

16H. PERMIT PROCESSES

16H.10 PURPOSE

16H.20 STATE ENVIRONMENTAL POLICY ACT (SEPA) REVIEW

- 16H.20.010 SEPA rules adopted.
- 16H.20.020 Additional provisions adopted.
- 16H.20.030 Designation of responsible official.
- 16H.20.040 Lead agency determination and responsibilities.
- 16H.20.050 Transfer of lead agency status to state agency.
- 16H.20.060 Additional consideration in time limits applicable to SEPA process.
- 16H.20.070 Additional timing considerations.
- 16H.20.080 Flexible thresholds for categorical exemptions.
- 16H.20.090 Environmental checklist.
- 16H.20.100 Mitigated DNS.
- 16H.20.110 Additional elements.
- 16H.20.120 Public notice.
- 16H.20.130 Designation of official to perform consulted agency responsibilities.
- 16H.20.140 Substantive authority.
- 16H.20.150 Appeals.
- 16H.20.160 Judicial Appeals
- 16H.20.170 Notice — Statute of limitations.
- 16H.20.180 Environmentally sensitive areas.
- 16H.20.190 Fees.

16H.30 CRITICAL AREA REVIEW

- 16H.30.010 Critical Area Review Requirements

16H.40 SHORELINE REGULATIONS

- 16H.40.010 Purpose
- 16H.40.020 Shoreline Permit Procedures

16H.50 CONDITIONAL USES

- 16H.50.010 Conditional use defined.
- 16H.50.020 Permit required.
- 16H.50.030 Conditions imposed.
- 16H.50.040 Required findings.
- 16H.50.050 General requirements.

16H.60 VARIANCES

- 16H.60.010 Definition.
- 16H.60.020 Required findings.
- 16H.60.030 Time limits.
- 16H.60.040 Applicability.
- 16H.60.050 Variance recorded.

16H.70 DESIGN REVIEW

- 16H.70.010 Purpose.
- 16H.70.020 Scope.
- 16H.70.030 Approval required.
- 16H.70.040 Application.
- 16H.70.050 Review of application.
- 16H.70.060 Notice required when.
- 16H.70.070 Bond.
- 16H.70.080 Design standards.
- 16H.70.090 Actions of board.
- 16H.70.100 Appeals.
- 16H.70.110 Enforcement.

16H.10 PURPOSE (NEW)

The purpose of this chapter is to articulate standards for permits issued by the city of Langley that are not included within the land division or special use requirements of this code. The standards included in this chapter are meant to:

A. Ensure that applications for City permits are processed in a timely and fair manner and that regulations are consistently applied to new projects.

B. Ensure that new developments, or the regulations affecting new projects, are sensitive to a project's local context. The standards found within this chapter are triggered based a development's unique setting or size and are designed to ensure that development preserves and enhances the qualities that make Langley a desirable place to live and visit, including the rural, small-town, marine atmosphere; scenic natural setting; waterfront; center of cultural activity; and the rural, early northwest character of the downtown area.

16H.20 STATE ENVIRONMENTAL POLICY ACT (SEPA) REVIEW

(Moved from 16.04 and Renamed)

16H.20.010 SEPA rules adopted.

The city adopts the model ordinance, WAC Chapter 173-806, to implement SEPA rules, WAC Chapter 197-11.

(Ord. 440, 1984)

16H.20.020 Additional provisions adopted.

The city adopts the optional sections of the model ordinance, as codified in this chapter. (Ord. 440, 1984)

16H.20.030 Designation of responsible official.

For those proposals for which the city is the lead agency, the responsible official shall be the city planning officer. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020. The city shall retain all documents required by the SEPA rules (WAC Chapter 197-11) and make them available in accordance with RCW Chapter 42.17.

(Ord. 440, 1984)

16H.20.040 Lead agency determination and responsibilities.

The department within the city 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. When the city is the lead agency for a proposal, the department receiving the application shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a

DNS or FIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600. If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the city may be initiated by the mayor. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses?).

(Ord. 440, 1984)

16H.20.050 Transfer of lead agency status to state agency.

For any proposal for a private project where the city would be the lead agency and for which one or more state agencies have jurisdiction, the city's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the city shall be an agency with jurisdiction. To transfer lead agency duties, the city's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

(Ord.440, 1984)

16H.20.060 Additional consideration in time limits applicable to SEPA process.

The following time limits (expressed in calendar days) shall apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies:

A. Categorical Exemptions. The city shall identify whether an action is categorically exempt within seven days of receiving a completed application.

B. Threshold Determinations.

1. The city should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen days of the date an applicant's adequate application and completed checklist are submitted.

2. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdiction:

a. The city should request such further information within fifteen days of receiving an adequate application and completed environmental checklist;

b. The city shall wait no longer than thirty days for a consulted agency to respond;

c. The responsible official should complete the threshold determination within fifteen days of receiving the requested information from the applicant or the consulted agency.

3. When the city must initiate further studies, including field investigations to obtain the information to make the threshold determination, the city should complete the studies within thirty days of receiving an adequate application and a completed checklist.

4. The city shall complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse

environmental impact(s) described in the application, within fifteen days of receiving an adequate application and completed checklist.

(Ord. 440, 1984)

16H.20.070 Additional timing considerations.

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

B. If the city'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 city conduct environmental review prior to submission of the detailed plans and specifications.

(Ord. 440, 1984)

16H.20.080 Flexible thresholds for categorical exemptions.

The city establishes the following exempt levels for minor new construction based on local conditions. The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

1. The construction or location of any residential structures of four dwelling units;

2. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering ten thousand square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;

3. The construction of an office, school, commercial, recreational, service or storage building with four thousand square feet of gross floor area, and with associated parking facilities designed for twenty automobiles;

4. The construction of a parking lot designated for twenty automobiles;

5. Any landfill or excavation of one hundred cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II or III forest practice under RCW 76.09.050 or regulations there under.

Whenever the city establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504.

(Ord. 440, 1984)

16H.20.090 Environmental checklist.

A completed environmental checklist (or copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency, for determining the responsible official and for making the threshold determination. The city may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal if either of the following occurs:

A. The city has technical information on a question or questions that is unavailable to the private applicant; or

B. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

(Ord. 440, 1984)

16H.20.100 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

2. Precede the city's actual threshold determination for the proposal.

B. The responsible official should respond to the request for early notice within seven working days. The response shall:

1. Be written;

2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city to consider a DS; and

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

C. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal:

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

2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot storm water retention pond at Y location" are adequate.

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

D. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fifteen day comment period and public notice. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS). The city's written response under subsection (D) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider clarifications or changes in its threshold determination.

(Ord. 440, 1984)

16H.20.110 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 or purpose under this chapter:

A. Economy;

B. Social policy analysis;

- C. Cost benefit analysis;
- D. Financial impacts on community and local government;
- E. Social consequences of the action. (Ord.440, 1984)

16H.20.120 Public notice.

A. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city shall give public notice as follows:

- 1. Posting the property, for site-specification proposals;
- 2. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- 3. Notifying the news media.

B. Whenever the city issues a DEIS under WAC 197-11-455(5) or a SF15 under WAC 197-11-620, notice of the availability of those documents shall be given by:

- 1. Posting the property, for site-specific proposals;
- 2. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- 3. Notifying the news media.

C. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permit(s) or approval(s) required for the proposal.

D. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.
(Ord. 440, 1984)

16H.20.130 Designation of official to perform consulted agency responsibilities.

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

B. This person shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.
(Ord. 440, 1984)

16H.20.140 Substantive authority.

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city/county.

B. The city may attach conditions to a permit or approval for a proposal so long as:

- 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
- 2. Such conditions are in writing; and
- 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;
- 4. The city has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
- 5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

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

D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:

I. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:

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

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

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

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

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

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

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

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The city adopts by reference the policies in the following city codes and plans:

a. Comprehensive plan adopted in November, 1994, as amended;

b. Title 16 of this code. **CHANGED CODE CITATION AND NUMBERING.**

4. The city establishes the following additional policies as contained in Ordinance No.357, adopted November 14, 1981.

E. Except for permits and variances issued pursuant to this title, when any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the city council. Review by the city council shall be on the de novo basis. **CHANGED CODE CITATION** (Ord. 570, 1990; Ord. 440, 1984) (Ord. 699, 1995)

16H.20.150 Appeals.

The city establishes the following administrative appeal procedure for appeals of determinations relating to SEPA:

A. Administrative appeals of determinations relating to SEPA shall be taken within the following time limits:

1. Final determination of significance

(DNS): Appeal of the DNS and the substantive determination of the action must be made within ten days of the date the permit or other approval is issued;

2. Determination of significance (DS): The appeal of a DS must be made within ten days of the date the DS is issued;

3. Final environment impact statement (FEIS): Appeal of the FEIS and the substantive determination on the action must be made within ten days of the date the permit or other approval is issued; and

4. Condition or denial on the basis of SEPA: When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, an appeal of such condition or denial must be made within ten days of the date such decision is made.

B. All appeals made pursuant to this section shall be perfected in the following manner:

1. All appeals shall be in writing;

2. The written notice of appeal must specify the basis for the appeal and the argument made in support of the appeal;

3. The written notice of appeal must be made to the city planning officer, and filed at City Hall;

4. The written notice of appeal, together with the required appeal fee as established by city ordinance, must be filed prior to four-thirty p.m. on the last day of the applicable time period for appealing; provided, however, that if City Hall is not open on the last day of the applicable appeal time period, then the appeal period shall be extended until four-thirty p.m. on the next day in which City Hall is open; and

5. Filing requires actual delivery to City Hall prior to four-thirty p.m. on the date due, and prior mailing is not sufficient if actual receipt by the city does not occur within the applicable time period.

C. For any appeal made pursuant to this section, a record shall be prepared, which shall consist of findings and conclusions, testimony under oath, and a taped or written transcript.

D. Procedural determinations made by the responsible official shall be entitled to substantial weight in any appeal proceeding.

E. Only one administrative appeal of a threshold determination or of the adequacy of an EIS shall be permitted.

F. Only parties of record shall be permitted to participate at the appeal hearing. The parties of record shall include, and be limited to, the city, the applicant for the proposal that is the subject of the appeal, and whose persons, organizations or agencies which have filed written appeal statements within the specified appeal period. No other persons may testify at the hearing. The hearing shall be limited to consideration of the matters raised in the appeal statements filed within the specified time.

G. The state environmental policy act is not intended to create a cause of action unrelated to a specific governmental action. Consequently, appeals under this chapter shall be of the governmental action, together with its accompanying environmental determination, provided that, the appeal proceeding on a determination of significance may occur before the final decision on a proposed action. There shall not be more than one administrative appeal proceeding per underlying land use action. Further appeals must be to Island County Superior Court per the procedures in 16H.20.160 of this code. **CHANGED CODE CITATION**

H. Following the public hearing upon such appeal, the hearing board may affirm, remand, modify or reverse the determination of the responsible official, recognizing the weight that is to be accorded the determination of the responsible official per 16H.20.150D above. The hearing body's decision shall be in the form of a report setting forth its findings, conclusions and decision. (Ord. 570, 1990: Ord. 440, 1984) (Ord. 714, 1996) **CHANGED CODE CITATION**

16H.20.160 Judicial Appeals

Appeals from the decision of the city hearing body shall be made to Island County Superior Court within twenty-one (21) days of the date of the hearing body's written decision. (Ord. 714, 1996)

16H.20.170 Notice — Statute of limitations.

The city applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.2 IC.080.
(Ord. 440, 1984)

16H.20.180 Environmentally sensitive areas.

1. The map filed under the city's adopted comprehensive plan designates the location of environmentally sensitive areas within the city and is adopted by reference. For each environmentally sensitive area, the exemptions within WAC 197-11-800 that are inapplicable for that area are: none. Unidentified exemptions shall continue to apply within environmentally sensitive areas of the city. (Added number and changed are to is)

2. The city 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 city 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. 440, 1984)

16H.20.190 Fees.

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

A. Threshold Determination. For every environmental checklist the city will review when it is lead agency, the city may collect a fee from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee.

B.Environmental Impact Statement.

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

2. The responsible official may determine that the city will contract directly with a consultant for preparation of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. The city may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city and applicant after a call for proposals.

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

C. The city may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

D. The city shall not collect a fee for per-forming its duties as a consulted agency.

E. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW Chapter 42.19. (Ord. 440, 1984)

16H.30 CRITICAL AREA REVIEW

(Moved and Renamed from Section 16.20.020 Critical area permit process and application requirements.)

16H.30.010 Critical Area Review Requirements

A. Pre-application conference. All applicants are encouraged to meet with the city prior to submitting an application subject to the critical area provisions of this section. The purpose of this meeting shall be to discuss the requirements, process and procedures; to review the critical areas checklist and any conceptual plans prepared by the applicant; to identify potential impacts and mitigation measures. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the city.

B. Critical area report. If the planning officer determines that critical area or buffer impacts might occur as a result of the proposal, a critical area delineation and assessment report must be submitted to the city for review as part of the development application; the application will not be deemed complete without the critical area report. the report must be prepared in accordance with city permit application requirements and must incorporate Best Available Science as defined in Section 16F. The report shall analyze the extent, type, and function of the critical area or areas and buffers on any site where regulated activities are proposed. The report will be used by the city to determine the extent of the critical area and appropriate buffer requirements and to assist the city in determining appropriate mitigation if required. The critical areas report, which shall be available to the public, shall contain the following: **CHANGED PLANNING OFFICER TO LOWERCASE**

1. The name and contact information of the applicant, a description of the proposal and identification of the requested critical area action;
2. A copy of the site plan for the development proposal including a map to scale depicting topography; critical areas and their buffers; site features, including existing development; the proposed development; and any areas to be cleared;
3. A description of the proposed storm water management plan for the development and consideration of impacts to drainage alterations;
4. Characterization of all critical areas, water bodies and buffers adjacent to the proposed project area;
5. A discussion of the performance standards applicable to the critical area and the requested critical area activity;
6. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize and mitigate impacts to critical areas;
7. Plans for adequate mitigation as needed to offset any impacts;
8. The dates, names and qualifications of the persons preparing the report and documentation of any field work performed on the site;
9. A statement specifying the accuracy of the report and all assumptions made and relied upon;
10. Financial guarantees, as appropriate, to ensure compliance; and
11. Any additional information deemed necessary by the planning official.

It is intended that the level of technical study and analysis in critical area reports be commensurate with the value or sensitivity of the particular critical area in question.

(Ord. 619, 1992) (Ord. 861, 2005)

C. Professional expertise. A wetland specialist, geotechnical engineer, or other qualified professional as mutually agreed upon by the City and the applicant, shall prepare all reports and studies required of the applicant by the City. The City or the applicant may retain a qualified professional to perform a peer review of required reports, studies and plans. All reports and studies (including peer review) required of the applicant shall be prepared at the applicant's expense.

D. Review process. This section is not intended to create a separate critical area permit process for development proposals. To the extent possible, the city shall consolidate and integrate the review and processing of critical area-related aspects of proposals with other land use and environmental considerations and approvals.

(Ord. 861, 2005)

16H.40 SHORELINE REGULATIONS

(Moved from Chapter 18.31)

16H.40.010 Purpose

A. The purpose of this section is to recognize that there are additional regulations adopted pursuant to the Shoreline Management Act that have similar force and effect as the other regulations adopted in this code (Title 16 LMC). Standards and regulations governing uses in the shorelines of Langley are stipulated in the form of policies and regulations in the City of Langley Shoreline Master Program. Every effort was made in adopting the SMP to be as consistent as possible with the City's zoning and related regulations. Where there is a conflict between the regulations of the SMP and other regulations adopted by the City, the SMP regulations take precedence. **CHANGED CODE CITATION**

B. Unless specifically exempted by RCW 90.58 or WAC 173-24, no project or activity shall be undertaken on shorelines of the City without first obtaining a substantial development permit. Under the city shoreline master program, shorelines of the city are designated as Urban, Shoreline Residential, Aquatic and Urban Aquatic shoreline environments, in which substantial developments are identified as permitted or conditional uses. Substantial developments not identified as permitted require a shoreline conditional use permit. Projects or activities deviating from the specific regulations of the master program require a shoreline variance permit. Exempt projects must comply with the provisions of the master program.

(Ord. 820, 2002)

16H.40.020 Shoreline Permit Procedures

A. Administration of the shoreline permit system shall be carried out by the city planning officer in accordance with the procedures, time lines and other requirements of Chapter 173-14 WAC. **MADE PLANNING OFFICIAL PLANNING OFFICER AND MADE LOWERCASE**

B. The following local procedures shall apply exclusively to all requests for shoreline substantial development, conditional use, and variance permits:

1. To the fullest extent possible, the shoreline permit process shall be integrated with other planning and licensing procedures of this title.

2. Pursuant to chapter 16I of this title, the city planning official has authority to issue shoreline substantial development permits in certain circumstances. In all other cases, shoreline permits are issued after a public hearing by the planning advisory board and final decision by the city council. **CHANGED CODE CITATION**

3. Appeals of permit decisions shall be as set forth in Chapter 16I LMC and RCW 90.58.180. **CHANGED CODE CITATION**

(Ord. 820, 2002)

16H.50 CONDITIONAL USES

(Moved from 18.28)

16H.50.010 Conditional use defined.

For the definition of "conditional use," see section 16I.20.020 (Ord. 527, 1989) **CHANGED CODE CITATION**

16H.50.020 Permit required.

A conditional use may be approved when authorized by this title when findings required by this title are made. All approved conditional uses shall be authorized by a permit, which states the

required finding and reasons therefore, the conditions imposed on the use, structure, the location of the conditional use and the time limit, if any. (Ord. 527, 1989)

16H.50.030 Conditions imposed.

In addition to the other requirements of this title, any condition reasonably required to allow the proposed use or activity to meet the standards of the required findings below may be imposed. Such conditions may include, but are not limited to:

- A. Requirements for environmental protection;
- B. Landscaping, clearing, planting, fencing and screening requirements;
- C. Requirements of site restoration, reforestation or regrading after use of the land;
- D. Setbacks, height and bulk requirements;
- E. Safety requirements, such as time of operations, traffic routing, limitations on processes, etc. (Ord 527, 1989)

16H.50.040 Required findings.

A. The proposed use, at the proposed location, is consistent with the purposes of the comprehensive plan, the zoning code and the zone district in which it is to be located, and that the proposed use will meet all applicable requirements of this title.

B. The use, as conditioned, will not be significantly detrimental to the public health, safety and welfare; diminish the value of nearby property or improvements; or disturb persons in the use of property unless the conditional use is a public necessity. (Ord. 527, 1989)

16H.50.050 General requirements.

A. The city shall determine whether the conditional use permit will run with the land or be personal. If the conditional use is personal, the permit is non-transferable to other persons. The city may require the permit to be recorded with the county auditor as a covenant on the property.

B. The conditional use permit must be acted upon within one year from the date of approval or the permit shall expire. The holder of the permit may request an extension of time before the expiration date and the mayor, upon the recommendation of the planning advisory board, may grant one extension of time of up to one year past the original expiration date.

C. The conditional use permit, even if issued to the person, applies only to the property on which it was issued and may not be transferred to any other property.

D. A conditional use permit may be denied if the city finds the proposed use cannot be conditioned so that the required findings can be made.

E. A conditional use permit shall expire if the use is discontinued for a period of 12 months or longer. (Ord. 527, 1989; Ord. 696, 1995)

16H.60 VARIANCES

(Moved from 18.30)

16H.60.010 Definition.

For the definition of variance, see section 16I.20.020. (Ord. 527, 1989) **CHANGED CODE CITATION**

16H.60.020 Required findings.

A variance to any requirement of this title, except use and procedural requirements, may only be granted when all of the following required findings are made:

A. Special Circumstances. Because of special circumstances related to the property, the strict enforcement of the zoning code would deprive the owner of use rights and privileges permitted to the other properties in the vicinity with the same zoning.

1. Special circumstances include the size, shape, topography, location or surroundings of the property, public necessity of public structures and uses, and protection of environmental features such as vegetation, streams, ponds and wildlife habitat;

2. Special circumstances may not be predicated upon any factor personal to the owner such as age or disability, extra expense which may be necessary to comply with the zoning code, the ability to secure a scenic view, the ability to make more profitable use of the property, nor any factor resulting from the action of the owner or any past owner of the same property.

B. Special Privilege. The approval of the variance will not grant special privilege to the property in comparison with the limitations upon other properties in the vicinity with the same zoning.

C. Comprehensive Plan. The approval of the variance will be consistent with the comprehensive plan.

D. Zoning Code. Approval of the variance will be consistent with the purposes of the zoning code and the zone district in which the property is located.

E. Not Detrimental. The variance as approved or conditionally approved will not be significantly detrimental to the public health, safety or welfare or injurious to the property or improvements in the vicinity.

F. Minimum Variance. The approved variance is the minimum necessary to allow the owner the rights enjoyed by other property owners in the vicinity with the same zoning. (Ord. 527, 1989)

16H.60.030 Time limits.

The variance must be acted upon within one year from the date of approval or the variance shall expire. The holder of the variance may request an extension of time before the expiration of the variance and the mayor, upon recommendation of the planning advisory board, may grant one extension of time up to six months past the original date of expiration. (Ord. 527, 1989)

16H.60.040 Applicability.

The variance applies only to the property or an individual for a specific property to which it was granted and may not be transferred to any individual or other property. (Ord. 527, 1989)

16H.60.050 Variance recorded.

All variances and the conditions specified will be recorded with the county auditor. (Ord. 527, 1989)

16H.70 DESIGN REVIEW

(Entire section moved from 18.34 and Renamed. Portions now included in Title 2)

16H.70.010 Purpose.

The purpose of this chapter is to establish design approval requirements and procedures in order to promote, preserve and enhance the city's architectural heritage and visual character, while recognizing the existing variety of architectural styles within the city, allowing maximum flexibility for building design, and encouraging individual initiative in the development process. Rather than requiring replication of a particular architectural style, the purpose of design standards should be to emphasize desirable functional characteristics to be incorporated in new development/redevelopment. (Ord. 527, 1989)

~~18.34.020 — Membership Terms — INFORMATION IS INCLUDED IN TITLE 2~~

16H.70.020 Scope.

Design review shall apply to all private development in the ~~central business-village center design zone~~ and ~~neighborhood dispersed business design zones~~ and all development in the residential zones including subdivisions (long plats), planned unit developments, attached single family dwelling units (townhouses) duplexes, detached accessory dwelling units, wireless communication antenna arrays, and additions to single family residences to accommodate an accessory dwelling unit or bed and breakfast room(s) with the exception of one-family dwellings, provided that, accessory buildings larger than twelve hundred square feet are subject to the provisions of this chapter as set forth in Chapter 16E.40.010 (B)(2)(b). All development by the city and other public agencies, except for underground utilities, shall be subject to design review. does not include underground utilities. All development by the city and other public agencies shall be subject to design review. (Ord. 733, 1997; Ord. 696, 1995; Ord. 788, 2000)(Ord. 820, 2002) **MOVED PORTIONS OF B. INTO THE DEFINITIONS IN THE ADMINISTRATIVE SECTION. CHANGED CODE CITATION AND ZONE NAMES**

16H.70.030 Approval required.

Design approval shall be required prior to the issuance of any permit or approval required for grading or clearing, construction or demolition or modification of structures, or prior to initiating the physical development, whichever shall come first. Such permits include, but are not limited to, building permits and conditional use permits. All construction or other activities undertaken pursuant to such permits and approvals shall be in conformance with the design approval granted pursuant to this chapter. (Ord. 527, 1989)

16H.70.040 Application.

Applications for design approval shall be submitted to the city services director on such forms and with such content as required by the design review board. The applicant may submit the plans required in this section in preliminary or sketch form, so that the comments and advice of the design review board may be incorporated into the final plans submitted for application. There shall be a ten-dollar fee per a design review session on each application. (Ord. 594, 1991; Ord. 527, 1989)

16H.70.050 Review of application.

The city ~~Land Use Coordinator~~ planning officer shall immediately review the application as provided in Section 16H.70.040 and schedule the item for the next scheduled meeting of the design review board. The design review board shall review the proposed development at a public meeting and approve, conditionally approval, or deny the proposal. The decision of the design review board is final unless appealed pursuant to Section 16H.70.100 of this chapter. The board may continue the meeting on the proposal to allow changes in the proposal or to obtain information needed to allow changes in the proposal, or to obtain information needed to properly review the proposal. After approval by the design review board or by the city council, after review on appeal, the ~~City~~ city ~~Land Use Coordinator~~ planning officer shall have the authority to approve design modifications that maintain the intent of the original approval. (Ord. 527, 1989)(Ord. 820, 2002) **CHANGED CODE CITATIONS AND CHANGED LAND USE COORDINATOR TO PLANNING OFFICIAL**

16H.70.060 Notice required when.

Public notice by mail, posting or newspaper publication shall not be required, except for applications that require an environmental impact statement, in which case notice of the hearing shall be required by Chapter 16H.20 of this code. (Ord. 527, 1989) **CHANGED CODE CITATION**

16H.70.070 Bond.

The design review board may require that a bond be posted to ensure the satisfactory installation of site improvements. (Ord. 527, 1989)

~~18.34.090~~ — (Vacant).

16H.70.080 Design standards.

The design review board shall establish a set of design standards for both site and building developments. The standards shall serve as a guide to the applicant and the board in the review of all proposals that are subject to this chapter. The standards established by the board shall be forwarded to the city council for adoption as a part of this chapter. The design review requirements established in this chapter shall not take effect until the design standards called for in this section have been adopted by the city council. (Ord. 527 (part), 1989)

~~18.34.110~~ — Meetings — INFORMATION IS INCLUDED IN TITLE 2

16H.70.090 Actions of board.

Approval or conditional approval of the design of a development project does not constitute approval or imply potential approval of any other permit that may be required for the development. (Ord. 527, 1989)

16H.70.100 Appeals.

Any interested party may appeal a decision of the design review board to the city council by filing notice with the city clerk/treasurer within seven days of the date of the design review board's decision. The appeal shall be scheduled for consideration at the next regularly scheduled city council meeting. The council shall consider the record and such additional evidence as may be submitted. The council may affirm or modify the action of the board or refer the matter back to the board for further consideration. A written copy of the action of the council shall be transmitted to the applicant. (Ord. 527, 1989)

16H.70.110 Enforcement.

Enforcement of this chapter shall be in accordance with the enforcement provisions of this code (Section 16I.60) and the city building code. (Ord.527, 1989) **CHANGED CODE CITATION**