

# Attachment A

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## **22.02.032 Determination of categorical exemption.**

A. Upon the receipt of an application for a proposal, the receiving department shall, and for city proposals, the initiating department shall, determine whether the proposal is an action potentially subject to SEPA and, if so, whether it is categorically exempt. This determination shall be made based on the definition of action (WAC 197-11-704), the process for determining categorical exemption (WAC 197-11-305), and the designation of critical areas under subsection C of this section. Departments shall ensure that the proposal is properly defined per WAC 197-11-060(3). If there is any question whether or not a proposal is exempt, the environmental coordinator shall be consulted and shall make the determination. If the proposal is not categorically exempt, the department making this determination (if different from the proponent) shall notify the proponent of the proposal that ~~he/she~~they must submit an environmental checklist per BCC 22.02.033.

B. Pursuant to the authority provided by WAC 197-11-800(1)(c), the following categorical exemption thresholds apply to exemptions determined under WAC 197-11-800(1) for minor new construction in Bellevue, replacing those provided under WAC 197-11-800(1)(b)(i), (ii), (iii), (iv), and (v), as now or hereafter amended:

1. The construction or location of single-family residential structure(s) containing 30 or less dwelling units;
2. The construction or location of multifamily residential structure(s) containing 200 or less dwelling units;
3. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 40,000 square feet or less of gross floor area, and to be used by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;

4. The construction of an office, school, commercial, recreational, service, or storage building with 30,000 square feet or less of gross floor area, and with associated parking facilities designed for 90 or less automobiles. This exemption includes parking lots for 90 or ~~fewer~~ less automobiles not associated with a structure;

5. Any landfill or excavation of 1,000 or less 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 thereunder;-

6. The construction or location of any mixed-use development meeting the following requirements:

a. Contains 200 or less dwelling units;

b. Contains 30,000 square feet or less of gross floor area of any one or more of the following uses: office, school, commercial, recreational, service, or storage use; and

c. If the mixed-use development contains parking facilities associated with an office, school, commercial, recreational, service, or storage use, then such parking facilities are designed for 90 automobiles or less.

C. To determine the exemptions allowed under WAC 197-11-908, critical areas shall mean those areas designated as critical areas pursuant to the city's Land Use Code, LUC 20.25H.025, and associated stream buffers as described in LUC 20.25H.075(C), now or as hereafter amended.

D. The following categorical exemptions in WAC 197-11-800, as now or hereafter amended, do not apply within any critical area described in subsection C of this section:

1. WAC 197-11-800(1), except that the construction or location of a single-family residence within a critical area, if otherwise allowed by applicable development regulations, is exempt;

2. WAC 197-11-800(2)(e), except when necessary for construction or location of a single-family residence exempt under WAC 197-11-800(1) and subsection (D)(1) of this section;

3. WAC 197-11-800(2)(g), except for single-family residences, the construction of which would be categorically exempt under WAC 197-11-800(1) and subsection (D)(1) of this section;

4. WAC 197-11-800(2)(h);

5. WAC 197-11-800(13)(c);

6. WAC 197-11-800(23)(c); and

7. WAC 197-11-800(23)(e).

E. All categorical exemptions listed in WAC 197-11-800, as modified by BCC 22.02.032(B) and not listed in subsection D of this section, apply within a critical area.

F. Pursuant to the authority provided by RCW 35A.21.440, the redevelopment of existing buildings into residential uses meeting the requirements of LUC 20.20.727.A are categorically exempt from SEPA.

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#### **22.02.034 Threshold determination.**

A. The environmental coordinator shall make the threshold determination and issue a determination of nonsignificance (DNS) or significance (DS). The environmental coordinator shall make such threshold determination in accordance with applicable sections of the SEPA rules, as adopted by this code. A threshold determination is a Process II decision governed by the procedures set out at LUC 20.35.200 et seq., as now or hereafter amended, except for a threshold determination that the threshold determination associated with a Process IV action, or Process V action, or a non-project City Council action that is not a Process IV land use decision.

B. A threshold determination associated with a Process IV or Process V action shall be merged with the Process IV and Process V action, and processed according to the notice, decision, appeal, and other procedures set forth in LUC 20.35.400 to 20.35.450 (Process IV) or LUC 20.35.500 to 20.35.540 (Process V), as now or hereafter amended. A threshold determination associated with a non-project City Council action shall be merged with the underlying non-project Council action; notice of application shall be provided as set forth in LUC 20.35.415, and notice of action may be provided pursuant to RCW 43.21C.080.

BC. Except where the threshold determination is merged with a Process IV action, or Process V action, or a non-project City Council action, the environmental coordinator shall provide notice according to the rules set forth for Process II land use applications, decisions, and public hearings or meetings (LUC 20.35.200 et seq.). The timing of SEPA actions shall be coordinated to coincide with the underlying or related decision making processes as specified in BCC 22.02.160.

CD. Time Limitation.

1. A threshold determination on a non-project action does not expire and is not subject to a time limitation. New or additional environmental review may be required, however, if

the environmental coordinator determines that substantial changes to a proposal are being considered.

2. Except as set forth in subsection (C)(3) of this section, a threshold determination on a project action shall have a life of two years, but shall be automatically extended if a building permit is applied for or the use is established within that two-year period; provided, however, the environmental coordinator may also extend a threshold determination for a project action if no substantial changes to the project are proposed and environmental conditions considered in issuance of the original threshold determination have not changed substantially.

3. The time limit for threshold determinations on a master development plan and associated Process II land use decisions for catalyst projects may be extended for up to a maximum of 15 years through a development agreement approved by the city council pursuant to Chapter 36.70B RCW. Any such extension shall be subject to the limitations contained in LUC 20.25D.035.B.2.b. As used in this section, “catalyst project” and “master development plan” shall have the meanings assigned in the Bellevue Land Use Code. Nothing in this section, the development agreement or the Bellevue Land Use Code provisions regarding catalyst projects shall be deemed to limit the environmental coordinator’s authority under BCC 22.02.037.

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#### **22.02.080      Appeal of threshold determination.**

A. General. Except as provided in this section, the decision of the environmental coordinator in making a threshold determination may be appealed to the hearing examiner using the appeal provisions for Process II decisions (see LUC 20.35.200 et seq., as now or hereafter amended); provided, however, when the threshold determination is a determination of significance which has been agreed to by the proponent, it shall not be appealable. The appeal of a threshold determination issued on a Process IV or Process V action shall be appealable only in the manner set forth for Process IV decisions (LUC 20.35.400 et seq., as now or hereafter amended) or Process V decisions (LUC 20.35.500 et seq., as now or hereafter amended). The appeal of a threshold determination associated with a non-project City Council action is not within the hearing examiner’s jurisdiction and shall be filed together with an appeal of the underlying non-project Council action. Any provisions of this section which conflict with Chapter 20.35 LUC, as now or hereafter amended, control over those sections.

B. Who May Appeal. Any person adversely affected by a threshold determination may appeal the decision; provided, however, only those persons who submit comments prior to issuance of the threshold determination may appeal the determination unless a showing is made to demonstrate that environmental issues raised in the appeal were not known to the appellants and

could not reasonably have been known to the appellants in time to submit comments before the decision was made.

C. Issues on Appeal. Appeals are limited to those issues raised through the comment period; provided, that new issues may be raised if the appellant shows that the project has changed substantially from what was identified in the public notice or information on expected environmental impacts was not reasonably available prior to issuance of the threshold determination.

D. Time to Appeal. For appeals of a threshold determination subject to the hearing examiner's jurisdiction, a~~A~~ written statement appealing the threshold determination of the environmental coordinator ~~as allowed under this section~~ must be filed with the city clerk within 14 days of the date of publication of the threshold determination or, if there is a comment period under WAC 197-11-340 or 197-11-350, within 21 days of the date of publication of the threshold determination.

E. Court Review. The decision of the hearing examiner on a threshold determination may only be appealed to superior court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075, the State Environmental Policy Act. Any such appeal must be brought within the time limits specified in RCW 36.70C.040.