

Title 18

SEPA

Chapters:

18.04 State Environmental Policy Act

18.08 Critical Areas

Chapter 18.04**STATE ENVIRONMENTAL
POLICY ACT**

Sections:

- 18.04.010 Purpose.
- 18.04.020 Authority.
- 18.04.030 General requirements.
- 18.04.040 Additional definitions.
- 18.04.050 Designation of responsible official.
- 18.04.060 Lead agency determination and responsibilities.
- 18.04.070 Transfer of lead agency status.
- 18.04.080 Additional timing considerations.
- 18.04.090 Categorical exemptions and threshold determinations – Generally.
- 18.04.100 Thresholds for categorical exemptions.
- 18.04.110 Use of exemptions.
- 18.04.120 Emergencies.
- 18.04.130 Environmental checklist.
- 18.04.140 Mitigated DNS.
- 18.04.150 Environmental impact statements – Generally.
- 18.04.160 EIS – Preparation.
- 18.04.170 Commenting – Generally.
- 18.04.180 Public notice.
- 18.04.190 Consulted agency responsibilities.
- 18.04.200 Existing environmental documents.
- 18.04.210 Substantive authority – Generally.
- 18.04.220 Substantive authority – Exercise.
- 18.04.230 Notice of action.
- 18.04.240 Definitions.
- 18.04.250 Agency compliance.
- 18.04.260 Fees.
- 18.04.270 Forms.

18.04.010 Purpose.

A. The purpose of this chapter is to adopt regulations to implement the State Environmental Policy Act of 1971 (Chapter 43.21C RCW), as amended, consistent with the SEPA rules adopted on November 10, 1997 (Chapter 197-11 WAC).

B. This chapter is based on the draft SEPA model ordinance prepared by the State of Washington Department of Ecology on March

9, 1998, in accordance with the mandate of RCW 43.21C.130, to be adopted as Chapter 173-806 WAC. (Ord. 1087 § 1, 1998)

18.04.020 Authority.

A. The town adopts this chapter pursuant to the mandate of RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

B. This chapter contains this town's SEPA procedures and policies.

C. The SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this chapter. (Ord. 1087 § 2, 1998)

18.04.030 General requirements.

The basic requirements for the town's SEPA process shall be as set forth in FHMC 18.04.030 through 18.04.080. The town adopts the following sections of Chapter 197-11 WAC by this 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 and regulations.
- 197-11-210 SEPA/GMA integration.
- 197-11-220 SEPA/GMA definitions.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 Documents.
- 197-11-250 SEPA/Model Toxics Control Act integration.

- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial actions.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions. (Ord. 1087 § 3, 1998)

18.04.040 Additional definitions.

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

A. "Department" means any division, subdivision or organizational unit of the town established by ordinance, rule or order.

B. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.

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

D. "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. (Ord. 1087 § 4, 1998)

18.04.050 Designation of responsible official.

A. For those proposals for which the town is the lead agency, the responsible official shall be the town administrator or his/her designee.

B. For all proposals for which the town 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.

C. The town shall retain all documents required by the SEPA rules and make them available in accordance with Chapter 42.17 RCW. (Ord. 1087 § 5, 1998)

18.04.060 Lead agency determination and responsibilities.

A. The department within the town receiving an application for or initiating a proposal that involves a nonexempt action shall refer the application to the responsible official, who shall then determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940, unless the lead agency has been previously determined.

B. When the town is the lead agency for a proposal, the responsible official shall supervise compliance with the 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, the town shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The town shall not 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.

D. If the town receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or WAC 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 responsible official.

E. The responsible official is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944.

F. The responsible official 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.

G. When the town is lead agency for a MTCA remedial action, the Department of Ecology shall be provided an opportunity, under WAC 197-11-253(5), to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together, with one public comment period under WAC 197-11-253(6), the town shall decide jointly with Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other. (Ord. 1087 § 6, 1998)

18.04.070 Transfer of lead agency status.

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. (Ord. 1087 § 7, 1998)

18.04.080 Additional timing considerations.

A. For nonexempt proposals, the DNS or final EIS for the proposal shall accompany the town's staff recommendation to any appropriate advisory body, such as the planning commission.

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. The point at which environmental review may be initiated for specific

permits or other licenses requiring detailed project plans and specifications shall be determined by the responsible official after consultation with the applicant and a representative of any department which will be involved with the proposal. (Ord. 1087 § 8, 1998)

18.04.090 Categorical exemptions and threshold determinations – Generally.

The rules for deciding whether a proposal has a "probable significant adverse environmental impact," requiring an environmental impact statement (EIS) to be prepared, and the rules for evaluating the impacts for proposals not requiring an EIS are set forth in FHMC 18.04.090 through 18.04.140.

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

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

(Ord. 1087 § 9, 1998)

18.04.100 Thresholds for categorical exemptions.

A. Except as set forth in subsection B of this section, proposed actions which are categorically exempt are as set forth in WAC 197-11-800, which is hereby adopted by this reference.

B. Pursuant to the authority set forth in WAC 197-11-800(1)(c), the exempt levels set

forth in WAC 197-11-800(1)(b) are hereby raised to the maximums specified in WAC 197-11-800(1)(c), except as provided in subsection C of this section.

C. The provisions of subsection B of this section, raising the exempt levels for certain proposed actions to the maximum allowed under WAC 197-11-800(1)(c), do not apply in any area of the town which is identified as a critical area in Chapter 18.08 FHMC. (Ord. 1087 § 10, 1998)

18.04.110 Use of exemptions.

A. A determination of whether or not a proposal is exempt shall be made by the responsible official and, when made, shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter 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 responsible official shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency.

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 any nonexempt action, any action that would limit the choice of alternatives, or any action that would have an adverse environmental impact;

2. The responsible official may withhold approval of an exempt action that would lead to modification of the physical environment when such modification would serve no purpose if nonexempt action(s) were not approved; and

3. The responsible official may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would

serve no purpose if nonexempt action(s) were not approved. (Ord. 1087 § 11, 1998)

18.04.120 Emergencies.

Pursuant to the authority provided in WAC 197-11-880, actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation shall be exempt. (Ord. 1087 § 12, 1998)

18.04.130 Environmental checklist.

A. A complete environmental checklist, 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 a checklist is not needed if the responsible official and applicant agree that an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The responsible official shall use the environmental checklist to determine the lead agency and, if the town is the lead agency, for making the threshold determination.

B. For private proposals, the town will require the applicant to complete the environmental checklist, providing assistance as necessary. For town proposals, the department initiating the proposal shall complete the environmental checklist.

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;

2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration. (Ord. 1087 § 13, 1998)

18.04.140 Mitigated DNS.

A. As provided 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 follow submission of a permit application and environmental checklist and shall precede the actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 15 days. The response shall be in writing and shall state whether the responsible official currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern leading the responsible official to consider a DS. The response shall also 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 responsible official 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 responsible official shall base the threshold determination on the changed or clarified proposal and the revised or amended checklist, and should make the determination within 15 days of receiving that information.

F. If the responsible official indicated specific mitigation measures in the response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the responsible official shall issue and circulate a DNS under WAC 197-11-340(2).

G. If the responsible official indicated areas of concern, but did not indicate specific mitigation measures that would allow issuance of a DNS, the responsible official shall make the threshold determination, issuing a DNS or DS, as appropriate.

H. 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 200-foot storm water retention pond at Y location" are adequate.

I. 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.

J. A mitigated DNS is issued under either WAC 197-11-340(2), requiring a 14-day comment period and public notice, or WAC 197-11-355(5), which may require no additional comment period beyond the comment period on the notice of application.

K. 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.

L. The written response under subsection C of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the town to consider the clarifications or changes in its threshold determination. (Ord. 1087 § 14, 1998)

18.04.150 Environmental impact statements – Generally.

The rules for preparing an environmental impact statement are set forth in FHMC 18.04.150 through 18.04.170. The town adopts the following sections of Chapter 197-11 WAC by this reference:

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 Elements of 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.
- (Ord. 1087 § 15, 1998)

18.04.160 EIS – Preparation.

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the town under the direction of the responsible official. Before the town issues an EIS, 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 town staff, the applicant, or by a consultant selected by the town or the applicant. 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. The town may require an applicant to provide information the town 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, unless such information is required under another town ordinance.

D. No matter who prepares the DEIS, FEIS or SEIS, it must be approved by the responsible official before distribution. (Ord. 1087 § 16, 1998)

18.04.170 Commenting – Generally.

The rules for consulting, commenting and responding on all documents under SEPA and the rules pertaining to public notice and hearings are set forth in FHMC 18.04.180 through 18.04.200. The town adopts the following sections of Chapter 197-11 WAC by this reference:

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. 1087 § 17, 1998)

18.04.180 Public notice.

A. Whenever possible, the town shall integrate the 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 a SEPA document is issued concurrently with the notice of application, the public notice requirements for the notice of application in FHMC Title 20 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1);

2. If public notice is not otherwise required, the town shall give notice of the DNS or DS by publishing notice in a newspaper of general circulation in the town;

3. 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. If a DNS is issued using the optional DNS process, the public notice requirements for the notice of application in FHMC Title 20, as supplemented by the requirements in WAC 197-11-355, will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

D. Whenever the town issues a DEIS under WAC 197-11-455(5) or SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the document in any public notice otherwise required; and

2. Publishing notice in a newspaper of general circulation in the town.

E. The town shall require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense. (Ord. 1087 § 18, 1998)

18.04.190 Consulted agency responsibilities.

A. The responsible official shall be responsible for preparation of written comments for the town in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The responsible official shall also 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. (Ord. 1087 § 19, 1998)

18.04.200 Existing environmental documents.

The rules for using and supplementing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the town's own environmental compliance are set forth in this section. The town adopts the following sections of Chapter 197-11 WAC by this 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. 1087 § 20, 1998)

18.04.210 Substantive authority – Generally.

The rules and policies for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA, are set forth in FHMC 18.04.220 and 18.04.230. The town adopts the following sections of Chapter 197-11 WAC by this 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. 1087 § 21, 1998)

18.04.220 Substantive authority – Exercise.

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 nonexempt 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 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 the one or more policies in subsection D of this section and identified in the permit or other decision document.

C. The town may deny a permit or approval for a nonexempt 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;

3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

D. As the basis for the town's exercise of authority under this section, the town designates and adopts by reference the policies and goals set forth in:

1. RCW 43.21.020;

2. FHMC Title 17, the comprehensive plan and land use regulations, as amended or replaced from time to time; and

3. FHMC Title 19, the shoreline master program, as amended or replaced from time to time. (Ord. 1087 § 22, 1998)

18.04.230 Notice of action.

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 in WAC 197-11-990. The notice shall be published pursuant to RCW 43.21C.080. (Ord. 1087 § 23, 1998)

18.04.240 Definitions.

For purposes of this chapter, the terms set out in this section shall have the meanings indicated. The town adopts the following sections of Chapter 197-11 WAC by this reference:

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.
 197-11-728 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 Responsible 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.
(Ord. 1087 § 24, 1998)

18.04.250 Agency compliance.

The rules for the town's compliance with SEPA, including listing agencies with environmental expertise, selecting the lead agency and applying these rules to current agency activities, are as set forth in this section. The town adopts the following sections of Chapter 197-11 WAC by this 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 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. 1087 § 25, 1998)

18.04.260 Fees.

A. Threshold Determination. For every environmental checklist the town will review when it is lead agency, the town shall collect a fee from the proponent of the proposal prior to undertaking the threshold determination. Any time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee. The nonrefundable review fees for all environmental documents governed by this chapter shall be reviewed annually by the town council which shall direct the town clerk to adjust the fee appropriately and post such list in a conspicuous place within Town Hall and make such list available to the public upon request.

B. Environmental Impact Statement.

1. When the town 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 town, the town may charge and collect a reasonable fee from any applicant to cover the costs incurred by the town in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation. The applicant shall post bond or otherwise ensure payment of such costs.

2. The responsible official may determine that the town 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 town and may bill such costs and expenses directly to the applicant. The town may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the town and applicant after a call for proposals.

3. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subsections (B)(1) and (B)(2) of this section which remain after incurred costs are paid.

C. The town 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.

D. The town shall not collect a fee for performing its duties as a consulted agency.

E. The town may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by Chapter 42.17 RCW. (Ord. 1087 § 26, 1998)

18.04.270 Forms.

By this reference, the town adopts the forms set forth in the following sections of Chapter 197-11 WAC:

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. 1087 § 27, 1998)

Chapter 18.08

CRITICAL AREAS

Sections:

- 18.08.010 Purpose.
- 18.08.020 Title.
- 18.08.030 Goals.
- 18.08.040 Critical areas map.
- 18.08.050 Definitions.
- 18.08.060 Applicability.
- 18.08.070 Regulations.
- 18.08.080 Reasonable use exceptions.
- 18.08.090 Exemptions.
- 18.08.100 Performance assurance.
- 18.08.110 Violation and enforcement.

18.08.010 Purpose.

The purpose of this chapter is to promote the maintenance, enhancement and preservation of critical areas and environmentally sensitive natural systems by avoiding or minimizing adverse impacts from construction and development. This chapter implements the goals and objectives of the State Growth Management Act of 1990 (Chapter 36.70A RCW) through the development and implementation of policies and regulations to manage critical areas in the public's interest and welfare. It is not the intent of this chapter to deny a reasonable use of private property, but to assure that development on or near critical areas is accomplished in a manner that is sensitive to the environmental resources of the community. The town shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The town shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area. (Ord. 1051 § 1, 1997)

18.08.020 Title.

This chapter shall be known as the critical areas ordinance and may be cited as such. (Ord. 1051 § 2, 1997)

18.08.030 Goals.

In implementing the purposes stated in FHMC 18.08.010, it is the intent of this chapter to accomplish the following:

A. Protect environmentally sensitive natural areas and the functions they perform by the careful and considerate regulation of development;

B. Minimize or prevent siltation to the receiving waters of Friday Harbor for the maintenance of marine water quality and the maintenance and preservation of marine fish and shellfish;

C. Preserve natural forms of flood control and storm water storage from alterations to drainage or stream flow patterns;

D. Protect aquifer recharge areas from undesirable or harmful development;

E. Protect, maintain and enhance areas suitable for wildlife, including rare, threatened or endangered species;

F. Protect, maintain and enhance fish and wildlife habitat conservation areas within their natural geographic distribution so as to avoid the creation of subpopulations; and

G. Implement the goals, policies and requirements of the Growth Management Act. (Ord. 1051 § 3, 1997)

18.08.040 Critical areas map.

The critical areas map, which is attached to the ordinance codified in this chapter as Exhibit A, is hereby adopted as the official identification of the critical areas within the town. (Ord. 1051 § 4, 1997)

18.08.050 Definitions.

For the purposes of this chapter, the terms set out in this section shall have the meanings indicated.

A. "Development" means any land use action regulated by FHMC Titles 15 through 19.

B. "Responsible official" means the person designated as the responsible official under FHMC 18.04.050 as amended from time to time. (Ord. 1051 § 5, 1997)

18.08.060 Applicability.

A. Scope. All development applications shall require the applicant to state whether or not any portion of the proposed development will be located within an area which is subject to the regulations set forth in this chapter.

B. Area. Except as exempted under FHMC 18.08.090, the regulations in this chapter shall apply to any development which will be located, in whole or in part, within 50 feet of an identified wetland, within an identified aquifer recharge area, or, if over water, within 200 feet of an identified eelgrass area. (Ord. 1051 § 6, 1997)

18.08.070 Regulations.

A. Wetlands. Whenever an application for development within 50 feet of an identified wetland indicates that any part of the proposal is to be located within 50 feet of the wetland, the responsible official shall visit the site and, after reviewing all available information, determine whether or not a wetlands study is necessary in order to adequately evaluate the probable impacts of the proposal on the wetlands. The study shall be performed by a qualified person selected or approved by the town, and shall be paid for by the applicant. The results of the study shall be used by the responsible official in making his or her threshold determination under Chapter 18.04 FHMC as amended from time to time.

B. Aquifer Recharge Areas. No development shall be permitted within an identified aquifer recharge area, except as permitted for single-family residential uses or multifamily residential uses under FHMC Title 17 as amended from time to time.

C. Eelgrass Areas. Whenever an application for development over water indicates that any part of the proposal is to be located within 200 feet of an identified eelgrass area, the responsible official shall visit the site and, after reviewing all available information, determine whether or not an eelgrass study is necessary in order to adequately evaluate the probable impacts of the proposal on the eelgrass area. The study shall be performed by a qualified person selected or approved by the town, and shall be paid for by the applicant. The results

of the study shall be used by the responsible official in making his or her threshold determination under Chapter 18.04 FHMC as amended from time to time. (Ord. 1051 § 7, 1997)

18.08.080 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a parcel, development, consistent with the general purposes and intent of this chapter, may be permitted if a reasonable use exception is approved in accordance with this section.

A. Information Required. An application for a reasonable use exception shall be submitted to the responsible official and shall include the following information:

1. A description of the area of the property which is within the critical area;
2. An analysis of the impact that the amount of development proposed would have on the critical area;
3. An analysis of whether any other reasonable use with less impact on the critical area is possible;
4. A design of the reasonable use proposal that will have the least practicable impact on the critical area;
5. A description and analysis of any minimum requirements of this chapter, which must be modified to accommodate the proposed development; and
6. Such other information as may be reasonable and necessary to evaluate the proposal.

B. Findings and Decision. If an applicant successfully demonstrates that the requirements of this chapter would deny all reasonable use of a site, development may be permitted. The responsible official may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter. The responsible official shall make written findings in support of the decision, as follows:

1. There are no feasible alternatives to the proposed development which would have less impact on the critical area;

2. The inability of the applicant to derive a reasonable use of the property is not the result of actions taken by the applicant after the effective date of the ordinance codified in this chapter;

3. The proposal mitigates the impacts on the critical area to the maximum extent practicable, while maintaining the reasonable use of the site; and

4. The modification of the requirements of this chapter is the minimum necessary to allow for the reasonable use of the property.

C. Notification of Decision. The decision shall be provided, in writing, to the applicant and all property owners immediately adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all such property owners.

D. Appeal. The decision of the responsible official is appealable to the town council. An appeal shall be in writing and submitted within 10 days of the date of the decision. (Ord. 1051 § 8, 1997)

18.08.090 Exemptions.

Certain development and uses may be of such impact and character or so essential to the maintenance and enjoyment of a lawfully permitted use that the requirements of this chapter should not apply. The following development and uses are therefore exempt from the requirements of this chapter:

A. Minimum actions necessary to protect life or property in an emergency situation. Qualification as an emergency shall be based upon the factual occurrence of imminent threat or danger;

B. Public and private pedestrian trails which consist of a pervious surface not exceeding four feet in width;

C. Science research and educational activities specific to the site, such as archaeological sites and attendant excavation, which do not require the construction of permanent structures or roads for vehicle access;

D. Subsurface drilling for geologic exploration associated with a proposed development which is not exempt from the requirements of this chapter; and

E. The placement of signs consistent with FHMC Title 14 as amended from time to time. (Ord. 1051 § 9, 1997)

18.08.100 Performance assurance.

A. The responsible official may allow the applicant to provide a financial performance assurance device in lieu of constructing required mitigation measures and may require such a device to guarantee installation/construction of required mitigation measures within one year of the issuance of a certificate of occupancy or final inspection.

B. Performance assurance devices shall take the form of one of the following:

1. A surety bond executed by a surety company authorized to transact business in the state, in a form approved by the town attorney;
2. Cash;
3. A letter of credit, approved by the town attorney, from a financial institution; or
4. An assigned savings account, pursuant to an agreement approved by the town attorney.

C. If a performance assurance device is employed, the property owner shall provide the town with a nonrevocable notarized agreement granting the town and its agents the right to enter the property and perform any required work remaining undone at the expiration of the time given to the owner for completion.

D. If the owner fails to complete the work and the town has incurred costs or expenses resulting from such failure, the town shall make demand on the assurance device for reimbursement. If the amount available is less than the expense incurred by the town, the owner shall be liable to the town for the difference. If the amount of the assurance device exceeds the expense incurred by the town, the remainder shall be released to the owner. (Ord. 1051 § 10, 1997)

18.08.110 Violation and enforcement.

A. A violation of this chapter shall be and hereby is declared both a public nuisance and a Class 1 civil infraction, as defined in Chapter 1.18 FHMC as amended from time to time. Each day that a violation of this chapter exists may be treated as a separate infraction.

B. Except in circumstances where there is a serious and imminent threat to public health or safety, prior to filing a public nuisance abatement action in San Juan County superior court, the town shall attempt to gain compliance by use of the civil infraction procedures set forth in Chapter 1.18 FHMC as amended from time to time.

C. The penalty for committing a civil infraction under this chapter shall be as set forth in Chapter 1.18 FHMC as amended from time to time. (Ord. 1051 § 11, 1997)