

ORDINANCE NO. 4150

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STATE ENVIRONMENTAL POLICY ACT PROCEDURES AND POLICIES; REPEALING AND RE-ENACTING SECTION 24.02 OF THE KIRKLAND MUNICIPAL CODE (KMC); AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION, FILE NO. ZON08-00007.

WHEREAS, the City Council has received recommendations from the Kirkland Planning Commission and Houghton Community Council to amend certain sections of the text of the KMC, all as set forth in that certain report and recommendation of the Planning Commission dated October 7, 2008 and bearing Kirkland Department of Planning and Community Development File No. ZON08-00007; and

WHEREAS, prior to making its recommendation, the Kirkland Planning Commission on July 31, 2008 held a public hearing on the amendment proposals and considered the comments received at said hearing; and

WHEREAS, pursuant to the State Environmental Policy Act (SEPA), adoption of agency SEPA procedures is categorically exempt from SEPA review pursuant to WAC 197-11- 800(19); and

WHEREAS, in regular public meeting the City Council considered the reports and recommendations of the Planning Commission.

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

Section 1. Municipal Code text repealed: Chapter 24.02 of the Kirkland Municipal Code is hereby repealed.

Section 2. Municipal Code text adopted: A new Chapter 24.02 of the Kirkland Municipal Code is hereby adopted to read as follows:

As set forth in Attachment A attached to this ordinance and incorporated herein by this reference.

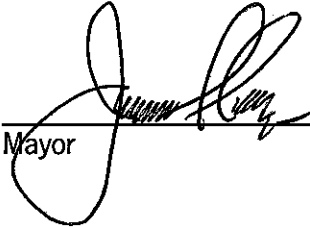
Section 3. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. This ordinance shall be in full force and effect 90 days from and after its passage by the Kirkland City Council and publication pursuant to Kirkland Municipal Code 1.08.017, in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.

Section 5. A complete copy of this ordinance shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.


PASSED by majority vote of the Kirkland City Council in open meeting this 21st day of October, 2008.

SIGNED IN AUTHENTICATION thereof this 21st day of October, 2008



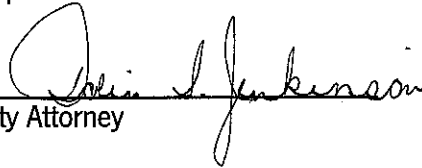
Mayor

Attest:

Acting


City Clerk

Approved as to Form:



City Attorney

ATTACHMENT A

Title 24

**Chapter 24.02
SEPA PROCEDURES AND POLICIES**

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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 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:

- 197-11-055 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;
- 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 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:

(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 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.

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:

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

(2) The most recent version of the Comprehensive Plan;

(3) The most recent version of the Zoning Code;

(4) The most recent version of the Zoning Map;

(5) 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, including the Shoreline Master Program), Title 25 (Concurrency Management), and Title 28 (Landmarks);

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

(7) The perpetual six-year transportation improvement program established by KMC Section 19.08.051, including annual amendments;

(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.

Article III. Definitions and Abbreviations

24.02.040 General—Definitions.

This article, Section 24.02.040 through Section 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 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.

- (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, Section 24.02.060 through Section 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 WAC 197-11-800(1)(a):

(a) The construction or location of any residential structures of nine or fewer dwelling units (WAC 197-11-800(1)(b)(i));

(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.

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:

(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. 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 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 KMC 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 KMC 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, 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:

- 197-11-310 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 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 VII. 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 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;

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, 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, and by mailing notice to those receiving mailed 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 (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.

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/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 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 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, Section 24.02.220 through Section 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. 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 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 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) above.

(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 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) Copies will be sent 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) 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.

24.02.240 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, Section 24.02.250 through Section 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 KMC 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.

ORDINANCE NO. 4150
PUBLICATION SUMMARY

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STATE ENVIRONMENTAL POLICY ACT PROCEDURES AND POLICIES; REPEALING AND RE-ENACTING SECTION 24.02 OF THE KIRKLAND MUNICIPAL CODE (KMC); AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION, FILE NO. ZON08-00007.

Section 1. Repeals existing Chapter 24.02 of the Kirkland Municipal Code.

Section 2. Adopts the specific text of a new Chapter 24.02 of the Kirkland Municipal Code.

Section 3. Addresses severability.

Section 4. Authorizes 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 ninety days after publication of said summary.

Section 5. 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 regular meeting on the 21st day of October, 2008.

I certify that the foregoing is a summary of Ordinance 4150 approved by the Kirkland City Council for summary publication.

Attest:

Acting Karen R. Jewell
City Clerk