

ORDINANCE 2010-3

AN ORDINANCE OF THE TOWN COUNCIL OF EATONVILLE, WASHINGTON, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA), ADOPTING DEPARTMENT OF ECOLOGY'S SEPA RULES SET FORTH IN THE WASHINGTON ADMINISTRATIVE CODE RELATING TO IMPLEMENTATION OF SEPA, DETERMINING "ACTIONS" SUBJECT TO SEPA, THRESHOLD DECISIONS, ENVIRONMENTAL IMPACT STATEMENTS, PUBLIC NOTICE, LEAD AGENCY DETERMINATIONS, LOCAL SEPA THRESHOLDS, ADOPTING PROCEDURES FOR ADMINISTRATIVE APPEALS TO THE EATONVILLE TOWN COUNCIL; REPEALING SECTIONS 15.04.010, 15.04.020, 15.04.030, 15.04.040, 15.04.050, 15.04.060 OF THE EATONVILLE MUNICIPAL CODE.

WHEREAS, the Washington State Legislature has adopted new SEPA rules that have not been incorporated into the town's code on SEPA; and

WHEREAS, the Town's code on SEPA needs to be so extensively revised in order to incorporate the new SEPA rules, such that all of the provisions in the existing chapter should be completely repealed; and

WHEREAS, on August 4, 2009 the town's SEPA responsible official determined that the adoption of this ordinance is categorically exempt under WAC 197-11-800 (19) as an ordinance relating to procedures only; **NOW THEREFORE**,

BE IT ORDAINED by the Council of the Town of Eatonville, as follows:

Section 1. Section 15.04.010 of the Eatonville Municipal Code is hereby repealed.

Section 2. Section 15.04.020 of the Eatonville Municipal Code is hereby repealed.

Section 3. Section 15.04.030 of the Eatonville Municipal Code is hereby repealed.

Section 4. Section 15.04.040 of the Eatonville Municipal Code is hereby repealed.

Section 5. Section 15.04.050 of the Eatonville Municipal Code is hereby repealed.

Section 6. Section 15.04.060 of the Eatonville Municipal Code is hereby repealed.

Section 7. A new chapter 15.04 is hereby added to the Eatonville Municipal Code, which shall read as follows:

**Chapter 15.04
ENVIRONMENTAL REVIEW (SEPA)**

Sections:

- 15.04.010 Authority.
- 15.04.020 Adoption by reference.
- 15.04.030 Additional definitions.
- 15.04.040 Designation of responsible official.
- 15.04.050 Lead agency determination and responsibilities.
- 15.04.053 Transfer of lead agency status to a state agency.

- [15.04.058](#) Additional timing considerations.
- [15.04.060](#) Categorical exemptions and threshold determinations – Adoption by reference.
- [15.04.070](#) Categorical exemptions and threshold determinations – Time estimates.
- [15.04.080](#) Categorical exemptions – Adoption by reference.
- [15.04.090](#) Categorical exemptions – Use of exemptions.
- [15.04.100](#) Determination – Review at conceptual stage.
- [15.04.110](#) Threshold determinations – Environmental checklist.
- [15.04.115](#) Completed environmental checklist defined.
- [15.04.120](#) Mitigated DNS.
- [15.04.123](#) Optional DNS process.
- [15.04.130](#) Environmental impact statement (EIS) – Adoption by reference.
- [15.04.140](#) EIS – Preparation.
- [15.04.145](#) Additional elements to be covered by EIS.
- [15.04.150](#) Commenting – Adoption by reference.
- [15.04.160](#) Public notice.
- [15.04.170](#) Designation of official to perform consulted agency responsibilities for the Town.
- [15.04.180](#) Using existing environmental documents – Adoption by reference.
- [15.04.190](#) SEPA decisions – Adoption by reference.
- [15.04.200](#) SEPA decisions.
- [15.04.210](#) Substantive authority.
- [15.04.230](#) Appeals.
- [15.04.240](#) Notice/statute of limitations.
- [15.04.250](#) Definitions – Adoption by reference.
- [15.04.260](#) Agency compliance – Adoption by reference.
- [15.04.280](#) Fees.
- [15.04.290](#) Forms – Adoption by reference.

15.04.010 Authority.

The Town of Eatonville adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA rules, Chapter 197-11 WAC. This chapter contains the Town’s SEPA procedures and policies. The SEPA rules contained in Chapter 197-11 WAC must be used in conjunction with this chapter.

15.04.020 Adoption by reference.

The Town adopts the following sections of Chapter 197-11 WAC by reference:

WAC

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions 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.
- 197-11-164 Planned actions – definitions and criteria
- 197-11-168 Ordinances or resolutions designating planned actions – procedures for adoption
- 197-11-172 Planned actions – project review
- 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 Integrating 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 and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.

15.04.030 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 chapter the following terms shall have the following meanings, unless the content indicates otherwise:

- A. “Department” means any division, unit or department of the Town.
- B. “Ordinance” or “chapter” means the ordinance, resolution or other procedure used by the Town to adopt regulatory requirements.
- C. “Early notice” means the Town’s response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant’s proposal (mitigated determination of nonsignificance (MDNS) procedures).
- D. “SEPA rules” means Chapter 197-11 WAC adopted by the Department of Ecology.

15.04.040 Designation of responsible official.

- A. For those proposals for which the Town is a lead agency, the responsible official shall be the planning director or such other person as the Mayor may designate in writing.
- B. For all proposals for which the Town is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS) and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference in this chapter. (Ord. 1103 § 4, 2007; Ord. 546 § 1(Exh. A), 1988).

15.04.050 Lead agency determination and responsibilities.

- A. The SEPA responsible official shall determine the lead agency for any application for or initiation of a proposal that involves a nonexempt action, as provided in WAC 197-11-050.
- B. When the Town is the lead agency for a proposal, the SEPA responsible official shall supervise compliance with the necessary threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.
- C. When the Town is not the lead agency for a proposal, all departments of the Town shall use and consider as appropriate either the determination of nonsignificance (DNS) or the final EIS of the lead agency in making decisions on the proposal. No Town department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency unless required under WAC 197-11-600. In some cases, the Town may conduct supplemental environmental review under WAC 197-11-600.
- D. If the Town, 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 Town 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 Town may be initiated by the SEPA responsible official.

E. Departments of the Town are 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; provided, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

F. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify other agencies with jurisdiction over the proposal.

15.04.053 Transfer of lead agency status to a state agency.

For any proposal for a private project where the Town would be the lead agency and for which one or more state agencies have jurisdiction, the Town's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the Town shall be an agency with jurisdiction. To transfer lead agency duties, the Town's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the Town shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

15.04.058 Additional timing considerations.

A. For nonexempt proposals, the DNS, MDNS or the draft EIS for the proposal shall accompany the Town's staff recommendation to the appropriate advisory body, such as the planning commission or the board of adjustment.

B. This subsection applies to those permits that are not subject to the notice of application requirements in EMC 18.09A and RCW 36.70B.110. If the Town's only action on a proposal is a decision on a building permit or other license/permit that requires detailed project plans and specifications, the applicant may request in writing that the Town conduct environmental review prior to the submission of the detailed plans and specifications.

15.04.060 Categorical exemptions and threshold determinations – Adoption by reference.

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

WAC

- 197-11-300 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.
- 197-11-360 Determination of significance (DS)/ initiation of scoping.
- 197-11-390 Effect of threshold determination.

15.04.080 Categorical exemptions – Adoption by reference.

The Town adopts by reference the following rules for categorical exemptions, as supplemented by this chapter, including EMC [15.04.090](#) (use of exemptions):

WAC

- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

15.04.090 Categorical exemptions – Use of exemptions.

A. Each department within the Town that receives an application for a license, permit, 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 final and not subject to administrative appeal. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal. The Town shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental license or permit required (WAC 197-11-070). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency even if the license application that triggers the consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the Town may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The Town 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 Town may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt actions were not approved; and
3. The Town 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 the nonexempt actions were not approved.

15.04.100 Determination – Review at conceptual stage.

A. Preapplication conferences, as provided in EMC [18.09A.040](#), shall also address environmental issues to familiarize the applicant with the Town's SEPA regulations, process, policies and objectives.

B. If the Town'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 Town conduct environmental review prior to submission of the detailed plans and specifications.

C. In addition to the environmental documents an applicant shall submit the following information for environmental review:

1. A copy of any permit or license application; and
2. Other information as the responsible official may determine.

15.04.110 Threshold determinations – Environmental checklist.

A. Except as provided in subsection (D) of this section, a completed environmental checklist (or a copy), in a form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate or other approval not specifically exempted by this chapter, except that a checklist is not needed if the Town and applicant agree that an EIS is required, SEPA has been completed, or compliance has been initiated by another agency. The Town shall use the environmental checklist to determine the lead agency, and if the Town is the lead agency, for determining the responsible official and for making the threshold determinations.

B. For private proposals, the applicant is required to complete the environmental checklist. The Town may provide assistance as necessary. For Town proposals the department initiating the proposal shall complete the environmental checklist for that proposal.

C. The Town may require that it, 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 Town 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.

The applicant shall pay to the Town the actual costs of providing the information for the environmental checklist.

D. For projects submitted as planned actions under WAC 197-11-164, the Town shall use its existing environmental checklist form or may modify the environmental checklist form as 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 to allow at least a 30-day review prior to use.

15.04.115 Completed environmental checklist defined.

A. An environmental checklist is deemed completed when the following information is provided:

1. All information as requested in the checklist is provided, including complete responses to all questions in the checklist.

2. All plans and illustrations as required per the applicable Town code are submitted with the environmental checklist.

3. The required number of copies of the checklist and associated plans and illustrations are submitted, as per the applicable Town code.

4. Checklist is properly signed and dated.

5. All applicable fees as established in the Town's fee schedule are paid.

B. Incomplete or inaccurate responses to the questions within the checklist shall be grounds for reserving a threshold determination on a proposal, including the scheduling of any public hearings as may be required, until such time as the information is provided by the applicant. Any period during which an applicant has been requested by the Town to correct plans, perform required studies or provide additional required information shall not be included in the project permit processing time provided in the EMC.

15.04.120 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance (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 department is lead agency; and

2. Precede the Town's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice as soon as possible. The response shall:

1. Be in writing;

2. State whether the Town currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the Town to consider a DS; and

3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, and may revise the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the Town 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 Town shall base its threshold determination on the changed or clarified proposal and should make the determination within 15 days of receiving the changed or clarified proposal.

1. If the Town 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 Town shall issue and circulate a determination of nonsignificance (DNS), under WAC 197-11-340(2).

2. If the Town indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the Town shall make the threshold determination, issue 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.

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. The Town shall not act upon a proposal for which a mitigated DNS has been issued until the 14-day comment and public notice period has expired; provided, that the requirements of this section shall not apply to a DNS issued pursuant to the optional DNS process described in EMC [15.04.123](#).

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any matter specifically prescribed by the Town.

H. If the Town's tentative decision on a permit or approval does not include mitigation measures that were incorporated in mitigated DNS for the proposal, the Town should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) relating to the withdrawal of a DNS.

I. The Town's written response under subsection (B) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification or changes to a proposal, as opposed to a written request for early notice, shall not bind the Town to consider the clarifications or changes in its threshold determination.

15.04.123 Optional DNS process.

A. If the responsible official has a reasonable basis for determining that significant adverse environmental impacts are unlikely, the responsible official may elect to use the single integrated comment period set forth in this section. If this process is used, a second comment period will typically not be required when the DNS is issued.

B. If the optional process set forth in this section is used, the responsible official shall:

1. State on the first page of the notice of application that it expects to issue a DNS for the proposal, and that:

a. The optional DNS process is being used;

b. This may be the only opportunity to comment on the environmental impacts of the proposal;

c. The proposal may include mitigation measures under applicable codes, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and

d. A copy of the subsequent threshold determination for the specific proposal may be obtained upon request (in addition, the Town may maintain a general mailing list for threshold determination distribution);

2. List in the notice of application the conditions being considered to mitigate environmental impacts, if a mitigated DNS is expected;

3. Comply with the requirements for a notice of application and public notice in EMC 18.09A.070; and

4. Send the notice of application and environmental checklist to:

a. Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and

b. Anyone requesting a copy of the environmental checklist for the specific proposal (in addition, the Town may maintain a general mailing list for checklist distribution).

C. If the responsible official indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application in accordance with EMC 15.04.050, WAC 197-11-940 and 197-11-948.

D. The responsible official shall consider timely comments on the notice of application and either:

1. Issue a DNS or mitigated DNS with no comment period using the procedures in subsection (E) below;

2. Issue a DNS or mitigated DNS with a comment period using the procedures in subsection (E) below, if the responsible official determines a comment period is necessary;

3. Issue a DS; or

4. Require additional information or studies prior to making a threshold determination.

E. If a DNS or mitigated DNS is issued under subsection (D)(1) or (D)(2) above, the responsible official shall send a copy of the DNS or mitigated DNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be recirculated.

15.04.130 Environmental impact statement (EIS) – Adoption by reference.

The Town adopts the following sections of Chapter 197-11 WAC, 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.
- 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.

15.04.140 EIS – Preparation.

A. Responsible Official’s Responsibilities. Preparation of draft and final EISs and SEISs shall be under the direction of the responsible official. Before the Town issues an EIS or SEIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by the Town staff, the applicant, or by a consultant selected by the Town, as determined by the responsible official. If the responsible official requires an EIS for a proposal and determines that someone other than the Town 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 Town’s procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. Time Limit. Subject to delays caused by the applicant’s failure to provide needed information and other delays beyond the Town’s control, draft and final EISs will be completed within one year of the date of the declaration of significance, unless the Town and the applicant agree in writing to a different estimated time period for completion.

D. Requirement for Additional Information. The Town may require an applicant to provide additional information which the Town does not possess, including information which must be obtained by specific investigations. The applicant shall not be required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the Town may request under another ordinance or statute.)

E. Fees.

1. For the purpose of reimbursing the Town for necessary costs and expenses relating to its compliance with the SEPA rules and this chapter in connection with private projects, the following schedule of fees are established (in addition to the fees in the Town’s fee resolution):

a. For a threshold determination which requires information in addition to that contained in or accompanying the environmental checklist, a fee in an amount equal to the actual costs and expenses incurred by the Town in conducting any studies or investigations necessary to provide such information;

b. For all private projects requiring an EIS for which the Town is the lead agency and for which the responsible official determines that the EIS shall be prepared by the employees of the Town, or that the Town will contract directly with a consultant or consultants for the preparation of an EIS, a fee in an amount equal to the actual costs and expenses incurred by the Town in preparing the EIS. Such fee shall also apply when the Town determines that the applicant may prepare the EIS, and the responsible official determines that substantial revisions or reassessing of impacts must be performed by employees of the Town to ensure compliance with the provisions of the SEPA guidelines and this chapter.

2. If the responsible official determines that an EIS is required, and that the EIS shall be prepared by employees of the Town or by a consultant or consultants retained by the Town, or that the applicant-prepared EIS shall be substantially rewritten by employees of the Town, the private applicant shall be advised by the responsible official of the estimated costs and expenses of preparing or rewriting the EIS prior to actual preparation or rewriting, and the private applicant shall post a bond or otherwise insure payment of such costs and expenses. A consultant or consultants may be recommended by the applicant. The final decision to hire a consultant or consultants shall be made by the Town council.

3. All fees owed the Town under this section shall be paid in full by the private applicant prior to final action by the Town on the private project. Any fee owed the Town under this subsection (D) shall be paid by the private applicant prior to the initiation of actual preparation of an EIS (if required) or actual rewriting of an applicant-prepared EIS by the Town or its consultant(s). For all EISs involving multiple applicants, the cost of preparation shall be divided among the applicants according to the nature, amount and type of work to be performed. The Town shall ask the EIS consultant to estimate the costs related to the portion of the EIS associated

with each application. The Town shall make the final decision on the costs to be billed each applicant, regardless of whether the EIS is prepared by a consultant or the Town. If a private applicant disputes the amount of the fee, the fee may be paid under protest and without prejudice to the applicant's right to file a claim and bring an action to recover the fee.

15.04.145 Additional elements to be covered by EIS.

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 chapter: economy, social policy analysis and cost-benefit analysis.

15.04.150 Commenting – Adoption by reference.

The Town adopts the following sections 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 Specific Town of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.

15.04.160 Public notice.

A. Whenever possible, the Town shall integrate public notice required under this section with existing notice procedures for the Town's nonexempt permit(s) or approval(s) required for the proposal.

B. Whenever the Town issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the Town shall give public notice as follows:

1. If public notice is required for a nonexempt permit, the notice shall state whether a DS or DNS has been issued and when comments are due;
2. If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1);
3. If no public notice is otherwise required for the permit or approval, the Town shall give notice of the DNS or DS by:
 - a. Posting on the property or publication in the official newspaper of the Town of Eatonville for site-specific proposals;
 - b. Mailing to property owners within 300 feet for site-specific proposals.
4. Whenever the Town issues a DS under WAC 197-11-360(3), the Town shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

C. Whenever a public hearing is held on a nonexempt permit, notice of the threshold determination shall be given. Such notice shall precede the hearing by at least 15 days. Notice will be given as follows:

1. Posting on the property or publication in the official newspaper of the Town of Eatonville for site-specific proposals;
2. Mailing to property owners within 300 feet for site-specific proposals.

D. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in EMC

[15.04.123](#) and WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

E. Whenever the Town issues a DEIS under WAC 197-11-455(5) or a 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; and the following:

a. Posting on the property or publication in the official newspaper of the Town of Eatonville for site-specific proposals;

b. Mailing to property owners within 300 feet for site-specific proposals.

F. Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).

G. The Town may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

15.04.170 Designation of official to perform consulted agency responsibilities for the Town.

A. The responsible official shall be responsible for preparation of written documents for the Town in response to a consultation request prior to a threshold determination, participation in scoping and reviewing of a draft EIS.

B. The responsible official shall be responsible for the Town's compliance with WAC 197-11-550 whenever the Town 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 Town.

15.04.180 Using existing environmental documents – Adoption by reference.

The Town adopts the following sections for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the Town's own environmental compliance by reference:

WAC

- 197-11-164 Planned actions – Definitions 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.

15.04.190 SEPA decisions – Adoption by reference.

The Town adopts the following sections by reference:

WAC

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

15.04.200 SEPA decisions.

For nonexempt proposals, the DNS or EIS for the proposal shall accompany the Town staff's recommendation. If a final EIS is or becomes available, it shall be substituted for the draft.

15.04.210 Substantive authority.

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the Town.

B. The Town may attach conditions to a permit or approval for a proposal, so long as:

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 Town 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 subsection (D) of this section and cited in the license or other decision document.

C. The Town 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 SEIS prepared pursuant to this chapter; 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 writing in the decision document.

D. The Town designates and adopts by reference the following policies as the basis for the Town's exercise of authority pursuant to this section:

1. The Town shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The Town recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The Town adopts by reference the policies in the following Town codes, ordinances, resolutions and plans, as they now exist or may be hereafter amended, as a possible basis for the exercise of substantive SEPA authority in the conditioning or denying of proposals:

a. Chapter 43.21C RCW – State Environmental Policy Act.

b. EMC Title [5](#) – Business Taxes, Licenses and Regulations.

c. EMC Title [6](#) – Animals.

d. EMC Title [8](#) – Health and Safety.

e. EMC Title [10](#) – Vehicles and Traffic.

f. EMC Title [12](#) – Streets, Sidewalks and Public Places.

- g. EMC Title [13](#) – Public Services.
 - h. EMC Title [15](#) – Environmental Protection.
 - i. EMC Title [16](#) – Building.
 - j. EMC Title [18](#) – Zoning.
 - k. The Town of Eatonville Comprehensive Plan.
 - l. The Town of Eatonville Shoreline Master Program.
 - m. The Town’s Six-Year Road Program.
 - n. The Town’s Comprehensive Water Plan.
 - o. The Town’s Comprehensive Sewer Plan.
 - p. Town of Eatonville Public Works Standards.
 - q. Town of Eatonville Storm Water Management Ordinance.
 - r. Eatonville Trails Plan
 - s. Eatonville Airport Layout Plan
4. The Town establishes the following additional policies:
- a. Schools. In order to ensure that adequate school facilities are available to serve new growth and development and to ensure that new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the Town may impose school mitigation fees, all as provided in RCW 82.02.020.
 - b. Police. In order to ensure that the Town’s acceptable level of service for police response is not diminished as a result of new growth and development and to ensure that new growth and development provides mitigation for the direct impacts on the Town’s police department that are identified by the Town as a consequence of proposed development, the Town may impose police and emergency response mitigation fees, all as provided in RCW 82.02.020.

15.04.230 Appeals.

The Town establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-110-680:

A. Appealable Decisions.

- 1. Only the following decisions may be administratively appealed under this chapter:
 - a. Final threshold determination;
 - b. Mitigation or failure to mitigate in the SEPA decision;
 - c. Final EIS; and
 - d. Project denials under SEPA.
- 2. If the Town does not provide for a hearing or appeal on the underlying action/permit, then the SEPA administrative appeal on the decisions listed in subsection (A)(1) of this section shall be the only hearing and appeal allowed on the underlying action/permit.

B. Notice of Decision.

- 1. In the notice of decision issued by the Town and for every decision for which an appeal is available in this section, the SEPA responsible official shall give official notice of the date and place for commencing an appeal. The notice shall include:
 - a. Notice that the SEPA issues must be appealed within the time limit set by statute or ordinance for appealing the underlying governmental action;
 - b. The time limit for commencing the appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit;
 - c. Where the appeal may be filed.
- 2. Written notice shall be provided to the applicant, all parties to any administrative appeal and all persons who have requested notice of decisions concerning the project. Such notice may be appended to the permit, the decision documents, the SEPA compliance documents or may be printed separately.

C. Timing of Appeal. The appeal shall take place prior to the Town's final decision on a proposed action. However, the SEPA appeal hearing may be consolidated with any other hearing on the underlying permit or action.

D. Number of Appeals. Only one administrative appeal to the Town is allowed of the decisions listed in EMC [15.04.170\(A\)](#).

E. Consolidated Appeals. If the underlying action/permit requires a hearing, any SEPA appeal shall be consolidated with the hearing or appeal of the underlying action/permit into one simultaneous hearing, with the exception of the following:

1. An appeal of a determination of significance (DS);

2. An appeal of a procedural determination made by the Town when the Town is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;

3. An appeal of a procedural determination made by the Town on a nonproject action;
and

4. An appeal to the Town council under RCW 43.21C.060 for a legislative action.

F. Timing of Appeal.

1. SEPA Decision Issues at the Same Time as Underlying Action. An appeal of a SEPA decision that issued at the same time as the decision on a project action shall be filed within 14 days after issuance of a notice of decision, or after notice that a decision has been made and is appealable.

2. SEPA Decision Allows Public Comment. For a DNS or MDNS for which public comment is required (under this chapter), the appeal period shall be extended for an additional seven days.

3. SEPA Threshold Decision Issues Prior to Decision on Underlying Action. An appeal of a threshold decision issued prior to a decision on a project action shall be filed within 14 days after notice that the decision has been made and is appealable.

G. Consideration of SEPA Responsible Official's Decision. Procedural determinations made by the SEPA responsible official shall be entitled to substantial weight by Town council in an appeal.

H. Administrative Record. An administrative record of the appeal must be provided, and the record shall consist of the following:

1. Findings and conclusions;

2. Testimony under oath; and

3. A taped or written transcript. (The Town may require that the appellant provide an electronic transcript.)

I. Exhaustion of Administrative Remedies. The Town's administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue for which the Town allows an appeal in this section.

J. Content of Appeal. Every appeal must be in writing, and must include the following:

1. The applicable appeal fee, as established by resolution of the Town council;

2. Appellant's name, address and phone number;

3. A statement describing the appellant's standing, or why the appellant believes that he or she is aggrieved by the decision appealed from;

4. Identification of the application and decision which is the subject of the appeal;

5. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;

6. The specific relief sought;

7. A statement that the appellant has read the appeal and believes the content to be true, followed by the appellant's signature.

K. Timeliness of Appeals. On receipt of a written notice of appeal, the SEPA responsible official shall forward the appeal to Town council who shall determine whether the appeal is timely prior to the scheduling of any appeal hearing or consolidated open record hearing on an underlying project permit. A written decision will issue if the appeal is untimely and the appeal will not proceed.

L. Town Council Appeals.

1. Jurisdiction. The Town council shall hear all administrative appeals relating to ministerial, quasi-judicial and legislative actions and applications. In addition, the Town council shall hear appeals relating to any other applications that are appealable to the Town council (pursuant to EMC 18.09A).

2. Hearing. For all legislative actions and applications, the Town council shall hold an open record hearing (Chapter 18.09A EMC). For any appeals relating to applications appealable to the Town council (pursuant to EMC 18.09A), the Town council shall hold a closed record hearing (Chapter 18.09A EMC) unless there has been no open record hearing on the application.

3. Record on Appeal. There are no restrictions on the evidence and testimony received by the council for an appeal relating to legislative actions and applications. For any other type of appeal, the Town council shall follow the requirements of Chapter 18.09A EMC for closed record appeals.

4. Appeals of Town Council's Decision. The Town council's decision on the timeliness of an appeal within its jurisdiction and any other appeals allowed under this subsection within its jurisdiction shall be the final decision of the Town. The Town council's decision shall include information on the further administrative appeals.

M. Judicial Appeals.

1. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA and those which do not. This section and RCW 43.21C.075 establish the time limits for raising SEPA issues, but existing statutes of limitation control the appeal of non-SEPA issues.

2. Appeals of the Town's final decision shall be filed in superior court, but appellants must follow RCW 43.21C.075(6)(c), which provides that "judicial review under chapter 43.21C RCW shall without exception be of the governmental action together with its accompanying environmental determinations," which contemplates a single lawsuit.

15.04.240 Notice/statute of limitations.

A. The Town, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided by WAC 197-11-990. The notice shall be published by the Town clerk or county auditor, applicant or proponent, pursuant to RCW 43.21C.080.

15.04.250 Definitions – Adoption by reference.

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

WAC

- 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/Town.
 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.

15.04.260 Agency compliance – Adoption by reference.

The Town adopts the following sections by reference, as supplemented in this chapter:
 WAC

- 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.
- 197-11-908 Critical areas.
- 197-11-910 Designation of responsible official.
- 197-11-912 Procedures of consulted agencies.
- 197-11-914 SEPA fees and costs.
- 197-11-916 Application to ongoing actions.
- 197-11-917 Relationship to Chapter 197-10 WAC.
- 197-11-918 Lack of agency procedures.
- 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/Town.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/Town, 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.

15.04.280 Fees.

The Town shall adopt a resolution establishing fees as required in accordance with the provisions of this chapter.

15.04.290 Forms – Adoption by reference.

The Town adopts the following forms and sections 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.

PASSED BY THE TOWN COUNCIL AT A REGULAR MEETING THEREOF ON THE _____ DAY OF FEBRUARY 2010 AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS _____ DAY OF FEBRUARY 2010.

Raymond Harper, Mayor

ATTEST:

Chrystal McGlone, Town Clerk

Approved as to form:

Carol A Morris, Attorney