

**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Public Hearing and Discussion on Proposed Ordinance 506, New SEPA Procedures		Meeting Date: March 2, 2009
Department: Community Development	Attachments: 1. Proposed Ord. 506 2. Existing SEPA Procedures 3. Comparison of Procedures	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A
Contact: Scott Greenberg, Comm. Dev. Director		
Telephone: (206) 248-5519		
Adopted Work Plan Priority: Yes X No	Work Plan Item Description: Review Development Codes	
<p>PURPOSE/REQUIRED ACTION: The purpose of this agenda item is for the Council to take public comment on and discuss proposed new procedures for implementing the State Environmental Policy Act (SEPA) in Burien (Attachment 1). No action is required at this meeting.</p> <p>BACKGROUND (Include prior Council action & discussion): All government actions are potentially subject to SEPA. RCW 43.21C and WAC 197-11 provide the legal statute and administrative rules for following SEPA. Much of what we do related to SEPA can be found in these State documents. Each jurisdiction must adopt a set of local SEPA procedures to help implement SEPA.</p> <p>In 1993, Burien adopted King County’s SEPA procedures by reference, with modifications to recognize that Burien was a city. Amendments were made in 1995, 1998, 2004 (adding an “urban infill exemption”) and 2005 (adding “Planned Actions”). The current procedures (Attachment 2) have become difficult to use, partially because references to King County procedures and codes are difficult to use, and some are not applicable to Burien’s current permit processing framework. The current rules are also in need of general updating to reflect more contemporary review standards and processes. The resulting Ordinance will place all of Burien SEPA procedures in one BMC chapter, with references only to State laws (which is common in all local SEPA procedures).</p> <p>Attachment 3 is a summary-level comparison between sections of the existing and proposed procedures. Many sections of Ord. 506 are derived from existing language in King County Code 20.44, which is referenced by our existing SEPA procedures (BMC 14.05). Bringing these sections over into Ord. 506 will make our procedures easier to use and understand. Policy-level changes are in proposed BMC 14.10.090 (Substantive Authority—list of “SEPA Documents”), BMC 14.10.040 (Categorical Exemptions—proposal to raise residential exemption levels from 8 units to 20 units—the maximum allowed by State law)</p> <p>Following the hearing, discussion and direction to staff, Ordinance No. 506 can be placed on your March 16th meeting agenda (business or consent) for action.</p> <p>OPTIONS (Including fiscal impacts):</p> <ol style="list-style-type: none"> 1. Modify proposed Ordinance No. 506. 2. Do not adopt proposed Ordinance No. 506 		
Administrative Recommendation: Hold public hearing, discuss testimony and proposed ordinance, discussion and give staff direction as needed.		
Committee Recommendation: N/A		
Advisory Board Recommendation: N/A		
Suggested Motion: N/A		
Submitted by: Scott Greenberg, AICP		
Administration _____	City Manager _____	
Today’s Date: February 23, 2009	File Code: \\File01\records\CC\Agenda Bill 2009\030209cd-1 SEPA Procedures.docx	

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 506

AN ORDINANCE OF THE CITY OF BURIEN, REPEALING BURIEN MUNICIPAL CODE CHAPTER 14.05, SEPA PROCEDURES AND POLICIES, AND CREATING A NEW BURIEN MUNICIPAL CODE CHAPTER 14.10, STATE ENVIRONMENTAL POLICY ACT PROCEDURES, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, pursuant to RCW 43.21C and WAC 197-11, City SEPA procedures and policies were first established in 1993 upon the official incorporation of the City; and

WHEREAS, these provisions have been amended several times since 1993; and

WHEREAS, the City wishes to have internally consistent, contemporary environmental procedures and to assure for its citizens that land development will meet the highest practical environmental standards;

WHEREAS, the City Council held a public hearing on this proposed ordinance on March 2, 2009;

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

Section 1: Repealer. Burien Municipal Code Chapter 14.05, SEPA Procedures and Policies, is hereby repealed.

Section 2: Adoption of New Environmental Policies and Procedures. Burien Municipal Code Chapter 14.10, State Environmental Policy Act Procedures, is hereby adopted as shown on Exhibit A.

Section 3: Severability. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4: Savings. The enactments of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this ordinance.

Section 5: Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2009.

CITY OF BURIEN

Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Christopher Bacha
Kenyon Disend, PLLC
Interim City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No. 506
Date of Publication:

ORDINANCE 506, EXHIBIT A

**Burien Municipal Code Chapter 14.10
STATE ENVIRONMENTAL POLICY ACT PROCEDURES
DRAFT**

Sections:

14.10.010	Definitions and abbreviations.
14.10.020	Lead agency and responsible official.
14.10.030	Purpose and general requirements.
14.10.040	Categorical exemptions and threshold determinations.
14.10.050	Planned actions.
14.10.060	Environmental impact statements and other environmental documents.
14.10.070	Comments and public notice.
14.10.080	Use of existing environmental documents.
14.10.090	Substantive authority.
14.10.100	SEPA/GMA integration.
14.10.110	Appeals of determination of nonsignificance and adequacy of a final EIS.
14.10.120	Department procedural rules.

14.10.010 Definitions and abbreviations.

(1) The City of Burien adopts by reference the definitions contained in WAC 197-11-700 through 197-11-799. In addition, the following definitions are adopted for this chapter:

- a. "City Council" means the Burien City Council.
- b. "Department" means the City of Burien Department of Community Development.
- c. "Director" means the director of the City of Burien Department of Community Development.

(2) The following abbreviations are used in this chapter:

- a. SEPA—State Environmental Policy Act.
- b. DNS—Determination of nonsignificance.
- c. DS—Determination of significance.
- d. EIS—Environmental impact statement

14.10.020 Lead agency and responsible official.

The procedures and standards regarding lead agency responsibility contained in WAC [197-11-050](#) and [197-11-922](#) through [197-11-948](#) are adopted, subject to the following:

(1) The department shall serve as the lead agency and the director shall serve as the responsible official for all SEPA activity by the City of Burien, unless otherwise designated by the city manager.

14.10.030 Purpose and general requirements.

The procedures and standards regarding the timing and content of environmental review specified in WAC [197-11-055](#) through [197-11-100](#) are adopted subject to the following:

(1) Pursuant to WAC [197-11-055](#)(4), the department shall adopt rules and regulations establishing a process for environmental review at the conceptual stage of permit applications that require detailed project plans and specifications.

- (2) The optional provision of WAC [197-11-060](#)(3)(c) is adopted.
- (3) Under WAC [197-11-100](#), the applicant shall prepare the initial environmental checklist, unless the lead agency specifically elects to prepare the checklist. The lead agency shall make a reasonable effort to verify the information in the environmental checklist and shall have the authority to determine the final content of the environmental checklist.
- (4) The director may set reasonable deadlines for the submittal of information, studies, or documents necessary for, or subsequent to, threshold determinations. Failure to meet such deadlines shall cause the application to be deemed withdrawn, and plans or other data previously submitted for review may be returned to the applicant together with any unexpended portion of the application review fees.

14.10.040 Categorical exemptions and threshold determinations.

- (1) The City of Burien adopts the standards and procedures specified in WAC 197-11-300 through 197-11-390 and 197-11-800 through 197-11-890 for determining categorical exemptions and making threshold determinations subject to the following:
 - a. The following exempt threshold levels are hereby established pursuant to WAC [197-11-800](#)(1)(c) for the exemptions in WAC [197-11-800](#)(1)(b):
 - i. The construction or location of any residential structures of up to 20 dwelling units;
 - ii. The construction of an office, school, commercial, recreational, service, or storage building with up to 12,000 square feet of gross floor area, and with associated parking facilities designed for up to 40 automobiles;
 - iii. The construction of a parking lot designed for up to 40 automobiles;
 - iv. Any fill or excavation of up to 500 cubic yards throughout the total lifetime of the fill or excavation.
 - b. The determination of whether a proposal is categorically exempt shall be made by the department.
- (2) New residential or mixed use development within the urban center designated in the Burien Comprehensive Plan that is consistent with the goals, policies, density and intensity of use called for in the Burien Comprehensive Plan, is categorically exempt from RCW 43.21C pursuant to RCW 43.21C.229.
- (3) Review and issuance of a threshold determination shall follow the procedures for a Type 1 review pursuant to BMC 19.65.
- (4) The mitigated DNS provision of WAC [197-11-350](#) shall be enforced as follows:
 - a. If the department issues a mitigated DNS, conditions requiring compliance with the mitigation measures that were specified in the application and environmental checklist

shall be deemed conditions of any decision or recommendation of approval of the action.

- b. If at any time the proposed mitigation measures are withdrawn or substantially changed, the responsible official shall review the threshold determination and, if necessary, may withdraw the mitigated DNS and issue a DS.

14.10.050 Planned actions.

(1) The purpose of this section is to streamline and expedite the permit review process for projects that qualify as planned actions.

(2) Development proposals within Special Planning Area 4 as designated in the Burien Comprehensive Plan are designated to be planned actions if:

- a. The significant environmental impacts of the proposal have been adequately addressed in the Final Supplemental Environmental Impact Statement (hereafter "SEIS") prepared for the Northeast Special Planning Area issued November 12, 2002; and
- b. The proposed project includes appropriate mitigating measures included in the SEIS; and
- c. The development proposal implements the Comprehensive Plan policies relating to Special Planning Area 4; and
- d. The development proposal is for uses allowed in BMC 19.15.070, Special Planning Area 4 zone; and
- e. The project is not an essential public facility as defined in RCW [36.70A.200](#); and
- f. The thresholds for total development analyzed in the SEIS would not be exceeded; and
- g. The requirements of RCW [43.21C.031](#) and WAC [197-11-164](#) through [197-11-172](#) are met.

(3) Planned action determination.

- a. Application. To assist the director in making his/her determination, the applicant shall submit a planned action environmental checklist and supporting information. The director shall specify the submittal requirements on a submittal checklist. Within 28 calendar days after a complete submittal, the director shall issue a written determination on whether the proposed development qualifies as a planned action pursuant to subsection (2) of this section. A request for a planned action determination shall not require the issuance of a threshold determination under SEPA, as provided by RCW [43.21C.031](#), WAC [197-11-172](#)(2)(a) and this chapter.
- b. Positive Determination. If the director determines that the proposed project qualifies as a planned action, no further environmental review is required under this chapter.
- c. Negative Determination. If the director determines that the proposed project does not qualify as a planned action, the proposed project shall require additional environmental review and appropriate mitigation.
- d. Appeals. There is no administrative appeal of the director's determination to approve, conditionally approve, or deny the request to have the development processed as a planned action.

- (4) Nothing in this section limits the city from using this chapter or other applicable law to place conditions on the project in order to mitigate nonsignificant impacts through the normal project review and permitting process.

14.10.060 Environmental impact statements and other environmental documents.

The procedures and standards for preparation of environmental impact statements and other environmental documents pursuant to WAC [197-11-400](#) through [197-11-460](#) and [197-11-600](#) through [197-11-640](#) are adopted, subject to the following:

- (1) Pursuant to WAC [197-11-408\(2\)\(a\)](#), all comments on determinations of significance and scoping notices shall be in writing, except where a public meeting on EIS scoping occurs pursuant to WAC [197-11-410\(1\)\(b\)](#).
- (2) Pursuant to WAC [197-11-420](#), [197-11-620](#), and [197-11-625](#), the department shall be responsible for preparation and content of EISs and other environmental documents. The department shall contract with consultants as necessary for the preparation of environmental documents. The department may consider the opinion of the applicant regarding the qualifications of the consultant but the department shall retain sole authority for selecting persons or firms to author, co-author, provide special services, or otherwise participate in the preparation of required environmental documents.
- (3) Consultants or subconsultants selected by the City to prepare environmental documents for a private development proposal shall not: act as agents for the applicant in preparation or acquisition of associated underlying permits; have a financial interest in the proposal for which the environmental document is being prepared; perform any work or provide any services for the applicant in connection with or related to the proposal.
- (4) The department may establish and maintain one or more lists of qualified consultants who are eligible to receive contracts for preparation of environmental documents. Separate lists may be maintained to reflect specialized qualifications or expertise. When the department requires consultant services to prepare environmental documents, the department may select a consultant from the lists and negotiate a contract for such services, or may issue requests for qualifications and/or requests for proposals to use in the consultant selection process.
- (5) All costs of preparing the environmental document shall be borne by the applicant. The department shall promulgate administrative rules that establish procedures necessary to implement this section.
- (6) In the event an applicant decides to suspend or abandon the project, the applicant must provide formal written notice to the department and consultant. The applicant shall continue to be responsible for all monies expended by the department or consultants to the point of receipt of notification to suspend or abandon, or other obligations or penalties under the terms of any contract let for preparation of the environmental documents.

- (7) The department shall only publish an EIS when it believes that the EIS adequately discloses: the significant direct, indirect, and cumulative adverse impacts of the proposal and its alternatives; mitigation measures proposed and committed to by the applicant, and their effectiveness in significantly mitigating impacts; mitigation measures that could be implemented or required; and unavoidable significant adverse impacts.

14.10.070 Comments and public notice.

- (1) The procedures and standards of WAC 197-11-500 through 197-11-570 are adopted regarding public notice and comments.

- (2) For purposes of WAC [197-11-510](#), public notice shall be required as indicated below:

- a. Notification of threshold determinations for project actions shall follow the requirements for the underlying land use review in BMC 19.65 or the notice requirements of BMC Title 17, whichever is applicable. If neither of these applies, the Type 1 land use review notice requirements in BMC 19.65 shall be followed.
- b. Notification of threshold determinations for nonproject actions shall be published in a newspaper of general circulation in the area where the proposal is located.
- c. Notification of the issuance of a draft EIS shall follow the requirements of WAC 197-11-455.
- d. Notification of the issuance of a final EIS shall follow the requirements of WAC 197-11-460.
- e. Notification of the issuance of an addendum shall follow the requirements of WAC 197-11-625.
- f. Notification of the adoption of an existing environmental document shall follow the requirements of WAC 197-11-630.

- (3) The responsible official may require further notice if deemed necessary to provide adequate public notice of a pending action. Failure to require further or alternative notice shall not be a violation of any notice procedure.

14.10.080 Use of existing environmental documents.

The procedures and standards of WAC [197-11-600](#) through [197-11-640](#) are adopted regarding use of existing environmental documents.

14.10.090 Substantive authority.

- (1) The procedures and standards of WAC 197-11-650 through 197-11-660 regarding substantive authority and mitigation, and WAC 197-11-158, regarding reliance on existing plans, laws and regulations, are adopted.
- (2) For the purposes of RCW [43.21C.060](#) and WAC [197-11-660\(a\)](#), the following policies, plans, rules and regulations, and all amendments thereto, are designated as potential bases for the

exercise of the City of Burien's substantive authority under SEPA, subject to the provisions of RCW [43.21C.240](#) and subsection (3) of this section:

- a. The policies of the State Environmental Policy Act, RCW [43.21C.020](#).
- b. Burien comprehensive plan, appendices and documents referenced therein.
- c. Burien shoreline master program.
- d. Burien municipal code, including but not limited to the zoning code, surface water management code and road design & construction standards.
- e. Des Moines Memorial Drive Corridor Management Plan, January, 2005
- f. Park, Recreation and Open Space Plan, May, 2000
- g. Seahurst Park Master Plan, July, 2002
- h. Eagle Landing Park Master Plan, August, 2003

(3) Substantive SEPA authority to condition or deny new development proposals or other actions shall be used only in cases where specific adverse environmental impacts are not addressed by the regulations applicable to the proposed action, or where unusual circumstances exist. Unusual circumstances related to a site or to a proposal, as well as environmental impacts not mitigated by applicable regulations, will be subject to site-specific or project-specific SEPA mitigation.

(4) Any decision to approve, deny, or approve with conditions pursuant to RCW [43.21C.060](#) shall be contained in the responsible official's decision document. The written decision shall contain facts and conclusions based on the proposal's specific adverse environmental impacts (or lack thereof) as identified in an environmental checklist, EIS, threshold determination, other environmental document including a department's staff report and recommendation to a decision maker, or findings made pursuant to a public hearing authorized or required by law or ordinance. The decision document shall state the specific plan, policy or regulation that supports the SEPA decision and, if mitigation beyond existing development regulations is required, the specific adverse environmental impacts and the reasons why additional mitigation is needed to comply with SEPA.

(5) This chapter shall not be construed as a limitation on the authority of the City to approve, deny, or condition a proposal for reasons based upon other statutes, ordinances, or regulations.

14.10.100 SEPA/GMA integration.

The procedures and standards regarding the timing and content of environmental review specified in WAC [197-11-210](#) through WAC [197-11-235](#) are hereby adopted.

14.10.110 Appeals of threshold determinations and adequacy of a final EIS.

(1) An administrative appeal pursuant to WAC 197-680(3) is allowed only for a threshold determination or adequacy of a final environmental impact statement. All other appeals under this chapter shall be made to Superior Court.

- (2) Appeals of actions under subsection (1) are procedural SEPA appeals that are conducted by the hearing examiner pursuant to the provisions of BMC 2.15 and 2.20, subject to the following:
- a. A procedural SEPA appeal is authorized only for an action classified as a Type 1, 2 or 3 land use decision in BMC 19.65.020; a preliminary short subdivision; a preliminary subdivision; a building permit or a clearing & grading permit.
 - b. Only one appeal of each threshold determination shall be allowed on a proposal. Only one appeal of the adequacy of a final environmental impact statement shall be allowed on a proposal.
 - c. An appeal of a DNS must be filed within 14 calendar days following issuance of the DNS. The appeal period for a DNS shall be extended for an additional 7 calendar days if WAC 197-11-340(2)(a) applies.
 - d. An appeal of the adequacy of a final EIS must be filed within 21 calendar days following issuance of the notice of availability of the final EIS.
 - e. As provided in RCW [43.21C.075](#)(3)(d), the decision of the responsible official shall be entitled to substantial weight.
 - f. The hearing examiner shall make a final decision on all procedural SEPA determinations. The hearing examiner's decision may be appealed to superior court as provided in BMC 2.20.
- (3) Except for appeal of a DS, the hearing examiner's consideration of procedural SEPA appeals shall be consolidated with:
- a. Substantive SEPA appeals, if any, involving decisions to condition or deny an application pursuant to RCW [43.21C.060](#) and
 - b. With the public hearing or appeal, if any, on the proposal.
- (4) Notwithstanding the provisions of subsections (1) through (3) of this section, the department may adopt procedures under which an administrative appeal shall not be provided if the director finds that consideration of an appeal would be likely to cause the department to violate a compliance, enforcement, or other specific mandatory order or specific legal obligation. The director's determination shall be included in the notice of the SEPA determination, and the director shall provide a written summary upon which the determination is based within five days of receiving a written request. Because there would be no administrative appeal in such situations, review may be sought before a court of competent jurisdiction under RCW [43.21C.075](#) and applicable regulations, in connection with an appeal of the underlying governmental action.

14.10.120 Department procedural rules.

The department may prepare administrative procedural rules for the implementation of SEPA, Chapter 197-11 WAC, and this chapter.

EXISTING PROCEDURES

Chapter 14.05 SEPA PROCEDURES AND POLICIES

Sections:

- [14.05.010](#) SEPA procedures.
- [14.05.020](#) SEPA policies.
- [14.05.030](#) Conditioning or denial of permits and approvals.
- [14.05.040](#) Modifications to Chapter 20.44 KCC.
- [14.05.050](#) Responsible official.
- [14.05.060](#) Planned actions.

14.05.010 SEPA procedures.

(1) Pursuant to Chapter [43.21C](#) RCW, Chapter [20.44](#) of the King County Code (KCC), entitled "County Environmental Procedures," now in effect, is hereby re-adopted as the environmental procedures for the city of Burien, except for KCC [20.44.080](#)(C) and (D), and as may be otherwise modified by this chapter. A copy of Chapter [20.44](#) KCC is attached to the ordinance codified in this chapter as Exhibit A and incorporated by this reference. Any and all administrative implementing rules now in effect regarding environmental procedures that have been adopted pursuant to Chapter [2.98](#) KCC, Rules of County Agencies, are hereby adopted by reference. In addition, the city of Burien may adopt additional administrative rules to implement these procedures.

(2) To the extent that any provision of the King County Code, or any other law, rule, or regulation referenced in sections incorporated by reference in this chapter is necessary to establish the validity, enforceability or interpretation of these environmental procedures, then such provision of the King County Code, or other law, rule or regulation, is hereby adopted by reference. [Ord. 220 § 1, 1998]

14.05.020 SEPA policies.

(1) The policies and goals set forth in this chapter are supplementary to those already existing in the laws, regulations, or other authorization of the city.

(2) For the purposes of RCW [43.21C.060](#) and WAC [197-11-660](#)(a), the following policies, plans, rules and regulations, and all amendments thereto, are adopted by reference and designated as possible bases for the exercise of the city's substantive authority under SEPA, subject to the provisions of RCW [43.21C.240](#):

- (a) RCW [43.21C.010](#) as now in effect or as may subsequently be amended, and which currently reads as follows:

43.21C.010 Purposes. The purposes of this chapter are: (1) To declare a state policy which will encourage productive and enjoyable harmony between man and his environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) and stimulate the health and welfare of man; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation.

- (b) RCW [43.21C.020](#) as now in effect or as may subsequently be amended, and which currently reads as follows:

43.21C.020 Legislative recognitions – Declaration – Responsibility. (1) The legislature, recognizing that man depends on his biological and physical surroundings for food, shelter, and other needs, and for cultural enrichment as well; and recognizing further the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource utilization and exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of

Washington, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to: (a) Foster and promote the general welfare; (b) to create and maintain conditions under which man and nature can exist in productive harmony; and (c) fulfill the social, economic, and other requirements of present and future generations of Washington citizens.

(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Washington and all agencies of the state to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

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

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

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

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

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

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

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

(3) The legislature recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(c) The city formally designates the following regulations, plans, studies, reports or codes, as presently constituted or as may be amended, as possible bases for the exercise of authority pursuant to the State Environmental Policy Act of 1971 as amended:

(i) Burien comprehensive plan, appendices and documents referenced therein; and

(ii) Burien shoreline master program; and

(iii) The Burien Municipal Code; and

(iv) Sea-Tac International Airport Impact Mitigation Study, February 1997, prepared by Hellmuth Obata & Kassabaum, Inc., and Raytheon Infrastructure Services, Inc., under a grant from the state of Washington; and

(v) Washington State Department of Transportation Pavement Guide, February 1995; and

(vi) Highway Capacity Manual, Special Report 209, Transportation Research Board, 1985; and

(vii) Institute of Transportation Engineers, Trip Generation, 5th Edition, 1991; and

(viii) King County Surface Water Design Manual, Revised November 1995; and

(ix) Shoreline Management Guide Book; and

(x) Code of the King County Board of Health; and

(xi) Washington State Flood Reduction Plan (1993 DCD); and

(xii) Guide to Conducting Wetland Inventories (DOE); and

(xiii) Washington State Shoreline Management Act of 1971; and

(xiv) Standard Specification for Construction of Trails (Forest Service 1984); and

(xv) Puget Sound Water Quality Management Plan; and

(xvi) King County Division of Parks and Recreation Play Area Design and Inspection Handbook; and

(xvii) KCC [20.44.080\(B\)](#); and

(xviii) Any and all administrative implementing rules now in effect regarding environmental procedures that have been adopted pursuant to Chapter [2.98](#) KCC, entitled "Rules of County

Agencies." [Ord. 220 § 2, 1998]

14.05.030 Conditioning or denial of permits and approvals.

- (1) The city may attach conditions to a permit or approval so long as:
 - (a) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
 - (b) Such conditions are in writing; and
 - (c) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
 - (d) The city 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 of the policies or policy sources identified in this chapter and cited in the permit, license, or other decision document.
- (2) The city may deny a permit or approval for a proposal on the basis of SEPA so long as:
 - (a) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to SEPA; and
 - (b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impacts; and
 - (c) The denial is based on one or more policies or policy sources identified in this chapter and identified in writing in the decision document.
- (3) It is the city's policy to protect its residents and businesses from the long-term consequences of successive incremental, or cumulative, adverse environmental impacts associated with a specific proposal or its connected action(s). Accordingly, the city may condition or deny proposals in order to mitigate or prevent such long-term impacts, if they are significant.
- (4) Unusual circumstances related to a site, a proposal, or a connected action, as well as probable significant adverse environmental impacts not capable of adequate mitigation using the foregoing provisions, may be cause for denial of a proposal or development of site-specific or project-specific SEPA mitigation. [Ord. 220 § 3, 1998]

14.05.040 Modifications to Chapter [20.44 KCC](#).

Unless the context requires otherwise, the King County environmental procedures, as adopted in BMC [14.05.010](#), shall be modified as follows:

- (1) Any reference to the "county" or to "King County" shall refer to the city of Burien; any reference to the county council shall refer to the city council; and any reference to the county executive or other county staff position shall refer to the city manager; and
- (2) The city of Burien director of community development services shall serve as the SEPA responsible official unless otherwise designated by the city manager; and
- (3) All costs of preparing environmental documents shall be borne by the applicant in accordance with the city of Burien fee schedule; and
- (4) Redevelopment of the Burien Town Square property as a mixed use infill project, consistent with the goals, policies, density and intensity of use called for in the Burien Comprehensive Plan, is categorically exempt from Chapter [43.21C](#) RCW pursuant to RCW [43.21C.229](#). For the purposes of this section, the "Burien Town Square" property is defined as land between SW 150th Street, SW 152nd Street, 4th Avenue SW and 6th Avenue SW (if extended), including any portion of a parcel of land lying both within and outside of this boundary. [Ord. 405 § 1, 2004; Ord. 220 § 4, 1998]

14.05.050 Responsible official.

The city manager shall serve as the responsible official for purposes of WAC [197-11-788](#) and [197-11-910](#). The city manager may delegate the duties of the responsible official depending on the nature of a proposal. [Ord. 220 § 5, 1998]

14.05.060 Planned actions.

- (1) The purpose of this section is to streamline and expedite the permit review process for projects that

qualify as planned actions.

- (2) Development proposals are designated to be planned actions if:
 - (a) The development proposal is located within Special Planning Area 4 as designated in the Burien Comprehensive Plan; and
 - (b) The significant environmental impacts of the proposal have been adequately addressed in the Final Supplemental Environmental Impact Statement prepared for the Northeast Special Planning Area issued November 12, 2002 (hereafter "SEIS"); and
 - (c) The proposed project includes appropriate mitigating measures included in the SEIS; and
 - (d) The development proposal implements the Comprehensive Plan policies relating to Special Planning Area 4; and
 - (e) The development proposal is for uses allowed in BMC 19.15.070, Special Planning Area 4 zone; and
 - (f) The project is not an essential public facility as defined in RCW [36.70A.200](#); and
 - (g) The thresholds for total development analyzed in the SEIS would not be exceeded; and
 - (h) The requirements of RCW [43.21C.031](#) and WAC [197-11-164](#) through [197-11-172](#) are met.
- (3) Planned Action Determination.
 - (a) Application. To assist the director in making his/her determination, the applicant shall submit a planned action environmental checklist and supporting information. The director shall specify the submittal requirements on a submittal checklist. Within 28 days after a complete submittal, the director shall issue a written determination on whether the proposed development qualifies as a planned action pursuant to subsection (2) of this section.
 - (b) Positive Determination. If the director determines that the proposed project qualifies as a planned action, no further environmental review is required under this chapter.
 - (c) Negative Determination. If the director determines that the proposed project does not qualify as a planned action, the proposed project shall require additional environmental review and possible mitigation in addition to that set forth in the SEIS.
 - (d) Appeals. There is no administrative appeal of the director's determination to approve, conditionally approve, or deny the request to have the development processed as a planned action.
 - (e) Threshold Determination. A request for a planned action determination shall not require the issuance of a threshold determination under SEPA, as provided by RCW [43.21C.031](#), WAC [197-11-172](#)(2)(a) and this chapter.
- (4) Nothing in this section limits the city from using this chapter or other applicable law to place conditions on the project in order to mitigate nonsignificant impacts through the normal project review and permitting process. [Ord. 432 § 2, 2005]

SUMMARY AND COMPARISON OF EXISTING AND PROPOSED SEPA PROCEDURE CHANGES

February 23, 2009

EXISTING (BMC 14.05/KCC 20.44)	PROPOSED (BMC 14.10)	COMMENTS
<p>BMC 14.05.010 SEPA Procedures Adopts KCC 20.44 by reference.</p>	Deleted	Proposed procedures no longer adopt KCC by reference. Existing section is not needed.
<p>BMC 14.05.020 SEPA Policies Establishes legal bases for exercising substantive authority (conditioning or denying projects based on SEPA).</p> <p>References RCW 43.21C (SEPA) as well as the following documents:</p> <ol style="list-style-type: none"> 1. Burien Comprehensive Plan 2. Burien Municipal Code 3. Sea-Tac Airport Mitigation Study 4. WSDOT Pavement Guide 5. Highway Capacity Manual 6. ITE Trip Generation Manual 7. County Surface Water Design Manual 8. Shoreline Management Guidebook 9. County Health Code 10. State Flood Reduction Plan 11. Wetland Inventory Guide 12. Shoreline Management Act 13. Forest Service Trail Specs 14. Puget Sound Water Quality Management Plan 15. County Code 20.44.080(B), referencing 15 County codes (Comp. Plan, Zoning Code, Agricultural Lands policies, etc.) 16. County rules of procedure 	<p>BMC 14.10.090 Substantive Authority Establishes legal bases for exercising substantive authority (conditioning or denying projects based on SEPA).</p> <p>References the following documents:</p> <ol style="list-style-type: none"> a. The policies of the State Environmental Policy Act, RCW 43.21C.020. b. Burien comprehensive plan, appendices and documents referenced therein. c. Burien shoreline master program. d. Burien municipal code, including but not limited to the zoning code, surface water management code and road design & construction standards. e. Des Moines Memorial Drive Corridor Management Plan, January, 2005 f. Park, Recreation and Open Space Plan, May, 2000 g. Seahurst Park Master Plan, July, 2002 h. Eagle Landing Park Master Plan, August, 2003 	<p>Many of the existing referenced documents were included in the mid-1990's before Burien had many of our own codes and policies.</p> <p>Referenced documents have been updated and streamlined. Many of the documents referenced in the existing procedures have been subsequently incorporated into the BMC, have been replaced by other specifically Burien rules and policies, are no longer current, or are inappropriately referenced today (such as the 15 King County Codes).</p>

EXISTING (BMC 14.05/KCC 20.44)	PROPOSED (BMC 14.10)	COMMENTS
<p>BMC 14.05.030 Conditioning or Denial of Permits and Approvals Contains procedures for mitigating impacts or denying projects based on SEPA.</p>	<p>BMC 14.10.090 Substantive Authority Includes updated criteria for mitigating impacts or denying projects based on SEPA.</p>	<p>Streamlines section for usability.</p>
<p>BMC 14.05.040 Modifications to Chapter 20.44 KCC Changes “County” to “City”; designates the Burien Community Development Director as SEPA Responsible Official, unless otherwise designated by the City Manager; requires applicants to pay all costs of preparing environmental documents; provides for an “urban infill” exemption.</p>	<p>BMC 14.10.020(1) Lead Agency Designates the Burien Community Development Department as Lead Agency and its Director as SEPA Responsible Official, unless otherwise designated by the City Manager</p> <p>BMC 14.10.040(2) Categorical Exemptions and Threshold Determinations Includes new urban infill exemption scheduled for Council approval Feb. 9.</p>	<p>Provision changing “County” to “City” no longer needed in proposed version.</p> <p>Cost of preparing environmental documents: already covered in WAC 197-11-100.</p>
<p>BMC 14.05.050 Responsible Official Designates City Manager as Responsible Official, unless otherwise designated (conflicts with 14.05.040)</p>	<p>BMC 14.10.020(1) Lead Agency Designates the Burien Community Development Department as Lead Agency and its Director as SEPA Responsible Official, unless otherwise designated by the City Manager</p>	<p>Removes conflict.</p>
<p>BMC 14.05.060 Planned Actions Establishes procedures for processing development applications as “Planned Actions” to streamline SEPA review process. NOTE: SPA-4 (NERA) is the only Planned Action area currently in Burien.</p> <p>KCC 20.44.042 Planned Actions (referenced) General statement about planned actions</p>	<p>BMC 14.10.050 Planned Actions Establishes procedures for processing development applications as “Planned Actions” to streamline SEPA review process. NOTE: SPA-4 (NERA) is the only Planned Action area currently in Burien. Same language as existing BMC.</p>	

EXISTING (BMC 14.05/KCC 20.44)	PROPOSED (BMC 14.10)	COMMENTS
<p>THE FOLLOWING SECTIONS FROM THE KING COUNTY CODE (KCC) ARE REFERENCED BY EXISTING BMC 14.05</p>		
<p>KCC 20.44.010 Definitions Adds several definitions of common terms.</p>	<p>BMC 14.10.010 Definitions Adds several definitions of common terms.</p>	<p>Updates referenced section and brings language over to BMC.</p>
<p>KCC 20.44.030 Purpose and General Requirements 1) Requires process for early environmental review 2) Adopts “optional DNS”—combined public notice for SEPA and project reviews. 3) Applicant to prepare SEPA checklist. 4) Allows Director to set deadlines for submittal of information.</p>	<p>BMC 14.10.030 Purpose and General Requirements No substantive changes</p>	<p>No substantive changes.</p>
<p>KCC 20.44.040 Categorical Exemptions and Threshold Determination 1) Defines types of projects and actions that are categorically exempt from SEPA compliance:</p> <ul style="list-style-type: none"> • 8 dwelling units or less • Agricultural buildings of 15,000-30,000 s.f. in size • Non-residential building of up to 12,000 s.f. in area with parking of 40 stalls or less • Parking lot up to 40 stalls • Fill or excavation of up to 500 cubic yards (c.y.), but limited to 100 c.y. in a critical area. • Fill or excavation of up to 500 c.y. to correct a violation in a critical area <p>2) Contains requirements for enforcing a mitigated DNS</p>	<p>BMC 14.10.040 Categorical Exemptions and Threshold Determination 1) Defines types of projects and actions that are categorically exempt from SEPA compliance:</p> <ul style="list-style-type: none"> • 20 dwelling units or less • Non-residential building of up to 12,000 s.f. in area with parking of 40 stalls or less • Parking lot up to 40 stalls • Fill or excavation of up to 500 cubic yards (c.y.), <p>2) Contains requirements for enforcing a mitigated DNS</p>	<p>State law allows localities to increase exemption levels to a defined cap. These maximum exemptions are being proposed. When SEPA was adopted in the early 1970’s, its purpose was to fill gaps between local regulations and environmental impacts of a project. At that time, few localities had any environmental regulations and SEPA was a valuable tool. New regulations relating to critical areas, storm water, growth management and others have reduced the need for SEPA to fill gaps. Therefore, higher exemption levels are appropriate to help streamline the development review process.</p>

EXISTING (BMC 14.05/KCC 20.44)	PROPOSED (BMC 14.10)	COMMENTS
<p>KCC 20.44.050 Environmental Impact Statements and Other Environmental Documents Provides procedures and standards for preparation of and EIS and other documents.</p>	<p>BMC 14.10.060 Environmental Impact Statements and Other Environmental Documents No substantive changes except removal of 270-day deadline for completing a Draft EIS.</p>	<p>The 270-day deadline for issuing a Draft EIS may be unrealistic depending on type, size and location of the project, and also on cooperativeness of the applicant to provide required information in a timely manner.</p>
<p>KCC 20.44.060 Comments and Public Notice Many references to specific King County processes that differ in Burien.</p>	<p>BMC 14.10.070 Comments and Public Notice Coordinates SEPA notice and comment processes and timelines with those for underlying action. If underlying action does not have a notice requirement, then the Type 1 review process would be used for the SEPA notice.</p>	<p>Updates and streamlines notification procedures.</p>
<p>KCC 20.44.070 Use of Existing Environmental Documents Adopts several WAC sections by reference.</p>	<p>BMC 14.10.080 Use of Existing Environmental Documents No substantive changes.</p>	
<p>KCC 20.44.080 Substantive Authority Establishes legal bases for exercising our substantive authority under SEPA (conditioning or denying projects based on SEPA). List of documents that can be used for exercise of authority is included under 14.05.020 above.</p>	<p>BMC 14.10.090 Substantive Authority Establishes legal bases for exercising our substantive authority under SEPA (conditioning or denying projects based on SEPA). Language is substantively the same, except for one added paragraph (3) to limit use of authority to mitigation of specific adverse environmental impacts or where unusual circumstances exist. List of documents that can be used for exercise of authority is included under 14.05.020 above.</p>	<p>Updates language.</p>
<p>KCC 20.44.090 Ongoing Actions WAC 197-11 applies to all SEPA compliance initiated after date of ordinance.</p>	<p>Deleted</p>	<p>Not needed.</p>

EXISTING (BMC 14.05/KCC 20.44)	PROPOSED (BMC 14.10)	COMMENTS
KCC 20.44.100 Responsibility as Consulted Agency	Deleted	Never used.
KCC 20.44.120 Appeals Establishes appeal procedures, based on State law.	BMC 14.10.130 Appeals of Threshold Determinations and Adequacy of a Final EIS Provides appeal procedures (tailored to Burien’s processes) for certain SEPA elements.	Appeals are limited by State law. The proposed appeals section will clarify our existing confusing procedures, which have references to King County processes and decisions that are not used in Burien.
KCC 20.44.130 Department Procedural Rules Authorizes preparation of administrative rules to implement KCC 20.44.	BMC 14.10.140 Department Procedural Rules No substantive changes	
Not in existing codes	BMC 14.10.100 SEPA/GMA Integration New section adopting by reference WAC sections relating to SEPA/GMA documents	Applies primarily to environmental review of Comprehensive Plan and development regulations.