

ORDINANCE NO. 21-1159

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING CHAPTER 19.04 OF THE BLACK DIAMOND MUNICIPAL CODE RELATED TO SEPA PROCEDURES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the statewide SEPA Rules promulgated by the state Department of Ecology, WAC Chapter 197-11, require the City to adopt its own local environmental review procedures to implement SEPA, and to make the local SEPA procedures consistent with state law and Department of Ecology regulations; and

WHEREAS, the City's SEPA procedures are codified in Chapter 19.04 of the Black Diamond Municipal Code (BDMC); and

WHEREAS, portions of the City's SEPA procedures in Chapter 19.04 BDMC are in need of amendments to clarify textual ambiguities, correct inconsistencies, and come into full compliance with state laws and regulations governing SEPA appeals; and

WHEREAS, BDMC Section 19.04.260 currently designates certain types of SEPA appeals to be heard and decided by the Hearing Examiner, and designates other types of SEPA appeals to be heard and decided by the City Council; and

WHEREAS, the City Council desires to revise the City's SEPA procedures to assign jurisdiction over all SEPA administrative appeals to the Hearing Examiner, due to the Examiner's superior subject-matter expertise with the relevant environmental statutes and regulations, and given the Examiner's extensive experience in conducting quasi-judicial proceedings; and

WHEREAS, amending the City's SEPA procedures is an action that is categorically exempt from SEPA threshold determination, under WAC 197-11-800(19)(c);

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

Section 1. Chapter 19.04 BDMC Amended. Sections 19.04.060, 19.04.210, 19.04.260, and 19.04.270 of the Black Diamond Municipal Code are hereby amended as shown on Attachment A hereto.

Section 2. Severability. If any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is declared

unconstitutional or otherwise invalid for any reason, or if any portion of this Ordinance is 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 OF THE CITY OF BLACK DIAMOND AT A SPECIAL MEETING THEREOF ON THE 22nd DAY OF APRIL, 2021.

CITY OF BLACK DIAMOND



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

Approved as to form:

David Linehan, City Attorney

Filed with the City Clerk: 4/22/2021
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Chapter 19.04 ENVIRONMENTAL REVIEW STATE ENVIRONMENTAL POLICY ACT (SEPA) ^[1]

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19.04.010 Authority.

The city adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA Rules, chapter 197-11 WAC. This ordinance contains the city's SEPA procedures and policies. The SEPA Rules, chapter 197-11 WAC must be used in conjunction with this chapter.

(Ord. No. 1042, § 2, 12-4-14)

19.04.020 Definitions.

This part contains the basic requirements that apply to the SEPA process. The city adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

WAC

- 197-11-040 Definitions.
- 197-11-220 SEPA/GMA definitions.
- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected Tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.
- 197-11-720 Categorical exemption.

197-11-721 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decision-maker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-775 Open record hearing.

- 197-11-776 Phased review.
- 197-11-778 Preparation.
- 197-11-780 Private project.
- 197-11-782 Probable.
- 197-11-784 Proposal.
- 197-11-786 Reasonable alternative.
- 197-11-788 Responsible official.
- 197-11-790 SEPA.
- 197-11-792 Scope.
- 197-11-793 Scoping.
- 197-11-794 Significant.
- 197-11-796 State agency.
- 197-11-797 Threshold determination.
- 197-11-799 Underlying government action.

(Ord. No. 1042, § 2, 12-4-14)

19.04.030 Additional definitions.

In addition to those definitions contained with 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 context indicates otherwise:

"Department" means any division, unit or department of the city.

"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 (mitigated determination of nonsignificance (MDNS) procedures).

"Ordinance" or "chapter" means the ordinance, resolution or other procedure used by the city to adopt regulatory requirements.

(Ord. No. 1042, § 2, 12-4-14)

19.04.040 Process.

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

WAC

- 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.
- 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.
- 197-11-172 Planned actions—Project review.
- 197-11-210 SEPA/GMA integration.
- 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 and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.

(Ord. No. 1042, § 2, 12-4-14)

19.04.050 Designation of responsible official.

- A. For those proposals for which the city is the lead agency, the responsible official shall be the community development director.
- B. For all proposals for which the city is the 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 were adopted by reference in this chapter.

(Ord. No. 1042, § 2, 12-4-14)

19.04.060 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, unless the lead agency has been previously determined or if another agency is in the process of determining the lead agency.
- B. When the city 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 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 ~~DISEIS~~ 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 required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.
- D. If the city or any of its departments receives a lead agency determination made by any other 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 fifteen days of receipt of the determination, or the city must petition the department of ecology for lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the city may be initiated by the community development director.
- E. Departments of the city 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 which other agencies have jurisdiction over the proposal.

(Ord. No. 1042, § 2, 12-4-14)

19.04.070 Transfer of lead agency status to a state agency.

For any proposal for a private project where the city would be the lead agency and for which one or more state agencies have jurisdiction, the city'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 city shall be an agency with jurisdiction. To transfer lead agency duties, the city'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 city shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

(Ord. No. 1042, § 2, 12-4-14)

19.04.080 Categorical exemptions—Adoption by reference.

The city adopts the following rules for categorical exemptions from Chapter 197-11 WAC:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

(Ord. No. 1042, § 2, 12-4-14)

19.04.090 Categorical exemptions—Determination.

- A. Each department within the city that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license, permit and/or proposal is exempt. The department's determination that a proposal is exempt shall be final and is not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The city 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 that the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-070). If a proposal includes exempt and non-exempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.
- C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:
 1. The city 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 department 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 action(s) were not approved; and
 3. A department 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.

The city will normally identify whether an action is categorically exempt within twenty-eight days of receiving a completed application. The community development director shall certify when an application is complete based upon review of the environmental checklist, or for project permit applications, based on the requirements for a complete application set forth in the city's code for each permit type. If additional information is required to supplement the checklist, the application shall not be certified complete until the required information is received by the director.

(Ord. No. 1042, § 2, 12-4-14)

19.04.100 Integration with permit and land use decision.

Under Chapter 36.70B RCW, the procedure for review and processing of project permit applications shall be combined with the environmental review process, both procedural and substantive. The process under the State Environmental Policy Act (SEPA) and this chapter shall integrate the following procedures, insofar as possible, with any applicable process for decision-making on permit and land use applications:

- A. Staff review of the application under city codes and regulations and the environmental review and determination thereon;
- B. The staff report on the application, and the report or documentation concerning environmental review;
- C. Hearings and other public processes, including required public notices, required by city code or regulation, and hearings and other public processes, including public notices and appeals, required or conducted under SEPA.
- D. Such other review processes as determined by the community development director.

(Ord. No. 1042, § 2, 12-4-14)

19.04.110 Integration of SEPA with project permit decision-making.

Under Chapter 36.70B RCW, the procedure for review of project permit applications (as defined in RCW 36.70B.020) shall be combined with the environmental review process, both procedural and substantive.

(Ord. No. 1042, § 2, 12-4-14)

19.04.120 Threshold determinations.

This part contains the rules for deciding whether a proposal has a "probable, significant, adverse environmental impact" requiring an environmental impact statement to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference, as supplemented in this part:

WAC

- 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 significance (DS).
- 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.
- (Ord. No. 1042, § 2, 12-4-14)

19.04.130 Environmental checklist.

- A. Except as provided in subsection D of this section, a completed environmental checklist (or a copy), in the 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 in this chapter, except that a checklist is not needed if the city and applicant agree that an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency, and if the city is the lead agency, for determining the responsible official and for making the threshold determinations.
- B. For private proposals, the city 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 city 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 city has technical information on a question or questions that are unavailable to the private applicant; or
 2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.
- D. For applications 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 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 thirty-day review prior to use.

(Ord. No. 1042, § 2, 12-4-14)

19.04.140 Timing.

For those project permit applications that are not subject to Chapter 36.70B RCW, the following will apply:

- A. The city will attempt to issue a threshold determination on a completed application within ninety days after the application and supporting documentation are complete.
- B. A complete application for a threshold determination consists of the following information:
 - 1. A description of the proposed action;
 - 2. Site information, including site plans, vicinity maps and other information required for a land use certification or other application;
 - 3. The environmental checklist;
 - 4. Additional information/environmental checklist (WAC 197-11-335). The environmental checklist covers sixteen subjects. If, after review of the environmental checklist, it is determined that there is insufficient information to make a threshold determination, additional information will be required using any one or more of the following:
 - a. The applicant will provide more information on subjects in the checklist;
 - b. The city makes its own further study;
 - c. The city will consult with other agencies, requesting information on the proposal's probable or potential impacts which lie within the other agency's jurisdiction or expertise.
- C. It is the policy of the city that adequate information must be provided before a threshold decision can be made. The city will not commence processing environmental checklists which are not complete.

(Ord. No. 1042, § 2, 12-4-14)

19.04.150 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 department 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. Reserved.
- F. 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).
 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 two hundred-foot storm water retention pond 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.
- G. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice.
- H. 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 manner specifically prescribed by the city.
- I. 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) (withdrawal of DNS).
- J. The city's written response under subsection B 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.

(Ord. No. 1042, § 2, 12-4-14)

19.04.160 Environmental impact statement.

This part contains the rules for preparing environmental impact statements. The City adopts the following sections by reference, as supplemented by this part:

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 (optional).
- 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 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.

(Ord. No. 1042, § 2, 12-4-14)

19.04.170 Preparation of EIS—Additional considerations.

- A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the city under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC. When there is a project permit application, preparation of the EIS is the responsibility of the applicant, under direction of the responsible official. However, when there is no project permit application, the Community Development Director shall have the discretion to determine the responsibility for preparation of the EIS, under the direction of the responsible official based on the circumstances.
- B. The DEIS and FEIS or draft and final SEIS shall be prepared by the city staff, the applicant, or by a consultant selected by the city. 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.
- C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. However, this does not apply to information the city may request under another ordinance or statute.
- D. Subject to delays caused by the applicant's failure to provide information requested by the city and other delays beyond the city's control, an EIS will be completed within one year of

the date of the declaration of significance, unless an appeal is filed or the city and applicant agree in writing to a different estimated time period for completion of the EIS.

(Ord. No. 1042, § 2, 12-4-14)

19.04.180 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.

(Ord. No. 1042, § 2, 12-4-14)

19.04.200 Adoption by reference.

This part contains rules for consulting, commenting and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented by this part:

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

(Ord. No. 1042, § 2, 12-4-14)

19.04.210 Public notice.

- A. 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, and how relevant information may be requested;
 2. If no public notice is required for the permit or approval, the city shall give notice of the DNS or DS by one or more of the following means as the responsible official determines is reasonably likely under the circumstances to result in notice to interested agencies, individuals, and groups:
 - a. Posting the property, for a site-specific proposal;
 - b. Publishing notice in ~~a the official city newspaper of general circulation in the county, city or general area where the proposal is located;~~
 - c. Notifying, by mail or email, agencies, individuals, and public or private groups ~~which~~ have previously provided comments or testimony expressed interest in concerning a the certain proposal or action being considered, or who have previously requested to be notified of decisions relating to the proposal or action or in the type of proposal being considered or similar types of proposals or actions;
 - ~~d. Notifying the news media;~~
 - ~~e. Placing notices in appropriate regional, neighborhood, ethnic or trade journals;~~
 - ~~f.d.~~ Publishing notice in agency-city newsletters and/or sending notice to agency-city mailing lists (either general lists or lists for specific proposals for subject areas); and/or
 - ~~ge.~~ Posting on the "Public Notices" page of the City of Black Diamond's Wwebsite under public notices.
 3. At a minimum, the city shall provide notice using the methods described in subsection 19.04.210(A)(2)(a) and (b) above, as provided in WAC 197-11-510.
- B. When 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. Whenever the city 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 by one or more of the following means as the responsible official determines is reasonably likely under the circumstances to result in notice to interested agencies, individuals, and groups
 - a. Posting the property, for site-specific proposals;
 - b. Publishing notice in ~~a the official city newspaper of general circulation in the county, city or general area where the proposal is located;~~
 - c. Notifying, by mail or email, agencies, individuals, and public or private groups ~~which~~ have expressed interest in previously provided comments or testimony concerning a certain the proposal or action or in the type of proposal being considered, or who have previously requested to be notified of decisions relating to the proposal or action being considered or similar types of proposals or actions;
 - ~~d. Notifying the news media;~~
 - ~~e. Placing notices in appropriate regional, neighborhood, ethnic or trade journals;~~
 - ~~fd. Publishing notice in agency-city newsletters and/or sending notice to agency-city mailing lists (general lists or specific lists for proposal or subject areas); and/or~~
 - ~~ge. Posting on the "Public Notices" page of the City of Black Diamond's Website under Public Notices.~~
2. At a minimum, the city shall provide notice using the methods described in subsection 19.04.210(A)(2)(a) and (b) above, as provided in WAC 197-11-510.

- D. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permit(s) or approval(s) required for the proposal.
- E. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his/her expense.

(Ord. No. 1042, § 2, 12-4-14)

19.04.220 Designation of official to perform consulted agency responsibilities for the city.

- A. The community development director shall be responsible for preparation of written comments for the city in response to a consultation requires prior to a threshold determination, participation in scoping, and reviewing a DEIS.

- B. The community development director shall be responsible for the city's compliance with WAC 197-11-440 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.

(Ord. No. 1042, § 2, 12-4-14)

19.04.230 Using existing environmental documents.

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

WAC

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

(Ord. No. 1042, § 2, 12-4-14)

19.04.240 SEPA and agency decisions.

This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city 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.

(Ord. No. 1042, § 2, 12-4-14)

19.04.250 Substantive authority.

- A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city.
- B. The city 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;
 - 2. Such conditions are in writing;
 - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;
 - 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 subsection D of this section and cited in the license or other decision document.
- C. 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 SEIS prepared pursuant to this chapter;
 - 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 the decision document.
- D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:
 - 1. The city 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 city 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 city adopts by reference the policies in the following city codes, ordinances, resolutions and plans, as they now exist or may hereafter be 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. Chapter 5.08 of the BDMC Business Licenses and Regulations.
 - c. Chapter 6.04 of the BDMC—Animals.
 - d. Titles 8 and 9 of the BDMC—Health and Safety.
 - e. Title 10 of the BDMC—Vehicles and Traffic.
 - f. Title 12 of the BDMC—Streets and Sidewalks.
 - g. Title 13 of the BDMC—Water and Sewers.
 - h. Title 15 of the BDMC—Buildings and Construction.
 - i. Title 17 of the BDMC—Subdivisions.
 - j. Title 18 of the BDMC—Zoning.
 - k. Chapter 18.08 of the BDMC—Administration of Development Regulations.

- l. The City of Black Diamond's Comprehensive Plan.
 - m. The City of Black Diamond's Shoreline Master Program.
 - n. The city's six year road program.
 - o. The city's comprehensive water plan.
 - p. The city's comprehensive sewer plan.
 - q. Chapter 19.12 of the BDMC—Critical Areas.
 - r. City's public works standards.
 - s. City's storm water management ordinance.
 - t. Comprehensive parks plan.
 - u. School district's capital facilities plans.
4. The city establishes the following additional policies:
- a. Schools. In order to ensure that adequate school facilities are available to serve new growth and development, as well as to ensure that such new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the city may impose school mitigation fees, all as provided in RCW 82.02.020.
 - b. Police. In order to ensure that the city'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 city's police department that are identified by the city as a consequence of proposed development, the city may impose police and emergency response mitigation fees, all as provided in RCW 82.02.020.
 - c. Other City Services. In order to that the city's acceptable level of service to citizens for all other government services and utilities is not diminished as a result of new growth and development, as well as to ensure that such new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the city may impose mitigation fees, all as provided in RCW 82.02.020 for parks.

(Ord. No. 1042, § 2, 12-4-14)

19.04.260 Appeals.

The city 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) ~~F~~final threshold determination (DNS, MDNS, or DS); (2) mitigation or failure to mitigate in the SEPA decision; (3) final EIS; and (4) project denials.
2. If the city does not provide for a hearing or appeal on the underlying action/permit, ~~then the SEPA administrative appeal on the decisions listed in subsection 19.04.260(A)(1) above shall be the only hearing and appeal allowed on the underlying action/permit there shall be no administrative appeal of the decisions described in subsection 19.04.260(A)(1), except as allowed under WAC 197-11-680(3)(a)(vi).~~

B. Notice of Decision.

1. In the notice of decision issued by the city pursuant to BDMC 18.08.150 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;~~
 - ~~ba.~~ The time limit for commencing the appeal of ~~the underlying governmental action and the SEPA issues~~decision, and the statute, regulation, or ordinance code section establishing the time limit; and
 - ~~cb.~~ Where the appeal may be filed.
2. Written notice shall be provided to the applicant, all parties of record to any administrative appeal, all persons who have submitted public comment on the proposal, and all persons who have requested notice of decisions concerning the project proposal. Such notice may be appended to the underlying permit or approval, the decision documents, or the SEPA compliance documents, or it may be printed separately.

- C. Timing of Appeal. ~~The SEPA administrative appeals~~ shall take place prior to the city's final decision on the underlying a-proposed action. However, the SEPA open record appeal hearing ~~may~~shall be consolidated with any other hearing or appeal on the underlying permit or action in accordance with WAC 197-11-680(3)(a)(5) and subsection 19.04.260(E) below.

- D. Number of Appeals. Only one administrative appeal to the city is allowed of the decisions listed in subsection 19.04.260(A) above.
- 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 city when the city 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 city on a nonproject action; and
 4. An appeal to the city council under RCW 43.21C.060.
- F. ~~Timing of~~ Deadline for Filing Appeal:
1. SEPA Decision Issues at the Same Time as Decision on Underlying Permit or Action. An appeal of a SEPA decision that issued at the same time as the decision on ~~a the underlying project permit or~~ action shall be filed within fourteen days after issuance of a notice of decision under BDMC 18.08.150 (or RCW 36.70B.130), or after notice that a decision has been made and is appealable.
 - ~~2. SEPA Decision Allows Public Comment. For However, in order to allow for public comment on a DNS or MDNS before requiring an administrative appeal to be filed, for which public comment is required (under this chapter)~~ the appeal period shall be extended for an additional seven days if the appeal is of a DNS; for which public comment is required under WAC 197-11-340.
 - ~~3.~~ SEPA Threshold Decision-Determination Issues Prior to Decision on Underlying Permit or Action. An appeal of a threshold decision-determination issued prior to a decision on ~~a the underlying project permit or~~ action shall be filed within fourteen days after notice that the decision-determination 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 the hearing examiner ~~or city council~~ in an appeal.

- H. Administrative Record. An administrative record of the appeal must be ~~provided~~created, and the record shall consist of the following:
1. Findings and conclusions;
 2. Testimony under oath; and
 3. A taped or written transcript. (The city may require that the appellant provide an electronic transcript.)
- I. Exhaustion of Administrative Remedies. ~~The city's administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue decision for which the city allows an administrative appeal in this section may not be initiated until the appellant has exhausted the city's administrative appeal procedures under 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 city 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 the hearing examiner ~~or city council (whichever is the hearing officer/body on the appeal)~~, 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 or action. A written decision will issue if the appeal is untimely and the appeal will not proceed.
- L. Hearing Examiner Appeals.
1. Jurisdiction. All administrative appeals ~~relating to project permit applications or any type of quasi-judicial or ministerial development applications that are not appealable to the city council (pursuant to subsection M below)~~ of city SEPA decisions shall be heard by the hearing examiner.

2. Hearing. The hearing examiner shall hold an open record public hearing on the appeal, as provided in BDMC 2.30.100.
3. Date for Issuance of Decision. The hearing examiner shall issue a decision on the appeal within the time period set forth in Section 2.30.110, unless a longer period is agreed to in writing by the applicant, appellant, and hearing examiner.
4. Appeals of Hearing Examiner's Decision. The hearing examiner's decision on the timeliness of an appeal within his/her jurisdiction, and any other appeals allowed under this subsection within his/her jurisdiction shall be the final decision of the city. The hearing examiner's decision shall state that any appeal of the final decision shall be filed in King County Superior Court (pursuant to Chapter 36.70C RCW), or the Shorelines Hearings Board or Growth Management Hearings Board, if applicable.

~~M. City Council Appeals.~~

- ~~1. Jurisdiction. The city council shall hear all administrative appeals relating to legislative actions and applications. In addition, the city council shall hear appeals relating to any other applications that are appealable to the city council (pursuant to Section 16.30.130).~~
- ~~2. Hearing. For all legislative actions and applications, the city council shall hold a public hearing. For any SEPA appeals relating to applications for which the city council has jurisdiction (legislative actions and applications), the city council shall hold a public hearing.~~
- ~~3. Record on Appeal. The evidence and testimony received by the council in a SEPA appeal shall be presented in an open record hearing.~~
- ~~4. Appeals of City Council's Decision. The city 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 city. The city council's decision shall state that any appeal of the final decision may be filed in King County Superior Court within twenty-one days (if applicable) or within sixty days to the growth management hearings board, pursuant to RCW 36.70A.290(2).~~

~~NM. 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 city's final decision shall be filed in superior court (or the ~~g~~Growth ~~m~~Management ~~h~~Hearings ~~b~~Board or Shorelines Hearings Board, as applicable), 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.

~~ON. Submittal of Appeal Documents. Electronic submittal of comments and supporting documents for all SEPA comments and appeals shall be allowed, subject to any procedural conditions that may be imposed by the~~The hearing examiner shall decide the means and methods for submittal of documents (motions, briefs, exhibits, testimony, etc.) for the examiner's consideration during the pendency of an appeal.

(Ord. No. 1042, § 2, 12-4-14; Ord. No. 1090, § 2, 5-4-17)

19.04.270 Notice/statute of limitations.

- A. The city, 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 city clerk ~~or county auditor~~, applicant, or proponent, pursuant to RCW 43.21C.080.

(Ord. No. 1042, § 2, 12-4-14)

19.04.280 Agency compliance.

This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency and applying these rules to current agency activities. The city adopts the following sections 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.
- (Ord. No. 1042, § 2, 12-4-14)

19.04.290 Fees.

- A. The city shall require the fees from the applicant for the following activities, in accordance with the provisions of this chapter:
1. Threshold Determination. The city will review an environmental checklist when it is lead agency, and the city shall collect a fee from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided in this chapter shall not begin to run until payment of the fee.
 2. Environmental Impact Statement.
 - a. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover the costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

- b. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS or a portion of the EIS, for activities initiated by some person or entity other than the city and may bill such costs and expenses directly to the applicant. The city may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected after input from the applicant, after a call for proposals. The city shall have the final decision on the selection of the consultant.
 - c. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.
3. The city may recover its reasonable expenses of preparation of a non-project environmental impact statement prepared under RCW 43.21C.229 and 43.21C.440 using the procedures set forth in RCW 43.21C.428.
 4. 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.
 5. The city shall not collect a fee for performing its duties as a consulted agency.
 6. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by the city's resolution on public records disclosure.

(Ord. No. 1042, § 2, 12-4-14)

19.04.300 Adoption by reference.

The city 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.

(Ord. No. 1042, § 2, 12-4-14)

FOOTNOTE(S):

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Editor's note— Ord. No. 1042, § 1, adopted December 4, 2014, repealed the former Chapter 19.04, §§ 19.04.010—19.04.320, and § 2 of Ord. No. 1042 enacted a new Chapter 19.04 as set out herein. The former Chapter 19.04 pertained to environmental policy and derived from Ord. No. 299, 1984; Ord. No. 857, 2008; Ord. No. 933, adopted January 7, 2010 and Ord. No. 949, adopted October 7, 2010. (Back)