

ORDINANCE NO. 2004-09-064

AN ORDINANCE RELATING TO THE STATE ENVIRONMENTAL POLICY ACT, REPEALING BELLINGHAM MUNICIPAL CODE CHAPTER 16.04 AND ADOPTING A NEW CHAPTER 16.20 AS THE CITY OF BELLINGHAM ENVIRONMENTAL PROCEDURES ORDINANCE.

WHEREAS, the State of Washington has adopted revised rules for implementation of the State Environmental Policy Act (SEPA) contained in WAC 197-11; and

WHEREAS, local governments are required to revise regulations to achieve consistency with State SEPA rules; and

WHEREAS, as required by RCW 36.70A, notice of the City's intent to adopt a new Environmental Procedures Ordinance was filed with the Department of Community, Trade and Economic Development on June 23, 2004, and sent to other reviewing agencies at least 60 days prior to the effective date of this ordinance; and

WHEREAS, after mailed and published notice the Planning Commission held a public hearing on the proposed ordinance on July 22, 2004 and a work session on August 5, 2004; and

WHEREAS, the Planning Commission considered the staff report and the comments received and recommends that this ordinance be adopted; and

WHEREAS, after mailed and published notice, the City Council held a public hearing on the proposed ordinance on September 13, 2004; and

WHEREAS, the City Council has considered the recommendation of the Planning Commission, the staff report and public comment and hereby adopts the findings and conclusions of the Planning Commission;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Bellingham Municipal Code Chapter 16.04 is hereby repealed.

Section 2. A new Bellingham Municipal Code Chapter 16.20 is hereby adopted as follows:

16.20.010 Authority

This chapter may be cited as the City of Bellingham Environmental Procedures Ordinance. The City of Bellingham adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, WAC 197-11-904. This chapter contains this City's SEPA procedures and policies. The SEPA Rules, Chapter 197-11 WAC, must be used in conjunction with this chapter.

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16.20.020 Definitions – Adoption by Reference

The City adopts by reference the definitions contained in WAC 197-11-700 through 197-11-799, as now existing or hereinafter amended. The following abbreviations are used in this chapter:

DEIS – Draft Environmental Impact Statement
DNS – Determination of Nonsignificance
DOE – Department of Ecology
DS – Determination of Significance
EIS – Environmental Impact Statement
FEIS – Final Environmental Impact Statement
MTCA – Model Toxics Control Act
SEPA – State Environmental Policy Act

16.20.030 Additional Definitions

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

“City” means the City of Bellingham.

“Department” means any division, subdivision or organizational unit of the City established by ordinance, rule or order.

“SEPA rules” means chapter 197-11 WAC adopted by the Department of Ecology.

“Ordinance” means the ordinance, resolution or other procedure used by the City to adopt regulatory requirements.

“Early notice” means the City’s response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant’s proposal as provided in 197-11-350 WAC.

16.20.040 General Requirements – Adoption by Reference

The City adopts the following sections of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference, as supplemented in this chapter:

WAC
197-11-040 Definitions.
197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.

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- 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.
- 197-11-210 SEPA/GMA integration.
- 197-11-220 SEPA/GMA definitions.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 Documents.
- 197-11-238 Monitoring.
- 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 actions.
- 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.

16.20.050 Designation of Responsible Official

- A. For those proposals for which the City is a lead agency, the responsible official shall be the Planning and Community Development Director or such other person as the Director may designate in writing.
- B. For all proposals for which the City is a lead agency, 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 those sections of the SEPA Rules (Chapter 197-11 WAC) that have been adopted by reference.
- C. The responsible official shall be responsible for preparation of written comments for the City in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.
- D. The responsible official shall be responsible for the City's compliance with WAC 197-11-550 whenever the City is a consulted agency and 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.
- E. The responsible official shall retain all documents required by the SEPA Rules and make them available in accordance with Chapter 42.17 RCW.

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16.20.060 Lead Agency Determination and Responsibilities

- A. When the City receives an application for or initiates a proposal that involves a nonexempt action, the responsible official shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the responsible official is aware that another agency is in the process of determining the lead agency.
- B. When the City is not the lead agency for a proposal, all departments of the City shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No City department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless the responsible official determines a supplemental environmental review is necessary under WAC 197-11-600.
- C. If the City, or any of its departments, receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the City must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the City may be initiated by the responsible official or any department.
- D. The responsible official is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944.
- E. The responsible official shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.
- F. When the City is lead agency for a MTCA remedial action, the Department of Ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the responsible official shall decide jointly with the Department of Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

16.20.070 Timing and Content of Environmental Review

- A. **Categorical Exemptions.** Upon receipt of an application for a proposal and for City proposals, the City shall determine whether the proposal is an action potentially subject to SEPA and if so, whether the action is categorically exempt.
- B. **Threshold Determinations.** When the City is lead agency for a proposal, the following threshold determination timing requirements apply:

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1. If a DS is made concurrent with the notice of application, the DS and scoping notice shall be combined with the notice of application (RCW 36.70B.110). Nothing in this subsection prevents the DS/scoping notice from being issued before the notice of application. If sufficient information is not available to make a threshold determination when the notice of application is issued, the DS may be issued later in the review process.
 2. If the City is lead agency and project proponent or is funding a project, the City may conduct its review under SEPA and may allow appeals of procedural determinations, if an appeal process is provided under this Chapter, prior to submitting a project permit application. The initiating department should contact the responsible official at initial proposal formulation to integrate environmental concerns into the early stage of the decision making process.
 3. If an open record pre-decision hearing is required, the threshold determination shall be issued at least 15 days before the open record pre-decision hearing (RCW 36.70B.110 (6)(b)).
 4. The optional DNS process in WAC 197-11-355 may be used to indicate on the notice of application that the lead agency is likely to issue a DNS. If this optional process is used, a separate comment period on the DNS may not be required (refer to WAC 197-11-355(4)).
- C. For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the City's staff recommendation to the appropriate review authority. If the final EIS is or becomes available, it shall be substituted for the draft.
- D. The optional provision of WAC 197-11-060(3)(c) is adopted.

16.20.080 Categorical Exemptions and Threshold Determinations – Adoption by Reference

The City adopts the following sections of the SEPA Rules by reference, as now existing or hereinafter amended, as supplemented in this chapter:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 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.

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- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-800 Categorical exemptions (flexible thresholds).
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

16.20.090 Categorical Exemptions – Minor New Construction

- A. The following exempt levels for minor new construction are established under WAC 197-11-800 (1):
 - 1. The construction or location of any residential structures of up to nine dwelling units.
 - 2. When located in the CBD Neighborhood as identified in the comprehensive plan: The construction of an office, school, commercial, recreational, service or storage building with up to 9,000 square feet of gross floor area with associated parking facilities designed for up to 40 automobiles.
 - 3. The construction of a parking lot located in the CBD Neighborhood and designed for up to 40 parking spaces.
 - 4. When located anywhere except the CBD Neighborhood: The construction of an office, school, commercial, recreational, service or storage building with up to 5,000 square feet of floor area with associated parking facilities designed for up to 20 automobiles.
 - 5. When located anywhere except the CBD Neighborhood: The construction of a parking lot designed for up to 20 automobiles.
 - 6. Any landfill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation; any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

16.20.100 Categorical Exemptions and Threshold Determinations – Use of Exemptions

- A. The determination of whether a proposal is categorically exempt shall be made by the responsible official. The determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal. The responsible official shall not require completion of an environmental checklist for an exempt proposal.
- B. In determining whether a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

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- C. If a proposal includes both exempt and nonexempt actions, the responsible official may authorize exempt actions prior to compliance with the procedural requirements of this ordinance, except that:
1. The responsible official shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of alternatives.
 2. The responsible official may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and
 3. The responsible official may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

16.20.110 Environmental Checklist

- A. A completed environmental checklist shall be filed at the same time as an application for a permit, license, certificate, or other approval not exempted in this ordinance; except, a checklist is not needed if the City's responsible official and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. Except as provided in subsection E of this section, the checklist shall be in the form of WAC 197-11-960 with such additions that may be required by the responsible official in accordance with WAC 197-11-906(4). A checklist submittal shall include any checklist review fee established by the City Council.
- B. For private proposals, the responsible official will require the applicant to complete the environmental checklist, providing assistance as necessary. For City proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.
- C. The responsible official may require that City staff, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:
1. The City has technical information on a question or questions that is unavailable to the private applicant; or
 2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.
- D. For projects submitted as planned actions under WAC 197-11-164, the City shall use its existing environmental checklist form or may modify the environmental checklist form as

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provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology for review prior to use as provided by WAC 197-11-315.

16.20.120 Mitigated DNS

- A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.
- B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:
 - 1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the City is lead agency; and
 - 2. Precede the City's actual threshold determination for the proposal.
- C. The responsible official should respond to the request for early notice within ten working days. The response shall:
 - 1. Be written;
 - 2. State whether the City currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the City to consider a DS; and
 - 3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- D. As much as possible, the City should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the City shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal:
 - 1. If the City indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the City shall issue and circulate a DNS under WAC 197-11-340(2).

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2. If the City indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the City shall make the threshold determination, issuing a DNS or DS as appropriate.
 3. 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 decibel" or construct X type and size of stormwater detention facility at Y location" are adequate.
 4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- F. A mitigated DNS is issued under either WAC 197-11-340(2), requiring a 14-day comment period and public notice, or WAC 197-11-355, which may require no additional comment period beyond the comment period on the notice of application.
 - G. Mitigation measures incorporated in the mitigated DNS shall be conditions of approval of the permit and may be enforced in the same manner as any conditions of the permit, or in any other manner as prescribed by the City.
 - H. If the City's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the City should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) relating to the withdrawal of a DNS.
 - I. The City's written response under subsection (C) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the City to consider the clarifications or changes in its threshold determination.

16.20.130 Environmental Impact Statements (EIS) – Adoption by Reference.

The City adopts the following sections of the SEPA Rules, as now existing or hereinafter amended, by reference, as supplemented by this chapter:

WAC

- 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.

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- 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.

16.20.140 Environmental Impact Statements--Additional Considerations

- A. Pursuant to WAC 197-11-408(2)(a), all comments on determinations of significance and scoping notices shall be in writing, except where a public meeting on EIS scoping occurs pursuant to WAC 197-11-410(1)(b).
- B. Pursuant to WAC 197-11-420, 197-11-620, and 197-11-625, the Department of Planning and Community Development ("Department"), under the direction of the responsible official, shall be responsible for preparation and content of EIS's. The Department may contract with consultants as necessary for the preparation of environmental documents. The Department may consider the opinion of the applicant regarding the qualifications of the consultant but the Department shall retain sole authority for selecting persons or firms to author, co-author, provide special services or otherwise participate in the preparation of required environmental documents.
- C. Consultants or sub-consultants selected by the Department to prepare environmental documents for a private development proposal shall not: act as agents for the applicant in preparation or acquisition of associated underlying permits; have a financial interest in the proposal for which the environmental document is being prepared; perform any work or provide any services for the applicant in connection with or related to the proposal.
- D. All costs of preparing the environment document shall be borne by the applicant. The responsible official shall advise the applicant(s) of the projected costs for the environmental document prior to actual preparation. The City may require the applicant to post bond or otherwise ensure payment of these costs. The City may bill consultant costs and expenses directly to the applicant.
- E. If the responsible official requires an EIS for a proposal and determines that someone other than the City will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the City's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution. The City Council may establish a fee for City review of an EIS.
- F. The City may require an applicant to provide information the City does not possess, including information that must be obtained by specific investigations. This provision is

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not intended to expand or limit an applicant's other obligations under WAC 197-11-100, or other provisions of regulations, statute, or ordinance. An applicant shall not be required to produce information under this provision which is not specifically required by this chapter or that is being requested from another agency. This provision does not limit the information the City may request under another ordinance or statute.

- G. In the event an applicant decides to suspend or abandon the project, the applicant must provide formal written notice to the Department and consultant. The applicant shall continue to be responsible for all monies expended by the Department or consultants to the point of receipt of notification to suspend or abandon, or other obligations or penalties under the terms of any contract let for preparation of the environmental documents. The responsible official shall refund any fees collected that remain after incurred costs are paid.
- H. The Department shall only publish an environmental impact statement (EIS) when it believes that the EIS adequately discloses the significant direct, indirect, and cumulative adverse impacts of the proposal and its alternatives; mitigation measures proposed and committed to by the applicant, and their effectiveness in significantly mitigating impacts; mitigation measures that could be implemented or required; and unavoidable significant adverse impacts.
- I. The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this ordinance:
1. Economy, including employment and tax base.
 2. Social policy analysis, including cultural factors, neighborhood cohesion and quality of life.
 3. Cost-benefit analysis.

16.20.150 Comments and Public Notice – Adoption by Reference

The City adopts the following sections, as now existing or hereinafter amended, by reference as supplemented in this chapter:

WAC

- 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.

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197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.

16.20.160 Comments and Public Notice – Additional Considerations

- A. Whenever possible, the City shall integrate the public notice required under this section with existing notice procedures for the City's nonexempt permits or approvals required for the proposal.
- B. Whenever the City issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the City shall give public notice as follows:
1. If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
 2. For purposes of WAC 197-11-510, public notice shall be as required for the associated permit notice of application in BMC 21.10 Procedures and Administration.
 3. For non-project actions or other actions that do not require a notice of application under BMC 16.20.160 B. 2, the City shall give notice of the DNS or DS by:
 - a. Publishing notice in a newspaper of general circulation in the city; and
 - b. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered, Mayor's Neighborhood Advisory Commission members and neighborhood associations and coalitions registered with the Planning and Community Development Department.
 4. Whenever the City issues a DS under WAC 197-11-360(3), the City shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
- C. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in BMC 21.10 as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1)(b).
- D. Whenever the City issues a Draft EIS (DEIS) under WAC 197-11-455(5) or a Supplemental EIS (SEIS) under WAC 197-11-620, notice of the availability of those documents shall be given by:
1. Indicating the availability of the DEIS in any public notice required for a nonexempt license;
 2. Publishing notice in a newspaper of general circulation in the county, city, or general areas where the proposal is located; and

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- 3. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered.
- E. Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).
- F. The responsible official may require further notice if deemed necessary to provide adequate public notice of a pending action. Failure to require further or alternative notice shall not be a violation of any notice procedure.
- G. The City may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this Chapter relating to the applicant's proposal.

16.20.170 Using and Supplementing Existing Environmental Documents – Adoption by Reference

The City adopts the following sections of the SEPA Rules, as now existing or hereinafter amended, by reference:

WAC

- 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.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statements.
- 197-11-625 Addenda – Procedures.
- 197-11-630 Adoption – Procedures.
- 197-11-635 Incorporation by reference – Procedures.
- 197-11-640 Combining documents.

16.20.180 SEPA Decisions – Adoption by Reference

The City adopts the following sections of the SEPA Rules, as now existing or hereinafter amended, by reference, as supplemented in this chapter:

WAC

- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.

16.20.190 SEPA Decisions – Substantive Authority

- A. The City may attach conditions to a permit or approval for a proposal so long as:

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1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
 2. Such conditions are in writing; and
 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
 4. The City has considered whether other local, State, or Federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 5. Such conditions are based on one or more policies in BMC 16.20.200 and cited in the permit, approval, license or other decision document.
- B. The City may deny a permit or approval for a proposal on the basis of SEPA so long as:
1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final supplemental EIS; and
 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
 3. The denial is based on one or more policies identified in BMC 16.20.200 and identified in writing in the decision document.

16.20.200 SEPA Policies

- A. The policies and goals set forth in this section are supplementary to those in the existing authorization of the City of Bellingham.
- B. For the purposes of RCW 43.21C.060 and WAC 197-11-660(a), the following policies, plans, rules and regulations, and all amendments thereto, are designated and adopted by reference as the basis for the exercise of the City's substantive authority to condition or deny proposals under SEPA, subject to the provisions of RCW 43.21C.240 and BMC 16.20.190:
1. The policies of the State Environmental Policy Act, RCW 43.21C.020;
 2. Bellingham Comprehensive Plan and appendices;
 3. City of Bellingham Municipal Code;
 4. Park and Recreation Master Plans;
 5. Parks, Recreation and Open Space Plan;
 6. Six Year Capital Facilities Plan;
 7. Six Year Transportation Improvement Program;
 8. Dept. of Ecology Stormwater Management Manual for Western Washington;
 9. Fire Protection Development Standards, Bellingham Fire Department;

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10. Water System Comprehensive Plan;
11. Sewer System Comprehensive Plan;
12. Public Works Development Guidelines and Improvement Standards, including referenced Manual on Uniform Traffic Control Devices and A Policy on Geometric Design of Highways and Streets (AASHTO);
13. Dept. of Ecology Criteria for Sewage Works Design; and
14. Watershed Master Plan.

16.20.210 Appeals and Notice of Action

- A. The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680.
- B. Any aggrieved person may appeal the following threshold decisions:
 1. A Determination of Significance (DS) when issued for a project action, however no appeal is provided for a DS when issued for a non-project action;
 2. A mitigated Determination of Nonsignificance (MDNS) for a Type IIIA or Type IIIB decision.
- C. Any aggrieved person may appeal the conditioning or denial of the following permits when the conditions or denial were based on SEPA:
 1. A Type II permit, except Shoreline permits, by the Planning Director;
 2. A Type IIIB permit by the Hearing Examiner only when the permit decision may be appealed to the City Council; and
 3. A Type VII permit by the Landmark Review Board.
- D. No other SEPA administrative appeals shall be allowed.
- E. Appeals shall be conducted as follows:
 1. An appeal listed in BMC 16.20.210.B.1, or BMC 16.20.210.B.2 or BMC 16.20.210.C.1 shall be decided by the Hearing Examiner after an open record appeal hearing following the procedures in BMC 21.10.250. The hearing on an appeal under B.2 shall be consolidated with any open record pre-decision or appeal hearing on the associated project decision unless it is exempt from this requirement under WAC 197-11-680(3)(vi.).
 2. An appeal listed in BMC 16.20.210.C.2 shall be decided by the City Council after a closed record hearing following the procedures in BMC 21.10.120.O.

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3. An appeal listed in BMC 16.20.210.C.3 shall be decided by the Hearing Examiner after a closed record appeal hearing following the procedures in BMC 21.10.250.
 4. For any appeal under this subsection, the City shall provide for a record that shall consist of the following:
 - a. Findings and conclusions;
 - b. Testimony under oath; and
 - c. A taped or written transcript.
 5. The City may require the appellant to provide an electronic transcript.
 6. The procedural determination by the City's responsible official shall carry substantial weight in any appeal proceeding.
- F. Appeals of a DS are procedural SEPA appeals which are conducted by the Hearing Examiner pursuant to the provisions of BMC 21.10.250 subject to the following:
1. Only one appeal of a DS shall be allowed on a proposal.
 2. An appeal of a DS must be filed within 14 calendar days following issuance of the DS.
 3. The Hearing Examiner shall make a final decision on an appeal of a DS. The Hearing Examiner's decision may be appealed to superior court as provided in BMC 21.10.250.J.
- G. Administrative appeals of decisions to condition or deny applications pursuant to RCW 43.21C.060 shall be consolidated in all cases with administrative appeals, if any, on the merits of a proposal.
- H. An appeal shall not be accepted unless the appeal filing fee, as set by the City Council, has been paid.
- I. The City shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.
- J. The City, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published pursuant to RCW 43.21C.080.

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16.20.220 Compliance With SEPA – Adoption by Reference

The City adopts the following sections of the SEPA Rules, as now existing or hereinafter amended, by reference:

WAC

- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the 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 of 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.

16.20.230 Forms – Adoption by Reference

The City adopts the following forms and sections of the SEPA Rules, as now existing or hereinafter amended, by reference:

WAC

- 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.

16.20.240 Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

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Section 3. This ordinance shall take effect on January 1, 2005.

PASSED by the Council this 27th day of September, 2004.



Council President


APPROVED by me this 30th day of Sept, 2004.



Mayor

Attest: 

Finance Director

Approved as to form:


Office of the City Attorney

Published: October 1, 2004

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