

Title 16
ENVIRONMENT¹

Chapters:

- 16.05 Environmental Procedures and Policies**
- 16.10 Shoreline Master Program**
- 16.15 Sensitive Areas**

1. For provisions on the permit application process, see Chapter 11.10 HPMC.

Chapter 16.05

ENVIRONMENTAL PROCEDURES AND POLICIES¹

Sections:

- 16.05.010 Authority and policies.
- 16.05.015 Codes adopted by reference.
- 16.05.020 Adoption by reference.
- 16.05.030 Additional definitions.
- 16.05.040 Responsible official – Designation – Duties.
- 16.05.050 Lead agency – Determination and responsibilities.
- 16.05.060 Lead agency status – Transfer to a state agency.
- 16.05.070 Categorical exemptions and threshold determinations – Adoption by reference.
- 16.05.080 Categorical exemptions and threshold determinations – Time estimates.
- 16.05.090 Categorical exemptions – Adoption by reference.
- 16.05.100 Categorical exemptions – Flexible thresholds.
- 16.05.110 Categorical exemptions – Determination.
- 16.05.120 Planned actions.
- 16.05.130 Threshold determinations – Review at conceptual stage.
- 16.05.140 Threshold determinations – Environmental checklist.
- 16.05.150 Threshold determinations – Mitigated DNS.
- 16.05.160 Consistency.
- 16.05.170 Optional DNS process.
- 16.05.180 Environmental impact statement (EIS) – Adoption by reference.
- 16.05.190 EIS – Preparation.
- 16.05.200 EIS – Additional elements.
- 16.05.210 EIS – Commenting – Adoption by reference.
- 16.05.220 Public notice.

- 16.05.230 Designation of official to perform consulted agency responsibilities.
- 16.05.240 Using existing environmental documents – Adoption by reference.
- 16.05.250 SEPA decisions – Adoption by reference.
- 16.05.260 SEPA decisions.
- 16.05.270 SEPA decisions – Substantive authority.
- 16.05.280 SEPA policies.
- 16.05.290 Appeals.
- 16.05.300 Notice of action.
- 16.05.310 Definitions – Adoption by reference.
- 16.05.320 Compliance with SEPA – Adoption by reference.
- 16.05.330 Environmentally sensitive areas.
- 16.05.340 GMA/SEPA integration.
- 16.05.350 Fees.
- 16.05.360 Forms – Adoption by reference.
- 16.05.370 WACs on file.

16.05.010 Authority and policies.

The town adopts this chapter under the State Environmental Policy Act (SEPA), Chapter 43.21C RCW and the SEPA rules, Chapter 197-11 WAC. This chapter contains the town’s SEPA procedures and policies. The SEPA rules contained in Chapter 197-11 WAC must be used in conjunction with this chapter. [Ord. 337 § 2, 1998]

16.05.015 Codes adopted by reference.

Unless otherwise specifically stated therein, all codes which are adopted or referenced in this chapter shall be as such codes now exist or are hereinafter amended. [Ord. 337 § 2, 1998]

16.05.020 Adoption by reference.

The town adopts the following sections of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference:

- WAC
- 197-11-040 Definitions
- 197-11-050 Lead agency
- 197-11-055 Timing of the SEPA process
- 197-11-060 Content of environmental review

1. Code reviser’s note: Pursuant to RCW 35.21.180, one copy of the statutes and codes adopted by reference in this chapter have been and are now on file with the town clerk and available for public inspection.

16.05.030

- 197-11-070 Limitations on actions during SEPA process
- 197-11-080 Incomplete or unavailable information
- 197-11-090 Supporting documents
- 197-11-100 Information required of applicants
- 197-11-158 GMA project review – Reliance on existing plans laws and regulations
- 197-11-164 Planned actions – Definitions and criteria
- 197-11-168 Ordinances or resolutions designating planned actions – Procedures for adoption
- 197-11-172 Planned actions – Project review
- 197-11-259 Determination of nonsignificance for MYCA remedial action

[Ord. 337 § 2, 1998]

16.05.030 Additional definitions.

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

- (1) “Town” means the town of Hunts Point, Washington.
- (2) “Department” means any division, subdivision or organizational unit of the town established by ordinance, rule or order.
- (3) “Early notice” means the town’s response to an applicant stating whether it considers issuance of the determination of significance likely for the applicant’s proposal.
- (4) Except as provided in HPMC 16.05.290, “days” for the purpose of time limits, means a day upon which the town is open for business.
- (5) “SEPA rules” means Chapter 197-11 WAC as adopted or amended by the Department of Ecology.
- (6) “Optional DNS process” means the process set forth in WAC 197-11-355 and in HPMC 16.05.170. [Ord. 337 § 2, 1998]

16.05.040 Responsible official – Designation – Duties.

(1) For those proposals for which the town is a lead agency, the responsible official shall be the town administrator or such other person as the town administrator may designate in writing. In these regulations, “town administrator” shall refer to the town administrator or his or her designee.

(2) For all proposals for which the town is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of all environmental documents, including environmental impact statements, and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference. [Ord. 337 § 2, 1998]

16.05.050 Lead agency – Determination and responsibilities.

(1) The town administrator, or the department receiving an application for, or initiating a proposal that involves a nonexempt action, shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.

(2) When the town is not the lead agency for a proposal, all departments of the town shall use and consider as appropriate either the DNS or the final EIS of the lead agency in making decisions on the proposal. No town department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency unless the town administrator determines that supplemental environmental review is necessary under WAC 197-11-600.

(3) If the town administrator receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, he or she may object to the determination. Any objection must be made to the agency originally making the determination and resolved

within 14 days of receipt of the determination or the town may petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 14-day time period. Any such petition on behalf of the town may be initiated by the responsible official or any department.

(4) The town administrator is authorized to make agreements as to lead agency status or shared lead agency’s duties for a proposal under WAC 197-11-942 and 197-11-944.

(5) The town administrator shall require sufficient information from the applicant to identify other agencies with jurisdiction. [Ord. 337 § 2, 1998]

16.05.060 Lead agency status – Transfer to a state agency.

For any proposal for a private project where the town would be the lead agency and for which there are one or more state agencies with jurisdiction, the town administrator may elect to transfer the lead agency duties to the state agency. The state agency with jurisdiction appearing first on the priority list in WAC 197-11-936 shall be the lead agency. To transfer lead agency duties, the town administrator must transmit a notice of the transfer, together with any relevant information available on the proposal, to the appropriate state agency with jurisdiction. The town administrator shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal. [Ord. 337 § 2, 1998]

16.05.070 Categorical exemptions and threshold determinations – Adoption by reference.

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

- WAC
- 197-11-300 Purpose of this part
- 197-11-305 Categorical exemptions
- 197-11-310 Threshold determination required
- 197-11-315 Environmental checklist
- 197-11-330 Threshold determination process
- 197-11-335 Additional information

- 197-11-340 Determination of nonsignificance (DNS)
- 197-11-350 Mitigated DNS
- 197-11-355 Optional DNS process
- 197-11-360 Determination of significance (DS)/initiation of scoping
- 197-11-390 Effect of threshold determination

[Ord. 337 § 2, 1998]

16.05.080 Categorical exemptions and threshold determinations – Time estimates.

The time estimates contained in this section apply when the town processes applications for all private projects and those governmental proposals submitted to the town by other agencies. The actual time may vary with the complexity of the project, the availability of staff, the cooperation of agencies with jurisdiction or expertise, and similar conditions. The time estimates contained herein shall not be construed to be mandatory.

(1) Categorical Exemptions. Except in extraordinary circumstances, the town administrator will decide whether an action is categorically exempt within seven days of receiving a completed application.

(2) Threshold Determinations.

(a) Except in extraordinary circumstances, the town administrator shall complete threshold determinations, that can be based solely upon review of the environmental checklist for the proposal, within 15 days of the date an applicant’s application and completed checklist are deemed complete.

(b) When the town administrator requires further information from the applicant or consults with other agencies with jurisdiction:

(i) The town administrator will normally request such further information within 15 days of receiving an adequate application and completed environmental checklist. A request for additional information shall be requested no later than 28 days after a project permit application is submitted pursuant to HMC 11.10.030.

(ii) Except in extraordinary circumstances, the town administrator will wait no

16.05.090

longer than 30 days for a consulted agency to respond.

(iii) Except in extraordinary circumstances, the town administrator will complete the threshold determination within 15 days of receiving the requested information from the applicant or the consulted agency.

(d) When the town must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the town administrator will, except in extraordinary circumstances, complete the studies within 30 days of receiving an adequate application and a completed checklist.

(e) Except in extraordinary circumstances, the town administrator will complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impacts described in the application, within 15 days of receiving an adequate application and completed checklist.

(f) Except in extraordinary circumstances, the town administrator will respond to a request for early notice within 10 days. The threshold determination will normally be made within 15 days of receipt of the changed or clarified proposal, environmental checklist and/or permit application.

(g) If a DS is made concurrent with the notice of application, the DS and scoping notice shall be combined with the notice of application issued under RCW 36.70B.110. Nothing in this subsection prevents the DS/scoping notice from being issued before the notice of application. If sufficient information is not available to make a threshold determination when the notice of application is issued, the DS may be issued later in the review process. [Ord. 337 § 2, 1998]

16.05.090 Categorical exemptions – Adoption by reference.

The town adopts the following rules for categorical exemptions from Chapter 197-11 WAC, as now existing or hereinafter amended, by reference, as supplemented in this chapter:

WAC

197-11-800 Categorical exemptions

197-11-880 Emergencies

197-11-890 Petitioning DOE to change exemptions

[Ord. 337 § 2, 1998]

16.05.100 Categorical exemptions – Flexible thresholds.

(1) The town establishes the following exempt levels for minor new construction based on local conditions:

(a) For residential dwelling units in WAC 197-11-800(1)(b)(i), up to four dwelling units;

(b) For agricultural structures in WAC 197-11-800(1)(b)(ii), up to 10,000 square feet;

(c) For office, school, commercial, recreational service or storage buildings in WAC 197-11-800(1)(b)(iii), up to 4,000 square feet, and up to 20 parking spaces;

(d) For parking lots in WAC 197-11-800(1)(b)(iv), up to 20 parking spaces;

(e) For landfills and excavations in WAC 197-11-800(1)(b)(v), up to 500 cubic yards.

(2) The responsible official shall send copies of all adopted flexible thresholds in excess of those listed in subsection (1) of this section to the Department of Ecology, Headquarters Office, Olympia, Washington. [Ord. 376 § 1, 2000; Ord. 337 § 2, 1998]

16.05.110 Categorical exemptions – Determination.

(1) When the town receives an application for a permit or other approval or, in the case of governmental proposals, a department initiates a proposal, the town administrator shall determine whether the permit and/or the proposal is exempt. The determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal. The town administrator shall not require completion of an environmental checklist for an exempt proposal.

(2) In determining whether a proposal is exempt, the town administrator shall determine that the proposal is properly defined, and

shall identify each permit and approval required. If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency even if the license application that triggers; the review is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the town administrator may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

(a) The town administrator shall not give authorization for:

- (i) Any nonexempt action;
- (ii) Any action that would have an adverse environmental impact; or
- (iii) Any action that would limit the choice of alternatives;

(b) The town administrator may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt actions were not approved; and

(c) The town administrator may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if the nonexempt actions were not approved. [Ord. 337 § 2, 1998]

16.05.120 Planned actions.

(1) A planned action does not require a threshold determination or the preparation of an environmental impact statement, but is subject to environmental review and mitigation under SEPA.

(2) A “planned action” means one or more types of project action that:

- (a) Are designated planned actions by an ordinance or resolution adopted by the town;
- (b) Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:
 - (i) A comprehensive plan or subarea plan adopted under Chapter 36.70A RCW, or

- (ii) A fully contained community, a master planned resort, a master planned development or a phased project;

- (c) Are subsequent or implementing projects for the proposals listed in subsection (3)(b)(ii) of this section;

- (d) Are located within an urban growth area, as defined in RCW 36.70A.030;

- (e) Are not essential public facilities, as defined in RCW 36.70A.200; and

- (f) Are consistent with the town’s comprehensive plan adopted under Chapter 36.70A RCW.

(3) Limitations on Planned Actions. The town administrator shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the town, and may limit a planned action to a time period identified in the environmental impact statement or the adoption of this code. [Ord. 337 § 2, 1998]

16.05.130 Threshold determination – Review at conceptual stage.

(1) Pre-application conferences shall also address environmental issues to familiarize the applicant with the town’s SEPA regulations, process, policies and objectives.

(2) Where the town’s only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the town administrator conduct environmental review prior to submission of the detailed plans and specifications.

(3) In addition to the environmental documents, an applicant shall submit the following information for early environmental review:

- (a) Site plan;
- (b) Circulation plans showing ingress and egress;
- (c) Utility locations;
- (d) Topography;
- (e) Building heights;
- (f) A lighting plan;
- (g) A description of all landscape buffers and screening; and

16.05.140

(h) Other information as the town administrator may determine. [Ord. 337 § 2, 1998]

16.05.140 Threshold determinations – Environmental checklist.

(1) A completed environmental checklist shall be filed at the same time as an application for a permit, license, certificate or other approval not exempted by this chapter. The checklist shall be in the form of WAC 197-11-960 with such additions as may be required by the town administrator in accordance with WAC 197-11-960(4).

(2) A checklist is not needed if the town administrator and the applicant agree that an EIS is required, SEPA compliance has been completed, or that SEPA compliance has been initiated by another agency.

(3) The town administrator shall use the environmental checklist to determine the lead agency and, if the town is the lead agency, for making the threshold determination.

(4) For private proposals, the applicant is required to complete the environmental checklist. The town administrator may provide assistance as necessary. For town proposals, the department initiating the proposal shall complete the environmental checklist for its proposal.

(5) The town administrator may decide to complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

(a) The town has technical information on a question or questions that are unavailable to the private applicant; or

(b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

(6) Submission of the environmental checklist shall be considered an element of the development permit application as described in HMC 11.10.030, and shall be subject to the determination of completeness requirements set forth in HMC 11.10.030. [Ord. 337 § 2, 1998]

16.05.150 Threshold determinations – Mitigated DNS.

(1) The town administrator may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal or on changes to, or clarifications of, the proposal made by the applicant.

(2) An applicant may request early notice of whether a DS is likely. The request must:

(a) Be in writing;

(b) Follow submission of a permit application and environmental checklist for a proposal for which the town is the lead agency; and

(c) Precede the town's actual threshold determination for the proposal.

(3) The town administrator's response to a request for early notice shall:

(a) State whether the town administrator currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the town administrator to consider a DS; and

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

(4) When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the town administrator shall base the threshold determination on the changed or clarified proposal.

(a) If the town administrator indicated specific mitigation measures in his or her response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the town administrator shall issue and circulate a declaration of nonsignificance if no additional information or mitigation measures are required.

(b) If the town administrator indicated areas of concern, but did not indicate specific mitigation measures that allow issuance of a DNS, the town administrator shall make the threshold determination and issue a DNS or DS as appropriate.

(c) The applicant's proposed mitigation measures, clarifications, changes or conditions must be in writing and must be specific.

(d) Mitigation measures contained in agency staff reports, studies or other documents which justify issuance of a mitigated DNS may be incorporated in the DNS by reference.

(5) The town administrator shall not act upon a proposal for which a mitigated DNS, has been issued for 14 days after the date of issuance.

(6) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the licensing or permitting decision and may be enforced in the same manner as any term or condition of the permit or enforced in any matter specifically prescribed by the town administrator. Failure to comply with the designated mitigation measures shall be grounds for suspension and/or revocation of any permit or approval granted.

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

(8) The town administrator's written response under subsection (3) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not require the responsible official to consider the clarifications or changes in the threshold determination. [Ord. 337 § 2, 1998]

16.05.160 Consistency.

The town administrator's environmental review shall include a determination of the proposal's consistency with existing development regulations and the comprehensive plan. The consistency review shall determine whether the impacts of the proposal have been addressed in development regulations or the comprehensive plan. The planning decisions made in these documents shall not be re-

analyzed in the environmental review of individual project proposals, nor will additional studies or mitigation be required if existing regulations and documents have adequately addressed the proposal's probable adverse impacts. [Ord. 337 § 2, 1998]

16.05.170 Optional DNS process.

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

(2) If the optional process set forth in this section is used, the responsible official 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 the 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 (in addition, the town administrator may choose to maintain a general mailing list for the threshold determination distribution);

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

(c) Comply with the requirements for a notice of application and public notice in RCW 36.70B.110; and

(d) Send the notice of application and environmental checklist to:

(i) Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision

16.05.180

whose public services would be affected as a result of implementation of the proposal; and

(ii) Anyone requesting a copy of the environmental checklist for the specific proposal (in addition, the town may choose to maintain a general mailing list for checklist distribution).

(3) The town administrator shall consider timely comments on the notice of application and either:

(a) Issue a DNS or mitigated DNS with no comment period using the procedures in subsection (4) of this section;

(b) Issue a DNS or mitigated DNS with a comment period using the procedures in subsection (4) of this section, if a comment period is necessary;

(c) Issue a DS; or

(d) Require additional information or studies prior to making a threshold determination.

(4) If a DNS or mitigated DNS is issued under subsection (3)(a) or (3)(b) of this section, the town administrator 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. [Ord. 337 § 2, 1998]

16.05.180 Environmental impact statement – Adoption by reference.

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

WAC

197-11-400	Purpose of EIS
197-11-402	General requirements
197-11-405	EIS types
197-11-406	EIS timing
197-11-408	Scoping
197-11-410	Expanded scoping
197-11-420	EIS preparation
197-11-425	Style and size
197-11-430	Format
197-11-435	Cover letter or memo
197-11-440	EIS contents

197-11-442 Contents of EIS on nonproject proposals

197-11-443 EIS contents when prior nonproject EIS

197-11-444 Elements of the environment

197-11-448 Relationship of EIS to other considerations

197-11-450 Cost-benefit analysis

197-11-455 Issuance of DEIS

197-11-460 Issuance of FEIS

[Ord. 337 § 2, 1998]

16.05.190 EIS – Preparation.

(1) Preparation of draft and final EISs and SEISs shall be under the direction of the town administrator. Before the town issues an EIS, the town administrator 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 at the town administrator's option by the town staff, the applicant or by a consultant approved by the town administrator. If the town administrator requires an EIS for a proposal, and determines that someone other than the town staff will prepare the EIS, the town administrator shall notify the applicant immediately after completion of the threshold determination. The town administrator shall also notify the applicant of the town's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution. Subject to delays caused by the applicant's failure to provide needed information, and other delays beyond the town's control, the draft and final EISs will be completed within one year of the date of the declaration of significance, unless the town administrator and the applicant agree in writing to a different estimated time period for completion.

(3) The town administrator may require an applicant to provide information that the town does not possess, including specific investigations. The applicant, however, is not required to supply information that is not required under this chapter or that is being requested from another agency; provided, that this does not apply to information the town may request under another ordinance or statute.

(4) An EIS may be combined with the recommendation or report on the proposal, or may be issued as a separate document. If issued as a combined document, the substantive SEPA decisions or recommendations shall be clearly identified. [Ord. 337 § 2, 1998]

16.05.200 EIS – Additional elements.

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function of purpose under this chapter:

- (1) Employment;
- (2) Economic values as provided by Chapter 43.21H RCW;
- (3) Social policy analysis;
- (4) Cost-benefit analysis;
- (5) Such other elements as may be related to impacts of the proposal. [Ord. 337 § 2, 1998]

16.05.210 EIS – Commenting – Adoption by reference.

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

WAC

197-11-500	Purpose of this part
197-11-502	Inviting comment
197-11-504	Availability and cost of environmental documents
197-11-510	Public notice
197-11-535	Public hearings and meetings
197-11-545	Effect of no comment
197-11-550	Specificity of comments
197-11-560	FEIS response to comments
197-11-570	Consulted agency costs to assist lead agency

[Ord. 337 § 2, 1998]

16.05.220 Public notice.

(1) Whenever public notice is required, the town administrator shall follow the procedures set forth in this section.

(2) Public notice will be given in the following situations:

(a) When the town administrator issues the following determinations of nonsignificance (DNS):

(i) DNS involving another agency with jurisdiction,

(ii) DNS involving the demolition of any structure or facility not exempted by WAC 197-11-800(2)(f) or 197-11-880,

(iii) DNS involving the issuance of a clearing or grading permit not exempted by WAC 197-11-800 through 197-11-890,

(iv) DNS issued following a request for early notice pursuant to WAC 197-11-350(2),

(v) Mitigated DNS issued pursuant to WAC 197-11-350(3),

(vi) DNS issued following the withdrawal of a DS pursuant to WAC 197-11-360(4);

(b) When the town administrator issues a determination of significance to commence scoping;

(c) When a draft EIS (DEIS) is available for public comment;

(d) Whenever the town holds a public hearing pursuant to WAC 197-11-535;

(e) Whenever the town administrator determines that public notice is required.

(3) The town administrator shall give public notice using subsections (a) and (b) and, in the discretion of the town administrator, by any of the following methods:

(a) Posting the property, for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, town or general area where the proposal is located, when the notice coincides with a license or action requiring published legal notice;

(c) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Any other reasonable method calculated to inform the public and other agencies.

16.05.230

(4) Notice of public hearings shall be published no later than 14 days before the hearing. Notice of public hearings or nonproject proposals shall be published in a newspaper of general circulation in the town.

(5) The town administrator may require an applicant to compensate the town for the costs of compliance with the public notice requirements for the applicant's proposal or require the applicant to provide services and materials. [Ord. 337 § 2, 1998]

16.05.230 Designation of official to perform consulted agency responsibilities.

(1) The town administrator shall prepare written comments for the town in response to a consultation request prior to a threshold determination, participation in scoping and review of a draft EIS.

(2) The town administrator shall assure compliance with WAC 197-11-550 whenever the town is a consulted agency, and is authorized to develop operating procedures to ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate town departments. [Ord. 337 § 2, 1998]

16.05.240 Using existing environmental documents – Adoption by reference.

The town adopts the following sections of Chapter 197-11 WAC as now existing or hereinafter amended, by reference:

WAC

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

[Ord. 337 § 2, 1998]

16.05.250 SEPA decisions – Adoption by reference.

The town adopts the following sections of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference:

WAC

- 197-11-650 Purpose of this part
- 197-11-655 Implementation
- 197-11-660 Substantive authority and mitigation
- 197-11-680 Appeals
- 197-11-700 Definitions

[Ord. 337 § 2, 1998]

16.05.260 SEPA decisions.

The DNS or draft EIS for any proposal shall accompany the town staff's recommendation to any advisory or decision-making body such as the planning commission or town council. [Ord. 337 § 2, 1998]

16.05.270 SEPA decisions – Substantive authority.

(1) The town administrator may attach conditions to a permit or approval for a proposal only when:

(a) Such conditions are necessary to mitigate specific adverse environmental impacts clearly identified in environmental documents prepared pursuant to this chapter; and

(b) Such conditions are in writing; and

(c) Such conditions are reasonable and capable of being accomplished; and

(d) The town administrator has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(e) Such conditions are based on one or more policies in HPMC 16.05.280 and cited in the permit, approval, license or other decision document.

(2) The town administrator may deny a permit or approval for a proposal on the basis of SEPA only when:

(a) A finding is made that approving the proposal will result in significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS; and

(b) A finding is made that there are no reasonable mitigation measures that are sufficient to mitigate the identified impact; and

(c) The denial is based on one or more policies identified in HPMC 16.05.280 and identified in writing in the decision document. [Ord. 337 § 2, 1998]

16.05.280 SEPA policies.

(1) The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the town.

(2) The town adopts by reference the policies in the following town codes, ordinances, resolutions and plans:

- (a) Zoning ordinance (HPMC Title 18);
- (b) Comprehensive plan;
- (c) Subdivision ordinances (HPMC Title 17);
- (d) Building codes (HPMC Title 15);
- (e) Planning and Development (HPMC Title 11);
- (f) Public Ways (HPMC Title 12);
- (g) Public Utilities (HPMC Title 13);
- (h) Boating and Harbors (HPMC Title 14);
- (i) Health and safety ordinances (HPMC Title 8);
- (j) Critical areas ordinances; and
- (k) Any other policy of the town which has been incorporated into any ordinance, resolution, regulation, plan or code and which provides a reasonable basis for attaching conditions to the approval, or denying the proposal in order to mitigate environmental impacts. [Ord. 337 § 2, 1998]

16.05.290 Appeals.

(1) SEPA appeals shall be limited to review of final threshold determinations, the adequacy of final environmental impact statements, mitigation or failure to mitigate environmental impacts, and project denials. SEPA appeals and any appeals or required public hearings on the underlying permit(s) shall be before the hearing examiner, in accordance with the procedures set forth in this section.

(2) SEPA appeals must be filed in writing with the town administrator within 14 calendar days of the date of the SEPA decision unless there is a time period for appealing an underlying permit decision, in which case the SEPA appeal shall be filed within the time period provided for the permit or decision. The hearing date for appeals of declarations of significance, issued before a decision on the permit, shall be not more than 45 days from the date the appeal is filed.

(3) On receipt of a written notice of appeal, the town administrator shall determine if the notice is timely. If the notice is untimely, the town administrator shall advise the person(s) who filed the notice that no appeal hearing will be scheduled because the notice was untimely. If the appeal is timely, the town administrator shall set a hearing date and transmit the appeal notice to the town clerk.

(4) SEPA appeals shall be open record hearings as described in HPMC 11.10.130. The hearing examiner shall take sworn testimony, consider all relevant evidence, and decide the issues de novo; provided, however, that the town administrator's decision(s) shall be given substantial weight. The hearing examiner shall issue a written decision, which shall include specific findings of fact and conclusions of law, within 10 working days of the close of the hearing unless a longer period is agreed to in writing by the applicant and the hearing examiner.

(5) The hearing examiner's decision shall be the final decision of the town. Appeals of the hearing examiner's decision shall be filed in the King County superior court. [Ord. 406 § 8, 2002; Ord. 337 § 2, 1998]

16.05.300 Notice of action.

(1) The town administrator shall determine whether the town or the proponent of a project or action shall publish a notice of action pursuant to RCW 43.21C.080.

(2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the town clerk, applicant or proponent pursuant to RCW 43.21C.080. [Ord. 337 § 2, 1998]

16.05.310

16.05.310 Definitions – Adoption by reference.

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

WAC

197-11-700	Definitions
197-11-702	Act
197-11-704	Action
197-11-706	Addendum
197-11-708	Adoption
197-11-710	Affected tribe
197-11-712	Affecting
197-11-714	Agency
197-11-716	Applicant
197-11-718	Built environment
197-11-720	Categorical exemption
197-11-721	Closed record appeal
197-11-722	Consolidated appeal
197-11-724	Consulted agency
197-11-726	Cost-benefit analysis
197-11-728	County/city
197-11-730	Decision maker
197-11-732	Department
197-11-734	Determination of nonsignificance (DNS)
197-11-736	Determination of significance (DS)
197-11-738	EIS
197-11-740	Environment
197-11-742	Environmental checklist
197-11-744	Environmental document
197-11-746	Environmental review
197-11-748	Environmentally sensitive area
197-11-750	Expanded scoping
197-11-752	Impacts
197-11-754	Incorporation by reference
197-11-756	Lands covered by water
197-11-758	Lead agency
197-11-760	License
197-11-762	Local agency
197-11-764	Major action
197-11-766	Mitigated DNS
197-11-768	Litigation
197-11-770	Natural environment
197-11-772	NEPA

- 197-11-774 Nonproject
- 197-11-775 Open record hearing
- 197-11-776 Phased review
- 197-11-778 Preparation
- 197-11-780 Private project
- 197-11-782 Probable
- 197-11-784 Proposal
- 197-11-786 Reasonable alternative
- 197-11-788 Responsible official
- 197-11-790 SEPA
- 197-11-792 Scope
- 197-11-793 Scoping
- 197-11-794 Significant
- 197-11-796 State agency
- 197-11-797 Threshold determination
- 197-11-799 Underlying governmental action
[Ord. 337 § 2, 1998]

- 197-11-936 agency, not a county/city, and one or more state agencies
Lead agency for private projects requiring licenses from more than one state agency
- 197-11-938 Lead agencies for specific proposals
- 197-11-940 Transfer of lead agency status to a state agency
- 197-11-942 Agreements on lead agency status
- 197-11-944 Agreements on division of lead agency duties
- 197-11-946 DOE resolution of lead agency disputes
- 197-11-948 Assumption of lead agency status
[Ord. 337 § 2, 1998]

16.05.320 Compliance with SEPA – Adoption by reference.

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

WAC

- 197-11-900 Purpose of this part
- 197-11-902 Agency SEPA policies
- 197-11-914 SEPA fees and costs
- 197-11-916 Application to ongoing actions
- 197-11-920 Agencies with environmental expertise
- 197-11-922 Lead agency rules
- 197-11-924 Determining the lead agency
- 197-11-926 Lead agency for governmental proposals
- 197-11-928 Lead agency for public and private proposals
- 197-11-930 Lead agency for private projects with one agency with jurisdiction
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city
- 197-11-934 Lead agency for private projects requiring licenses from a local

16.05.330 Environmentally sensitive areas.

(1) The town planning commission shall designate environmentally sensitive areas under the standards of WAC 197-11-908 and shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with the town clerk and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designation shall have full force and effect of law as of the date of filing.

(2) The town shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The town shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

(3) Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped. [Ord. 337 § 2, 1998]

16.05.340 GMA/SEPA integration.

The town adopts by reference the following sections of Chapter 197-11 WAC relating to integration of SEPA with Growth Management Act processes, analysis, and documents.

16.05.350

These sections are adopted as now existing, or as hereafter amended, and as supplemented in this chapter:

WAC

197-11-210

197-11-220

197-11-228

197-11-230

197-11-232

197-11-235

[Ord. 337 § 2, 1998]

16.05.350 Fees.

The town shall require the following fees for its activities in accordance with the provisions of this chapter:

(1) **Threshold Determination.** For every environmental checklist the town will review when it is lead agency, the town shall collect a fee from the proponent of the proposal prior to undertaking the threshold determination. The amount of the fee shall be as provided in the town council's master fee resolution. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of fees. When the town assists the applicant or completes the environmental checklist at the applicant's request or under HPMC 16.05.140 an additional fee in the amount of the town's actual processing costs shall be collected. In the event the town utilizes a consultant to assist the town in making the threshold determination, the applicant shall pay the consultant's projected fee to the town prior to the consultant being retained. All consultant fees will be paid by the applicant.

(2) **Environmental Impact Statement.**

(a) When the town is the lead agency for a proposal requiring an EIS and the town administrator determines that the EIS shall be prepared by employees of the town, the town may charge and collect a reasonable fee from any applicant to cover costs incurred, including overhead, by the town in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation.

(b) The town administrator may determine that the town will contract directly with a consultant for preparation of an EIS, or a por-

tion of the EIS, for activities initiated by some persons or entity other than the town and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by the town.

(c) The applicant shall pay the projected amount to the town prior to the town commencing review or shall enter into an agreement with the town administrator for payment of the projected amount. The town will refund the excess of any fees paid, if any, at the completion of the EIS. If the town's costs exceed the projected costs, the applicant shall immediately pay the excess. If a proposal is modified so that an EIS is no longer required, the town administrator shall refund any fees collected under subsections (2)(a) or (2)(b) of this section which remain after incurred costs, including overhead, are paid.

(3) The town administrator may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

(4) The town administrator may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by Chapter 42.17 RCW. [Ord. 337 § 2, 1998]

16.05.360 Forms – Adoption by reference.

The town adopts the following forms and sections of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference:

WAC

197-11-960 Environmental checklist

197-11-965 Adoption notice

197-11-970 Determination of nonsignificance (DNS)

197-11-980 Determination of significance (DS) and scoping notice

197-11-985 Notice of assumption of lead agency status

197-11-990 Notice of action

[Ord. 337 § 2, 1998]

16.05.370 WACs on file.

The town clerk shall maintain on file for public use and examination one copy of the Washington Administrative Code sections referred to herein. [Ord. 337 § 2, 1998]

Chapter 16.10

SHORELINE MASTER PROGRAM

Sections:

16.10.010 Adopted.

16.10.010 Adopted.

The town of Hunts Point shoreline master program, dated June 15, 1975, approved by the Department of Ecology of the state of Washington on August 12, 1975 (Chapter 173-19 WAC), a true copy of which is attached to the ordinance codified in this chapter and by this reference incorporated herein, is hereby adopted as the shoreline master program for the town of Hunts Point. [Ord. 122 § 1, 1975]

Chapter 16.15

SENSITIVE AREAS

Sections:

- 16.15.010 Purpose.
- 16.15.020 Designation.
- 16.15.030 Scope.
- 16.15.040 Conflicting regulations.
- 16.15.050 Applicability.
- 16.15.060 Authority.
- 16.15.070 Determination of wetland boundary.
- 16.15.080 Existing regulations.
- 16.15.090 Prohibited activities.
- 16.15.100 Regulated activities.
- 16.15.110 Allowed activities.
- 16.15.120 Enforcement.

16.15.010 Purpose.

The town council finds that the environmentally sensitive areas of the town are limited to the wetland classification. Wetlands and their existing buffer areas are valuable and fragile natural resources. The protection of these important resources contributes to the ecological balance of the area, maintains existing bird and animal habitat and enhances the living environment of the people of the town.

Development within wetlands and/or the filling of wetlands can result in the deterioration or loss of the fragile wetland environment. Among the results of such development are the degradation of wildlife and fisheries habitat, the loss of storm water retention capacity and the compromise of water quality of streams and lakes. Buffer areas are important to the maintenance and protection of wetland functions and values.

It is therefore desirable and in keeping with the wishes of the people and the council of the town of Hunts Point to ensure protection for publicly held wetland areas by acknowledging them to be environmentally sensitive and designating them as “sensitive areas.”

It is the policy of the town of Hunts Point to restrict development so as to avoid or minimize damage to wetlands. In addition, it is the intent that activities in or affecting wetlands not threaten public safety, cause nuisances,

destroy or degrade natural wetland functions and values, decrease wildlife breeding and feeding areas, or interfere with public rights to use and maintain navigable waters and the recreational opportunities provided by wetlands for such activities such as fishing, boating, hiking, bird watching, photography and other passive uses, including significant view corridors.

The town council of Hunts Point has chosen to further enhance its commitment to the preservation of wetland habitat by enacting provisions for the preservation of “sensitive areas.” The town takes this action to comply with the Growth Management Act except where such action would result in the unconstitutional taking of private property. [Ord. 252 § 1, 1992]

16.15.020 Designation.

The Wetherill Nature Preserve shall be designated as a “sensitive area” because of its valuable wetlands and natural habitat. [Ord. 252 § 2, 1992]

16.15.030 Scope.

This chapter establishes guidelines for the protection of designated “sensitive areas” within the town of Hunts Point, specifically the Wetherill Nature Preserve. The Wetherill Nature Preserve contains approximately 16 acres in relation to the town’s 205-acre area. The Preserve containing a wetland area of approximately six acres is located at the head of Cozy Cove on Lake Washington. It is owned jointly by the towns of Hunts Point and Yarrow Point. The Wetherill Nature Preserve was donated in perpetuity to the towns in 1988 and is a highly valued amenity in both communities. The Preserve is currently regulated and will continue to be regulated by the Wetherill Nature Preserve commission for the protection of plant life and wildlife habitat for the use and benefit of the public. The Preserve is also identified and governed by the Hunts Point shoreline master program. [Ord. 252 § 3, 1992]

16.15.040 Conflicting regulations.

It is not intended that this chapter repeal, abrogate, or impair any existing regulations; however, where this chapter imposes greater

restrictions, the provisions of this chapter shall apply. [Ord. 252 § 4, 1992]

16.15.050 Applicability.

When any provision of any other ordinance of the town of Hunts Point conflicts with this chapter, that which provides more protection to wetlands and wildlife habitat shall apply. This chapter shall apply to all wetlands designated as “sensitive areas” and situated within the formal limits of the town of Hunts Point. It is intended to address only property designated under this chapter as “sensitive area.” The remainder of Hunts Point, including its shoreline, is regulated outside of this chapter. [Ord. 252 § 4.1, 1992]

16.15.060 Authority.

The town council and building official are authorized to carry out the provisions of this chapter, including the determination of appropriate mitigation for proposed actions. [Ord. 252 § 4.2, 1992]

16.15.070 Determination of wetland boundary.

Determination of the exact location of wetland boundaries shall be the responsibility of the town council. [Ord. 252 § 4.3, 1992]

16.15.080 Existing regulations.¹

The town of Hunts Point has existing ordinances to regulate development and to protect and preserve the town’s ecology and natural amenities. Existing town ordinances and development policies continue to be among the most rigorous in this state with regard to the preservation of natural native landscape. Land containing or abutting potentially environmentally sensitive areas will continue to be governed and protected by the town through those existing ordinances and the town’s permit process. The policy of the town is to avoid or minimize damage to wetlands and sensitive areas. Existing conditions and zoning regulations within the town of Hunts Point and

neighboring town of Yarrow Point provide adequate buffer areas for designated “sensitive areas.” [Ord. 252 § 4.4, 1992]

16.15.090 Prohibited activities.

All development in wetlands designated as “sensitive areas” is prohibited. Any activity which would result in the destruction or material degradation of a designated “sensitive area” is prohibited. [Ord. 252 § 5.1, 1992]

16.15.100 Regulated activities.

The following activities are prohibited within designated “sensitive areas” unless adverse impacts to habitat and wetlands can be mitigated to the satisfaction of the town council, using the Washington State Department of Wildlife and the Department of Ecology guidelines:

- (1) Dumping, discharging or filling with any material.
- (2) Expansion of any structure.
- (3) Destruction of native wetland vegetation through clearing, harvesting or shading of vegetation that would degrade the character of the “sensitive area.”
- (4) Activities that would result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, which include the quantity or the introduction of pollutants. [Ord. 252 § 5.2, 1992]

16.15.110 Allowed activities.

The following uses shall be allowed within a “sensitive area” to the extent that they are not prohibited by any other ordinance:

- (1) Enhancement, conservation or preservation of soil, water vegetation, fish, shellfish and other wildlife;
- (2) Outdoor recreational activities such as bird watching, photography, walking and non-motorized boating;
- (3) Education, scientific research and use of nature trails;
- (4) Navigation aids and boundary markers;
- (5) Maintenance necessary to the preservation of water quality, collection and removal of silt, control of erosion and the preservation of existing navigable waters;

1. See also Ch. 15.45 HPMC (Site Development) and Ch. 11.10 HPMC (Permit Process).

16.15.120

- (6) Removal of nonnative vegetation;
- (7) Maintenance and extension of nature trails. [Ord. 252 § 5.3, 1992]

16.15.120 Enforcement.

(1) Violation notices and administrative orders requiring the restoration of the site and mitigation of all damages and the institution of legal actions shall be directed by the town council of Hunts Point.

(2) Restoration shall be to the satisfaction of the town council.

(3) Each violation shall be a separate offense. A knowing and willful continuance of a violating activity or condition shall be treated as a separate offense.

(4) All costs for restoration of damages and all costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator. [Ord. 252 § 6, 1992]