

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:

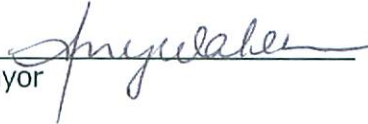
Section 1. Chapter 24.02 of the Kirkland Municipal Code is amended as set forth in Attachment A to this ordinance and incorporated by reference.

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 2nd day of September, 2014.

Signed in authentication thereof this 2nd day of September, 2014.



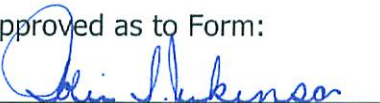
Mayor

Attest:



City Clerk

Approved as to Form:



City Attorney

Publication Date: September 13, 2014

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.
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 - 24.02.045 Definitions and abbreviations.
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 - Article X. SEPA/Growth Management Act Integration
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 - Article XI. SEPA/Model Toxics Control Act Integration
- 24.02.200 General—SEPA/MTCA integration.
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- 24.02.210 General—Using existing environmental documents.
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- 24.02.220 General—Appeals.
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- 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	<u>SEPA/GMA Integration</u> documents.
197-11-238	<u>SEPA/GMA integration monitoring</u> .

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 September 13, 2014.

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 2nd day of September, 2014.

I certify that the foregoing is a summary of Ordinance O-4452 approved by the Kirkland City Council for summary publication.



City Clerk