a public hearing on these changes on July 31. The Houghton Community Council reviewed the changes in a study session on June 23, 2008 and decided not to hold a public hearing on them. Minor changes suggested by the Houghton Community Council have been incorporated into the amendments.

To broaden public awareness of, and participation in, this amendment process, staff has sent information to the neighborhood associations, the Chamber of Commerce, and the Kirkland Developers Partnership Forum. The City's web page provides information about the project along with links to the proposed amendments. To date, we have not received any public comments on any of the proposed amendments.

SEPA review of the LSM and Cottage Housing portions of the proposal has been conducted and an Addendum to the 2004 Kirkland Comprehensive Plan Draft and Final Environmental Impact Statement was issued on July 14, 2008. No comment or appeal periods apply to this action. The SEPA amendments, themselves, are categorically exempt from SEPA review, per Washington Administrative Code (WAC) Section 197-11-800(19).

City Council review of the Planning Commission's recommendation is tentatively scheduled for September.

III. AMENDMENT OVERVIEW

A. SEPA Amendments

Attachment 1 includes the proposed changes to the SEPA chapter of the Municipal Code. Most of the amendments are organizational in nature, although some new requirements (the result of changes to state law) are also included.

The most significant substantive changes in the staff proposal are:

- (1) *Eliminate SEPA review for many minor projects in seismic, erosion and landslide hazard areas. (See Section 24.02.070.)*

The State identifies “categorical exemptions” to SEPA review—projects that are not required to go through SEPA because of their small size or minor nature. At the same time, the State allows local jurisdictions to retract these exemptions in critical areas, including geologically hazardous areas.

City rules for seismic, erosion and landslide hazard areas are found in Chapter 85 of the Zoning Code. During permit review, a geotechnical report is submitted and the applicant is required to comply with the recommendations in the report. SEPA review, historically, does not result in any additional mitigation measures as the standards in Chapter 85 suffice. Instead, the SEPA process adds time and expense for applicants, often for single-family projects, with no additional benefit.

- (2) *Broaden public notice of SEPA determinations. (See Section 24.02.160.)*

Current public notice requirements require public notice board posting and mailing of mitigated SEPA determinations for Process IIA, IIB and III zoning and subdivision permits. As the public notice boards are already in place for Process I and short plat permit applications, the amendments state that SEPA posting will occur for these projects as well. In other words, if a zoning or subdivision permit process requires that a public notice sign be installed, SEPA notice, if required, will be posted on the sign and mailed to surrounding property owners.

- (3) *Clarify who may participate in the SEPA appeals process. (See Section 24.02.230.)*

The City Attorney's office has requested revisions to the appeals process clarifying who may participate in a SEPA appeal. Although the standards for who can appeal are very broad (the applicant or proponent, an agency with jurisdiction, or any individual or other entity who is "specifically and directly affected"), the new language states that only those who actually appeal may participate in the process.

B. LSM Amendments

The purpose of developing a new Land Surface Modification title in the Municipal Code is to clarify and consolidate a number of City regulations that address clearing and grading. Currently, rules are found in the Zoning Code, Building Code and Public Works standards. New Title 29 clarifies these rules, eliminates inconsistencies, and puts all standards in a single place to be used by multiple departments.

Attachment 2 includes the proposed changes. The Zoning Code revisions are to amend the definition of land surface modification to eliminate tree removal (now regulated under Chapter 95 of the Zoning Code), to redirect Zoning Code references to "land surface modification," and to delete Zoning Code Section 115.75, Land Surface Modification, and existing Building Code sections in Title 21 related to LSM. Most of the standards in the deleted sections have been relocated to new Title 29, with little substantive change.

Provisions in new Title 29 that may be of interest include:

(1) *New Purpose and Intent language (See Section 29.04.010.)*

This language has been added to clarify the purpose of the City's LSM regulations. The Comprehensive Plan, Natural Environment Chapter, Policy NE-1.3, states that the City should:

"Use a variety of techniques to manage activities affecting air, vegetation, water, and the land to maintain or improve environmental quality, to preserve fish and wildlife habitat, to prevent degradation or loss of natural features and functions, and to minimize risks to life and property."

Text under this policy states that "land surface modification of undeveloped property should be prohibited unless a development application has been approved." The proposed regulations allow land surface modification to go forward only if a development permit has been approved, if the site already contains a building or an active use, or if a complete building permit application has been submitted and a restoration bond provided in case the application is not approved.

Land surface modification of a vacant site would be permitted only for very limited activities of benefit to the community: correcting an erosion or storm drainage problem; creating new utility or access corridors required by the City; improving a deficient water, sewer, storm drainage or transportation system; or avoiding erosion, landslides, or other environmental hazards.

(2) *Revised permit exemptions. (See Section 29.12.010.)*

These exemptions do not apply in critical areas and their buffers, waterward of the high waterline, in high waterline required yards, or in areas with an historic overlay designation.

(3) *New criterion for the minor landscaping LSM exemption. (See Section 29.12.010.c.)*

With the amendments, such work may not result in an increase or decrease in topography at any point of more than 4'.

(4) *New requirements for land surface modifications using the emergency exemption. (See Section 29.12.020.)*

LSMs resulting from an emergency situation would now have to be brought to the City's attention within 7 days after the action. Too, the City is authorized to require that the party who conducted the LSM obtain a permit after-the-fact and/or provide mitigation as necessary.

(5) *New ability for City staff to require a geotechnical report for any LSM permit. (See Section 29.16.020.)*

Previously, a geotechnical report could only be required if the project involved more than 100 cubic yards of material or was in a critical area.

(6) *New ability for City staff to require third party review of a geotechnical report. (See Section 29.16.030.)*

This ability is similar to that found in Chapter 85 of the Zoning Code, Geologically Hazardous Areas.

(7) *New approval criteria. (See Sections 29.20.050.b and 29.20.050.d.)*

New criteria have been added about maintaining stability of structures and landforms either on-site or on adjacent properties, and compliance with the Public Works standards.

- (8) *Revised permit appeal and code enforcement processes. (See Sections 29.36.020 and 29.36.030.)*

The amendments authorize the use of Building or Zoning Code processes for LSM permit appeals and code enforcement.

C. Cottage Housing Amendments

Ordinance 4120 allowing for “cottage, carriage and two/three unit homes” was adopted in December of 2007. Over the past six months, staff has become aware of the need for a number of minor edits to the regulations. The proposed changes are included in Attachment 3.

Most of the revisions are suggested to provide greater clarity in the regulations. Others, such as the proposed expanded text to the footnote for FAR, are intended to both clarify application of the regulations, and to ensure that development on sites with sensitive areas is consistent with Zoning Code Chapter 90 (Drainage Basins) guidelines.

Additional changes, such as the reduced Lapse of Approval time period, and the minor change to standards for required common open space, are suggested as a result of staff’s experience with the submittal process for cottage housing applications.

A change to the Subdivision Ordinance (Title 22) is proposed to allow for inclusion of land area used for vehicular access easements in the lot area for cottage housing—the same way the City handles this issue for multifamily development. Without this change, subdivisions of property for cottage housing development might be discouraged.

V. **CONCLUSION**

Zoning Code changes associated with these proposals are minor. There are no Zoning Code changes proposed with the SEPA amendments. The LSM changes are primarily to eliminate existing Code sections and change references. The Cottage Housing amendments clarify rules that were extensively discussed by decision-makers in 2007.

The Municipal Code amendments, while more extensive, are principally reorganizations of existing regulations, with some new concepts as outlined above.

One of many follow-up actions that would be needed if these amendments are adopted would be to reassess the SEPA fee schedule for preparation of an EIS to determine whether the required deposit amount is sufficient.

To streamline the review on July 31st, you should feel free to contact Planning Staff prior to the meeting with questions about the proposed amendments or the hearing process.

You can reach Lauri Anderson at (206) 525-5240 (or lwanderson4@msn.com), or Nancy Cox at (425) 587-3228 (or ncox@ci.kirkland.wa.us).

ATTACHMENTS

1. Proposed SEPA Amendments
2. Proposed LSM Amendments
3. Proposed Cottage Housing Amendments

PROPOSED CHANGES TO KIRKLAND'S STATE ENVIRONMENTAL POLICY ACT (SEPA) RULES

HOW TO READ THIS:

- Text that is covered by a strike-through (~~strike-through~~) is existing text currently contained in the Municipal Code that is to be deleted.
 - Text that is underlined (underlined) is new text that is to be added.
 - Notes in italics identify text relocations or provide background information on proposed amendments.
 - Individual section heading numbers have been changed to reflect the new organization; old numbers are not shown.
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Revised

Title 24

**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.

~~**24.02.015 Definitions.**~~ *(moved elsewhere)*

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. *(moved here from another section)*

Article III. Definitions

~~**24.02.040 General—Definitions.**~~ *(moved here from another section)*

~~**24.02.045 Definitions.**~~ *(moved here from another section)*

Article IV. Lead Agency

24.02.050 General—Lead Agency. *(moved here from another section)*

Article V. Categorical Exemptions

24.02.060 General—Categorical exemptions. *(moved here from another section)*

24.02.065 Threshold levels for categorical exemptions. *(moved here from another section)*

24.02.070 Categorical exemptions in critical areas.

~~24.02.080 Sensitive Critical areas maps adopted by reference.~~ *(moved here from another section)*

24.02.090 Use of exemptions. *(moved here from another section)*

~~Article III~~VI. Categorical Exemptions and tThreshold Determinations

~~24.02.100 General –Categorical exemptions and tThreshold determinations.~~

~~24.02.045 Threshold levels for categorical exemptions.~~ *(moved elsewhere)*

~~24.02.050 Use of exemptions.~~ *(moved elsewhere)*

24.02.110 Environmental checklist.

24.02.120 Mitigated DNS.

Article IVII. 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. *(moved here from another section)*

Article IX. Planned Actions

24.02.180 General—Planned Actions.

Article X. SEPA/GMA Integration

24.02.190 General—SEPA/GMA Integration.

Article XI. SEPA/Model Toxics Control Act Integration

24.02.200 General—SEPA/MTCA Integration.

~~VXII.~~ Using Existing Environmental Documents

24.02.210 General—Using existing environmental documents.

Article ~~VXIII.~~ SEPA and Agency Decisions Appeals

24.02.220 General—SEPA and agency decisions Appeals.

~~24.02.100 SEPA policies.~~ *(moved elsewhere)*

24.02.230 Administrative appeals.

~~24.02.106 Repealed.~~

24.02.240 Judicial review.

~~Article VIII. Definitions.~~ *(moved elsewhere)*

~~Article IX. Categorical Exemptions.~~ *(moved elsewhere)*

Article XIV. Agency Compliance Fees

24.02.250 General—Agency compliance Fees.

~~24.02.130 Sensitive areas map adopted by reference.~~ *(moved elsewhere)*

24.02.260 Fees.

Article XIV. 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 (RCW 43.21C). This chapter contains several parts. ~~These parts correspond to the parts contained in~~ references to Chapter 197-11 of the Washington Administrative Code, which also implements the State Environmental Policy Act. At the beginning of each part of this chapter is a list of sections of the Washington Administrative Code, Chapter 197-11, that are adopted by reference. These WAC sections, as well as RCW 43.21C, should be consulted for complete information regarding SEPA.

Article II. General Requirements

24.02.010 SEPA process.

This article, Section 24.02.010 through Section 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:

- ~~197-11-040 Definitions; (moved elsewhere)~~
- ~~197-11-050 Lead agency; (moved elsewhere)~~
- 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 GMA project review—reliance on existing plans, laws and regulations;
- 197-11-238 Monitoring;
- 197-11-300 Purpose of this part; *(moved here from another section)*
- 197-11-650 Purpose of this part; *(moved here from another section)*
- 197-11-655 Implementation; *(moved here from another section)*
- 197-11-900 Purpose of this part; *(moved here from another section)*
- 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; *(moved here from another section)*
- 197-11-920 Agencies with environmental expertise. *(moved here from another section)*

24.02.015 Definitions *(moved to new Article)***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 ~~city manager~~ 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;

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

(144) 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 insure 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:

(51) Maintain all public information on SEPA;

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

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

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

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

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

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

(428) 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 decision maker.

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.

(Subsection (e) moved elsewhere)

24.02.038 SEPA policies. *(moved here from another section)*

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

(1) The policies of the State Environmental Policy Act—RCW 43.21C;

~~(2) Ordinance No. 3481—The most recent version of the Comprehensive pPlan;~~

~~(3) Ordinance No. 2740, as amended—The most recent version of the Zoning eCode;~~

~~(4) Ordinance No. 2699, as amended—The most recent version of the zZoning mMap;~~

~~(5) Ordinance No. 2766, as amended—The Kirkland Municipal Code, 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, including the Shoreline Master Program), Title 25 (Concurrency Management), and Title 28 (Landmarks) ordinance;~~

~~(6) The city of Kirkland Shoreline Master Program—Ordinance 2256 as well as the Shoreline Policies adopted in Kirkland Municipal Code Chapter 24.04;~~

~~(7) Building and Construction—Title 21 of the Kirkland Municipal Code;~~

~~(6) The design guidelines documents adopted under KMC Section 3.30.040.~~

~~(8) The perpetual six-year transportation improvement program established by KMC Section 19.08.051, Kirkland Municipal Code,~~

including annual amendments—(Resolution R-3106 or its successor);

(8) The City of Kirkland Natural Resources Management Plan 2003, as amended;

(9) The City of Kirkland Surface Water Master Plan 2005, as amended;

(10) The Lake Washington/Cedar/Sammamish Watershed (WRIA8) Chinook Salmon Conservation Plan;

(11) The most recent version of the City of Kirkland Sewer Comprehensive Plan;

(12) The most recent version of the Water Comprehensive Plan;

(13) The most recent version of the Non-Motorized Transportation Plan;

~~(14) The most recent version of the Park and Open Space Plan—Ordinance No. 2117, as amended;~~

~~(10) East planning area comprehensive sewer plan—Ordinance No. 2796, as amended;~~

~~(11) Flood protection—Kirkland Municipal Code, Chapter 21.56;~~

~~(12) Policies and regulations relating to water and sewer extensions established in Title 15, Kirkland Municipal Code.~~

Article III. Definitions

24.02.040 General--Definitions. *(moved here from another section)*

This article, Section 24.02.040, contains information on the usage and definition of terms under SEPA. The city adopts by reference the following sections ~~by reference as supplemented by Section 24.02.015 of this chapter~~ 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;
~~197-11-748 Environmentally sensitive area;~~
 197-11-750 Expanded scoping;
 197-11-752 Impacts;
 197-11-754 Incorporation by reference;
 197-11-756 Lands covered by water;
 197-11-758 Lead agency;
 197-11-760 License;
 197-11-762 Local agency;
 197-11-764 Major action;
 197-11-766 Mitigated DNS;
 197-11-768 Mitigation;
 197-11-770 Natural environment;
 197-11-772 NEPA;
 197-11-774 Nonproject;
 197-11-775 Open record hearing;
 197-11-776 Phased review;
 197-11-778 Preparation;
 197-11-780 Private project;
 197-11-782 Probable;
 197-11-784 Proposal;
 197-11-786 Reasonable alternative;
 197-11-788 Responsible official;
 197-11-790 SEPA;
 197-11-792 Scope;
 197-11-793 Scoping;
 197-11-794 Significant;
 197-11-796 State agency;
 197-11-797 Threshold determination;
 197-11-799 Underlying governmental action.

24.02.045 Definitions. *(moved here from another section)*

(a) In addition to those definitions contained within WAC 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) "Improvement" means any structure or manmade feature.

(6) "Recognized historical significance" means listed in the state or national register of historic places, designation as an historic landmark overlay zone, inclusion in the list of Historic Resources and Community Landmarks, Table CC-1 in the Comprehensive Plan 1983 planning and community development SEPA list of historic structures, or other formal recognition conferred by a body with authority and expertise in what might constitute historical significance; provided that inclusion in the 1992 survey of historic structures by northwest preservation resources is not considered such recognition for the purposes of this chapter or SEPA.

(b) The following abbreviations are used in this chapter:

(1) "DNS" means determination of nonsignificance.

(2) "DS" means determination of significance.

(3) "SEIS" means Supplemental Environmental Impact Statement.

(4) "WAC" means Washington Administrative Code.

Article IV. Lead Agency

24.02.050 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: (all of these cites moved here from other sections)

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. *(moved here from another section)*

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; *(moved here from another section)*
- 197-11-800 Categorical exemptions;
- 197-11-880 Emergencies;
- 197-11-890 Petitioning DOE to change exemptions;
- 197-11-908 ~~Environmentally sensitive areas~~ Critical areas. *(moved here from another section)*

24.02.065 Threshold levels for categorical exemptions. *(moved here from another section)*

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 WAC 197-11-800(1)(a):

- (~~4~~a) The construction or location of any residential structures of nine or fewer dwelling units (WAC 197-11-800(1)(b)(i));
- (~~2~~b) Any landfill or excavation of five hundred 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 (WAC 197-11-800(1)(b)(v)).

24.02.070 Categorical Exemptions in Critical Areas. *(This section was previously adopted as part of the Environmentally Sensitive Areas Map cover. Many of the “exemptions that do not apply” that appeared on that map cover are no longer needed as the exemptions, themselves, state that they do not apply on “lands covered by water”, including lakes, streams and wetlands. The “exemptions that do not apply” in high landslide, seismic and erosion hazard areas have been eliminated with this revision, meaning that SEPA review may no longer be required in these areas.)*

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

(1) 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, ~~including licenses or permits required for permanent construction of any of the above.~~ WAC 197-11-800(13)(c)

(2) The following natural resources management activities:

- (a) Development of recreational sites, including campsites. WAC 197-11-800(24)(g)
- (b) Periodic use of chemical or mechanical means to maintain a public park and recreational land. WAC 197-11-800(24)(h)

24.02.080 Sensitive Critical areas maps adopted by reference. *(moved here from another section)*

The maps identifying the City’s critical areas, as maintained and updated by the City’s Department of Planning and Community Development, prepared for the city by King County environmental division and dated December, 1991, and bearing the signatures of the mayor and the director of the department of planning and community development as of February 4, 1992, is are adopted by reference as though fully set forth herein, ~~except that the map pages entitled “Wetlands, Streams and 100 Year Floodplains” are replaced with the map entitled “Sensitive Areas Map” and dated December, 2004.~~ The exemptions from SEPA that do not apply to each sensitive area in streams, lakes or wetlands are stated on the “Kirkland Sensitive Areas” map folio in KMC 24.02.070.

24.02.090 Use of exemptions. *(moved here from another section)*

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 KMC 24.02.025(b). If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. (Ord. 2830 Part 3, § 1 (part), 1984)

Article IIIVI. Categorical Exemptions and tThreshold Determinations

24.02.100 General—~~Categorical exemptions and tThreshold determinations.~~

This article, Section 24.02.100 through Section 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:

~~197-11-300 Purpose of this part; (moved elsewhere)~~

~~197-11-305 Categorical exemptions; (moved elsewhere)~~

197-11-310 Threshold determination required;

197-11-315 Environmental checklist;

197-11-330 Threshold determination process;

197-11-335 Additional information;

197-11-340 Determination of nonsignificance (DNS);

197-11-350 Mitigated DNS;

~~197-11-355 Optional DNS process; (moved elsewhere)~~

197-11-360 Determination of significance (DS)/initiation of scoping;

197-11-390 Effect of threshold determination;

197-11-660 Substantive authority and mitigation. *(moved here from another section)*

~~24.02.045 Threshold levels for categorical exemptions. (moved to new Article)~~

~~24.02.050 Use of exemptions. (moved to new Article)~~

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 200-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 insure that the DNS is still valid or determine if it should be withdrawn under WAC 197-11-340(3)(a).

Article IV. Environmental Impact Statement**24.02.130 General—Environmental Impact Statement.**

This article, Section 24.02.130 through Section 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 subsection (b) of Section 24.02.160 of this chapter 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 KMC 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 30 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, Section 24.02.150 ~~and through~~ Section 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; (*moved here from another section*)

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 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 Process IIA, IIB, and III zoning and subdivision applications, the city shall give public notice by publishing notice in a newspaper of general circulation in the city where the proposal is located, by posting notice on the public notice sign for the underlying permit providing that the applicant erect public notice signs on or near the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property, and by mailing notice to those receiving mailed notice of the underlying permit owners of all property within three hundred feet and all residents adjacent to or directly across the street from the subject property.

(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 (b) above; and

(2) Publishing notice in a newspaper of general circulation in the city; and

(3) Mailing notice for site specific proposals, pursuant to the guidelines in (b) above.

24.02.170 Optional DNS Process. *(moved here from another section)*

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 KMC 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/GMA 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 Documents.

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 ES for MTCA remedial actions;
- 197-11-265 Early scoping for MTCA remedial actions;
- 197-11-268 MTCA interim actions.

Article ~~VXII~~. 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 ~~VXIII~~. ~~SEPA And Agency Decisions Appeals~~

24.02.220 General—~~SEPA and agency decisions Appeals~~.

This article, Section 24.02.220 through Section 24.02.240, contains ~~information on SEPA's substantive authority and~~ 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:

~~197-11-650 Purpose of this part; (moved elsewhere)~~

~~197-11-655 Implementation; (moved elsewhere)~~

~~197-11-660 Substantive authority and mitigation; (moved elsewhere)~~

197-11-680 Appeals.

24.02.100 SEPA policies. (moved to another Article)

24.02.230 Administrative appeals.

(a) Appealable Decisions. 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 24.02.085 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 DNS's and DS's will be heard at the open record hearing for 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 permit does not include an open record public hearing, the SEPA appeal will be 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.

(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 send a copy of this notice to each person who received a copy of the threshold determination and any person who ~~submitted written comments on, or an appeal of,~~ 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 these—the applicant or proponent, City staff and persons entitled to appeal 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) above.

(B) By ~~appearing in person, or through a representative,~~ 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 copies of the staff report as follows:

- (i) A copy will be sent to the hearing body hearing the appeal as specified under subsection (f) above.
- (ii) A copy will be sent to the applicant.
- (iii) ~~A copy~~ Copies will be sent to the persons who filed the appeals.
- (iv) ~~A copy will be sent to any person or agency who received a copy of the threshold determination or submitted comments on the threshold determination.~~

(4) ~~Public Hearing~~ on the Appeal.

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

(B) Hearing Declared Open. The hearings of the hearing body ~~are~~ 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 ~~calendar~~ days after it is issued, the hearing body shall distribute the decision as follows:

(A) A copy will be mailed to the applicant.

(B) A copy will be mailed to the person who filed the appeal.

(C) A copy will be mailed 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.

~~24.02.106 Special procedures for SEPA appeals on specified projects.~~

Repealed by Ord. 3530. (Ord. 3424 § 1, 1994)

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 VIII. Definitions~~ *(moved to new Article)*

~~Article IX. Categorical Exemptions~~ *(moved to new Article)*

Article XIV. Agency Compliance Fees

~~24.02.250 General—Agency compliance Fees.~~

This article, Section 24.02.250 through Section 24.02.260, contains information on rules for charging fees under the SEPA process, ~~designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities.~~ The city adopts by reference the following sections of the WAC which contain related information:

- ~~197-11-900 Purpose of this part; (moved elsewhere)~~
- ~~197-11-902 Agency SEPA policies; (moved elsewhere)~~
- ~~197-11-908 Environmentally sensitive areas; (moved elsewhere)~~
- ~~197-11-916 Application to ongoing action; (moved elsewhere)~~
- ~~197-11-914 Fees.~~
- ~~197-11-916 Application to ongoing action; (moved elsewhere)~~
- ~~197-11-920 Agencies with environmental expertise; (moved elsewhere)~~
- ~~197-11-922 Lead agency rules; (moved elsewhere)~~
- ~~197-11-924 Determining lead agency; (moved elsewhere)~~
- ~~197-11-926 Lead agency for governmental proposals; (moved elsewhere)~~
- ~~197-11-928 Lead agency for public and private proposals; (moved elsewhere)~~
- ~~197-11-930 Lead agency for private projects with one agency with jurisdiction; (moved elsewhere)~~
- ~~197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city; (moved elsewhere)~~
- ~~197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city; and one or more state agencies; (moved elsewhere)~~
- ~~197-11-936 Lead agency for private projects requiring licenses from more than one state agency; (moved elsewhere)~~
- ~~197-11-938 Lead agencies for specific proposals; (moved elsewhere)~~
- ~~197-11-940 Transfer lead agency status to a state agency; (moved elsewhere)~~
- ~~197-11-942 Agreements on lead agency status; (moved elsewhere)~~
- ~~197-11-944 Agreements on division of lead agency duties; (moved elsewhere)~~
- ~~197-11-946 DOE resolution of lead agency disputes; (moved elsewhere)~~
- ~~197-11-948 Assumption of lead agency status. (moved elsewhere)~~

~~**24.02.240 Sensitive areas map adopted by reference.** (moved to new Article)~~

24.02.260 Fees.

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

Article XIV. 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.

PROPOSED CHANGES TO KIRKLAND'S LAND SURFACE MODIFICATION (LSM) RULES

HOW TO READ THIS:

- Text that is covered by a strike-through (~~strike-through~~) is existing text currently contained in the Zoning Code or Municipal Code that is to be deleted.
- Text that is underlined (underlined), with the exception of section headings, is new text that is to be added.

NOTE: Text for new Chapter 29 has not been underlined, although all text is new.

From Zoning Code:

Section 1.10

12. Land Surface Modification – Do you want to do any clearing, grading or engage in any land surface modifications including removing vegetation other than trees on the subject property? If so, you should read ~~KZC 415.75~~KMC Title 29, Land Surface Modification.

Section 5.10

- .455 Land Surface Modification – The clearing or removal of ~~trees, shrubs, groundcover and other vegetation, excluding trees, and all grading, excavation and filling of materials. The removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 KMC shall not be deemed to be land surface modification.~~

Sections 30.17, 30.27, 30.37, 50.20, 52.35, 60.28, 60.173

4. Land Surface Modification Landward of the High Waterline Yard – Land surface modification landward of the high waterline yard is regulated like land surface modifications throughout the City. See KMC Title 29 Chapter 415~~KZC~~ for those regulations.

Section 60.18

4. Land Surface Modification Other than Waterward of the High Waterline or the Regulated Wetland or Wetland Buffer – See KMC Title 29 Chapter 415~~KZC~~ for regulations regarding land surface modifications other than waterward of the high waterline or within the regulated wetland or wetland buffer.

Section 115.75

~~115.75 Land Surface Modification~~

~~1. General — The applicant shall comply with this section with respect to all land surface modifications.~~

~~2. Nature of Fill Materials — All materials used as fill must be nondissolving and nondecomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.~~

~~3. A land surface modification is permitted, only if it:~~

~~a. Has been approved as part of a valid development permit, subdivision, or substantial development permit; or~~

~~b. Is for cemetery graves; or~~

~~c. Is in a right-of-way authorized in writing by the Director of the Department of Public Works; or~~

~~d. Is for mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate or clay where a permit has been issued by the state of Washington, Department of Natural Resources; or~~

~~e. Is for exploratory excavations under the direction of a professional engineer licensed in the state of Washington, as long as the extent of the land surface modification does not exceed the minimum necessary to obtain the desired information; or~~

~~f. Is for normal maintenance and repair of the facilities of a common carrier by rail in interstate commerce within its existing right-of-way; or~~

~~g. Is for excavations for utility service connections to serve existing and/or new structures; or~~

~~h. Is for actions which must be undertaken immediately, or within a time too short to allow full compliance with the permit requirements of subsection (4) of this section, to avoid an imminent threat to public health or safety; to prevent an imminent danger to public or private property; or to prevent an imminent threat of serious environmental degradation. This determination will be made by the Planning Official; or~~

~~i. Is for the removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 KMC, and the removal of blackberry vines or dead, dangerous, or diseased trees, when authorized by the Building Official; or~~

~~j. Is for placement of fill on land owned or controlled by the City; or~~

~~k. Complies with all of the following criteria:~~

~~1) The subject property contains a permanent building or an active use; and~~

~~2) The land surface modification will not change the points where the storm water or groundwater enters or exits the subject property; and will not change the quality, quantity, or velocity of storm water or groundwater; and~~

~~3) The land surface modification is not in a stream, lake, wetland, or required setback therefrom; is not on or within 25 feet of a geologically hazardous area; and is not in an area with soft compressible soils; and~~

~~4) The land surface modification is not located on a site for which a development permit, subdivision, or substantial development permit has been submitted or is under review but has not yet been approved; and~~

~~5) In any one-year period, not more than 500 cubic yards of fill material is deposited on, excavated and removed from or moved from place to place on the subject property and will not result in more than a two-foot increase or one-foot decrease in average slope. If the subject property is larger than one acre, the limit is 500 cubic yards within each acre; and~~

~~6) If the land surface modification is between 100 and 500 cubic yards, the City may require a soils report. If a soils report is required, it shall contain a description of any on- or off-site impacts of the proposed land surface modification on each of the following elements:~~

- ~~a) Slope stability — if the site has an average slope 15 percent or greater;~~
- ~~b) Landslide hazard, sloughing or mud flows;~~
- ~~c) Seismic hazards (based on subclassifications within the Class III risk zone);~~
- ~~d) Erosion hazards;~~
- ~~e) Drainage;~~
- ~~f) Springs or seeps or any other surface water;~~
- ~~g) Groundwater;~~
- ~~h) Flood hazard;~~
- ~~i) Existing vegetation;~~

~~The soils report also must contain recommended methods for mitigating identified impacts and a description of how these mitigating measures impact adjacent properties. The City may require implementation of recommendations in the soils report to mitigate identified impacts.~~

~~4. The Planning Official may approve a land surface modification which does not comply with subsection (3) of this section if the land surface modification:~~

~~a. Except as allowed by Chapter 90-KZC, does not alter or adversely affect streams, lakes, wetlands, or significant trees, either on the subject property or on any other property; and~~

~~b. Does not violate any expressed policy of the City; and~~

~~c. Either:~~

~~1) Is proposed to correct an erosion or drainage problem on an undeveloped site; or~~

~~2) Is proposed to create new utility or access corridors; or~~

~~3) The subject property contains a permanent building or an active use and in any one-year period more than 500 cubic yards of fill material is deposited on, excavated and removed from, or moved from place to place on the subject property and will not result in more than a two-foot increase or one-foot decrease in average slope. If the subject property is larger than one acre, the threshold is 500 cubic yards within each acre; or~~

~~4) The subject property contains a permanent building or an active use and is on or within 25 feet of a regulated slope or is within an area of soft compressible soils; or~~

~~5) Is proposed to ensure grading is done to avoid erosion, landslides, or other environmental hazards for a development activity for which a complete building permit application is being processed and a bond for restoration has been submitted. All land surface modification authorized by the Planning Official must be completed no later than October 1st, unless extended by the Building Official. The bond shall be held until all site work associated with the approved building permit is completed.~~

~~5. Prior to approving a land surface modification under subsection (4) of this section, the applicant shall submit to the Planning Official:~~

~~a. Survey of the subject property;~~

~~b. Limits of proposed grading;~~

~~c. Tree retention plan;~~

~~d. Utility locations;~~

~~e. Easement and right-of-way improvement locations;~~

~~f. Erosion control/construction phase storm water control plan; and~~

~~g. A soils report which contains all elements described in subsection (3)(k)(7) of this section.~~

~~6. In approving the LSM, the Planning Official may require measures to mitigate the impacts of the LSM, including but not limited to the following:~~

~~a. The limit of grading line shall be clearly marked in the field with the installation of a six-foot-high temporary chain link fence and signage and flagging of trees to be retained.~~

~~b. An erosion control siltation fence shall be erected along required setbacks from streams, wetlands, and steep-sloped areas.~~

~~7. Appeals — The decision of the Planning Official in approving or denying a land surface modification may be appealed using the appeal provision, as applicable, of Process I, KZC 145.60 through 145.110.~~

~~8. Bonds — The City may require the following bonds, per Chapter 175 KZC:~~

~~a. A performance bond to guarantee that the land surface modification will conform to City standards; and/or~~

~~b. A maintenance bond after the land surface modification is completed.~~

~~9. Tree and Plant Restoration~~

~~If any tree required to be retained or planted is damaged or destroyed, the applicant shall plant a tree of the same species at least three to five inches in diameter, if deciduous, as measured one foot above grade or at least 16 feet high, if coniferous, in the immediate vicinity of the damaged or destroyed tree. The City may require the applicant to remove the damaged or destroyed tree.~~

~~In addition, if grading or clearing destroys groundcover or shrubbery, the applicant shall hydroseed the bare soil and plant shrubs at least 24 inches in height in the immediate vicinity of the damaged or destroyed vegetation.~~

From Municipal Code Title 9:

9.12.010 Removal of overhanging vegetation and fire hazards.

(a) The owner of any property in the city shall remove or destroy, in a manner permitted by law, all trees, plants, shrubs or vegetation or parts thereof that which overhangs or is growing on any sidewalk or street, or which are growing thereon in such a manner as to that obstructs or impairs the free and full use of the sidewalk or street by the public; and. Prior authorization is required from the City to the extent pruning or removal of trees is required.

(b) The owner of any property in the city shall also remove or destroy (in a manner permitted by law), all grass, weeds, shrubs, bushes, trees or

~~vegetation, brush or growing or which have grown and died and to remove or destroy (in a manner permitted by law) all debris upon property owned or occupied by them and which are that is a fire hazard or a menace to public health, safety or welfare. Such work, when proposed in a critical area or its buffer, requires prior approval from the Department of Planning and Community Development. (Ord. 2149 § 1, 1971)~~

From Municipal Code Title 21:

~~21.08.105 IBC Section J102 amended.~~

~~Section J102 of the International Building Code is amended and supplemented by the addition of the following definition:~~

~~LAND SURFACE MODIFICATION shall include clearing or removal of trees, shrubs, ground cover and other vegetation, and all grading, excavation and filling of materials. The removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 of the Kirkland Municipal Code and the removal of dead, dangerous, or diseased trees or blackberry vines when authorized by the Building Official shall not be deemed to be a Land Surface Modification.~~

~~(Ord. 4099 § 3 (part), 2007; Ord. 3946 § 1 (part), 2004)~~

~~21.08.110 IBC Section J103 amended.~~

~~Section J103 of the International Building Code is amended and supplemented to read:~~

~~Section J103. PERMITS REQUIRED. Except as exempted in Section J103.2, no land surface modification shall be performed without first having obtained a permit from the building official.~~

~~Section J103.2. Exemptions. A land surface modification permit shall not be required for the following:~~

- ~~1. Land surface modification performed in the normal course of maintaining existing landscaping on a lot associated with an existing building or buildings, provided such work does not modify any drainage course and does not involve more than 50 cubic yards of material in an 12 month period.~~
- ~~2. Any excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid Building Permit. This shall not exempt any fill made with the material from such excavation when the material is removed from the lot or any fill material which is placed on the lot.~~
- ~~3. Cemetery graves.~~
- ~~4. Fill deposited on previously approved disposal sites under the control of other City Administrative Departments.~~

- ~~5. Excavations for wells or tunnels, or utilities or other work supervised by the City of Kirkland.~~
- ~~6. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate or clay where a permit has been issued by the State of Washington, Department of Natural Resources.~~
- ~~7. Exploratory excavations under the direction of soil engineers or engineering geologists.~~
- ~~8. Normal maintenance and repair of the facilities of a common carrier by rail in interstate commerce within its existing right-of-way.~~
- ~~9. Excavations for utility service connections to serve existing and/or new structures.~~
- ~~10. Correction of drainage problems when supervised by the Department of Public Works; and the installation of approved preliminary plat and short plat improvements as permitted by Section J103.3.~~

~~Exemption from the permit requirements of this Chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction.~~

~~(Ord. 4099 § 3 (part), 2007; Ord. 4017 § 7, 2005; Ord. 3946 § 1 (part), 2004)~~

21.08.115 IBC Appendix Section J103.3 added.

Appendix Section J103.3 of the International Building Code is amended by the addition of a new subsection:

Section J103.3. Permit Issuance. No land surface modification or grading permit shall be issued in the following circumstances:

1. Prior to the approval of a preliminary plat or short plat.

~~Exception: After the approval of a preliminary plat or short plat, a land surface modification or grading permit may be issued for land surface modification or grading work to be done within rights-of-way, utility easements or access easements as designated on the approved preliminary plat drawings. A limited amount of grading may be permitted and stockpiling of materials on individual lots with the concurrence of the departments that normally review development permit applications. Permits to be issued for activities covered by this subparagraph shall be issued by the department of public works who shall with respect to such activities, have full authority to administer and enforce the provisions of Appendix Chapter J of the International Building Code as herein amended and supplemented.~~

2. Prior to the issuance of a building permit.

~~Exception: After the receipt of a complete application for a building permit, a land surface modification or grading permit may be issued only for the minimum land surface modification or grading necessary to locate structures or other associated improvements designated on the submitted building permit plans.~~

~~3. In areas served by inadequate water, sewer, storm drainage or transportation systems as determined by the Public Works Department.~~

~~Exception: When such action proposes the improvement of any deficient system to minimum city standards and at the expense of the private sponsor and such improvements are associated with the issuance of a valid building permit.~~

~~4. Prior to the approval specified in Section 115.75, Kirkland Zoning Code, where no Building Permit is required.~~

~~5. Prior to the approval of a preliminary Planned Unit Development.~~

~~Exception: After the approval of a preliminary Planned Unit Development, a Land Surface Modification or Grading Permit may be issued for land surface modification or grading work to be done within rights-of-way, utility easements, access easements or other major components of the internal vehicular circulation system so designated in the approved Preliminary Planned Unit Development.~~

~~(Ord. 4099 § 3 (part), 2007; Ord. 3946 § 1 (part), 2004)~~

New Municipal Code Title to be Added:

Title 29

LAND SURFACE MODIFICATION

Chapters:

- 29.04 General Provisions
- 29.08 Definitions
- 29.12 Permit Exemptions
- 29.16 Permit Application
- 29.20 Permit Approval Criteria
- 29.24 Development Standards
- 29.28 Bonds and Restoration
- 29.32 Expiration
- 29.36 Suspension or Revocation, Appeals and Enforcement

Chapter 29.04
GENERAL PROVISIONS

Sections:

- 29.04.010 Purpose and Intent
- 29.04.020 Applicability
- 29.04.030 Right of Entry.
- 29.04.040 Inspections.

29.04.010 Purpose and Intent

The purpose of this title is to provide for and promote the health, safety and welfare of the general public by minimizing risks to life and property and ensuring that land surface modification occurs in a manner compatible with City goals for environmental protection. To preserve natural features and functions of the land until a development plan is reviewed and approved, speculative grading is discouraged.

29.04.020 Applicability.

The provisions of this title apply to all land surface modifications conducted after the effective date of the ordinance codified in this title. Except as exempted in Chapter 29.12, no land surface modification shall be performed without first having obtained a permit from the City of Kirkland.

29.04.030 Right of entry.

Where it is necessary to make an inspection to enforce the provisions of this chapter, or where the City has reasonable cause to believe that there exists upon a site a condition which is contrary to or in violation of this chapter, the City is authorized to enter the site at reasonable times to inspect or to perform the duties imposed by this chapter.

29.04.040 Inspections.

Land surface modifications for which a permit is required shall be subject to inspection by the City to ascertain compliance with the provisions of this chapter and other City laws and regulations. It shall be the duty of the applicant to cause the work to remain accessible for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this chapter or of other codes or ordinances of the City.

Chapter 29.08
DEFINITIONS

Sections:

- 29.08.010 General
- 29.08.020 Definitions

29.08.010 General.

The definitions in this Chapter apply throughout this title.

29.08.020 Definitions.

- a. "Development Permit" means any permit or approval under the Zoning Code or the Building Code that must be issued before initiating a use or development activity.
- b. "Land Surface Modification" means the clearing or removal of ~~trees~~, shrubs, groundcover and other vegetation, excluding trees, and all grading, excavation and filling of materials.

Chapter 29.12 PERMIT EXEMPTIONS

Sections:

- 29.12.010 Permit Exemptions.
- 29.12.020 Emergency Exemption.
- 29.12.030 Relationship to Other Regulations.

29.12.010 Permit Exemptions

Except in (1) critical areas and their buffers, (2) areas waterward of the high waterline, (3) high waterline required yards, or (4) areas with an historic overlay designation, a land surface modification permit shall not be required for the following:

- a. The removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 of the Kirkland Municipal Code.
- b. The removal of prohibited vegetation.
- c. Land surface modification performed in the normal course of maintaining existing landscaping on a lot associated with an existing building or buildings, provided such work:
 - 1) does not modify any drainage course;
 - 2) does not result in an increase or decrease in topography at any point of more than 4'; and
 - 3) does not involve more than 50 cubic yards of material in any 12 month period.
- d. Any excavation authorized by a valid Building Permit. This shall not exempt any fill made with the material from such excavation when the material is removed from the lot or any fill material which is placed on the lot.
- e. Utilities or other work in a right-of-way supervised by the City of Kirkland, authorized in writing by the Director of the Department of Public Works, or as allowed by a right-of-way permit approved under KMC 19.12.

