Chapter 15.01 Land Use Application Requirements

Table of Contents

Article I. Land Use Applications

15.01.010 Preapplication review

A. The purpose of preapplication review is to acquaint city staff with a sufficient level of detail about the proposed project to enable staff to advise the applicant accordingly. The purpose is also to acquaint the applicant with the applicable requirements of this title and other applicable city regulations. Further, the preapplication review is intended to provide the applicant with preliminary direction regarding the required content of the proposed application. However, the conference is not intended to provide an exhaustive review of all the potential issues that a given application could raise. The preapplication review does not prevent the city from applying all relevant laws to the application and does not constitute an approval of the project.

B. Preapplication review is required for Review Process II, III, and V applications, unless the ordinance or the planning director exempts the application in question or the applicant submits a completed form provided by the city requesting waiver of preapplication review, and such waiver is granted by the planning director.

C. To initiate preapplication review, an applicant shall submit a completed request for preapplication meeting form provided by the planning department for that purpose, any required fee, preliminary site plan and all other information required by the city.

D. The preapplication conference shall be scheduled within twenty-one (21) calendar days, and held within thirty (30) days – unless a longer period of time is agreed by the city and applicant, after the city accepts the application for preapplication review.

E. Preapplication review does not vest an application nor does it constitute approval.

15.01.020 Land use permit application

A. Content. Applications shall be submitted upon forms provided by the planning director. An application shall identify all city land use permits required by the applicable development regulations as they apply to the proposed land use action. Applications may be filed by a property owner or an agent acting on his/her behalf. At a minimum, applications shall include the following information:
   1. A completed land use permit application packet containing all required forms, information, and any special studies or information necessary to process the application indicated by the city in a preapplication meeting including, for example, where applicable to a project, traffic analysis, wetland and critical area studies, biological assessment; soil, stormwater and utility analyses.
   2. Environmental checklist (SEPA) or other SEPA documentation including supporting information, when required under Chapter 197-11 WAC and the SEPA ordinance (EMC 19.43).
   3. Complete and accurate special studies, reports, information, maps, plans, or other documentation required by the planning director to support the application and to enable the city to evaluate consistency and the environmental impacts of the proposal. When identified in the application packet, a supplemental narrative statement describing how the proposal meets the required evaluation criteria.
   4. A statement that the applicant is the owner of the property affected by the application or is authorized by the owner to submit the application. For land divisions, a declaration of ownership form signed by the owner is required.
   5. A written designation by the applicant of a single person or entity to receive determinations and notices required and issued as part of the project review process.
   6. A property and/or legal description of the site for all applications required by the pertinent land use permit application packet and applicable development regulations. For land divisions, a legal description of the property proposed to be adjusted.
   7. A complete and accurate site plan or proposed land use plans as described in the city's land use permit application packet. For land divisions, see plat and map requirements in EMC 15.01.030 of this chapter.
   8. A complete and accurate mailing list, as required by the pertinent land use permit application packet and development regulations.
   9. Filing fee.

B. Fees. Fees shall be submitted with applications in accordance with the current land use development permit fee ordinance adopted by the city council. An application shall not be considered complete until the required fee has been submitted.

C. Modification or Waiver. The planning director may waive application requirements that are clearly not necessary to show an application complies with relevant regulations, review criteria and standards and may modify application requirements based on the nature of the proposed application, development site, or other factors.

D. Supplemental Application Requirements. Additional application requirements for shoreline permits, land division applications, and planned actions are set forth later in this chapter.

15.01.022 Shoreline permit applications.

Shoreline permit applications shall meet the requirements of the Joint Aquatic Review Project Application (JARPA) forms, if applicable to the project, and the information required by the planning department for shoreline permits.

15.01.030 Land division applications

A. Applications. In addition to the requirements in EMC 15.01.020 above, all land division applications shall include the following:
   1. The application materials as specified in EMC 15.01.020 of this chapter, including application forms or checklists provided by the city.
   2. A plat map, supplemental maps and/or site plan drawn to the specifications set forth in the applicable application.

3. A survey conducted by or under the supervision of a registered licensed land surveyor in the state of Washington, in accordance with the "Survey" section of EMC 19.26.140.
4. A certificate, not older than ninety (90) days, from a title company is required. The applicant shall be responsible for updating the title report to ensure that it is current as of the time of final land division review. This report must confirm that the title of the lands as described and shown on the land division is in the name of the owners signing the land division.

B. Planning Director's Determination on Restrictive Covenants. For purposes of meeting the requirements of this title and RCW 58.17.215, any restrictive covenant that has not been imposed by the city shall not be subject to the requirements of the alteration and vacation review procedures of this title.

C. Notice of Correction. The planning director may authorize corrections to the recorded final division map or other documents required by the city. It is the applicant's responsibility to provide all necessary maps or documents and pay all required fees and record the corrections as necessary. For the purpose of this title, a correction is the act of correcting an error on a map or document to bring it into conformity with the standards of this title or applicable survey standards as required by state law.

D. Withdrawal of Preliminary or Final Approvals. Except for formal subdivisions as provided by RCW 58.17.170, if a division of land or boundary line adjustment application was procured by misrepresentation, lack of material disclosure or erroneous information, or if there was deficient public notice as a direct result of the applicant or based on erroneous information or, if in the opinion of the planning director, a substantial change in conditions of approval has occurred and construction has not commenced, the city or hearing examiner may withdraw its approval of the project and require the applicant to correct the application. If the approval is withdrawn, the city or the hearing examiner shall issue a new decision on the application consistent with the review processes and standards of this title.

15.01.035 Land division, supplemental requirements.

Supplemental requirements for certain Review Process I land divisions (minor amendments to land divisions, boundary line adjustments, and binding site plans with previously approved site plans) are as follows:

A. Criteria for Minor Amendment. For the purposes of this title, a minor amendment shall meet the following criteria:
1. The proposal represents a minor adjustment of lot lines or lot frontage that does not increase or decrease said lot lines and/or frontage in excess of ten percent;
2. The proposal does not result in substantial changes in the design or location of access, parking, circulation, drainage or public utility improvements;
3. The proposal does not result in additional lots or potential number of dwelling units;
4. The proposal would not modify or be in conflict with any of the conditions of preliminary approval;
5. In the opinion of the planning director, the proposal would not have an adverse effect on other lots within the project or on adjacent properties; and
6. The proposal is consistent with Titles 18, 19, 20 and other applicable city code provisions and standards.

B. Approval of Adjacent Owners is Not Required for Minor Amendments. The approval of other property owners within the proposed project is not required on the final division map or other documents if the city approves a minor amendment.

C. When an Amendment Does Not Qualify as a Minor Amendment. If the city determines that any proposed amendments are not minor, the project shall be processed as required for the original application meeting all the requirements of this title, including providing public notice to all property owners within the original project area.

D. Binding Site Plans with Previously Approved Site Plans. The following supplemental information shall be submitted with an application for a binding site plans with previously approved site plan:
1. The approved site plan with a copy of the corresponding decision and project numbers;
2. The SEPA threshold determination and corresponding checklist submitted for the approved project; and
3. A proposed or approved phasing plan.

E. Boundary Line Adjustments. Boundary line adjustment applications shall submit a declaration of legal documentation form. Requirements for final recording of boundary line adjustments shall be specified in rules for the administration and implementation of this title.

Article II. Determination of Completeness

15.01.040 Review for technically complete status.

Before accepting an application for processing, the city shall determine that the application is technically complete. A technically complete application contains all information required under Section 15.01.020. The city shall issue a notice of completeness or notice that the application is deemed incomplete as set forth in Section 15.01.050.

15.01.050 Determination of completeness or incomplete application.

A. Within twenty-eight (28) days after receiving a project permit application, the city shall mail (electronic mail acceptable) or personally provide a determination to the applicant which states either:
   1. That the application is complete; or
   2. That the application is incomplete and what is necessary to make the application complete.

B. To the extent known by the city, other agencies that may have jurisdiction over the application shall be identified in the city's completeness determination.

C. An application is complete for purposes of this section when it meets the procedural submission requirements set forth in Section 15.01.020 and is sufficient for continued processing even though additional information may be required or project modification may be undertaken subsequently. The determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is needed or substantial changes in the proposed action occur.

   The determination of completeness may include the following as optional information:
   1. A preliminary determination of those development regulations that will be used for project mitigation;
   2. A preliminary determination of consistency, with the comprehensive plan or subarea plan, and applicable development regulations; or
   3. Other information deemed appropriate by the planning director.

D. An application shall be deemed complete under this section if the planning director, within twenty-eight (28) days of receiving the application, does not mail (electronic mail acceptable) or provide in person a written determination to the applicant that the application is incomplete.

E. If the planning director determines that an application is not complete, then within twenty-eight (28) days after receiving the application, the planning director shall place in the mail (electronic mail acceptable) to the applicant a written statement that the application is incomplete based on a lack of information and listing what is required to make the application technically complete; provided, however, an applicant may request or agree to an extension of the twenty-eight (28) day completeness review period.

F. If the applicant receives a determination of the city that an application is not complete, the applicant shall have ninety (90) days to submit the necessary information to the city. The planning director may grant an extension to the ninety (90)-day time deadline for filing the required information. Within fourteen (14) days after an applicant has submitted the additional information requested in a notice of incompleteness, the city shall make a new determination of completeness as described herein, and notify the applicant in the same manner.

G. If the required information is not submitted by the date specified and the planning director has not extended that date, the planning director may take one of the following actions as deemed appropriate by the planning director:
   1. Reject and return the application and eighty percent (80%) of the application fee(s) and mail to the applicant a written statement which lists the remaining additional information needed to make the application technically complete; or
   2. Issue a decision denying the application, based on a lack of information; or
   3. Allow the applicant to start the technically complete review process a second time by providing the required missing information by a date specified by the review authority, in which case the review authority shall retain the application and fee pending expiration of that date, or a technical review of the application as amended by that date.

H. A determination of completeness for a project subject to environmental review under SEPA, including planned actions (which do not require threshold determinations), may be withdrawn in the following circumstances:
   1. There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;
   2. There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
   3. The determination of completeness was procured by misrepresentation or lack of material disclosure.
   4. In the event that a determination of completeness is withdrawn and the responsible official determines that additional information is needed to process the application, the applicant shall be so notified, and the one-hundred-twenty-calendar-day period stayed pending receipt of the requested information by the city.

Article III. Time Limits for Permits and Permit Processing

15.01.080 Review Process I through III.

Except as otherwise provided in this title or by state law, the city shall provide a notice of decision as specified in EMC 15.02 on all Review Process II and III applications, and on any Review Process I applications which require a notice of decision, within one hundred twenty (120) days after the city notifies the applicant that the application is complete.

15.01.090 Determining time limits.

In determining the number of days that have elapsed after the city has notified the applicant that the application is complete, the following periods shall be excluded:

A. Any period during which the applicant has been requested by the planning director to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the city notifies the applicant of the need for additional information until the earlier of the date the city determines whether the additional information satisfies the request for information or fourteen (14) days after the date the information has been provided to the local government;

B. If the city determines that the information submitted by the applicant under subsection A of this section is insufficient, it shall notify the applicant of the deficiencies and the procedures under subsection A of this section shall apply as if a new request for studies had been made;

C. Any period during which an environmental impact statement is being prepared following a SEPA determination of significance;

D. Any period during which the applicant has requested an interpretation of applicable provisions of the city code and development regulations;

E. Any period for which a threshold determination requires further information from the applicant and/or consultation with other agencies with jurisdiction, as determined by the responsible official, in which case the running of the one-hundred-twenty (120)-calendar-day period shall be stayed until the required information and/or consultation is provided;
F. Any period for which a SEPA threshold determination requires further studies, including field investigations initiated by the city;
G. Any time limits set forth in this section shall not apply to withdrawal of SEPA threshold determinations (DS, DNS) where such withdrawals are made in accordance with WAC 197-11-340 and 197-11-360;
H. Any period for administrative appeals of project permits or SEPA determinations; and
I. Any extension of time mutually agreed upon by the applicant and the city.

15.01.100 Exceptions.

The time limit requiring a final decision within one hundred twenty (120) days of the notice of application on a Review Process II or III decision does not apply if the land use permit application:
A. Requires an amendment to the comprehensive plan or a development regulation;
B. Requires approval of a new fully contained community as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200;
C. Is substantially revised by the applicant, in which case the new one-hundred-twenty-day time period shall start from the date at which the revised project application is determined to be complete; or
D. Results in a determination of completeness (of the application) being withdrawn under the determination of completeness or incomplete application, Section 15.01.050.

15.01.110 Time limit for Review Process I, II and III permits.

A. Review Process I

If a complete application has not been filed for a building permit or equivalent construction permit within two (2) years on a project for which a land use permit has been granted under Review Process I, and an extension has not been granted:

1. The land use permit shall be deemed to be terminated, except where a time limit on the land use permit is otherwise established by federal or state law, city ordinance, or an executed development agreement.
2. If the permittee requests an extension in writing not later than two (2) years from the land use permit date, the planning director may grant a six (6)-month extension.

B. Review Process II and III

If a complete application has not been filed for a building permit or equivalent construction permit within three (3) years on a project for which a land use permit has been granted under Review Process II or III, and an extension has not been granted:

1. The land use permit shall be deemed to be terminated, except where a time limit on the land use permit is otherwise established by federal or state law, city ordinance, or an executed development agreement.
2. If the permittee requests an extension in writing not later than three (3) years from the land use permit date, the planning director may grant a six (6)-month extension.
3. For any reapplication, the city may use the existing SEPA determination or may require new or additional environmental documents as provided by WAC 197-11-600.

15.01.210 Time periods and expiration of land division approvals.

See EMC 15.02.400.

Chapter 15.02 Land Use and Project Review Procedures

Table of Contents

Article I. Types of Review Process

15.02.010 Introduction

The purpose of this chapter, in conjunction with EMC 15.01 and 15.03, is to implement requirements in Chapter 36.70B RCW, Local Project Review. Included within this chapter are the procedures for review of land use and development applications within the city, including public notice requirements for land use and development actions. For application requirements, please see EMC 15.01. For land use decision criteria, please see EMC 15.03.

15.02.015 Authority

The planning director is authorized to promulgate rules for the implementation and administration of this chapter.

15.02.020 Exemptions and Special Circumstances

A. The project permit procedural requirements of this chapter, including the procedures for notice of completeness, notice of application, and notice of decision, shall not apply to Review Process I or V decisions or to building and other construction permits. Specifically exempted from these procedural requirements and the requirements of RCW 36.70B.060 through 36.70B.090, and RCW 36.70B.110 through 36.70B.130 are:
   1. The adoption or amendment of a comprehensive plan, subarea plan, or development regulation or any other legislative action adopting, accepting, or authorizing a plan, regulation, or public project;
   2. Lot line or boundary adjustments, street vacations and building and other construction permits, or similar administrative approvals, categorically exempt from environmental review under Chapter 43.21C RCW or for which environmental review has been completed in connection with other project permits;
   3. City council quasi-judicial decisions on land use permits;
   4. The approval of final subdivisions; and
   5. Conceptual site plan review and other preapplication processes that occur prior to submittal of a complete application for a land use permit.

B. Building and Other Construction Permits. Building and construction permits are not governed by this chapter, except in the unusual situation where they are not categorically exempt or prior environmental review has not been completed on the project, or where an applicant has opted for the individual option under EMC 15.02.050 to consolidate review of land use permits and all other city permits.

C. Special circumstances. The city has determined that the following permits present special circumstances that warrant a different review process than that provided in RCW 36.70B.060 et seq.:
   1. Review Process V. Adoption of a "planned development" overlay zone or a rezone or other zoning revision that is not of area-wide significance or general applicability, or other quasi-judicial permit decisions, which provide for a public hearing or meeting before the planning commission and an open public hearing before the city council.

D. Legislative decisions. Legislative decisions are not subject to the permit process procedures of this title. In order to promote a public understanding of governmental actions relating to land use and the environment, certain legislative decisions are included in and governed by EMC 15.02.095. Specifically, public notice requirements for certain legislative decisions made by the city council that relate to land use and the environment are also set forth in this chapter.

15.02.030 Types of Land Use Permit Applications

For the purpose of project review, all land use permit applications shall be classified as one of the following:

A. Review Process I, minor administrative review decisions;
B. Review Process II, planning director administrative review decisions;
C. Review Process III, hearing examiner decisions
    1. Review Process IIIA, hearing examiner final decision;
    2. Review Process IIIB, hearing examiner recommendation to city council for final decision;
D. Review Process V, planning commission and city council land use quasi-judicial decisions;

15.02.040 Determining appropriate review

A. The planning director shall determine the proper classification for all project permit applications. If the planning director determines that the choice among appropriate classifications cannot be ascertained from the code and its intent, the planning director shall resolve it in favor of the higher classification number.
B. A project that involves two or more land use permits may be processed collectively under the highest numbered classification required for any part of the application or processed individually under each of the classifications identified by the specific city regulation. The applicant may determine whether the application is processed under the individual procedure option (see EMC 15.02.050). If the application is processed under the individual procedure option, the highest numbered classification must be processed prior to the subsequent lower numbered procedure.
C. For any project dependent on a legislative decision, including a change in the comprehensive plan (see EMC 15.02.095), the legislative decision must be made prior to processing the land use permit application.
D. Applications processed in accordance with subsection B of this section that have the same highest numbered classification, but are assigned different hearing bodies, shall be heard by the highest decisionmaker. The city council is the highest, followed by the hearing examiner or planning commission, as applicable, the planning director, and then the planning department or other authorized city staff.

15.02.050 One project review process.

The city shall provide a project review process that is integrated with the SEPA review process to the maximum extent feasible. For projects that require more than one project permit approval, the SEPA threshold determination, and all land use permit decisions shall be made concurrently to the extent permissible by law. To promote integration and avoid duplication, it is the intent of this process that any studies be used to fulfill all regulatory needs for which they provide adequate information, regardless of the specific law or requirement that caused their preparation. Likewise, it is the intent of this process to avoid duplication under different laws or regulations of measures to avoid or otherwise mitigate the same project impacts.

A. Individual Procedure Option. Under the individual procedure option, an applicant may request: (1) processing land use permits separately; or (2) processing land use and all other project permits including construction permits in a single consolidated project review process, which may include a request for a designated permit coordinator.

    An application that involves two or more Review Process I, II, or III procedures shall be processed collectively under the highest numbered procedure required for any part of the application unless the applicant requests that the application be processed under the individual procedure option. Based upon the specific content of the application and the required permits, the planning director may grant or deny a request to process the application under individual procedures for separate permit decisions. If an applicant elects a single consolidated project review process for all city permits, as provided by RCW 36.70B.120, the planning director

may determine the specific scope and procedures for the project review on the proposed action consistent with this title and other applicable city requirements.

B. Timing of Notice of Application and SEPA Threshold Determination. The planning director shall integrate the timing of the notice of application with environmental review under SEPA as follows:
   1. Except for a determination of significance and except as otherwise expressly allowed in this subsection B, the planning director may not issue a threshold determination (where required), or issue a decision or a recommendation on a project permit until the expiration of the public comment period on the notice of application.
   2. For all Review Process III applications, if the city's threshold determination requires public notice under the SEPA ordinance (EMC 19.43), the city shall issue its threshold determination at least fifteen days prior to the hearing examiner's open public hearing. As a general matter, unless the applicant prefers otherwise, the city should try to issue the SEPA threshold determination sufficiently in advance of the open public hearing to allow any administrative appeals to be filed and consolidated with the hearing on the application, so as to avoid postponing a hearing for which public notice has already been given.

C. Combined Decision on Review Process I and II Applications. For all applications that involve two or more Review Process I or II decisions, the planning director shall issue a single decision on the applications. The decision may be the permit; provided, however, an applicant may request an interpretation of applicable provisions of the city's development regulations under Section 15.02.800, and the planning director may issue a written determination prior to issuance of a decision on the land use permits.

D. Combined Report on Review Process I through III Applications. For all applications involving one or more Review Process I or II applications plus one or more Review Process III applications, the city shall issue a single report stating:
   1. All the interpretations, recommendations or decisions made as of the date of the report on all project permits included in the project review process that do not require an open public hearing; and
   2. Staff recommendation on land use permits that do require an open public hearing before the examiner.
   3. The report shall identify documents that contain an analysis of impacts resulting from the development and state any mitigation required or proposed under the development regulations or the agency's SEPA authority. If a SEPA threshold determination or other SEPA environmental document (such as an environmental impact statement or addendum) has not been issued previously, the report shall include or append them.

E. Combined Hearings. The planning director may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency; provided, that the hearing is held within the geographic boundary of the city. Hearings shall be combined if requested by an applicant, as long as the joint hearing can be held within the time periods specified in this title or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings.

F. Cooperation on Joint Hearings. The planning director shall cooperate to the fullest extent possible with other agencies in holding a joint hearing if requested to do so, as long as:
   1. The city is not expressly prohibited by statute from doing so;
   2. Sufficient notice of the hearing is given to meet each of the agency's adopted notice requirements as set forth in statute, ordinance, or rule; and
   3. The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the city's hearing.

15.02.060 Review Process I: Minor Administrative Review

A. Description

1. Review Process I ("REV I") applies to permit applications that involve minor administrative land use decisions. Review Process I applications shall be reviewed administratively by the planning department

staff to determine compliance with the unified development code and other applicable ordinances and regulations.

2. If a Review Process I application is not categorically exempt under SEPA, the application shall be processed under Review Process II.

B. Decisions Included

1. Land use decisions identified as "Permitted", or "P", in EMC 19.05.080 - .120, Tables 5-1 through 5-5 are Review Process I (REV I) decisions.
2. Land divisions. The following permit applications are included as REV I decisions:
   a) All short subdivision applications.
   b) All other land division applications, including preliminary and final approvals, not identified as REV II or REV III decisions.
   c) Pursuant to RCW 58.17.100, all final plat approvals regardless of the number of lots created. See REV II and REV III decisions for preliminary plat approval authority.
3. Historic. The following permit applications are included as REV I decisions:
   a) Construction of a new single-family or 2-unit dwelling;
   b) Addition of an accessory dwelling unit to an existing single-family or 2-unit dwelling;
   c) Alteration of significant features identified in a historic resource inventory of a structure or site on the Everett Register of Historic Places;
   d) Additions of more than one hundred fifty square feet to a building with three or more dwelling units when identified as a contributing structure and within an Everett historic overlay zone.
4. The review process for land use decisions shall be REV I unless otherwise indicated in this title, or as otherwise determined by the planning director based on subsection B.5 below.
5. Administrative determinations made by the planning department staff that are not associated with an application specifically identified in the unified development code and that are categorically exempt under SEPA are not subject to the procedures and requirements of this title.
6. If the planning director determines that notice to contiguous property owners should be provided regarding a land use decision, the planning director may require the permit application to be reviewed using a higher level of review process than otherwise required.

C. Action Taken

Action taken on the application shall be one of the following:

1. Permit issuance or approval, which may include conditions on the project;
2. Permit denial explaining the reasons the permit was not approved; or
3. A letter explaining what additional information is necessary or other approvals which are required before the permit can be issued.

An administrative appeal to the hearing examiner is provided. Any appeals shall be in accordance with the appeals section of this chapter (see 15.02.600).

D. Public notice requirements

1. No public notice is required for REV I land use decisions except for shoreline permit applications as set forth in subsection D.5 below.
2. When a project requires more than one land use permit, public notice shall follow the public notice requirements for the highest review process.
3. The city provides a notice of application, which is a public record. These records are available upon request and may be available electronically through the city's open data portal or other web-based applications.
4. Historic. Those REV I actions that are subject to review by the Historical Commission shall follow procedures for public notice and conduct of public meetings.

5. Shorelines. Those REV I actions that are applications for shoreline management substantial development shall provide notice as set forth in WAC 173-27-110 and EMC 15.02.110.C.3.b:
   a) Notice of application within fourteen (14) days of the determination of completeness;
   b) A public comment period not less than thirty (30) days following the date of notice of application, except that comments shall be submitted within twenty (20) days for shoreline permits for limited utility extensions or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion. See the definitions section of the city's shoreline master program for the definition of a limited utility extension;
   c) Mailing notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet (300') of the boundary of the property upon which the development is proposed;
   d) Mailing notice to the SEPA mailing list (unless the project is categorically exempt); and
   e) Mailing notice to the neighborhood leader mailing list if applicable.

15.02.070 Review Process II: Planning director Review

A. Description

Review Process II ("REV II") applies to permit applications that involve a greater exercise of administrative discretion by the planning director . No public hearing is required for REV II applications. Public notice requirements are specified in subsection C below and EMC 15.02.100-110.

B. REV II decisions included

The following permit applications are included as REV II decisions:

1. Uses. The following uses identified in EMC 19.05 are REV II decisions:
   a) Land use decisions identified as "Administrative Uses", or "A" in EMC 19.05.080 - .120, Tables 5-1 through 5-5);
   b) Use of basement or other building spaces in the Mixed Urban Zone (EMC 19.05.040);
   c) Modification of special regulations and notes in Tables 5-1 through 5-5 (EMC 19.05.060);
   d) Minor expansion of a Conditional Use (EMC 15.03.120.C);
   e) Specific Uses (see EMC 19.13 for uses that are subject to REV II review);
   f) Other uses shown in the special regulations and notes in Tables 5-1 through 5-5requiring a REV II decision.
2. Modification of development standards. The following modification of development standards allowed by this title are included as REV II decisions:
   a) Accessory Dwelling Units (EMC 19.08.100)
   b) Modification of Specific Use standards (EMC 19.13)
   c) Modification of structured parking standards (EMC 19.12.110)
   d) Modification of building setbacks (EMC 19.06)
3. Nonconforming. Expansion of a nonconforming use greater than 10% but less than or equal to 25% of land or building area. (EMC 19.38)
4. Building Heights. The following modification of building heights are included as REV II decisions:
   a) Amateur radio tower or antenna exceeding 65" above base elevation (EMC 19.22.090)
   b) How heights are measured (EMC 19.22.060)
5. Historic. The following permit applications are included as REV II decisions:
   a) Demolition of a building identified as a contributing structure within an Everett historic overlay zone or on the Everett Register of Historic Places;
   b) Construction of any new building with three or more dwelling units if within an historic overlay zone;
   c) Construction of a new clinic, commercial building, or places of worship; or
   d) Deviations from Historic Overlay Zone standards and neighborhood conservation guidelines.

6. Off-street Parking. The following modification of off-street parking standards allowed by this title are included as REV II decisions:
   a) Modification of off-street parking set forth in Table 34-1 or 34-2 greater than 25% (EMC 19.34.060)
   b) Modification of off-street parking location standards (EMC 19.34.100)
7. Critical areas. Development of previously altered critical areas when the proposal is not categorically exempt under SEPA. (EMC 19.37)
8. Shorelines. The following shoreline permit applications are included as REV II decisions:
   a) The development has one acre or more of the project footprint within shoreline jurisdiction and does not require a shoreline variance or shoreline conditional use permit;
   b) The development will include new construction or additions to buildings within 200 feet of the ordinary high water mark which are in excess of 35 feet in height; or
   c) The development will include the construction of docks or other in-water facilities, including fill, which could interfere with the public's use of shorelines of the state.
9. Land Divisions. Land division applications which meet the following are included as REV II decisions:
   a) Unit Lot Land Divisions (EMC 19.27)
   b) Divisions of land into ten lots, but no more than fifty (50) lots by subdivision or binding site plan (EMC 19.24).
10. SEPA. If a Review Process I application is not categorically exempt under SEPA, the application shall be processed under Review Process II
11. Any permit application identified in this title as a Review Process II (REV II) decision.

C. Public notice requirements

Public notice of REV II decisions shall include notice of application and notice of decision.

1. General Requirements. Public notice of the notice of application shall be provided by:
   a) Posting notice on or near the property with two signs no less than twenty-four inches by thirty-six inches in size, as specified by EMC 15.02.110;
   b) Posting additional signs if the project is a linear project, as specified by EMC 15.02.110;
   c) Mailing notice to owners of property located within one hundred fifty feet (150') of the subject property, provided, however, that shoreline project permit applications shall be mailed to property owners within three hundred feet (300') of the boundary of the property upon which the development is proposed;
   d) Mailing notice to the SEPA mailing list (unless the project is categorically exempt); and
   e) Mailing notice to the neighborhood leader mailing list if applicable.
2. Specific Land Use Notice Requirements. In addition to the general requirements outlined above, the following notices are required as set forth below:
   a) Land Divisions.
      i. Right to Hearing. Pursuant to RCW 58.17.095, any REV II preliminary plat application shall include a mailed notice which includes a statement that an open public hearing (REV III) shall be held if any person files a request within twenty-one (21) days of publishing the notice.
      ii. State Highways. Pursuant to RCW 58.17.155, whenever the city receives an application for a short subdivision which is located adjacent to state highway right-of-way, the city shall give written notice of the application to the Washington State Department of Transportation.
      iii. Adjacent City. Pursuant to RCW 58.17.080, notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities.
      iv. Airport. Pursuant to RCW 58.17.080, notice of the filing of a preliminary plat of a proposed subdivision located within two miles of the boundary of a state or municipal airport shall be given to the secretary of transportation and to the airport manager.

v. County. Pursuant to RCW 58.17.080, notice of the filing of a preliminary plat of a proposed subdivision located in the and adjoining the municipal boundaries thereof shall be given to appropriate county officials.

b) Historic. Those REV II actions that are subject to review by the Historical Commission shall follow procedures for the conduct of open public meetings.

c) Shorelines. Those REV II actions that are applications for shoreline management substantial development, conditional use, or variance permits shall provide notice as set forth in WAC 173-27-110 and EMC 15.02.110.C.3.b

D. Notice of Decision

1. The planning director shall provide a notice of decision on all Review Process II applications.
   a) Except as otherwise provided in this title or by state law, the notice of decision shall be issued within one hundred twenty (120) days after the determination of completeness.
   b) For shoreline permits for limited utility extensions or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenance structures from shoreline erosion, the notice of decision shall be issued within twenty-one (21) days of the last day of the comment period.
2. The city shall use the procedures in EMC 15.01.110 for determining the number of days that have elapsed after the issuance of its determination that the application was complete.
3. The notice of decision shall include a statement of any SEPA threshold determination and the procedures for any administrative appeal. The notice of decision may be a copy of the report or decision on the project permit application.
4. The notice of decision shall be provided to the applicant and to any person who, prior to the rendering of the decision, made a written request for a notice of the decision or submitted substantive comments on the application.
5. Shoreline permits.
   a) A notice of decision for shoreline substantial development, variance, and/or conditional use permit shall be provided to the Washington State Department of Ecology and the Attorney General's Office as set forth in WAC 173-27-130.
   b) For shoreline conditional use and variance permits, the Washington State Department of Ecology issues the final decision. The Washington State Department of Ecology shall render the final decision and notify the city and the applicant of its decision approving or disapproving the permit within thirty (30) days of filing by the city. The city shall notify those interested persons having contacted the city under the final decision.

E. Expiration of REV II decisions

1. Except as provided in subsection 2 below, a land use permit issued under REV II shall terminate if a permittee does not apply for a building permit within three (3) years, except as follows:
   a) Where a time limit on the land use permit is otherwise established under federal or state law, city ordinance;
   b) Where a development agreement has been executed (see EMC 15.03.200); or
   c) Where the permittee requests an extension in writing not later than three (3) years from the land use permit date, the planning director may grant a six (6)-month extension.
2. Land division approvals. See EMC 15.02.400 for expiration of land division approvals.

15.02.080 Review Process III: Hearing examiner Review

A. Description

Review Process III is a discretionary review process in which the land use hearing examiner may approve, approve with conditions, modify, or disapprove an application based upon the requirements of the city's comprehensive

plan, land use regulations, other applicable city ordinances or regulations, or any other applicable regulations administered by federal, state, regional, or local, or other agencies. Specific criteria may apply to certain of the listed Review Process III applications.

B. REV IIIA and REV IIIB decisions included

There are two types of REV III review processes:

1. REV IIIA. These are actions for which the hearing examiner issues a final decision on the application after an open public hearing.
   a) Uses.
      i. Land use decisions identified as "Conditional Uses", or "C" in EMC 19.05.080 - .120, Tables 5-1 through 5-5.
      ii. Industrial zones along the waterfront. Requests for additional heights to accommodate industrial activities with access to the marine shorelines in EMC 19.22.070.
   b) Nonconforming. Expansion of a nonconforming use greater than 25% of land or building area. (EMC 19.38)
   c) Land Divisions. Land division applications which meet the following are included as REV IIIA decisions:
      i. Divisions of land into fifty (50) lots or more by subdivision or binding site plan (EMC 19.24);
      ii. Any preliminary plat application in which a person has filed a request for a public hearing within twenty-one (21) days of publishing the notice.
   d) Shorelines. The following shoreline permit applications are included as REV IIIA decisions:
      i. Shoreline variance applications;
      ii. Shoreline conditional use applications;
      iii. See subsection B.1.a.ii above regarding additional heights in industrial zones along marine shorelines.
   e) Variances. Applications for variances from the standards of this title as set forth in EMC 15.03.140.
   f) Appeals. Appeals of REV I and REV II planning director decisions, including the appeals of the application of development standards by the planning director.
2. REV IIIB. These are actions for which the hearing examiner issues a recommendation to the city council, who has final decision-making on these quasi-judicial decisions.
   a) Rezones which do not require an amendment to the comprehensive plan;
   b) Light rail station decision with development agreement (EMC 19.05.110)
   c) Development agreements which do not require other actions subject to review by the planning commission.

C. Public notice requirements

1. Public notice shall include notice of application, notice of open public hearing (if not in the notice of application) and notice of decision.
2. Public notice of the notice of application shall be provided by:
   a) Posting notice on or near the property with signs no less than twenty-four inches by thirty-six inches in size, as specified by Section 15.02.110.A.1;
   b) Posting additional signs if the project is a linear project, as specified by Section 15.02.110.A.2.
   c) Mailing notice to the property owners located within five hundred feet (500');
   d) Mailing notice to the SEPA mailing list (unless the project is categorically exempt);
   e) Mailing to the neighborhood leader mailing list if applicable; and
   f) Publishing notice in the official city newspaper.
3. Land Divisions.
   a) Adjacent City. Pursuant to RCW 58.17.080, notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities.

b) Airport. Pursuant to RCW 58.17.080, notice of the filing of a preliminary plat of a proposed subdivision located within two miles of the boundary of a state or municipal airport shall be given to the secretary of transportation and to the airport manager.
c) County. Pursuant to RCW 58.17.080, notice of the filing of a preliminary plat of a proposed subdivision located in the and adjoining the municipal boundaries thereof shall be given to appropriate county officials.

4. Shorelines. Those REV III actions that are applications for shoreline management substantial development, conditional use, or variance permits shall provide notice as set forth in WAC 173-27-110 and EMC 15.02.110.C.3.b
5. Public hearing requirements.
   a) Before rendering a decision on any application or making a recommendation, the hearing examiner shall hold one open public hearing.
   b) Notice of the open public hearing shall be provided at least fifteen (15) days prior to the hearing date. The notice shall include the time and place of the public hearing.
   c) The hearing examiner may continue or reconvene the hearing in order to implement the requirements of this title.
6. REV IIIB process. In addition to subsections 1-5 above, notice of the city council meeting shall be provided to the applicant, to parties of record from the open public hearing before the hearing examiner, to any person who submitted substantive comments on the application, and to any person who has made a written request to the office of city council for notice of the hearing.
7. Appeal hearings.
   a) Public notice under this subsection C is not required for an appeal hearing to the hearing examiner for a Review Process I or II decision.
   b) Public notice of the appeal hearing for appeals of Review Process I or II decisions shall be provided to parties of record to the appeal and/or as established by the hearing examiner in an order subsequent to a prehearing conference.
   c) Separate notice is not required for a SEPA appeal hearing that is consolidated with a Review Process IIIA permit decision if notice of the open record hearing on the permit has already been given.

D. Expiration of REV III decisions

1. A land use permit issued under Review Process III shall terminate if a permittee does not apply for a building permit within three (3) years, except as follows:
   a) Where a time limit on the land use permit is otherwise established under federal or state law, city ordinance;
   b) Where a development agreement has been executed (see EMC 15.03.200); or
   c) Where the permittee requests an extension in writing not later than three (3) years from the land use permit date, the planning director may grant a six (6)-month extension.
2. Land division approvals. See EMC 15.02.040 for expiration of land division approvals.

15.02.090 Review Process V: Quasi-judicial City Council Review

A. Description

Review Process V ("REV V") applies to discretionary decisions that require a recommendation by the planning commission and a decision by the city council. REV V actions are a quasi-judicial decision that relates to an approval of a specific proposed project on specific property. This review process is similar to REV IIIB, except that an open public hearing and recommendation for REV V is from the planning commission and not the hearing examiner. See EMC 15.02.095 for discretionary legislative land use decisions of city council.

B. REV V decisions included

The following land use decisions are REV V decisions:

1. Adoption of a rezone or other zoning revision that is not of area-wide significance or general applicability;
2. Adoption of a "planned development" overlay that is not of area-wide significance or general applicability;
3. Adoption of institutional overlay zone that is not of area-wide significance or general applicability as provided by EMC 19.31;
4. Changes or revisions to institutional overlay zone master plan which are not consistent with prior city council approval;
5. Planned Residential Development requiring a comprehensive plan change;
6. Special aviation uses (EMC 19.13.060).

C. Public notice requirements

Public notice shall include notice of the public hearing or meeting and opportunity to comment on the application, and a notice of the final city council action taken.

1. Notice of the public hearing or meeting, including notice of opportunity to comment, shall be provided in the same manner for the planning commission and city council public hearings or meeting on the application, as follows:
   a) Posting notice on or near the property with signs no less than twenty-four inches by thirty-six inches in size, as specified by EMC 15.02.110.A.1;
   b) Posting additional signs if the project is a linear project, as specified by EMC 15.02.110.A.2;
   c) Mailing notice to the property owners located within five hundred feet (500');
   d) Mailing notice to the SEPA mailing list (unless the project is categorically exempt);
   e) Mailing notice to the neighborhood leader mailing list if applicable; and
   f) Publishing notice in the official city newspaper.
2. Notice of the public hearing or meeting shall be provided at least fifteen (15) days prior to the hearing date.
3. Official notice of the final city council action taken shall be provided to the applicant and to any person who has made a written request to the office of the city council for notice of the decision. This notice shall state the date and place for commencing an appeal.

15.02.095 Legislative Actions

A. Description

Several land use decisions are the discretionary authority of the city council. These decisions are not subject to the local project review procedures set forth in this chapter. These legislative actions require a recommendation from the planning commission.

B. Decisions included

The following land use actions are considered legislative actions of the city council.

1. Adoption or amendment to the comprehensive plan or land use map;
2. Adoption or amendment of subarea plans;
3. Planned action ordinance or resolution;
4. Area-wide rezone in conjunction with a comprehensive plan land use map change;
5. Adoption or amendment to development regulations.

C. Public notice requirements

1. Public notice shall include the following:
   a) Mailing to all persons who have made written request to be notified of the proposed change;
   b) Mailing to the SEPA mailing list if applicable;
   c) Mailing to the neighborhood leader mailing list if applicable; and
   d) Publishing notice in the official city newspaper.
2. Notice of the public hearing or meeting shall be provided at least fifteen (15) days prior to the hearing date.

D. Action Taken

1. The city council and planning commission shall be deemed to be acting in their legislative capacity in taking any of the above actions. If an action is a project permit rather than of area-wide significance or general applicability, the action shall be considered quasi-judicial in nature and shall be processed under Review Process V.
2. In reviewing the recommendation of the planning commission, the city council shall have the authority to approve, disapprove or modify the proposal in whole or in part, or remand the proposal in its entirety or the portions of the proposal about which it has concerns to the planning commission for further consideration.

Article II. Notice Requirements and SEPA Procedures

15.02.100 Notice of Application

Notice of application will serve as the principal public notice for review of projects subject to Review Processes II and III. Except for REV IIIB actions, a notice of application is not required for city council decisions; a notice of application is not required for REV I actions, either.

A. Timing of notice

A notice of application shall be provided within fourteen (14) days after the issuance of a determination of completeness for all REV II and REV III applications. For REV II, the notice of application shall be provided at least fifteen days prior to the open public hearing before the hearing examiner.

B. Integrated Notice

1. Whenever possible, the notice of application will be combined or issued concurrently with other required notices including the notice of completeness, SEPA notice, and notice of public hearing.
2. When a SEPA determination of nonsignificance that requires public notice under WAC 197-11-340 is issued, both the notice of application and SEPA notice requirements (EMC 15.02.130) shall be met.
3. The planning director may issue a SEPA determination of significance concurrently with the notice of application, in which case, the notice of application shall be combined with the determination of significance and scoping notice. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application.

C. Content of notice of application

The notice of application shall include the following information in whatever order or format the planning director deems appropriate for a type of application or for a specific application. A notice of availability or summary of the notice of application may be used for any required newspaper publication.

1. Date. The date of application, the date of the notice of completion for the application, and the date of the notice of application;
2. Permits and Studies. A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under this title or under RCW 36.70B.070;
3. Other Permits. The identification of other permits not included in the application to the extent known by the local government;
4. Environmental Documents. The identification of existing environmental documents that evaluates the proposed project, and the location where the application and any studies may be reviewed;
5. Public Comment Period and Future Notices. A statement of the public comment period, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;

6. Hearings If Known. The date, time, place, and type of hearing, if applicable and if scheduled at the date of notice of the application;
7. Preliminary Determinations. A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency with applicable development regulations as provided in RCW 36.70B.030(2), and the comprehensive plan; and
8. Other Information. Any other information determined appropriate by the planning director.

D. Notice of appeal hearings to hearing examiner

Public notice is not required for an appeal hearing to the hearing examiner for a Review Process I or II decision. Public notice of the appeal hearing for appeals of Review Process I or II decisions shall be provided to parties of record to the appeal and/or as established by the hearing examiner in an order subsequent to a prehearing conference. Separate notice is not required for a SEPA appeal hearing that is consolidated with a Review Process IIIA permit decision if notice of the open record hearing on the permit has already been given.

15.02.110 Public notice and comments

A. Content and timing of notice

1. Posting of Property. Where posting is required as part of a particular review process, a notice shall be posted conspicuously in two places on or near the subject property and shall be readily accessible for the public to review. Whenever the subject property fronts on a public street or alley, the property shall be posted with one sign per frontage including alleys plus one additional sign for each additional one hundred fifty lineal feet of frontage; provided, if more than a total of five hundred (500) lineal feet of frontage exists, then the number of actual signs required and their placement shall be discretionary with the planning director (see next paragraph on posting of linear projects). All signs required to be posted shall remain in place until the final SEPA determination has been made.
2. Posting of Linear Projects. Signs shall be posted for linear projects, including projects that traverse numerous properties or occur along an alignment or corridor, every one-quarter mile, or as otherwise determined by the director, in locations readily accessible to the public. The planning director may determine the size and content of the signs.
3. Content of Posted Signs. The posting notice shall contain the following information:
   a) The name of the applicant;
   b) The address or locational description of the subject property;
   c) A written description of the requested action or actions;
   d) Identification of the existing environmental document that evaluates the application;
   e) For Review Process III, the date of public hearing, and for Review Process II, the date by which written comments must be received;
   f) The name, address, and phone number of the staff contact person;
   g) A site plan; and
   h) A statement regarding the availability of the notice of application and the location where the application may be reviewed.
4. Mailing. Where mailing to contiguous or adjacent property owners is required, the content of the notice shall meet the requirements for a notice of application and any other additional requirements for specific project notice as set forth in this chapter. Mailing shall be by first class mail unless otherwise specified by this chapter or by the planning director.
5. Publication in Official City Newspaper. Where publication is required as part of the notification for a particular review process, the notification shall be published in the official newspaper designated by city council. Notice shall be published at least fifteen days prior to the date of hearing or date of decision, as applicable.
6. Responsibility for Notice.

a) The city shall be responsible for publication of notice.
b) The applicant shall be responsible for posting the property subject to the application in compliance with rules established by the planning director.
c) The applicant shall provide the planning director with an affidavit of compliance with the posting requirements of this section.
d) The applicant shall be responsible for providing a mailing list in compliance with rules established by the planning director. The city shall be responsible for mailing the notice of application.

7. Costs. All costs of providing notice shall be borne by the applicant.

B. Electronic notice

The planning director may establish procedures for providing notice and receiving comments electronically. The planning director may adopt forms that will facilitate the ability of applicants to file applications and to provide information electronically and for the city to issue notices electronically.

C. Public comments

1. Comments must be in writing, shall be as specific as possible, shall be reasonably related to the factual circumstances or development standards applicable to the proposed action.
2. Comment period on notice of application. Comments on a notice of application shall be submitted within fourteen days of its issuance; provided, however, that the fourteen-day comment period shall commence on the date that the site is posted or notices published or mailed, whichever occurs later. Other than commenting on the notice of application, any other comment periods should be specified in the public notice inviting comments.
3. Exceptions.
   a) Land divisions.
      i. Comments on Review Process II preliminary subdivision, or subdivisions and short subdivision alteration or vacation applications shall be submitted within twenty (20) days of the issuance of the notice of application.
      ii. A copy of all written comments on Review Process II land divisions shall be provided to the applicant, and the applicant will have seven (7) days from the receipt of the comments to respond to the city.
   b) Shoreline permits. Comments on shoreline substantial development, conditional use or variance permit applications shall be submitted within thirty (30) days of the issuance of the notice of application, except that comments shall be submitted within twenty (20) days for shoreline permits for limited utility extensions or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion. See the definitions section of the city's shoreline master program for the definition of a limited utility extension.
4. Submitted means "physically or electronically received by the city." Notice: the city does not assume any responsibility for failure to receive comments received electronically. A sender should seek confirmation that the city received the comments to satisfy the timing required for submission of comments.

15.02.120 SEPA Procedures

A. Timing and Integration of SEPA

1. The primary purpose of the environmental review process is to provide environmental information to governmental decisionmakers to be considered prior to making their decision, and to provide for appropriate mitigation of environmental impacts in compliance with this title, the SEPA ordinance (EMC 19.43), and the SEPA rules (Chapter 197-11 WAC). The threshold determination and the EIS (if required) should be completed at the earliest point in the planning and decision-making process, at which time, principal features of a proposal and its environmental impacts can be reasonably identified.

2. If the responsible official determines that the information initially supplied by an applicant is not reasonably sufficient to evaluate the environmental impacts of a proposal subject to environmental review under SEPA, further information may be required of the applicant under WAC 197-11-100 and 197-11-335, and this chapter.
    a) The environmental checklist and necessary studies and analysis supporting the environmental checklist are part of the required permit application and are subject to the determination of completeness or incomplete application provisions of this title.
    b) Any additional information required by the responsible official must be submitted as required by this title. Applicants should be aware that the city will evaluate projects that have incomplete or unavailable information under WAC 197-11-080.
3. At a minimum, any DNS, MDNS, or final environmental document shall be completed prior to the city making any decision irreversibly committing itself to adopt, approve or otherwise undertake any proposed nonexempt action. Further, as specified in WAC 197-11-070, until the responsible official issues a final DNS or final EIS, the city shall take no action concerning the proposal that would:
    a) Have an adverse environmental impact; or
    b) Limit the choice of reasonable alternatives.
4. For nonexempt proposals, the final DNS, MDNS, final EIS, or other final environmental document for the proposal shall accompany the city's final staff recommendation to any appropriate advisory body, such as the planning commission; provided, however, that preliminary discussions, public workshops or preliminary public hearings or meetings before the advisory body may occur prior to the final SEPA determinations. Exception: the SEPA threshold determination does not need to be final prior to a public hearing or meeting by the historic commission on a proposed project in the historic overlay zone since the historic commission's action is advisory to the responsible official.
5. When the city is the proponent for either a governmental action of a project nature or a governmental action of a nonproject nature, and the city is also the lead agency, then the maximum time limits contained in this chapter for the threshold determination and EIS process shall not apply to the proposal.

B. Use of categorical exemptions

1. The responsible official shall determine if a permit or governmental proposal initiated by the city is categorically exempt. The determination of whether or not a proposal is exempt shall be made by:
    a) Ascertaining that the proposal is properly defined and by identifying the governmental permit required (WAC 197-11-060); and
    b) Determining whether the proposal is exempt as minor new construction as set forth in EMC 19.43.130 or new infill development as set forth in EMC 19.43.140.
    c) If a proposal includes a series of actions, physically or functionally related to each other, some of which are exempt and some of which are not, the proposal shall not be exempt.
    d) The responsible official's determination that a proposal is exempt shall be final and not subject to administrative review.
2. If a proposal includes both exempt and nonexempt actions, exempt actions may be authorized with respect to the proposal prior to compliance with the procedural requirements of these guidelines subject to the following limitations:
    a) No nonexempt action shall be authorized;
    b) No action shall be authorized that would have an adverse environmental impact or limit the choice of reasonable alternatives;
    c) The responsible official may withhold approval of an exempt action that would lead to modification of the physical environment, when such modifications would serve no purpose if later approval of a nonexempt action is not secured;

d) The responsible official may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant which would serve no purpose if later approval of a nonexempt action is not secured.

3. A determination whether the project or proposal is categorically exempt shall be made by the responsible official within fifteen (15) days of receiving a request for such a determination from a private applicant or another governmental agency.

C. Environmental checklist

1. When a threshold determination is required under WAC 197-11-310 and an environmental checklist is required under WAC 197-11-315(1)(a), a completed environmental checklist, substantially in the form provided in WAC 197-11-960, shall be filed with the application. For any application, including resubmitted applications, the city may use an existing SEPA determination or may require new or additional environmental documents as provided by WAC 197-11-600, including adoption of NEPA documents.
2. For private proposals, the city will require the applicant to complete the environmental checklist. 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:
   a) The city has technical information on a question or questions contained in the environmental checklist that is unavailable to the private applicant; or
   b) The applicant has provided misleading and inaccurate information on previous proposals or on proposals currently under consideration.

D. Mitigated DNS

1. As provided in this section and in WAC 197-11-350, the responsible official may issue a mitigated determination of nonsignificance (mitigated DNS) for a proposal whenever:
   a) The city specifies mitigation measures in its DNS and conditions the proposal to include those mitigation measures so that the proposal will not have a probable significant adverse environmental impact; and
   b) The proposal is clarified or changed by the applicant to mitigate impacts of the proposal so that, in the judgment of the responsible official, the proposal will not have a probable significant adverse environmental impact.
2. After submission of an environmental checklist and prior to the city's threshold determination, an applicant may submit a written request for early notice of whether a determination of significance (DS) is likely under WAC 197-11-350.
3. The responsible official should respond to the request for early notice within fifteen working days. The response shall:
   a) Be written;
   b) State whether the city currently considers issuance of a DS likely and, if so, indicate the potentially significant adverse environmental impacts that are leading the city to consider a DS; and
   c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, and revise the environmental checklist and/or permit application for the proposal as necessary to describe the changes or clarifications.
4. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
5. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within fourteen days of receiving the changed or clarified proposal.
   a) 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 mitigated determination of nonsignificance under WAC 197-11-340(2). The

responsible official shall reconsider the DNS based on timely comments and may retain, modify or withdraw the DNS under WAC 197-11-340(2)(f).

6. If the city indicated potentially significant adverse environmental impacts, 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.
   a) 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" may be adequate.
   b) Environmental documents need not be revised and resubmitted if the clarifications or changes to the proposal are stated in writing in attachments to, or documents incorporated by reference into, the environmental review record. An addendum may be used in compliance with WAC 197-11-600 and WAC 197-11-425.
   c) If a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS shall be prepared.
7. The city's written response to a request for early notice under the mitigated DNS provisions of this section shall not be construed as a determination of significance.
8. A mitigated DNS issued under WAC 197-11-340(2) or WAC 197-11-355 requires a public notice under EMC 15.02.130. Whenever possible, SEPA notice under this section or the optional DNS process will be combined with or issued concurrently with other required notices including the notice of completeness, notice of application, and notice of public hearing.
9. 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.
10. 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 responsible official should reevaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

E. Preparation of EIS—Additional Considerations

1. Preparation of draft and final EISs and draft and final supplemental EISs is the responsibility of the city under the direction of the responsible official per the procedures contained in this subsection. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.
2. The draft and final EIS or SEIS shall be prepared by a consultant selected by the city per the city's adopted procedures. However, city staff may prepare EISs for city proposals. If the responsible official requires an EIS for a proposal, 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.
3. The city may require that an applicant provide information the city does not possess, including specific investigations necessary to identify potentially significant adverse environmental impacts. However, the applicant may not be required to supply information that is not required under this chapter or WAC 197-1-100. (The limitation does not apply to information the city may request under another ordinance or statute.)
   a) Preparation of Draft Environmental Impact Statement.
      i. When an EIS is required, all information required by the SEPA rules shall be presented by the consultant in substantially the same form as for the draft environmental impact statement in accordance with procedures of this subsection.
      ii. The responsible official shall assure that the EIS is prepared in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and

examination to be undertaken, as well as the organization of the resulting document in accordance with this subsection.

iii. The draft environmental impact statement shall be prepared, or reviewed and approved, by the responsible official prior to distribution. If, in the opinion of the responsible official, the information provided by the consultant and/or subconsultant(s) for the draft environmental impact statement is inadequate, erroneous, misleading, unclear, has excessive jargon, or otherwise deficient, the responsible official will cause its distribution to be delayed for such time as may be required to correct said deficiencies.

iv. Upon acceptance of the information required under this section for the draft environmental impact statement, such information shall become the property of the city and the responsible official shall possess the right to edit, reproduce, modify and distribute said information.

b) Preparation of Final Environmental Impact Statement. Upon acceptance of the draft EIS, the responsible official shall cause its circulation and shall finalize said EIS in accordance with the procedures required by this title and the SEPA rules.

c) Consultant Selection for Draft EIS.

i. When a DS is issued, a consultant will be selected per the city's adopted procedures.

ii. When a DS is issued, the applicant shall solicit and provide to the responsible official statements of qualifications for preparation of the EIS from at least three consultants.

iii. Based upon the responsible official's review of the responses to the statement of qualifications, the responsible official shall select a consultant and appropriate subconsultant or reject the proposed consultant and/or subconsultant and require that the applicant solicit new statements of qualifications. The review may include interviews with the responsible official.

iv. Upon issuance of a scoping determination by the responsible official, it shall be the responsibility of the applicant to negotiate a contract with the consultant and any subconsultant selected by the responsible official. The contract shall address all items in the scoping document. If there is a conflict between the contract and the scoping document, the scoping document shall prevail. The contract shall provide for modification to the scope based upon the results of the environmental studies and analysis developed in the course of preparing the draft EIS. The contract shall reserve sufficient funds for preparation of a well-written cover memo and summary for both the draft and final EIS that meet the requirements in WAC 197-11-435 and 197-11-440(4) to synthesize the environmental analysis and evaluate and effectively communicate the environmental choices to be made among alternative courses of action and the effectiveness of mitigation measures, focusing on the main options that would be preserved or foreclosed for the future. After the responsible official is notified by the consultant and/or subconsultant that the contract with the applicant has been negotiated and executed in accordance with the provisions of this chapter and the city's adopted procedures, the consultant/subconsultant work on the EIS shall commence.

v. The responsible official will meet with the consultant and any subconsultants to direct preparation of the draft EIS. The consultant shall meet with the applicant and/or discuss the EIS process with the applicant only when authorized by the responsible official.

vi. When the rough and preliminary draft EIS is provided to the responsible official, the consultant shall also provide a copy to the applicant, and the applicant shall be provided an opportunity to comment.

vii. All fees charged by the consultant and any subconsultant shall be the responsibility of the applicant. In no event shall the city be responsible for any such fees charged by the consultant or subconsultant except when the city is the applicant. All consultant and subconsultant contracts shall include language which recognizes that payment of the consultant/subconsultant fees shall be the sole responsibility of the applicant and not the responsibility of the city.

viii. In the event the actions or inactions of the consultant/subconsultant jeopardize the EIS process as defined herein, the responsible official is authorized to impose penalties in accordance with rules adopted by the responsible official. Such rules shall be incorporated into the consultant/subconsultant contract and the contract shall be consistent with said rules.

d) Consultant/Applicant Responsibilities. When a consultant prepares a draft, final or supplemental EIS, the following responsibilities are hereby specified (for purposes of this section, the term EIS includes any graphics, supporting materials, and technical studies):
   i. Consultant and subconsultant selected by city;
   ii. City determines the scope of the EIS in compliance with WAC 197-11-360, and WAC 197-11-408 or WAC 197-11-410 as appropriate;
   iii. Applicant negotiates and executes contract with consultant and required subconsultants;
   iv. Consultant submits information in the form of a rough draft EIS to city and applicant;
   v. Applicant reviews and provides comments on rough draft EIS to city;
   vi. City reviews the rough draft EIS and applicant's comments;
   vii. City prepares review comments and directs changes to the document;
   viii. Consultant prepares preliminary draft of EIS;
   ix. City approves preliminary draft EIS or directs that further revisions be made;
   x. Consultant prepares approved draft EIS in sufficient quantity to satisfy WAC 197-11-455. The specific number shall be determined by the responsible official;
   xi. Consultant circulates draft EIS to agencies with expertise and jurisdiction, affected tribes and persons requesting a copy in compliance with WAC 197-11-455;
   xii. City reviews comments and directs consultant in preparation of changes and additions to draft EIS, responses to draft EIS comments and preparation of final EIS, including reasonable alternatives or modified alternatives and environmental impacts that might not have been studied or fully evaluated in the draft EIS, using the same sequence of rough and preliminary final EIS as described above for the draft EIS;
   xiii. Consultant prepares final EIS;
   xiv. Consultant circulates final EIS in compliance with WAC 197-11-460.

e) Public notice shall be given as specified in EMC 15.02.130 at the expense of the applicant.

15.02.130 Notice of SEPA determinations

A. Overview

To the maximum extent feasible, SEPA notice shall be integrated into the other public notice requirements, including the notice of application process. Where a specific form of notice is required by both notice for the applicable review process and notice under SEPA, a single integrated notice shall meet the notice requirements (e.g., a single publication in the newspaper shall be sufficient to meet the publication requirements under both sections).

B. SEPA and Neighborhood Leader Mailing Lists

1. The city shall establish a SEPA mailing list consisting of all public or private groups or individuals who submit a written request with the responsible official that they be notified of all SEPA actions which require public notice under WAC 197-11-510.
2. The city shall also establish a neighborhood leader mailing list, which shall include the duly elected chairperson of each neighborhood group. It shall be the responsibility of the neighborhood chairperson or his/her designated representative to notify the responsible official in writing of the name and mailing address of his/her successor. "Neighborhood group" means a group representing a specified geographic area within the city which is formally recognized by the city's office of neighborhoods and which has elected officers and representatives on the council of neighborhoods.

C. Optional DNS process

1. To provide for an integrated project review process, the city will use the optional DNS process as set forth in WAC 197-11-355, unless the responsible official determines that another SEPA threshold determination process would more effectively implement SEPA procedures and requirements. A single comment period shall be used unless the responsible official determines that substantial new information regarding the environmental impacts of the proposal has been received during the comment period and that an additional public comment period on the new information is necessary.
2. If the city uses the optional process specified in subsection C.1 of this section, the city shall:
    a) State on the first page of the notice of application that it expects to issue a DNS for the proposal, and that:
        i. The optional DNS process is being used;
        ii. This may be the only opportunity to comment on the environmental impacts of the proposal;
        iii. The proposal may include mitigation measures under applicable codes, and that project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and
        iv. A copy of the subsequent threshold determination for the specific proposal may be obtained upon request;
    b) List in the notice of application the conditions being considered to mitigate environmental impacts, if a mitigated DNS is expected;
    c) Provide a notice of application and SEPA public notice as required by EMC 15.02.120.
    d) Send the notice of application and environmental checklist (or other environmental document if applicable) to:
        i. Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and
        ii. Anyone requesting a copy of the environmental checklist of the specific proposal.
3. If the city indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application (WAC 197-11-948).
4. The responsible official shall consider timely comments on the notice of application and either:
    a) Issue a DNS or mitigated DNS (or other environmental document if applicable) with no comment period using the procedures in subsection C.5 of this section.
    b) Issue a DNS or mitigated DNS (or other environmental document if applicable) with a comment period using the procedures in subsection C.5 of this section, if the lead agency determines a comment period is necessary;
    c) Issue a DS; or
    d) Require additional information or studies prior to making a threshold determination.
5. If a DNS or mitigated DNS is issued under subsection C.4.a of this section, the lead agency shall send a copy of the DNS or mitigated DNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be recirculated.

D. Notice of SEPA Threshold Determinations

Whenever the city issues a DNS under WAC 197-11-340(2) or 197-11-355, or a DS under WAC 197-11-360(1), the city shall give public notice as follows:

1. For site specific proposals, notice shall be given by:
    a) Mailing notice to the SEPA mailing list established under subsection B of this section;
    b) Posting notice as specified by EMC 15.02.110.
2. For nonproject or other proposals that are not site specific (e.g., city or areawide), notice shall be given by:

a) Mailing notice to the SEPA mailing list established under subsection B of this section; and
b) Publishing notice in the official city newspaper.

3. In exceptional circumstances, where it is determined that methods of notice provided for SEPA notice in this subsection would not provide adequate public notice of a proposed action, the responsible official may require additional notice or notice by another reasonable method. Failure to require such additional or alternative notice shall not be a violation of any notice procedure.
4. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408.

E. Notice of Draft EIS

Whenever the city issues a draft EIS under WAC 197-11-455(5) or a draft supplemental EIS 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 permit;
2. Publishing notice in the official city newspaper;
3. Mailing a notice of availability to the SEPA mailing list and the neighborhood leader mailing list established under subsection A of this section; and
4. Sending the DEIS to other agencies and persons requesting a copy of the DEIS, as specified in WAC 197-11-455.

F. Notice of Final EIS

Whenever the city issues a final EIS under WAC 197-11-460 or a final supplemental EIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the FEIS in any public notice required for a nonexempt permit;
2. Mailing notice of availability to anyone who received or commented on the DEIS, as provided by WAC 197-11-460.
3. Sending the FEIS to all agencies with jurisdiction, to all agencies who commented on the DEIS, and to anyone requesting a copy of the FEIS.

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

Article III. Hearing Examiner Procedures

15.02.200 Hearing examiner Procedures

The following procedures apply to where this title requires the hearing examiner to conduct open public hearings.

A. Project Review

The hearing examiner shall receive and examine available information including environmental checklists and environmental impact statements, conduct public hearings, prepare a record thereof, enter findings of fact and conclusions based upon those facts, and enter decisions as provided herein.

B. Final action

The decisions of the hearing examiner shall represent the final action on the applications and decisions specified in Review Process IIIA, including consolidated SEPA appeals on these actions. The recommendations of the hearing examiner shall not represent final action on the applications and decisions specified in Review Process IIIB; the city council decision following any remand shall represent final action.

C. Reports by city staff and applicant/appellant

1. When an application has been set for public hearing, the planning department or other appropriate city departments shall coordinate and assemble the comments and recommendations of other city

departments and governmental agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and the proposed findings and recommendations.

2. At least five (5) working days prior to the scheduled hearing, the report shall be filed with the hearing examiner and copies thereof shall be mailed to the applicant and made available for use by any interested party for the cost of reproduction; provided, however, any appeal heard by the hearing examiner under this title shall be subject to the procedures in the appeals section of this title.

D. Open public hearing

Before rendering a decision on any application or appeal or making a recommendation, the hearing examiner shall hold one open public hearing thereon. Notice of the time and place of the public hearing and hearing procedures are specified in EMC 15.02.080.C. The hearing examiner may continue or reconvene the hearing in order to implement the purposes and provisions of this title.

E. Decision, recommendation, conditions

1. Applicable to All Actions. The hearing examiner's decision or recommendation may be to grant or deny the applications, or the hearing examiner may recommend or require of the applicant such conditions, modifications and restrictions as the hearing examiner finds necessary to make the project compatible with its environment and carry out the objectives and goals of the city's environmental policy ordinance, comprehensive plan, shoreline master program, other applicable plans and programs adopted by the city council, the unified development code (Title 19), other applicable codes and ordinances of the city and regulations of other agencies. The scope of the hearing examiner's review for any hearing, recommendation, or decision on a proposed permit or appeal is further specified in EMC 15.02.600. Conditions, modifications and restrictions which may be imposed are, but are not limited to:
   a) Exact location and nature of development, including additional building and parking area setbacks, screening in the form of landscaped berms, landscaping or fencing;
   b) Measures to avoid or otherwise mitigate the adverse environmental impacts of the development;
   c) Hours of use or operation or type and intensity of activities;
   d) Sequence and scheduling of the development;
   e) Maintenance of the development;
   f) Duration of use and subsequent removal of structures;
   g) Granting of easements and dedications of roads, walkways, utilities or other purposes and dedication of land or other provisions for public facilities, the need for which the hearing examiner finds would be generated in whole or in significant part by the proposed development;
   h) Provisions which would bring the proposal into compliance with the comprehensive plan;
   i) Posting of assurance devices as required to insure compliance with any conditions, modifications and/or restrictions imposed on the proposal.
2. Additional Considerations. The hearing examiner shall consider criteria for land use actions set forth in EMC 15.03.
3. Findings required. When the hearing examiner renders a decision or recommendation, the hearing examiner shall make and enter written findings and conclusions from the record on all issues presented to the hearing examiner, which support such recommendation or decision. Unless the applicant agrees to an extension or the hearing examiner is hearing an appeal, the hearing examiner shall render a decision or recommendation, as applicable, within ten (10) working days of the conclusion of a hearing.
4. Notice of decision.
   a) Not later than three (3) working days following the rendering of a written decision or recommendation, copies shall be mailed to the applicant and to other persons who have requested notice of the decision by signing a register provided at the hearing. Alternatively, the city may transmit the decision electronically to any person who so indicates on the register at the hearing. The city shall retain the right to charge a reasonable fee to recover costs associated with providing such

copies. The person mailing such decision shall prepare an affidavit of mailing, in standard form, and such affidavit shall become a part of the record of such proceedings.

b) If the hearing examiner is making a recommendation to the city council, the recommendation and a copy of the hearing examiner's record shall be transmitted to the city council.

c) Shoreline permits.

i. A notice of decision for shoreline substantial development, variance, and/or conditional use permit shall be provided to the Washington State Department of Ecology and the Attorney General's Office as set forth in WAC 173-27-130.

ii. For shoreline conditional use and variance permits, the Washington State Department of Ecology issues the final decision. The Washington State Department of Ecology shall render the final decision and notify the city and the applicant of its decision approving or disapproving the permit within thirty (30) days of filing by the city. The city shall notify those interested persons having contacted the city under the final decision.

5. Reconsideration. Any aggrieved party of record who has actively participated in the hearing before the hearing examiner may file a written request for reconsideration with the hearing examiner within ten (10) working days after the written decision of the hearing examiner has been rendered. "Actively participated in the hearing before the hearing examiner" means the party has submitted oral or written testimony, excluding persons who have merely signed a petition. This request shall set forth the specified errors of fact and/or law relied upon. The hearing examiner may deny the request in writing or issue a revised decision or reconvene the public hearing. If the hearing is reconvened, notice of said reconvened hearing shall be mailed to all parties of record not less than ten (10) working days prior to the hearing date. The hearing examiner's written decision shall be rendered within fifteen (15) working days of the conclusion of the reconvened hearing. Notice of the decision shall be provided as specified in subsection E.4 above.

6. Remand from council. When the city council entertains a recommendation from the hearing examiner, the city council may accept the findings or conclusions of the hearing examiner, remand the recommendation to the hearing examiner or reverse the decision of the hearing examiner. Council's action shall be based upon the hearing examiner's record. No new information or evidence may be presented to the city council. After receiving the recommendation following remand, the city council shall either accept the recommendation of the hearing examiner or reverse the decision of the hearing examiner.

7. Dismissal – Exhaustion.

a) Under a motion filed by the city or a party to the appeal, the hearing examiner may summarily dismiss an appeal or application in whole or in part without hearing when the hearing examiner determines that the appeal or application is untimely, without merit on face, frivolous, beyond the scope of his/her jurisdiction, brought merely to secure a delay or that the applicant/appellant lacks standing. If the hearing examiner issues a dismissal order, the hearing examiner shall explain the reasons for the dismissal.

b) If the hearing examiner issues an order requiring the applicant, or any other party to the appeal, to provide additional information within a specified time period, and the party to which the order is directed fails to provide the information by the required deadline, the hearing examiner may dismiss the appeal, issue a decision on the basis of information in the record, or take other action as deemed appropriate by the hearing examiner.

c) No person may seek judicial review of any decision or determination of the city unless the person first exhausts the administrative remedies provided by the city, except for an appeal of a determination by the planning director that a proposed land use is in violation of the unified development code.

8. Jurisdiction retained by hearing examiner. Whenever the hearing examiner renders a decision, the hearing examiner retains jurisdiction for the purpose of making minor changes. A "minor change" is one or more changes which do not alter the scope of the decision.

a) Upon receipt of an application for a minor change, the hearing examiner may approve or disapprove a minor change by issuance of a written order.
b) It shall be the discretion of the hearing examiner to reconvene the hearing. If the hearing examiner does not reconvene the hearing, the hearing examiner may request written clarification or comments of the minor changes. Such comments will become part of the official record.
c) Copies of the order shall be mailed to all parties of record. Within ten (10) days of the issuance of the order, a party of record may submit a written request with the hearing examiner's office requesting a hearing. Upon receipt of such request, the hearing examiner's order approving the minor change will be stayed pending the hearing. Absent receipt of a request for hearing, the order shall become final upon expiration of the ten-day period.
d) An open record hearing on a proposed change shall be considered a subsequent action and is not barred by the limitation on a single open record hearing for a land use permit.

9. For the purposes of this subsection, the hearing examiner shall have all the powers of the planning director (except for that of the SEPA responsible official), and those powers necessary to fulfill his/her function as land use hearing examiner, including recommendations for docketing revisions to plans and development regulations (see EMC 15.02.700).

Article IV. Shoreline Permit Procedures

15.02.300 Shoreline permit procedures

A. Shoreline permit issuance

1. Letter of Exemption. Whenever a development is determined by the city to be exempt from substantial development permit requirements and the development is subject to a United States Corps of Engineers Section 10 permit under the River and Harbor Act of 1899, or a Section 404 permit under the Federal Water Pollution Control Act of 1972, the planning director shall prepare a letter addressed to the applicant and the Department of Ecology, exempting the development from the shoreline permit requirements of this chapter. This exemption letter shall be substantially as described in WAC 173-27-050.
2. When Construction Authorized. Development under a shoreline permit shall not begin and shall not be authorized until twenty-one (21) days from the date of filing, or until all review proceedings, initiated within twenty-one (21) days from the date of such filing, have been terminated, except as provided in RCW 90.58.140(5)(b) and (c).
   a) For purposes of a substantial development permit, "date of filing" means the date the actual receipt of the decision by the Department of Ecology. For purposes of any permit that requires a variance or a conditional use, the "date of filing" means the date a decision by the Department of Ecology is transmitted to the city of Everett.
   b) In addition, each permit for a substantial development, conditional use, or variance issued by the city should contain a provision that construction is not authorized until twenty-one (21) days from the date of filing, or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated, except as provided in RCW 90.58.140(5)(b). Absence of the provision in a shoreline permit shall not affect enforcement of this requirement.
3. Conditions on Shoreline Permits. In granting or extending a permit, the planning director or examiner may attach conditions or modifications and restrictions regarding the location, character or other features of the proposed development as is necessary to make the permit compatible with the criteria set forth in the shoreline master program and this title.
4. Other Applicable Requirements. Issuance of a shoreline permit does not exempt the applicant from meeting requirements in other agency permits, procedures and regulations.

B. Time requirements of shoreline permits.

The time requirements in subsections 1 and 2 of this subsection shall apply to all shoreline permits, including substantial development permits, variances and conditional uses, unless a different time requirement is specified in the permit as provided in subsection 3 of this subsection. The time frames established in subsections 1 and 2 of this subsection do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals, or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permit or approvals.

1. Construction must be commenced or, where no construction activities are involved, the use or activity shall be commenced within two (2) years of the effective date of a shoreline permit. The city may, at its discretion, extend the two-year time period for a reasonable time based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.
2. If a project for which a shoreline permit has been granted under these procedures has not been completed within five (5) years after the effective date of the permit, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology, the permit shall, at the end of the five-year period, be reviewed and, upon a showing of good cause, the city shall do either of the following:
   a) Extend the permit for one year; or
   b) Terminate the permit.
3. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and the Act, the city may apply different time limits from those set forth in subsections 1 and 2 of this subsection.

C. Process for revisions to shoreline permits.

When an applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in a permit issued under any review process, the applicant shall submit detailed plans and text to the planning director describing the proposed changes in relation to the original permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of Chapter 90.58 RCW. Changes that are not substantive in effect do not require approval of a revision.

1. For revisions not requiring a conditional use permit or variance, if the planning director determines that the proposed changes are within the scope and intent of the original permit, the planning director shall approve a revision. The revised permit shall become effective immediately. The approved revision along with copies of the revised site plan and text as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section, shall be submitted to the Department of Ecology, the Attorney General, and to persons who received a copy of the original notice of decision for the application under this title.
2. For revisions requiring a conditional use permit or variance, if the planning director determines that the proposed changes are within the scope and intent of the original permit, the planning director shall submit the revision to the Department of Ecology for approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of WAC 173-27-100(6). The Department of Ecology shall render and transmit to the city and the applicant its final decision within fifteen (15) days of the date of the department's receipt of the submittal from the city. The city shall notify parties of record of the department's final decision. The revised permit is effective upon final action by the Department of Ecology. Appeals shall be in accordance with the appeals section of EMC 15.02.600.
3. For purposes of this section, "within the scope and intent of the original permit" means all of the following:

a) No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten percent (10%) from the provisions of the original permit, whichever is less;
b) Ground area coverage and height may be increased a maximum of ten percent (10%) from the provisions of the original permit;
c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
e) The use authorized under the original permit is not changed; and
f) No increased adverse environmental impact will be caused by the project revision.

4. If a revision to a permit is authorized after the original permit expired, the purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of Chapter 90.58 RCW, WAC 173-27-110, or the city's shoreline master program. If the proposed change constitutes substantial development, then a new permit is required.
5. If the proposed changes or the sum of the proposed revision and any previously approved revisions are not within the scope and intent of the original permit, the applicant shall apply for a new shoreline permit in the manner provided for in this chapter.
6. An application for a new permit may use or rely upon previous environmental review and supporting studies (such as biological assessments), as provided by the SEPA ordinance (EMC 19.43).

D. Enforcement provisions for shoreline regulations.

The city adopts by reference the enforcement provisions of WAC 173-27-240 through WAC 173-27-300. Further, any person, firm or corporation who violates any provision of the city's shoreline regulations shall be subject to the city's civil enforcement procedures set forth in Chapter 1.20. The enforcement provisions and procedures provided herein are not exclusive and the city is authorized to pursue any remedy it deems appropriate or is otherwise provided by law.

Article V. Land Division Procedures

15.02.400 Land division expirations and resubdivision

A. Expiration of Preliminary Subdivision Approval.

Final subdivision approval must be obtained within the time limits established in RCW 58.17.140, after which time the preliminary approval will be void. An extension may be granted by the city for one year if the applicant has attempted in good faith to submit the final plat within the time period; provided, however, that the applicant files a written request with the planning director requesting the extension at least thirty (30) days before expiration of the time period.

B. Expiration of Preliminary Short Subdivision or Preliminary Binding Site Plan Approval.

Final short subdivision or final binding site plan approval must be obtained within five years of the date of preliminary approval, after which time the preliminary approval will be void. An extension may be granted by the city for one year if the applicant has attempted in good faith to submit the final short plat or binding site plan within the time period; provided, however, that the applicant files a written request with the planning director requesting the extension of at least thirty (30) days before the expiration of the time period. In the event of any public emergency declared by the mayor or city council, an additional extension of one year may be granted.

C. Expiration of Preliminary Subdivision Alteration or Vacation Approval.

Final subdivision alteration or vacation approval must be obtained within five years of the date of preliminary approval, after which time the preliminary approval will be void. An extension may be granted by the city for one year if the applicant has attempted in good faith to submit the final plat alteration or vacation within the five-year time period; provided, however, the applicant must file a written request with the planning director requesting the extension at least thirty (30) days before expiration of the five-year period. In the event of any public emergency declared by the mayor or city council, an additional extension of one year may be granted.

D. Expiration of Preliminary Short Subdivision Alteration or Vacation Approval.

Final short subdivision alteration or vacation approval must be obtained within five (5) years of the date of preliminary approval, after which time the preliminary short subdivision alteration or vacation approval will be void. No extension may be granted by the city to the applicant, except in the event of any public emergency declared by the mayor or city council, an additional extension of one year may be granted.

E. Expiration of Approval for a Binding Site Plan with a Previously Approved Site Plan.

Final binding site plan approval must be obtained within the time frames established for the previously approved site plan. If the binding site plan with the previously approved site plan is totally constructed, the time frame shall be three years from the date the city notifies the applicant that the application is complete, after which time the binding site plan approval will be void. No extension may be granted by the city to the applicant except in the event of any public emergency declared by the mayor or city council, an additional extension of one year may be granted.

F. Expiration of Boundary Line Adjustment Approval.

The applicant must submit and complete all required documents as specified by this title within six (6) months following the date the applicant is notified that the boundary line adjustment would be approved upon submittal of all the required final documents for recording. Failure to submit and complete the required documents within the six-month period will result in the application becoming void. No time extension will be granted except in the event of any public emergency declared by the mayor or city council, an additional extension of one year may be granted. The final required documents must be recorded within the above stated time frame.

G. Valid Land Use for Subdivision.

As required by RCW 58.17.170, a subdivision shall be governed by the terms of the approval of the final plat, and any lots created thereunder shall be a valid land use notwithstanding any change in zoning laws for a period of five years, unless the city council finds that a change in conditions in the subdivision creates a serious threat to the public health or safety.

H. Unit Lot Subdivisions

1. Ten (10) lots or more. For unit lot subdivisions with ten units or more, see EMC 15.02.400.A.
2. Less than 10 lots. For unit lot subdivisions with less than ten units, see EMC 15.02.400.B.

I. Resubdivision restrictions for short subdivisions.

1. Five-Year Restriction. Land within an approved short subdivision shall not be resubdivided for a period of five years from the date of final approval of the short subdivision without the submission and approval of a final subdivision under all provisions of this title concerning the subdivision of land into ten or more lots, tracts or parcels.
2. Nine-Lot Restriction. When the original short subdivision contains nine or less lots, the above restrictions shall not apply to the creation of additional lots, not exceeding a total of nine. If the number exceeds nine, a new application must be filed and processed. After five years, further division may be permitted when otherwise consistent with the regulations of the city.
3. Withdrawal of Application. Where there have been no dedications to the public and no sales of any lots in a short subdivision, nothing contained in this section shall prohibit an applicant from completely withdrawing his entire short subdivision application and thereafter presenting a new application.

Article VI. Planned Action Review

15.02.500 Planned action project review

A. Planned action review process

The review process for a project that is proposed as a planned action shall be determined by the permits required for the planned action. Because an environmental impact statement will previously have been prepared, review of a project proposed as a planned action is intended to be simpler and more focused than for other projects. A planned action includes a type of project action, or a subsequent project that implements an adopted subarea plan, master planned development, or phased project, that is designed by ordinance or resolution as a planned action and meets the criteria in RCW 43.21C.031(2)(a).

B. Verification

A project proposed as a planned action shall be reviewed for consistency with the comprehensive plan and adopted planned action ordinance and for compliance with applicable development regulations and city ordinances.

To determine whether a proposed action qualifies as a planned action, planned action project review shall include:

1. Verification that the project meets the description in, and will implement any applicable conditions or mitigation measures identified in, the designating ordinance or resolution; and
2. Verification that the probable significant adverse environmental impacts of the project have been adequately addressed in the prior environmental impact statement through review of an environmental checklist or modified environmental checklist form provided by the city for this purpose as allowed by WAC 197-11-172 and 197-11-315.

C. Mitigation, public notice, and appeals

All projects processed as planned actions shall comply with mitigation requirements set forth in applicable development regulations and city ordinances and the adopted planned action ordinance or resolution. Through the local project review process, the city may place conditions on the project in order to mitigate nonsignificant impacts. Public notice and appeal procedures for projects that qualify as planned actions shall follow the requirements for the project permit. If notice is required, the notice shall state that the project has qualified as a planned action.

Article VII. Appeals

15.02.600 Appeals

A. Scope of project review and appeals

As required by RCW 36.70B.030, except for issues of code interpretation, neither the city nor any reviewing body shall reexamine alternatives to or hear appeals on the following items:

1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit development and conditional and special uses, if the criteria for their approval have been satisfied;
2. Density of residential development in urban growth area; and
3. Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by Chapter 36.70A RCW.

B. Time limit for appeal decisions

Land use permit decisions and SEPA determinations, including the adequacy of a final EIS, shall be appealable as provided for in this section. For purposes of this section, a final decision means the decision issued after any reconsideration or remand if applicable. The time period for hearing and deciding an administrative appeal to the city shall not exceed ninety (90) days. However, the parties to an appeal may agree to extend this time period. This appeal period is not included in the time limit for issuing a permit EMC 15.01.080.

C. SEPA appeals

The city establishes the following administrative appeal procedures under the SEPA ordinance (EMC 19.43), RCW 43.21C.075 and WAC 197-11-680. For purposes of this subsection, "EIS" means a final environmental impact statement, final supplemental environmental impact statement, or a notice of adoption or addendum to a final EIS/SEIS that is prepared and used by the city for making a decision on the proposal. Except as specified in this chapter, SEPA appeals on land use permit decisions and any other city proposals shall be filed and heard at the same time as appeals on the applicable land use permit or city proposal.

1. Procedural and Substantive Compliance. For purposes of utilizing SEPA to assist in governmental planning and decisionmaking the city recognizes a right of appeal by any aggrieved person on whether governmental action is in compliance with the substantive and procedural provisions of SEPA, including a threshold determination (DNS, MDNS or DS), adequacy of an EIS, and of a decision document issued by the responsible official or city which conditions or denies a project on the basis of SEPA substantive authority. Any SEPA appeal shall meet the requirements of SEPA (see RCW 43.21C.075), the SEPA ordinance (EMC 19.43), and this title, as further specified in this section.
2. Review Process V—Judicial Appeal Only, Except for Determination of Significance. No SEPA administrative appeal to the city is provided for Review Process V other than for an appeal of a determination of significance to the hearing examiner. The hearing examiner's open record appeal hearing shall occur prior to any permit hearing by a body designated under Review Process V to make a recommendation or decision on the project. Any further SEPA appeal shall not occur prior to a permit decision under Review Process V. Any appeals of Review Process V decisions shall be to Snohomish County superior court under Chapter 36.70C RCW (the Land Use Petition Act or LUPA).
3. Review Process I, II, and III—Administrative and Judicial Appeal. SEPA administrative appeals are provided for Review Process I, II, and III. All SEPA administrative appeals shall be to the hearing examiner and are subject to the consolidated appeals provisions of this title. Any appeal of the hearing examiner's decision shall be to Snohomish County superior court under Chapter 36.70C RCW. This means:
    a) For Review Process I and II permits, one open record appeal hearing is allowed on the appeal of a SEPA threshold determination and permit together. If the hearing examiner requires an EIS, one subsequent open record appeal is allowed on the adequacy of the EIS and permit together.
    b) For Review Process III permits, the hearing examiner must hear the SEPA administrative appeal for a Review Process III permit at the same open public hearing where the hearing examiner makes a recommendation or decision on the permit. If the hearing examiner requires an EIS or supplemental EIS, the hearing examiner must hear any appeal of the EIS at the open public hearing on the permit (which will generally be continued pending the preparation of the required environmental document).
    c) For Review Process I, II, and III, an appeal of a SEPA determination of significance shall be heard by the hearing examiner in its own separate open record appeal hearing, prior to the further processing of the land use permit application or issuance of a decision.
4. Appeals on Other City Proposals. This paragraph applies to appeals of SEPA procedural determinations on project or nonproject proposals by the city that are not city legislative actions. If a SEPA threshold determination or EIS on a city proposal is issued prior to an application for a land use permit (or if no land use permit is required for the proposal), the city shall allow an administrative appeal to the hearing examiner in the public notice of the SEPA determination. The hearing examiner shall hear only the SEPA

procedural appeal and shall not have jurisdiction over review of the city proposal unless otherwise provided by city ordinance. There shall be no further appeal of the hearing examiner's appeal decision until after the city makes a final decision on the proposal.

5. Appeals To and From the Hearing examiner. The hearing examiner shall provide for the preparation of a record for use in any subsequent appeal proceedings. Any further appeal of the hearing examiner's decision on a SEPA administrative appeal on a Review Process I, II, and III permit shall be to Snohomish County superior court under Chapter 36.70C RCW together with the appeal of the permit (unless state law provides for a different appeal process, such as to the Shoreline Hearings Board).
6. Deference to Responsible Official. The procedural determinations made by the city's responsible official shall be entitled to substantial weight.

D. Permit appeals

1. Review Process I, Minor Administrative Decisions. Appeals of Review Process I decisions shall be heard by the hearing examiner in the manner provided for in Review Process II appeals.
2. Review Process II, Administrative Decisions. Appeals of administrative decisions, including decisions for SEPA threshold determinations, shall be heard by the hearing examiner. The hearing examiner's decision on the appeal shall be final. Appeals of hearing examiner's decision shall be to Snohomish County superior court in accordance with Chapter 36.70C RCW and filed within twenty-one (21) days of issuance of the decision. Exception: no city administrative appeal is provided for limited utility extensions or construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion, as defined in RCW 90.58.140(11)(b); any appeal shall be directly to the Shoreline Hearings Board.
3. Review Process IIIA, Hearing examiner Decisions. The decision of the hearing examiner on Review Process IIIA applications, including SEPA determinations, shall be final. Appeals of the hearing examiner's decisions shall be to Snohomish County superior court in accordance with Chapter 36.70C RCW and filed with twenty-one (21) days of issuance of the decision; provided however, that appeals of the hearing examiner's decision on shoreline substantial development permits or revisions shall be to the shorelines hearings board as set forth in RCW 90.58.180 and Chapter 461-08 WAC, the rules of practice and procedure of the shorelines hearings board.
    a) Appeals of revisions to shoreline permits not requiring a conditional use permit or variance shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one (21) days from the date of receipt of the city's action by the Department of Ecology. The party seeking review shall have the burden of proving the revision granted was not within the scope and intent of the original permit.
    b) Appeals of revisions to shoreline permits requiring a conditional use permit or variance shall be in accordance with RCW 90.48.180 and shall be filed within twenty-one (21) days from the date of receipt of the city's action by the Department of Ecology. The party seeking review shall have the burden of proving the revision granted was not within the scope and intent of the original permit.
4. Review Process IIIB, Hearing examiner Recommendation to Council.
    a) There is no appeal of the hearing examiner's recommendation. The decision of the city council constitutes the final action of the city and is appealable to Snohomish County superior court in accordance with Chapter 36.70C RCW and shall be filed within twenty-one (21) calendar days of issuance of the decision.
    b) If a SEPA procedural determination is appealed for a proposal subject to Review Process IIIB, the appeal shall be heard with the hearing examiner's open public hearing on the permit. The decision of the hearing examiner shall be final and shall be stated in the hearing examiner's recommendation to the city council on the Review Process III permit. Any further SEPA appeal shall be to Snohomish County superior court under Chapter 36.70C RCW together with the city council decision on the permit.

c) Nothing in this subsection limits the authority of the city council to condition or deny a proposed project under Review Process IIIB under applicable city standards and ordinances.

5. Review Process V, Planning Commission/City Council Quasi-Judicial Decisions. The decision of the planning commission constitutes a recommendation to the city council. The decision of the city council constitutes the final action of the city and is appealable to Snohomish County superior court in accordance with Chapter 36.70C RCW and shall be filed within twenty-one days of issuance of the decision.

Article VIII. Comprehensive Plan Docket Procedures

15.02.700 Docketing

A. Overview

1. Except as allowed by RCW 36.70A, the comprehensive plan may only be amended once per year. The city shall review all revisions as a comprehensive package of updates to the plan so the cumulative effect of all proposed amendments is fully understood.
2. For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure such suggested changes will be considered by the city and will be available for review by the public.

B. Project review docket applications

If during project review, the city identifies deficiencies in plans or regulations, the identified deficiencies shall be docketed for possible future plan or development regulation amendments. For purposes of this subsection, a deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation addresses a project's probable specific adverse environmental impacts which the city could mitigate in the normal project review process.

C. Annual docket process

1. Any interested person, including applicants, citizens, hearing examiners, city officials, and staff of other agencies, may suggest plan or development regulation amendments in writing to the planning director, which shall be docketed and considered on at least an annual basis, consistent with the provisions of RCW 36.70A.130.
2. The planning director is authorized to set deadlines for applications to amend the comprehensive plan. The planning director is also authorized to establish the docket for consideration of amendments. If the planning director believes a request should not be considered for the annual docket, this decision shall be forwarded to the city council who will have the legislative discretion to place the amendment on the final docket for further consideration.
3. The planning director shall provide the city council and planning commission the annual docket that will be considered and make this information available to the public.

D. Application Requirements

Any person proposing amendments to the comprehensive plan must submit the information as required by the planning director, including a complete description of the proposed amendment, the location of the amendment, and explanation of why the amendment is being proposed, and an explanation of how the proposed amendment is consistent with RCW 36.70A, the Snohomish County Countywide Planning Policies, and the city's Comprehensive Plan adopted pursuant to RCW 36.70A.

Article IX. Interpretations, Vesting & Definitions

15.02.800 Interpretations of land use regulations

Any person may request an interpretation of applicable provisions of city land use requirements or development regulations as part of the project review process. Further, the planning director is authorized to issue interpretations of the land use and development regulations as necessary and to promulgate rules and procedures as consistent with the terms of this title. Such interpretations shall constitute Review Process I decisions.

15.02.810 Vested Rights

Unless provided otherwise by this section, an application for a land use permit or other project permit shall be considered under the development regulations in effect on the date of filing of that complete application.

A. Project permit applications shall not include preapplication submittals or materials, conceptual site plan reviews, or applications or requests to the planning director for interpretations.

B. For purposes of this section, "date of filing of the complete application" shall mean the date on which the applicant files a project permit application that contains all required information and documents. If the planning director determines that an application is not technically complete, the "date of filing of complete application" shall mean the date on which the applicant submits a technically complete application under EMC 15.01.040.

C. Subdivision and Short Subdivisions. A project permit application for development or use of land subject to an unexpired subdivision or short subdivision approval shall follow the requirements of RCW 58.17.

D. SEPA determinations and vesting. Development regulations could be revised or adopted during the time between the issuance of a SEPA determination and a building or construction permit application. Where conditions identified in the SEPA determination are based on adopted development regulations, the proposal is required to comply with the development regulations in effect at the time a complete building or construction permit application (or other application which by law vests development requirements) is filed

E. For purposes of this section, "development regulations" shall mean those ordinances and regulations that control or affect the type, degree, or physical attributes of land development or use, including the unified development code, and shall not include the following:
   1. Permit processing fees and taxes or administrative fees;
   2. Ordinances or regulations that specify or are based upon adopted SEPA policies for the exercise of SEPA substantive authority, including the SEPA ordinance (Chapter 19.43);
   3. Regulations that affect the procedure through which a project permit application is processed or considered, including but not limited to this chapter; and
   4. Any ordinance or regulation that, by its terms, applies to developments or uses that exist on the effective date of that ordinance or regulation.

15.02.820 Definitions

A. "Applicant" means the person or entity proposing a project. "Applicant" includes private or public entities. The applicant shall be the owner of land or authorized representative. "Applicant" includes the entity or person for which an authorized representative is submitting an application.

B. "Application" means a written request to the city to issue a land use permit. Unless the context clearly requires otherwise, "application" refers to a "complete application."

C. "Complete application" means an application that is technically complete and meets all requirements for a determination of completeness.

D. "Consolidated process" means a single project review process for all land use permits subject to the procedural requirements of this title, including the individual procedure option in EMC 15.02.050. It does not necessarily refer to consolidating land use permits with all other permits that might be required for a project.

E. “Days” are in calendar days, including weekends and holidays. If a deadline falls on a weekend or federal, state, or city holiday, the deadline shall be extended to the close of the next business day at the applicable city office. When computing time periods, the first day shall be the date from which the designated period of time begins to run (such as the “permit date” or the date that notice is posted or mailed).

F. “Open public hearing” means the open record hearing under RCW 36.70B.020(3). An open public hearing may be held in order to render a project permit recommendation or decision (predecision hearing) or after a determination on which there is an administrative appeal (appeal hearing).

G. “Permit” means any form of written permission given to any person, organization, or agency to engage in a specific activity. A permit includes all or part of an agency permit, license, certificate, approval, registration, entitlement, or other authorization to facilitate a particular proposal.

H. “Permit date” means the date the last city staff member or official executes the project permit document (or in the case of shoreline conditional use or variance permits, the date the permit is executed by the Washington State Department of Ecology). The permit date normally appears on the face of the permit. For Review Process III, the permit date typically will be the date of the hearing examiner decision or city council ordinance, unless there is a project permit administratively signed and issued by city staff to the applicant on that decision.

I. “Project permit” means any land use or environmental permit or license required from the city of Everett for a project action, including but not limited to building permits, subdivisions, binding site plans, unit lot subdivisions, planned unit developments, conditional uses, shoreline substantial development permits, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption of amendment of a comprehensive plan, subarea plan, or development regulations, except as otherwise specifically included in this subsection. A SEPA determination is not a permit; a project permit typically includes any conditions required as a result of SEPA review, as provided by this title. A project permit does not include nonproject actions as defined in the SEPA ordinance (EMC 19.43). Also see “land use permit.” Preapplication documents and early conceptual review, such as site plan review, do not require open public hearings and are not project permits under this title.

J. “Public hearing or meeting” means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the city’s project permit decision. A “public meeting or hearing” is distinguished from the single “open public hearing” that creates the record in a final project permit recommendation or decision or an administrative appeal under this title. A public meeting or hearing may be required by law and may include certain formalities, such as a public hearing on an environmental impact statement.

Chapter 15.03 Land Use Decisions, Criteria and Authority

Table of Contents

15.03.010 Introduction

The purpose of this chapter, in conjunction with EMC 15.01 and EMC 15.02, is to implement requirements in Chapter 36.70B RCW, Local Project Review. In addition to the Local Project Review requirements, this chapter addresses who may apply for certain land use decisions, the criteria for land use decisions and the authority for those decisions.

15.03.040 Land Use Project Review and Consistency

A. The review of a proposed project's consistency with applicable development regulations, and the adopted comprehensive plan shall serve as the starting point for project review. Land use permit review shall not reanalyze these land use planning decisions in making a permit decision.

B. The planning director or his/her designee ("director") may determine through the local project review process that existing requirements including mitigation measures in applicable development regulations and plans and other applicable laws provide adequate mitigation for some or all of the project's specific adverse environmental impacts.

C. Nothing in this chapter limits the authority of the city to approve, condition, or deny a project as provided in its adopted development regulations and in its policies adopted under RCW 43.21C.060. Project review shall be used to: (1) review and document consistency with comprehensive plans and development regulations; (2) provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level; and (3) ensure accountability by local government to applicants and the public for requiring and implementing mitigation measures.

D. Project review shall be used to identify specific project design and conditions relating to the characteristics of a development; to identify specific adverse environmental impacts of the proposal not previously analyzed; and to address the details of site plans, curb cuts, stormwater facilities, transportation demand management, the payment of impact fees, or other measures to avoid or otherwise mitigate a proposal's probable adverse environmental impacts.

E. A proposed project's consistency with the city's development regulations and the appropriate elements of the comprehensive plan or subarea plan adopted under Chapter 36.70A RCW, shall be determined by consideration of:

   1. The type of land use allowed;
   2. The level of development allowed, such as units per acre or other measures of density;

3. Infrastructure, including the adequacy of public facilities and services needed to serve the proposed development; and
4. The characteristics of the proposed development, such as compliance with specific development standards.

F. In determining consistency, the determinations made under this chapter shall be controlling.

G. Nothing in this section requires documentation, dictates procedures for considering consistency, or limits the planning director from asking more specific or related questions with respect to any of the four main categories listed in subsection E of this section. This chapter does not apply to the city's civil enforcement procedures, EMC 1.20, except as specifically referenced herein.

15.03.060 Modification of Development Standards

A. Overview

Throughout this title, the planning director, city engineer or their designee ("director") may be authorized to approve project-specific modifications of the standards in this title.

B. Review Process

1. An applicant shall submit a request for modification, providing such information as is required by the director, including application fees.
2. Where this title authorizes the director to modify development standards, the review process shall be Review Process I (REV I) unless otherwise indicated.
3. If the director determines that notice to contiguous property owners should be provided regarding a request to modify development standards, the director may require the proposed modification to be reviewed using a higher level of review process than otherwise required.
4. See EMC 15.02 for notice and procedures for various review processes.

C. General Criteria

In considering any request for modification of standards in this title, the following criteria need to be met:

1. The request for modification would result in development that is equivalent or superior to what would likely result from compliance with the development standards which are proposed to be modified.
2. The request for modification meets the intent of the standards being modified.
3. The request for modification does not create any impacts or nuisances that cannot be mitigated, such as access points which are unsafe, noise, dust, odor, glare, visual blight or other undesirable environmental impacts.
4. The request for modification meets any additional modification criteria in the respective chapter.

15.03.100 Administrative Use

A. Overview

An Administrative Use, identified in EMC 19.05, is a mechanism by which the city may place special conditions on the use or development of property to ensure that new development is compatible with surrounding properties.

B. Who May Apply

A property owner, or their designated agent, may apply for an Administrative Use.

C. Review Process

Each zoning district includes uses which may be permitted if an Administrative Use is approved. See Use Tables in EMC 19.05. The process for consideration of an Administrative Use is as follows:

1. The planning director may approve, approve with conditions, or deny an Administrative Use following the Type II Review process set forth in EMC 15.02.
2. All Administrative Uses shall be evaluated by the criteria listed in subsection D of this section.

3. Some land uses may be subject to Specific Use Standards set forth in EMC 19.13. If the Administrative Use is included in EMC 19.13, the requirements of that chapter must be met.
4. The planning director is authorized to approve a minor expansion or alteration of an existing Administrative Use as follows:
    a) A minor expansion or alteration of an Administrative Use can be approved with Review Process I (see EMC 15.02).
    b) For purposes of this section:
        i. A minor expansion shall be not more than twenty-five percent (25%) of the land or building gross floor area devoted to the existing Administrative Use.
        ii. A minor alteration may include changes to final site plans and development which do not change the intent and compatibility with surrounding property which were originally approved.
5. The planning director may impose conditions to ensure the approval criteria in subsection D are met.

D. Administrative Use Evaluation Criteria

The following criteria shall be used for evaluating Administrative Uses:

1. Compatibility of proposed structures and improvements with surrounding properties, including the size, height, location, setback and arrangements of all proposed buildings and facilities, especially as they relate to light and shadow impacts on more sensitive land uses and less intensive zones.
2. The landscaping, buffering and screening of buildings, parking, loading and storage areas, especially as they relate to more sensitive land uses.
3. The generation of nuisance irritants such as noise, smoke, dust, odor, glare, visual blight or other undesirable impacts.

E. Other Standards

1. Revocation. The planning director has the authority to review and modify or revoke Administrative Uses for failure to meet the requirements of an Administrative Use. Such decisions may be appealed pursuant to EMC 15.02.
2. Transfer of ownership. An Administrative Use runs with the land and compliance with the conditions of any such permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.
3. Permit expiration. Administrative Uses shall complete development and establish the permitted use within three (3) years of approval. The planning director may authorize a one-time extension of six (6) months. If the use is not commenced within that time frame, the Administrative Use is considered void and a new application is required. The city has no duty or obligation to notify the applicant or current property owner that the permit is due to expire.

15.03.120 Conditional Use

A. Overview

A Conditional Use, identified in EMC 19.05, means a use, which because of its unusual size, infrequent occurrence, special requirements, possible safety hazards, or other possible detrimental effects on surrounding properties, may be approved only after meeting the requirements of this section.

B. Who May Apply

A property owner, or their designated agent, may apply for a Conditional Use.

C. Review Process

Each zoning district includes uses which may be permitted if a Conditional Use is approved. See Use Tables in EMC 19.05. The process for consideration of a Conditional Use is as follows:

1. Conditional Uses require a public hearing with action by the Hearing Examiner following Review Process III. See EMC 15.02 for procedures.

2. All Conditional Uses shall be evaluated by the criteria listed in subsection D of this section.
3. Some land uses may be subject to Specific Use Standards set forth in EMC 19.13. If the Conditional Use is included in EMC 19.13, the requirements of that chapter must also be met in conjunction with approval of a Conditional Use.
4. The planning director is authorized to approve a minor expansion of an existing Conditional Use using Review Process II.
    a) A minor expansion of a Conditional Use, which was previously considered a Special Property Use prior to adoption of this Ordinance, can be reviewed pursuant to this subsection C.4.
    b) For purposes of this section, a minor expansion shall be not more than twenty-five percent (25%) of the land or building gross floor area devoted to the existing Conditional Use.
5. The Hearing Examiner may impose conditions to ensure the approval criteria in subsection D are met.

D. Conditional Use Evaluation Criteria

The following criteria shall be used for evaluating Conditional Uses:

1. The adequacy of utilities, public facilities and services required to serve a proposed use.
2. The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety; and the ability of the proponent to mitigate such potential impacts.
3. Compatibility of proposed structures and improvements with surrounding properties, including the size, height, location, setback and arrangements of all proposed buildings and facilities, especially as they relate to light and shadow impacts on more sensitive land uses and less intensive zones.
4. The landscaping, buffering and screening of buildings, parking, loading and storage areas, especially as they relate to more sensitive land uses.
5. The generation of nuisance irritants such as noise, smoke, dust, odor, glare, visual blight or other undesirable impacts.
6. Compliance with the provisions of Title 19 and other city, state and federal regulations.

E. Other issues

1. Revocation. The planning director has the authority to review and modify or revoke Conditional Uses for failure to meet the requirements of a Conditional Use. Such decisions may be appealed pursuant to EMC 15.02.
2. Transfer of ownership. A Conditional Use runs with the land and compliance with the conditions of any such permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.
3. Permit expiration. Conditional Uses shall complete development and establish the permitted use within three (3) years of approval. The planning director may authorize a one-time extension of six (6) months. If the use is not commenced within that time frame, the Conditional Use is considered void and a new application is required. The city has no duty or obligation to notify the applicant or current property owner that the permit is due to expire.

15.03.140 Variances

A. User Guide

This section establishes a mechanism whereby the provisions of Title 19 can be varied on a case-by-case basis if the application of such provisions would result in an unreasonable and unusual hardship. The criteria of this section shall be met in order to approve a variance.

B. Who May Apply

A property owner, or their designated agent, may apply for a Variance.

C. Review Process

An application for a Variance is considered by Review Process III. See EMC 15.02 for procedures.

D. Criteria for Granting a Variance

The city may grant a variance only if it finds that:

1. The variance will not be materially detrimental to the property in the area of the subject property or to the city as a whole; and
2. The variance is necessary because of exceptional or extraordinary circumstances regarding the size, shape, topography or location of the subject property; or the location of a preexisting improvement on the subject property that conformed to the zoning code in effect when the improvement was constructed; and
3. The variance will only grant the subject property the same general rights enjoyed by other property in the same area and zone as the subject property; and
4. The need for the requested variance is not the result of a self-created hardship.

E. Variances Prohibited

Under no circumstances shall the review authority grant a variance to any of the following:

1. To any provisions establishing the uses that are permitted to locate or that may continue to operate in any zone; or
2. To any of the procedural provisions of the code; or
3. To any provision that specifically states that its requirements are not subject to variance; or
4. To minimum lot size or maximum residential density requirements; or
5. To the critical areas standards in Chapter 19.37.

F. Stay of Proceedings

If a request for a variance is made in an effort to remedy a violation of Title 19 for which enforcement action has been commenced, the variance request stays all proceedings on the enforcement action until the variance has been acted upon. If, in the opinion of the mayor, a stay of proceedings would cause imminent peril to life or property, the mayor may continue enforcement action and such enforcement action may not be stayed except by a restraining order issued by superior court. If a variance request has been filed, enforcement shall be taken only to the extent that there shall no longer be imminent peril to life or property.

15.03.200 Development Agreements

A. Development Agreements Authorized

The city may enter into a development agreement pursuant to Chapter 36.70B RCW with a person having ownership or control of real property within the city or for real property outside the city as part of a proposed annexation or a service agreement.

1. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.
2. A development agreement shall be consistent with applicable development regulations adopted by the city under chapter 36.70A RCW.
3. For the purposes of this section, "development standards" includes, but is not limited to:
   a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
   b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
   c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;
   d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
   e) Affordable housing;

f) Parks and open space preservation;
g) Phasing;
h) Review procedures and standards for implementing decisions;
i) A build-out or vesting period for applicable standards; and
j) Any other appropriate development requirement or procedure.

4. Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. A permit or approval issued by the city after the execution of the development agreement must be consistent with the development agreement.
5. A development agreement shall be recorded with the real property records of Snohomish County. During the term of the development agreement, the agreement is binding on the parties and their successors, including if the city assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement.

B. Development Agreements – Public Hearing Required

1. The city shall only approve a development agreement by ordinance or resolution after a public hearing.
2. The public hearing shall be conducted in conjunction with the underlying land use action. In the event the underlying land use action does not require a public hearing, a public hearing following Type III Review Process in EMC 15.02 shall be conducted by the Hearing Examiner, with a recommendation to the City Council.
3. See EMC 15.02 for procedures for notice and conduct of public hearings for development agreements.
4. Minor modifications to development agreements, as set forth in subsection C below, do not require a public hearing.

C. Modification of Development Agreements

1. Minor Modifications.
   a) The applicant may apply for a minor modification to a development agreement following Review Process I set forth in EMC 15.02.
   b) The planning director will review and decide upon an application for a minor modification. If the planning director determines that notice to contiguous property owners should be provided regarding the minor changes, the planning director may require the proposed modification to be reviewed using Review Process II set forth in EMC 15.02.
   c) The planning director may approve a minor modification only if he or she finds that:
      i. The change is necessary because natural features of the subject property not foreseen by the applicant or by the city prior to approval of the development agreement; and
      ii. The change will not result in reducing the landscaped area, buffering areas or the amount of open space on the project required by the development agreement; and
      iii. The change will not result in increasing the residential density or gross floor area of the project as approved by the development agreement; and
      iv. The change will not result in any structure, or vehicular circulation or parking area which will adversely affect abutting property or public right-of-way, or conflict with any provisions of the development agreement or Title 19; and
      v. The planning director determines that the change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project.
2. Major Modifications
   The applicant may seek a modification to the approved site plan that does not meet all of the requirements of subsection A of this section by submitting an application which will be reviewed by the

city using the procedures set forth in EMC 15.03.200 as if it were an application for a new development agreement.

15.03.300 Unified Development Code Amendment

This section establishes the mechanism and criteria to amend the Unified Development Code, including amendments to the zoning maps.

A. Area-Wide Rezones

1. Description. An area-wide rezone is to change the zoning classification that is not site-specific.
2. Who May Initiate. Only the city may initiate area-wide rezones; the area-wide rezone may be initiated by the city council, mayor or designee.
3. Review Process. An area-wide rezone is considered by Review Process V. See EMC 15.02 for procedures.
4. Criteria. The city may decide to approve a proposal to rezone land only if it finds that:
   a) The proposal is consistent with the Everett Comprehensive Plan; and
   b) The proposal bears a substantial relation to public health, safety or welfare; and
   c) The proposal promotes the best long-term interests of the Everett community.

B. Site-Specific Rezones

1. Description. A site-specific rezone is to change the zoning classification of a specific property or properties.
2. Who May Initiate. Site specific rezones may be initiated by all property owners in the requested rezone or the city.
3. Review Process.
   a) If the rezone includes an application to amend the Comprehensive Plan, the site-specific rezone is considered by Review Process V. See EMC 15.02 for procedures.
   b) If the rezone includes does not require an amendment to the Comprehensive Plan, the site-specific rezone is considered by Review Process IIIB. See EMC 15.02 for procedures.
4. Criteria. The review authority may approve an application for a site-specific rezone if it finds that:
   a) The proposed rezone is consistent with the Everett Comprehensive Plan; and
   b) The proposed rezone bears a substantial relation to public health, safety or welfare; and the proposed rezone promotes the best long-term interests of the Everett community; and
   c) The proposed rezone mitigates any adverse impact(s) upon existing or anticipated land uses in the immediate vicinity of the subject property.
   d) If a Comprehensive Plan amendment is required in order to satisfy section 4.a. of this subsection, approval of the Comprehensive Plan amendment is required prior to or concurrently with the granting of an approval on the rezone.
5. Development Agreements. In some circumstances, in order to demonstrate the criteria for approval are met, the city may determine that a development agreement authorized pursuant to RCW 36.70B and EMC 15.03.200 are necessary.

C. Unified Code Text Amendments

1. Description. Amendment of the text of the Unified Development Code.
2. Who May Initiate. Amendments to the text of the Unified Development Code may be initiated by the city council, mayor or designee, or planning commission.
3. Review Process. Amendments are considered by Review Process V. See EMC 15.02 for procedures.
4. Criteria. The city may amend the text of the Unified Development Code if it finds that:
   a) The proposed amendment is consistent with the applicable provisions of the Everett Comprehensive Plan; and
   b) The proposed amendment bears a substantial relation to public health, safety or welfare; and
   c) The proposed amendment promotes the best long-term interests of the Everett community.

15.03.400 Comprehensive Plan Amendments

1. Description. Amendments to the Comprehensive Plan may include both text (e.g. goals and policies) and maps (e.g. land use designations).
2. Who May Initiate. Amendments to the Comprehensive Plan may be initiated as follows:
   a) Area-Wide Amendments. Area-wide amendments may be initiated only by the city council, mayor or designee, or planning commission. Area-wide amendments could include both text and map amendments.
   b) Site-Specific Amendments. Site-specific amendments may be initiated by property owners, city council, mayor or designee, or planning commission.
3. Review Process.
   a) Docket. Except as allowed by RCW 36.70A, the comprehensive plan may only be amended once per year. The city shall review all revisions as a comprehensive package of updates to the plan so the cumulative effect of all proposed amendments is fully understood. The planning director is authorized to set deadlines for applications to amend the comprehensive plan and establish the docket for consideration of amendments. See EMC 15.02 for application requirements.
   b) Amendments are considered by Review Process V. See EMC 15.02 for procedures.
4. Land Use Map. The following factors shall be considered in reviewing requests to amend the Comprehensive Plan Land Use Map.
   a) The proposed land use designation must be supported by or consistent with the existing policies of the various elements of the comprehensive plan.
   b) Have circumstances related to the subject property and the area in which it is located changed sufficiently since the adoption of the Land Use Element to justify a change to the land use designation? If so, the circumstances that have changed should be described in detail to support findings that a different land use designation is appropriate.
   c) Are the assumptions upon which the land use designation of the subject property is based erroneous, or is new information available which was not considered at the time the Land Use Element was adopted, that justify a change to the land use designation? If so, the erroneous assumptions or new information should be described in detail to enable the Planning Commission and City Council to find that the land use designation should be changed.
   d) Does the proposed land use designation promote a more desirable land use pattern for the community as a whole? If so, a detailed description of the qualities of the proposed land use designation that make the land use pattern for the community more desirable should be provided to enable the Planning Commission and City Council to find that the proposed land use designation is in the community's best interest.
   e) Should the proposed land use designation be applied to other properties in the vicinity? If so, the reasons supporting the change of several properties should be described in detail. If not, the reasons for changing the land use designation of a single site, as requested by the proponent, should be provided in sufficient detail to enable the Planning Commission and City Council to find that approval as requested does not constitute a grant of special privilege to the proponent or a single owner of property.
   f) What impacts would the proposed change of land use designation have on the current use of other properties in the vicinity, and what measures should be taken to assure compatibility with the uses of other properties in the vicinity?
   g) Would the change of the land use designation sought by the proponent create pressure to change the land use designation of other properties in the vicinity? If so, would the change of land use designation for other properties be in the best long-term interests of the community in general?
5. Comprehensive Plan Policies. The following factors shall be considered in reviewing proposed amendments to comprehensive plan policies.

a) Have circumstances related to the subject policy changed sufficiently since the adoption of the plan to justify a change to the subject policy? If so, the circumstances that have changed should be described in detail to support the proposed amendment to the policy.
b) Are the assumptions upon which the policy is based erroneous, or is new information available that was not considered at the time the plan was adopted, that justify a change to the policy? If so, the erroneous assumptions or new information should be described in detail to support the proposed policy amendment.
c) Does the proposed change in policy promote a more desirable growth pattern for the community as a whole? The manner in which the proposed policy change promotes a more desirable growth pattern should be described in detail.
d) Is the proposed policy change consistent with other existing plan policies, or does it conflict with other plan policies? The extent to which the proposed policy change is consistent with or conflicts with other existing policies should be explained in detail.