

**CITY OF SAMMAMISH
WASHINGTON
ORDINANCE NO. O2009 - 251**

AN ORDINANCE OF THE CITY OF SAMMAMISH, WASHINGTON, AMENDING SECTION 20.15 OF THE SAMMAMISH MUNICIPAL CODE (STATE ENVIRONMENTAL POLICY ACT PROCEDURES) TO REVISE SEPA FLEXIBLE EXEMPTION THRESHOLD LEVELS FOR MINOR NEW CONSTRUCTION

WHEREAS, the City Council adopted the City's Comprehensive Plan on September 16, 2003, and the City has enacted appropriate zoning consistent with the comprehensive plan; and

WHEREAS, the City Council adopted the Sammamish Municipal Code on October 7, 2003, and therein the minimum SEPA exemption thresholds for flexible thresholds set forth in WAC 197-11-800 (1); and

WHEREAS, since the comprehensive plan, zoning and municipal code were adopted, the city has also enacted additional and updated environmental standards and regulations, including tree retention requirements, traffic concurrency requirements, street, parks, and school impact fees and a critical areas ordinance updated in accordance with Best Available Science; and

WHEREAS, development applications are reviewed for compliance with these environmental regulations, and also for compliance with the Sammamish Municipal Code, including Title 21A (Development Code), Title 25 (Shoreline Management), Title 19 (Subdivisions), the City's adopted drainage manual, and applicable public works and other standards; and

WHEREAS, in accordance with WAC 197-11-800(1)(a) the categorical exemptions contained in WAC 197-11-800(1)(b) or (c) shall not apply when a rezone or any license governing emissions to the air or discharges to the water is required, and shall not apply when undertaken wholly or partly on lands covered by water; and

WHEREAS, increases in SEPA exemption threshold levels as set forth in Attachment "A" are supported by local conditions, since compliance with adopted and updated regulations and standards will provide adequate mitigation for the environmental impacts of projects up to the maximum exemptions allowed by WAC 197-11-800(1)(c) as set forth in Attachment "A"; and

WHEREAS, increasing the SEPA exempt threshold levels in accordance with WAC 197-11-800 (1) allowances will increase certainty for applicants and decrease permit processing requirements while maintaining environmental standards; and

WHEREAS, in accordance with WAC 365-195-620, a notice of intent to adopt the proposed municipal code amendments was sent to the State of Washington Department of Community, Trade and Economic Development on July 21, 2008 to allow for a 60 day review and comment period; and

WHEREAS, the adoption of agency SEPA procedures is exempt from SEPA review under WAC 197-11-800(19); and

WHEREAS, the public process for the proposed amendments has provided for public participation opportunities; and included presentation to the Sammamish Planning Commission on June 5, 2008; and

WHEREAS, the Planning Commission considered the proposed amendments at a Planning Commission public hearing conducted on June 19, 2008 and continued on July 10, 2008; and

WHEREAS, the Planning Commission considered the public comment received and other information presented at the public hearing and forwarded their recommendation to the City Council; and

WHEREAS, the City Council considered the Planning Commission's recommendation, public comment, and other available information; and

WHEREAS, the City Council has considered the goals of GMA as set forth in RCW 36.70A.020 and determined that the proposed amendments attached to this ordinance reflect the appropriate balancing of the public interests served by the planning goals of the GMA and that adequate public notice for appropriate projects will continue to be provided.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendments to the Municipal Code. The municipal code amendments set forth in Attachment "A" to this ordinance are hereby adopted.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20th DAY OF JANUARY 2009.

CITY OF SAMMAMISH



Mayor Donald L. Gerend

ATTEST/AUTHENTICATED:



Melonie Anderson, City Clerk

Approved as to form:



Bruce L. Disend, City Attorney

Filed with the City Clerk:	December 10, 2008
Public Hearing:	December 16, 2008
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Public Hearing:	January 20, 2009
Passed by the City Council:	January 20, 2009
Date of Publication:	January 28, 2009
Effective Date:	February 2, 2009

Chapter 20.15

STATE ENVIRONMENTAL POLICY ACT PROCEDURES

Sections:

- 20.15.010 Definitions and abbreviations.
- 20.15.020 Lead agency.
- 20.15.030 Purpose and general requirements.
- 20.15.040 Categorical exemptions and threshold determinations.
- 20.15.050 Planned actions.
- 20.15.060 Environmental impact statements and other environmental documents.
- 20.15.070 Comments and public notice.
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- 20.15.090 Substantive authority.
- 20.15.100 SEPA/GMA integration.
- 20.15.110 Ongoing actions.
- 20.15.120 Responsibility as consulted agency.
- 20.15.130 Appeals.
- 20.15.140 Department procedural rules.
- 20.15.010 Definitions and abbreviations.

(1) The City of Sammamish adopts by reference the definitions contained in WAC 197-11-700 through 197-11-799. In addition, the following definitions are adopted for this chapter:

- (a) "City council" means the Sammamish City council.
- (b) "Department" means the City of Sammamish department of community development.
- (c) "Director" means the director of the department of community development.

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

- (a) SEPA – State Environmental Policy Act.

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- (b) DNS – Determination of nonsignificance.
- (c) DS – Determination of significance.
- (d) EIS – Environmental impact statement. (Ord. O2003-132 § 9)

20.15.020 Lead agency.

The procedures and standards regarding lead agency responsibility contained in WAC 197-11-050 and 197-11-922 through 197-11-948 are adopted, subject to the following:

- (1) The department shall serve as the lead agency and the director shall serve as the responsible official for all SEPA activity by the City of Sammamish. (Ord. O2003-132 § 9)

20.15.030 Purpose and general requirements.

The procedures and standards regarding the timing and content of environmental review specified in WAC 197-11-055 through 197-11-100 are adopted subject to the following:

- (1) Pursuant to WAC 197-11-055(4), the department shall adopt rules and regulations pursuant to Chapter 2.55 SMC establishing a process for environmental review at the conceptual stage of permit applications that require detailed project plans and specifications (i.e., building permits and PUDs). This process shall not become effective until it has been reviewed by the council.
- (2) The optional provision of WAC 197-11-060(3)(c) is adopted.
- (3) Under WAC 197-11-100, the applicant shall prepare the initial environmental checklist, unless the lead agency specifically elects to prepare the checklist. The lead agency shall make a reasonable effort to verify the information in the environmental checklist and shall have the authority to determine the final content of the environmental checklist.
- (4) The director may set reasonable deadlines for the submittal of information, studies, or documents necessary for, or subsequent to, threshold determinations. Failure to meet such deadlines shall cause the application to be deemed withdrawn, and plans or other data previously submitted for review may be returned to the applicant together with any unexpended portion of the application review fees. (Ord. O2003-132 § 9)

20.15.040 Categorical exemptions and threshold determinations.

- (1) The City of Sammamish adopts the standards and procedures specified in WAC 197-11-300 through 197-11-390 and 197-11-800 through 197-11-890 for determining categorical exemptions and making threshold determinations subject to the following:
 - (a) The following exempt threshold levels are hereby established pursuant to WAC 197-11-800(1)(c) for the exemptions in WAC 197-11-800(1)(b):

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- (i) The construction or location of any residential structures of up to ~~four~~ twenty dwelling units;
 - (ii) The construction of an office, school, commercial, recreational, service, or storage building with up to ~~4,000~~ 12,000 square feet of gross floor area, and with associated parking facilities designed for up to ~~20~~ 40 automobiles;
 - (iii) The construction of a parking lot designed for up to ~~20~~ 40 automobiles;
 - (iv) Any fill or excavation of up to ~~400~~ 500 cubic yards throughout the total lifetime of the fill or excavation, ~~provided, however, that if the proposed action is to remove from or replace fill in a sensitive area to correct a violation, the threshold shall be 500 cubic yards.~~
- (b) The determination of whether a proposal is categorically exempt shall be made by the department.
- (2) The mitigated DNS provision of WAC 197-11-350 shall be enforced as follows:
- (a) If the department issues a mitigated DNS, conditions requiring compliance with the mitigation measures that were specified in the application and environmental checklist shall be deemed conditions of any decision or recommendation of approval of the action.
 - (b) If at any time the proposed mitigation measures are withdrawn or substantially changed, the responsible official shall review the threshold determination and, if necessary, may withdraw the mitigated DNS and issue a DS. (Ord. O2003-132 § 9)

20.15.050 Planned actions.

The procedures and standards of WAC 197-11-164 through 197-11-172 are adopted regarding the designation of planned actions. (Ord. O2003-132 § 9)

20.15.060 Environmental impact statements and other environmental documents.

The procedures and standards for preparation of environmental impact statements and other environmental documents pursuant to WAC 197-11-400 through 197-11-460 and 197-11-600 through 197-11-640 are adopted, subject to the following:

- (1) 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).

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- (2) Pursuant to WAC 197-11-420, 197-11-620, and 197-11-625, the department shall be responsible for preparation and content of EISs and other environmental documents. The department shall 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.
- (3) Consultants or subconsultants selected by the City 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.
- (4) The department ~~may~~ shall establish and maintain one or more lists of qualified consultants who are eligible to receive contracts for preparation of environmental documents. Separate lists may be maintained to reflect specialized qualifications or expertise. When the department requires consultant services to prepare environmental documents, the department shall select a consultant from the lists and negotiate a contract for such services. Pursuant to Chapter 2.55 SMC, the department shall promulgate administrative rules that establish processes to: create and maintain a qualified consultant list; select consultants from the list; remove consultants from the list; provide a method by which applicants may request a reconsideration of selected consultants based upon costs, qualifications, or timely production of the environmental document; and waive the consultant selection requirements of this chapter.
- (5) All costs of preparing the environmental document shall be borne by the applicant. Pursuant to Chapter 2.55 SMC, the department ~~may~~ shall promulgate administrative rules that establish a deposit mechanism ~~trust fund~~ for consultant payment purposes, define consultant payment schedules, prescribe procedures for treating interest from deposited funds, and develop other procedures necessary to implement this chapter.
- (6) 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 division 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.
- (7) 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. Unless

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otherwise agreed to by the applicant, a final environmental impact statement shall be issued by the department within 270 days following the issuance of a DS for the proposal, except for public projects and nonproject actions, unless the department determines at the time of issuance of the DS that a longer time period will be required because of the extraordinary size of the proposal or the scope of the environmental impacts resulting therefrom; provided, that the additional time shall not exceed 90 days unless agreed to by the applicant.

(8) The following periods shall be excluded from the 270-day time period for issuing a final environmental impact statement:

- (a) Any time period during which the applicant has failed to pay required environmental review fees to the department;
- (b) Any period of time during which the applicant has been requested to provide additional information required for preparation of the environmental impact statement; and
- (c) Any period of time during which the applicant has not authorized the department to proceed with preparation of the environmental impact statement. (Ord. O2003-132 § 9)

20.15.070 Comments and public notice.

(1) The procedures and standards of WAC 197-11-500 through 197-11-570 are adopted regarding public notice and comments.

(2) For purposes of WAC 197-11-510, public notice shall be required as provided in this title. Publication of notice in a newspaper of general circulation in the area where the proposal is located also shall be required for all nonproject actions and for all other proposals that are subject to the provisions of this chapter but are not classified as land use permit decisions in this title.

(3) 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. (Ord. O2003-132 § 9)

20.15.080 Use of existing environmental documents.

The procedures and standards of WAC 197-11-600 through 197-11-640 are adopted regarding use of existing environmental documents. (Ord. O2003-132 § 9)

20.15.090 Substantive authority.

(1) The procedures and standards of WAC 197-11-650 through 197-11-660 regarding substantive authority and mitigation, and WAC 197-11-158, regarding reliance on existing plans, laws and regulations, are adopted.

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(2) 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 as potential bases for the exercise of the City of Sammamish's substantive authority under SEPA, subject to the provisions of RCW 43.21C.240 and subsection (3) of this section:

- (a) The policies of the State Environmental Policy Act, RCW 43.21C.020.
- (b) The City's comprehensive plan, and surface water management program basin plans, as specified in Chapters 24.15 and 24.20 SMC.
- (c) The Sammamish development code, as adopted in SMC Title 21A.
- (d) The City's shoreline management master plan, as adopted in SMC Title 25.
- (e) The King County surface water runoff policy, as adopted by reference in Chapter 9.04 KCC as adopted by Chapter 15.05 SMC.
- (f) The City's public works standards and transportation regulations, as adopted in SMC Title 14.
- (g) The City's noise ordinance, Chapter 8.15 SMC.

(3) Substantive SEPA authority to condition or deny new development proposals or other actions shall be used only in cases where specific adverse environmental impacts are not addressed by regulations as set forth below, or unusual circumstances exist. In cases where the City has adopted the following regulations to systematically avoid or mitigate adverse impacts (Chapter 21A.25 SMC, Development Standards – Density and Dimensions; Chapter 21A.30 SMC, Development Standards – Design Requirements; Chapter 21A.35 SMC, Development Standards – Landscaping and Irrigation; Chapter 21A.40 SMC, Development Standards – Parking and Circulation; Chapter 21A.45 SMC, Development Standards – Signs; Chapter 21A.50 SMC, Environmentally Sensitive Areas; Chapter 21A.55 SMC, Development Standards – Communication Facilities; Chapter 21A.60 SMC, Development Standards – Adequacy of Public Facilities and Services), those standards and regulations will normally constitute adequate mitigation of the impacts of new development. Unusual circumstances related to a site or to a proposal, as well as environmental impacts not mitigated by the foregoing regulations, will be subject to site-specific or project-specific SEPA mitigation.

(4) Any decision to approve, deny, or approve with conditions pursuant to RCW 43.21C.060 shall be contained in the responsible official's decision document. The written decision shall contain facts and conclusions based on the proposal's specific adverse environmental impacts (or lack thereof) as identified in an environmental checklist, EIS, threshold determination, other environmental document including a department's staff report and recommendation to a decision maker, or findings made pursuant to a public hearing authorized or required by law or ordinance. The decision document shall state the specific plan, policy or regulation that supports the SEPA

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decision and, if mitigation beyond existing development regulations is required, the specific adverse environmental impacts and the reasons why additional mitigation is needed to comply with SEPA.

(5) This chapter shall not be construed as a limitation on the authority of the City to approve, deny, or condition a proposal for reasons based upon other statutes, ordinances, or regulations. (Ord. O2003-132 § 9)

20.15.100 SEPA/GMA integration.

The procedures and standards regarding the timing and content of environmental review specified in WAC 197-11-210 through WAC 197-11-235 are hereby adopted. (Ord. O2003-132 § 9)

20.15.110 Ongoing actions.

Unless otherwise provided herein, the provisions of Chapter 197-11 WAC shall be applicable to all elements of SEPA compliance, including the modification or supplementation of an EIS, initiated after the effective date of the ordinance. (Ord. O2003-132 § 9)

20.15.120 Responsibility as consulted agency.

All requests from other agencies that the City of Sammamish consult on threshold investigations, the scope process, EISs, or other environmental documents shall be submitted to the department. The department shall be responsible for coordination with other affected City officials and for compiling and transmitting the City's response to such requests for consultation. (Ord. O2003-132 § 9)

20.15.130 Appeals.

(1) Appeals of threshold determinations or the adequacy of a final EIS are procedural SEPA appeals that are conducted by the hearing examiner pursuant to the provisions of SMC 20.10.070, subject to the following:

- (a) Only one appeal of each threshold determination shall be allowed on a proposal.
- (b) As provided in RCW 43.21C.075(3)(d), the decision of the responsible official shall be entitled to substantial weight.
- (c) An appeal of a DS must be filed within 14 calendar days following issuance of the DS.
- (d) An appeal of a DNS for actions classified as land use permit decisions in SMC 20.05.020 must be filed within 21 calendar days following notice of the decision

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as provided in SMC 20.05.090. For actions not classified as land use permit decisions in SMC 20.05.020, no administrative appeal of a DNS is permitted.

- (e) Administrative appeals of the adequacy of a final EIS are permitted for actions classified as Type 2, 3 or 4 land use permit decisions in SMC 20.05.020, except Type 1 decisions for which the department has issued a threshold determination. Such appeals must be filed within 21 calendar days following notice of the decision or recommendation as provided in SMC 20.05.090.
 - (f) The hearing examiner shall make a final decision on all procedural SEPA determinations. The hearing examiner's decision may be appealed to superior court as provided in SMC 20.10.250(1).
- (2) The hearing examiner's consideration of procedural SEPA appeals shall be consolidated in all cases with substantive SEPA appeals, if any, involving decisions to condition or deny an application pursuant to RCW 43.21C.060 and with the public hearing or appeal, if any, on the proposal, except for appeals of a DS.
- (3) 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.
- (4) Notwithstanding the provisions of subsections (1) through (3) of this section, the department may adopt procedures under which an administrative appeal shall not be provided if the director finds that consideration of an appeal would be likely to cause the department to violate a compliance, enforcement, or other specific mandatory order or specific legal obligation. The director's determination shall be included in the notice of the SEPA determination, and the director shall provide a written summary upon which the determination is based within five days of receiving a written request. Because there would be no administrative appeal in such situations, review may be sought before a court of competent jurisdiction under RCW 43.21C.075 and applicable regulations, in connection with an appeal of the underlying governmental action. (Ord. O2003-132 § 9)

20.15.140 Department procedural rules.

- (1) The department may prepare rules and regulations pursuant to Chapter 2.55 SMC for the implementation of SEPA, Chapter 197-11 WAC, and this chapter.
- (2) The rules and regulations prepared by the department shall not become effective until approved by council motion. (Ord. O2003-132 § 9)