



Agenda

PLANNING COMMISSION WORKSHOP

City Manager's Conference Room - 505 Swift Boulevard

WEDNESDAY, February 25, 2015

7:00 p.m.

COMMISSION MEMBERS: Chair Madsen, Vice-Chair Boring, Commissioners Berkowitz, Clark, Palmer, Wallner and Wise

LIAISONS: Council Liaison Lemley
Staff Liaison Planning and Development Services Manager Simon

Call to Order 7:00 p.m.

Business

1. DISCUSSION OF POTENTIAL CODE AMENDMENTS

Adjournment

Planning Commission Workshop Meeting – Wednesday, March 11, 2015

Planning Commission Regular Meeting – Wednesday, March 25, 2015

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MEMORANDUM

Community and Development Department
Planning & Development Services Division

TO: PLANNING COMMISSION

FROM: RICK SIMON, DEVELOPMENT SERVICES MANAGER

DATE: FEBRUARY 25, 2015

RE: FEBRUARY WORKSHOP

Retaining Wall Standards

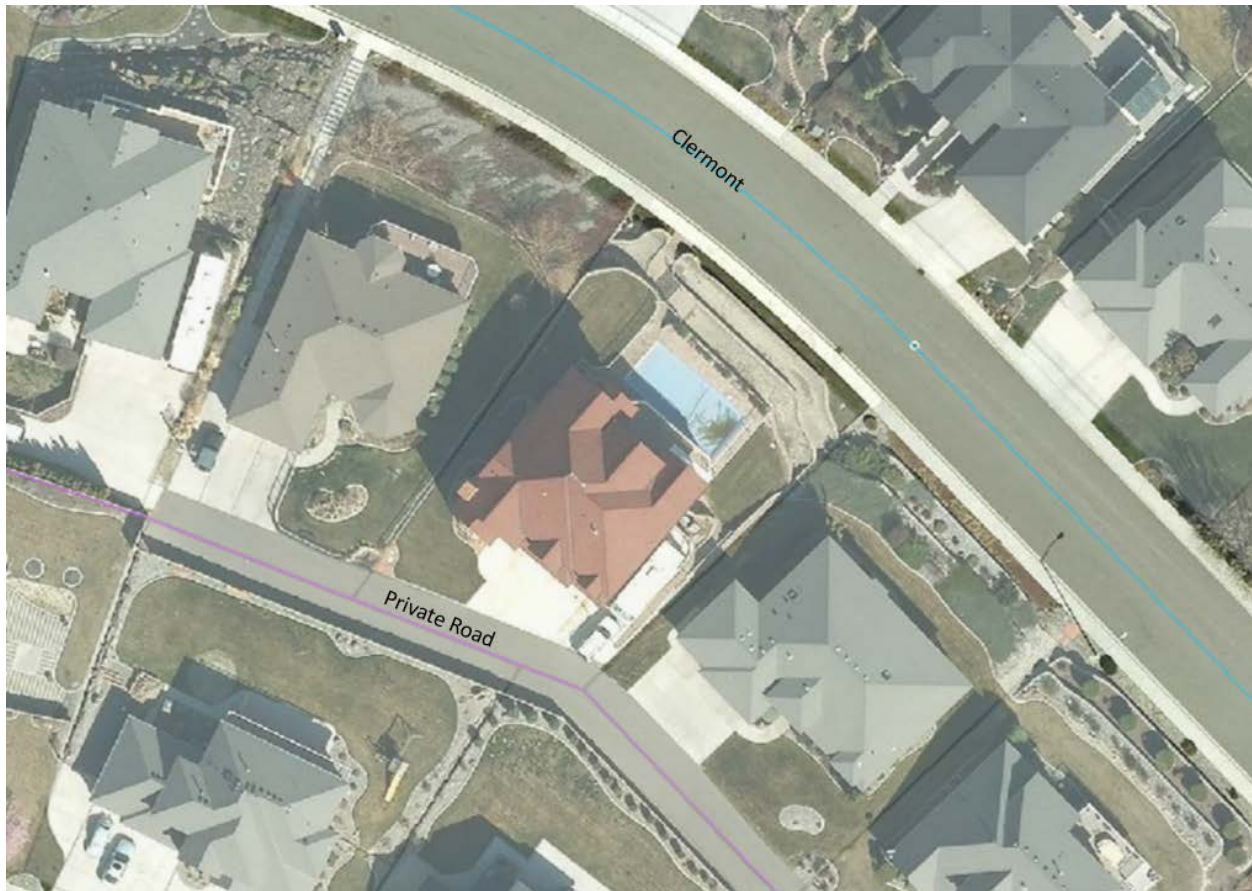
At our last discussion on this topic, we talked in general terms of what standards would be desirable for retaining walls, but did not identify any specifics. There are a variety of factors to consider including the height of the wall, the type of material used in the wall's construction, it's setback from the street and whether the area in front of the wall is landscaped or not. The attached sheet of draft retaining wall standards was prepared only as a beginning point in the discussion for determining what the appropriate standards should be. As much of the issue with the retaining walls is based on aesthetics, there are many possible approaches, so the standards should allow for a variety of design approaches.

The draft standards do not address all retaining walls. They focus on the retaining walls that are adjacent to a public street, located between the street and the residence. They do not address walls that are adjacent to private streets, nor do they address slopes which have been covered in rock, which is a common practice in some South Richland neighborhoods. The draft standards also do not address walls that are located along either side or rear property lines.

One issue to consider is that in some of these hillside lots, the engineering reports prepared for the development allow for only limited irrigation water to be introduced on the slopes. So, some alternatives that do not rely on landscaping should be included in the standards.

Swimming Pools

Current zoning regulations specify that swimming pools in residential neighborhoods be located in the back half of the lot, or at least 75 feet from the public street. Many of the hillside lots in South Richland are accessed by a combination of public and private streets. By definition, a front yard is adjacent to the public street, even if access to the lot is provided from the private street located on the opposite side of the lot. An example of this situation is provided in the photo below:



This particular property was issued a variance by the Board of Adjustment that allowed a pool to be constructed within the front half of the lot. The code regarding swimming pools is as follows:

23.42.300 Swimming pools. *All private swimming pools located in an AG, SAG, R-1-12, R-1-10, R-2, R-2S and R-3 zone capable of holding 24 inches or more of water shall be located in the back half or rear yard of the lot, or shall be located a minimum of 75 feet from a street right-of-way; except that this provision shall not apply to hot tubs as defined in RMC [23.06.500](#).*

Public and semi-public pools shall meet the provisions of RMC [23.42.210](#), Recreational clubs.

Staff suggests that the code be amended to allow pools anywhere on a residential lot outside of the front yard setback.

SEPA Amendments

Attached, please find a memo detailing changes in state law that allow cities to exempt smaller developments from the SEPA review process.

Other Topics

The hearing examiner held the first hearing in Richland to review a zone change request on January 22nd. A copy of his written decision is attached.

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DRAFT RETAINING WALL STANDARDS

February, 2015

Intent of Regulation

- a. Provide for improved aesthetics for retaining walls on hillside lots.
- b. Ensure the placement of retaining walls do not obstruct sight lines for passing motorists.
- c. Provide flexibility in design.
- d. Encourage builders to work with natural slopes rather than attempting to create flat lots on hillsides

General Requirements:

- a. Walls subject to regulation are those that are located within a required front yard or located between the public street and the single family residence.
- b. Retaining walls adjacent to private streets or those located within rear or side yards are not subject to these regulations.
- c. Standards apply to retaining walls, whose purpose is to stabilize a hillside; not to fences.
- d. Maximum height of a single retaining wall is 10 feet.
- e. Multiple retaining walls can be terraced, provided that no single wall is higher than 10 feet and that the width of the terrace between the walls at a minimum is equal to the height of the tallest wall.

Standards:

Retaining Wall Height¹	Required Setback from front property line	Wall Construction Materials	Landscaping Requirements
3 feet	Permitted within ROW 1 foot behind sidewalk w/ ROW permit	Any ²	No
4 feet	On property line subject to clear vision triangle requirements	Any ²	No
5 – 6 feet	5 feet, subject to clear vision triangle requirements	If landscaped, any material ² If not landscaped, then limited ³	Yes, between wall and property line ⁴
6 - 10 feet	10 feet, subject to clear vision triangle requirements	Limited ³	Yes, between wall and property line ⁴

Notes:

- 1. Wall height is measured from the top of the footing to the top of the wall.
- 2. Ecology block walls are not permitted, unless that are imprinted with a pattern on the face of the wall.
- 3. Wall materials must be comprised of one or more of the following: split face CMU, natural rock, keystone block, brick, dyed concrete, patterned concrete, stucco or other similar material that provides visual interest.
- 4. Landscape requirements consist of shrubs and/or trees that within 3 years of planting will provide a visual screen covering a minimum of 75% of the surface of the retaining wall.

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MEMORANDUM

TO: Planning Commission

FROM: Planning Staff

DATE: February 20, 2015

SUBJECT: Introduction to consideration of SEPA amendments

Commissioners,

The Washington State Department of Ecology adopted changes to the State Environmental Policy Act (SEPA) rules, WAC 197-11-800, which became effective May 10, 2014. The changes were driven by Senate Bill 6406 which,

"Directed Ecology to modernize the rules that guide state and local agencies in conducting SEPA reviews, in light of the increased environmental protections in place under RCW 36.70A, RCW 90.50 and other laws".

This quote is from the background section found on page two of Exhibit 1.

SEPA was adopted in 1971 and was the forerunner for environmental protection in the state. Subsequent to that time, the Growth and Shoreline Management Acts (GMA & SMA) were adopted and generally require more environmental review and protection than does SEPA. These acts are the referenced RCW's in the above quote and provide for protection of critical areas including shorelines, wetlands, rivers, steep slopes, habitat, agricultural and mineral resource lands. Further, the GMA allows for the collection of mitigation fees for school, park, traffic, water and sewer impacts. Redundancy occurs with SEPA and other required environmental reviews. Recognizing this Ecology adopted changes to the project exemption levels requiring SEPA review.

WAC 197-11-800 establishes minimum and maximum levels of exemptions for project requiring SEPA review. Jurisdictions can choose to adopt the minimum levels, up to the maximum levels, or any range in between. Of note is that the exemptions are not applicable to project that involve wetlands or discharges to waters such as rivers and lakes. The minimum levels that jurisdictions must accept are for projects developing less than 4 dwelling units, commercial, office or school construction less than 4,000 square feet or parking lots developing less than 20 parking stalls. The upper level of

exemptions allowed by recent changes to the law are found below along with the current exempt levels adopted by the City.

We will be discussing whether the Commission would consider recommending raising the exemption levels as allowed by the updated SEPA law.

EXHIBITS:

1. Ecology informational webpages regarding the updates
2. Current exemption levels, WAC 197-11-800 & RMC 22.09.090
3. RMC 22.09 State Environmental Policy Act
4. WAC 197-11-800 *Revised*

<http://www.ecy.wa.gov>[Ecology home](#) > [News](#) > News Release

Department of Ecology News Release - April 10, 2014

14-058

Changes to State Environmental Policy Act rules benefit local governments

Communities gain greater flexibility and increased public review period

OLYMPIA – The Washington Department of Ecology has adopted changes to the State Environmental Policy Act rules. The changes will make SEPA rules work better for local governments and their communities while considering environmental protection needs.

The changes come after months of working in partnership with the State Environmental Policy Act (SEPA) advisory committee. The advisory committee was formed as a result of state legislation passed in 2012. Committee members represented cities, counties, the business community, environmental groups, agriculture, state agencies, cultural resources and tribes.

"Advisory committee members took a thoughtful, collaborative approach and provided us with excellent input," said Brenden McFarland, environmental review section manager for Ecology. "Their input helped us draft the changes which will make the SEPA rule work better."

[SEPA rule changes](#) are available on Ecology's website and will:

- Provide greater flexibility for cities and counties to determine the size of development projects that need review under SEPA.
- Clarify the analysis required before cities and counties can increase their exemption levels.
- Increase the public review period prior to city and county adoption of increased exemption levels of minor new construction.
- Eliminate SEPA requirements for some maintenance activities.

SEPA was enacted by the Washington Legislature in 1971 to ensure that environmental values were considered during decision making by state and local agencies. SEPA requires identification and evaluation of probable impacts to the environment before making decisions on projects, plans, programs, and policies.

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Media Contact:

[Camille St. Onge](#), communication manager, 360-407-7647, [@ecologyWA](#)

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<http://www.ecy.wa.gov>

State Environmental Policy Act (SEPA)

[SEPA Program Home](#) > [SEPA Home](#) > State Environmental Policy Act Rulemaking 2013-14

State Environmental Policy Act Rulemaking 2013-14

Washington's State Environmental Policy Act (SEPA) requires that all state and local agencies consider the likely consequences before making decisions that affect the natural and built environment. The law provides broad authority for agency decision makers to avoid, mitigate or compensate for adverse impacts by modifying proposals or denying permits.

Ecology has completed Round 2 of SEPA rule-making. The rule-making order was filed on April 9, 2014, and the rule will take effect on May 10, 2014. For more information see:

- [Adopted Rule Amendments, Chapter 197-11 WAC](#)
- [Rule-making order CR103](#)
- [Final Cost-Benefit Analysis](#)
- [Condensed Explanatory Statement and Responses to Comments](#)
- [Rule Implementation Plan](#)
- [Rule Adoption Notice](#)
- State Environmental Policy Act Review:
 - [Determination of Non-Significance, Environmental Checklist](#)
 - [SEPA Staff Report](#)

Why is this important?

SEPA was enacted in 1971, when the nation's awareness of environmental problems was emerging. Many laws and procedures for environmental protection, land use planning and infrastructure provision have been implemented since SEPA was first adopted. The 2012 legislature directed Ecology to modernize the rules that guide state and local agencies in conducting SEPA reviews, in light of the increased environmental protections in place under [RCW 36.70A](#), [RCW 90.58](#) and other laws.

Background

Ecology is embarking on the final round of updates to the State Environmental Policy Act (SEPA) rules ([Chapter 197-11 WAC](#)), as directed by the 2012 legislature. The legislature directed Ecology to modernize the rules that guide state and local agencies in conducting SEPA reviews, in light of the increased environmental protections in place under [RCW 36.70A](#), [RCW 90.58](#) and other laws. This legislative direction is provided in [Senate Bill 6406](#) (now codified as Chapter 1, Laws of 2012 1st Special Session), specifically in Section 301. The bill also revised certain aspects of SEPA procedures that took effect July 10, 2012.

The legislation sets up two rounds of rule updates: A narrowly-focused initial round which was completed by December 31, 2012 and a broader round of SEPA rule updates during 2013. For more information see [SEPA rulemaking in 2012](#).

Senate Bill 6406 also directed Ecology to update these two specific SEPA rule topics by December 31, 2012. The bill directs Ecology to conduct a second broader round of SEPA rule revisions during 2013.

Senate Bill 6406 also directs Ecology to convene a [SEPA Advisory Committee](#) to assist Ecology in updating the SEPA exemption thresholds and the environmental checklist.

Contact information

- Brenden McFarland, (360) 407-6976, brenden.mcfarland@ecy.wa.gov
- Fran Sant, (360) 407-6004, fran.sant@ecy.wa.gov

For questions or comments concerning SEPA, please e-mail the [SEPA Unit](#) or call (360) 407-6922.

EXHIBIT 2

EXCERPT:**WAC 197-11-800 UPDATED EXEMPTION LEVELS**

(d) The maximum exemption levels applicable to (c) of this subsection are:

	Fully planning GMA counties		All other counties
Project types	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential	30 units	20 units	20 units
Multifamily residential	60 units	25 units	25 units
Barn, loafing shed, farm equipment storage, produce storage or packing structure	40,000 square feet	40,000 square feet	40,000 square feet
Office, school, commercial, recreational, service, storage building, parking facilities	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
Fill or excavation	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

EXCERPT:

CURRENT CITY THRESHOLD EXEMPTIONS

22.09.090 Flexible thresholds for categorical exemptions.

The city of Richland establishes the following exempt levels for minor new construction under WAC [197-11-800](#)(1)(b) based on local conditions:

- A. For residential units in WAC [197-11-800](#)(1)(b)(i), 20 dwelling units.
- B. For office, school, commercial, recreational, service or storage buildings in WAC [197-11-800](#)(1)(b)(iii), 12,000 square feet with associated parking lots designed for 40 automobiles.
- C. For parking lots in WAC [197-11-800](#)(1)(b)(iv), parking lots designed for 40 automobiles.
- D. For landfills and excavations in WAC [197-11-800](#)(1)(b)(v), 500 cubic yards.

EXHIBIT 3

RICHLAND MUNICIPAL CODE

Chapter 22.09

STATE ENVIRONMENTAL POLICY ACT

Sections:

Article I. Authority

[22.09.010](#) Authority.

Article II. General Provisions

[22.09.020](#) General requirements.

[22.09.030](#) Additional definitions.

[22.09.040](#) Designation of responsible official.

[22.09.050](#) Lead agency determination and responsibilities.

[22.09.060](#) Time limits applicable to the threshold determination.

[22.09.070](#) Additional timing considerations.

Article III. Categorical Exemptions and Threshold Determinations

[22.09.080](#) Categorical exemptions and threshold determinations.

[22.09.090](#) Flexible thresholds for categorical exemptions.

[22.09.100](#) Use of exemptions.

[22.09.110](#) Environmental checklist.

[22.09.120](#) Mitigated determination of nonsignificance (DNS).

Article IV. Environmental Impact Statements

[22.09.130](#) Environmental impact statement (EIS).

[22.09.140](#) Additional considerations in preparation of an EIS.

Article V. Commenting

[22.09.160](#) Commenting.

[22.09.170](#) Public notice.

[22.09.180](#) Designation of official to perform consulted agency.

Article VI. Using Existing Environmental Documents

[22.09.190](#) Using existing environmental documents.

Article VII. SEPA and Agency Decisions

[22.09.200](#) SEPA and agency decisions.

[22.09.210](#) Substantive authority.

[22.09.220](#) Appeals.

[22.09.230](#) Notice/statute of limitations.

Article VIII. Definitions

[22.09.240](#) Definitions.

Article IX. Categorical Exemptions

[22.09.250](#) Categorical exemptions.

Article X. Agency Compliance

[22.09.260](#) Agency compliance.

[22.09.270](#) Environmentally sensitive areas.

[22.09.280](#) Fees.

[22.09.285](#) SEPA public information.

Article XI. Forms

[22.09.290](#) Forms.

Article I. Authority

22.09.010 Authority.

The city of Richland adopts this chapter under the State Environmental Policy Act (SEPA), RCW [43.21C.120](#), and the SEPA rules, WAC [197-11-904](#).

This chapter contains this city's SEPA procedures and policies. The SEPA rules, Chapter [197-11](#) WAC, must be used in conjunction with this chapter. [Ord. 26-84].

Article II. General Provisions

22.09.020 General requirements.

This section contains the basic requirements that apply to the SEPA process. The city adopts the following sections of Chapter [197-11](#) WAC by reference:

WAC

- [197-11-040](#) Definitions.
- [197-11-050](#) Lead agency.
- [197-11-055](#) Timing of the SEPA process.
- [197-11-060](#) Content of environmental review.
- [197-11-070](#) Limitations on action during SEPA process.
- [197-11-080](#) Incomplete or unavailable information.
- [197-11-090](#) Supporting documents.
- [197-11-100](#) Information required of applicants.

[Ord. 26-84].

22.09.030 Additional definitions.

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

“Department” means any division, subdivision, or organizational unit of the city established pursuant to ordinance, rule, or order.

“Early notice” means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated DNS procedures).

“Ordinance” means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.

“SEPA rules” means Chapter [197-11](#) WAC adopted by the Department of Ecology. [Ord. 26-84].

22.09.040 Designation of responsible official.

A. For those proposals for which the city is the lead agency, the responsible official shall be the planning and inspection services director or his designee.

B. 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 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 RMC [22.09.020](#). [Ord. 26-84].

22.09.050 Lead agency determination and responsibilities.

A. Any department within the city receiving any application for or initiating a proposal that involves a nonexempt action shall forward such proposal to the planning and inspection services department for determination of 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.

B. In those instances in which the city is the lead agency, the responsible official of the city shall supervise compliance with the threshold determination, and if an EIS is necessary, shall supervise preparation of the EIS.

C. 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 EIS 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](#).

D. 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 that determination. Any objections must be made to the agency originally making the determination and resolved within 15 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 15-day time period. Any such petition on behalf of the city shall be initiated by the city's responsible official or his designee.

E. 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 must approve the agreement.

F. The planning and inspection services department 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. 26-84].

22.09.060 Time limits applicable to the threshold determination.

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. The city shall complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within 15 days of submission of an adequate application and completed checklist.

B. Threshold determinations which require further studies, field investigations, or further information from the applicant shall be completed within 15 days after the required information or investigation is completed.

C. Threshold determinations that require consultation with other agencies with jurisdiction shall be completed within 30 days of submission of an adequate application and completed checklist. [Ord. 26-84].

22.09.070 Additional timing considerations.

A. For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the city's staff recommendation to the physical planning commission and/or board of adjustment, when they are acting in an advisory capacity.

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. 26-84].

Article III. Categorical Exemptions and Threshold Determinations

22.09.080 Categorical exemptions and threshold determinations.

This section contains the rules for deciding whether a proposal has a probable significant, adverse environmental impact requiring an environmental impact statement (EIS) to be prepared. This article also

contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference, as supplemented in this chapter:

WAC

- [197-11-300](#) Purpose of this part.
- [197-11-305](#) Categorical exemptions.
- [197-11-310](#) Threshold determination required.
- [197-11-315](#) Environmental checklist.
- [197-11-330](#) Threshold determination process.
- [197-11-335](#) Additional information.
- [197-11-340](#) Determination of nonsignificance (DNS).
- [197-11-350](#) Mitigated DNS.
- [197-11-360](#) Determination of significance (DS)/initiation of scoping.
- [197-11-390](#) Effect of threshold determination.

[Ord. 26-84].

22.09.090 Flexible thresholds for categorical exemptions.

The city of Richland establishes the following exempt levels for minor new construction under WAC [197-11-800\(1\)\(b\)](#) based on local conditions:

- A. For residential units in WAC [197-11-800\(1\)\(b\)\(i\)](#), 20 dwelling units.
- B. For office, school, commercial, recreational, service or storage buildings in WAC [197-11-800\(1\)\(b\)\(iii\)](#), 12,000 square feet with associated parking lots designed for 40 automobiles.
- C. For parking lots in WAC [197-11-800\(1\)\(b\)\(iv\)](#), parking lots designed for 40 automobiles.
- D. For landfills and excavations in WAC [197-11-800\(1\)\(b\)\(v\)](#), 500 cubic yards.
- E. Whenever the city establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, under WAC [197-11-800\(1\)\(c\)](#). [Ord. 26-84].

22.09.100 Use of exemptions.

- A. Each department within the city that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall forward the application to the

responsible official to determine whether the license and/or the proposal is exempt. The responsible official's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The city shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC [197-11-060](#)). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency even if the license application that triggers the department's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:

- a. Any nonexempt action;
- b. Any action that would have an adverse environmental impact; or
- c. Any action that would limit the choice of alternatives;

2. A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved;

3. A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved. [Ord. 26-84].

22.09.110 Environmental checklist.

A. A completed environmental checklist (or a 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 an 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. If the city is the lead agency, the environmental checklist shall be used for making the threshold determination.

B. For private and other agency proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for the proposal. [Ord. 26-84].

22.09.120 Mitigated determination of nonsignificance (DNS).

A. As provided in this section and in WAC [197-11-350](#), the responsible official may issue a determination of nonsignificance (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.

B. 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.

C. The responsible official should respond to the request for early notice within 15 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 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.

D. As much as possible the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within 15 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 these specific mitigation measures, the city shall issue and circulate a determination of nonsignificance 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 stormwater runoff" are inadequate, whereas proposals to "muffle machinery to 'x' decibel" or "construct 200-foot stormwater 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.

F. A mitigated DNS is issued under WAC [197-11-340\(2\)](#), requiring a 15-day comment period and public notice.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of 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.

H. 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\(3\)\(a\)](#).

I. The city's written response under subsection (B) 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 the clarifications or changes in its threshold determination. [Ord. 26-84].

Article IV. Environmental Impact Statements

22.09.130 Environmental impact statement (EIS).

This article contains the rules for preparing environmental impact statements. The city adopts the following sections by reference, as supplemented by this article:

WAC

- [197-11-400](#) Purpose of EIS.
- [197-11-402](#) General requirements.
- [197-11-405](#) EIS types.
- [197-11-406](#) EIS timing.
- [197-11-408](#) Scoping.
- [197-11-410](#) Expanded scoping.
- [197-11-420](#) EIS preparation.
- [197-11-425](#) Style and size.
- [197-11-430](#) Format.
- [197-11-435](#) Cover letter or memo.
- [197-11-440](#) EIS contents.
- [197-11-442](#) Contents of EIS on nonproject proposals.
- [197-11-443](#) EIS contents when prior nonproject EIS.
- [197-11-444](#) Elements of the environment.
- [197-11-448](#) Relationship of EIS to other considerations.
- [197-11-450](#) Cost-benefit analysis.
- [197-11-455](#) Issuance of draft EIS.
- [197-11-460](#) Issuance of final EIS.

[Ord. 26-84].

22.09.140 Additional considerations in preparation of an EIS.

A. The draft and final EIS shall be prepared either by the responsible official or his designee, or by a private applicant or a consultant retained by the private applicant. In the event the responsible official determines that the applicant will be required to prepare an EIS, the applicant shall be so notified immediately after completion of the threshold determination.

B. Whenever an applicant or a consultant retained by the city or the applicant is preparing an EIS, the responsible official shall assure that the EIS is prepared in a responsible manner and with appropriate interdisciplinary methodology. The city shall:

1. Direct the areas of research and examination to be undertaken and the content and organization of the document.
2. Initiate and coordinate scoping, ensuring that the individual preparing the EIS receives all substantive information submitted by an agency or person.
3. Assist in obtaining information on file with another agency that is needed by the person preparing the EIS.
4. Allow the person preparing the EIS access to city records relating to the EIS (under Chapter [42.17](#) RCW, Public Disclosure and Public Records Law).

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.) [Ord. 26-84].

Article V. Commenting

22.09.160 Commenting.

This section contains rules for commenting, consulting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented in this article:

WAC

- [197-11-500](#) Purpose of this part.
- [197-11-502](#) Inviting comment.
- [197-11-504](#) Availability and cost of environmental documents.
- [197-11-508](#) SEPA register.
- [197-11-535](#) Public hearings and meetings.
- [197-11-545](#) Effect of no comment.
- [197-11-550](#) Specificity of comments.
- [197-11-560](#) FEIS response to comments.
- [197-11-570](#) Consulted agency cost to assist lead agency.

[Ord. 26-84].

22.09.170 Public notice.

A. Whenever the city of Richland 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. If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
2. If no public notice is required for the permit or approval, the city shall give notice of the DNS or DS by:
 - a. Posting the property for site-specific proposals; and
 - b. Publishing notice in the Tri-City Herald, a daily newspaper of general circulation in the city and a legal newspaper of Benton County, Washington.

B. Whenever the city issues a draft EIS under WAC [197-11-455](#)(5) or a supplemental EIS under WAC [197-11-620](#), notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license;
2. Posting the property for site-specific proposals; and
3. Publishing notice in the Tri-City Herald.

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 pay for costs incurred in completing the public notice requirements for the applicant's proposal. [Ord. 26-84].

22.09.180 Designation of official to perform consulted agency.

Responsibilities of the city:

A. The responsible official 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, or reviewing a draft EIS.

B. The responsible official shall also 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. 26-84].

Article VI. Using Existing Environmental Documents

22.09.190 Using existing environmental documents.

This section contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's own environmental compliance. The city adopts the following sections by reference:

WAC

- [197-11-600](#) When to use existing environmental documents.
- [197-11-610](#) Use of NEPA documents.
- [197-11-620](#) Supplemental environmental impact statement – Procedures.
- [197-11-625](#) Addenda – Procedures.
- [197-11-630](#) Adoption – Procedures.
- [197-11-635](#) Incorporation by reference – Procedures.
- [197-11-640](#) Combining documents.

[Ord. 26-84].

Article VII. SEPA and Agency Decisions

22.09.200 SEPA and agency decisions.

This section contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This article also contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts the following sections by reference:

WAC

- [197-11-650](#) Purpose of this part.
- [197-11-655](#) Implementation.
- [197-11-660](#) Substantive authority and mitigation.
- [197-11-680](#) Appeals.

[Ord. 26-84].

22.09.210 Substantive authority.

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

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; and
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 probably significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS 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:

1. 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, whenever 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 wide sharing of life's amenities;
- 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, plans, ordinances and resolutions as a basis for the exercise of authority under SEPA:

- a. The comprehensive plan of the city (Chapter [23.01](#) RMC);
- b. The city's zoning code (RMC Title [23](#));
- c. The city's fire and building codes (RMC Titles [20](#) and [21](#));
- d. The city's shoreline master program (RMC Title [26](#));
- e. Any other policies of the city which have been incorporated in resolutions, regulations, ordinances, plans, or codes and which provide a reasonable basis for conditioning or denying a proposal in order to mitigate adverse environmental impacts.

4. The city establishes by reference the following additional policies:

- a. The policies and regulations of the Benton, Franklin, and Walla Walla Counties' air pollution control authority;
- b. The policies and regulations of the Benton-Franklin health district;
- c. The policies and regulations of state or federal regulatory agencies which pertain to environmental quality standards. [Ord. 26-84].

22.09.220 Appeals.

The following shall be the procedure for appeal of decisions:

A. Except for permits and variances issued pursuant to RMC Title [26](#) (Shoreline Management), 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. Such appeal shall be perfected by the proponent or any aggrieved party by filing a written notice with the city clerk within 15 days of the date of the decision. Such notice shall clearly state: the date of the decision from which the appeal is taken; the name, title or other designation of the responsible official; the nature of the decision; the manner in which the appellant is aggrieved; a statement that the appeal is not being filed for the purpose of harassment or causing needless delay to the project forming the subject matter of the appeal; and that the facts contained in the notice of the appeal are true and correct to the best of the appellant's knowledge. The notice shall be subscribed and sworn to by the appellant.

B. Upon receipt of a notice of appeal, the city shall proceed according to rules and regulations as may be adopted by the city council. [Ord. 26-84].

22.09.230 Notice/statute of limitations.

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to RCW [43.21C.080](#) for any action.

B. The form of the notice shall be substantially in the form provided in WAC [197-11-990](#). The notice shall be published by the city clerk, applicant or proponent pursuant to RCW [43.21C.080](#). [Ord. 26-84].

Article VIII. Definitions

22.09.240 Definitions.

This section contains uniform usage and definitions of terms under SEPA. The city adopts the following sections by reference, as supplemented by RMC [22.09.030](#):

WAC

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

197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Nonproject.
197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible official.
197-11-790	SEPA.
197-11-792	Scope.
197-11-793	Scoping.
197-11-794	Significant.
197-11-796	State agency.
197-11-797	Threshold determination.
197-11-799	Underlying governmental action.
[Ord. 26-84].	

Article IX. Categorical Exemptions

22.09.250 Categorical exemptions.

The city adopts by reference the following rules for categorical exemptions, as supplemented in this chapter, including RMC [22.09.090](#) (flexible thresholds), [22.09.100](#) (use of exemptions), and [22.09.270](#) (environmentally sensitive areas):

WAC

197-11-800	Categorical exemptions.
197-11-880	Emergencies.

[197-11-890](#) Petitioning DOE to change exemptions.

[Ord. 26-84].

Article X. Agency Compliance

22.09.260 Agency compliance.

This section contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current activities. The city adopts the following sections by reference as supplemented by this article:

WAC

[197-11-900](#) Purpose of this part.

[197-11-902](#) Agency SEPA policies.

[197-11-916](#) Application to ongoing actions.

[197-11-920](#) Agencies with environmental expertise.

[197-11-922](#) Lead agency rules.

[197-11-924](#) Determining the lead agency.

[197-11-926](#) Lead agency for governmental proposals.

[197-11-928](#) Lead agency for public and private proposals.

[197-11-930](#) Lead agency for private projects with one agency with jurisdiction.

[197-11-932](#) Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.

[197-11-934](#) Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

[197-11-936](#) Lead agency for private projects requiring licenses from more than one state agency.

[197-11-938](#) Lead agencies for specific proposals.

[197-11-940](#) Transfer of lead agency status to a state agency.

[197-11-942](#) Agreements on lead agency status.

[197-11-944](#) Agreements on division of lead agency duties.

[197-11-946](#) DOE resolution of lead agency disputes.

[197-11-948](#) Assumption of lead agency status.

[Ord. 26-84].

22.09.270 Environmentally sensitive areas.

A. The city of Richland shall designate environmentally sensitive areas under the standards of WAC [197-11-908](#) and shall file maps designating such areas together with the exemptions from the list in WAC [197-11-908](#) that are inapplicable in such areas, with the planning and inspection services department and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.

B. The city shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. 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. 26-84].

22.09.280 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 shall collect a fee of \$100.00 from the proponents 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 an 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 an EIS, or a portion 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. Such consultants shall be selected by mutual agreement of the city and applicant. The city may require the applicant to post bond or otherwise ensure payment of such costs.

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

C. Public Notice. 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. Cost of Documents. 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 Chapter [42.17](#) RCW.

E. The city shall not collect a fee for performing its duties as a consulted agency. [Ord. 26-84].

22.09.285 SEPA public information.

The city shall retain all documents required by the SEPA rules (Chapter [197-11](#) WAC) and make them available in accordance with Chapter [42.17](#) RCW. [Ord. 26-84].

Article XI. Forms

22.09.290 Forms.

The city adopts the following forms and sections by reference:

WAC

[197-11-960](#) Environmental checklist.

[197-11-965](#) Adoption notice.

[197-11-970](#) Determination of nonsignificance (DNS).

[197-11-980](#) Determination of significance and scoping notice (DS).

[197-11-985](#) Notice of assumption of lead agency status.

[197-11-990](#) Notice of action.

[Ord. 26-84].

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EXHIBIT 4

WAC 197-11-800

Agency filings affecting this section

Categorical exemptions.

The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC [197-11-305](#).

Note: The statutory exemptions contained in chapter [43.21C](#) RCW are not included in Part Nine. Chapter [43.21C](#) RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

(1) Minor new construction - Flexible thresholds.

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection apply except when the project:

- (i) Is undertaken wholly or partly on lands covered by water;
- (ii) Requires a license governing discharges to water that is not exempt under RCW [43.21C.0383](#);
- (iii) Requires a license governing emissions to air that is not exempt under RCW [43.21C.0381](#) or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The following types of construction shall be exempt:

- (i) The construction or location of four detached single family residential units.
- (ii) The construction or location of four multifamily residential units.
- (iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 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.
- (iv) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles. This exemption includes parking lots for twenty or fewer automobiles not associated with a structure.
- (v) Any fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

(c) Cities, towns or counties may raise the exempt levels up to the maximum specified in (d) of this subsection by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC [197-11-904](#)). Separate maximum optional thresholds are established in (d) of this subsection applying to both incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW [36.70A.040](#); other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the minimum and maximum level. An agency may adopt a system of several exempt levels, such as different levels for different geographic areas, and mixed use projects.

At a minimum, the following process shall be met in order to raise the exempt levels.

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC [197-11-444](#)) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations.

(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established notice and comment opportunities for the public, affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.

(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the agency shall provide a minimum of sixty days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.

(iv) The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. The requirements for notice and opportunity to comment for the public, affected tribes, and agencies in (c)(i) and (ii) of this subsection and the requirements for protection and mitigation in (c)(i) of this subsection must be specifically documented. The local ordinance or resolution shall include, but not be limited to, the following:

- Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.

- Planning and permitting processes that ensure compliance with applicable laws including chapters [27.44](#), 27.53, 68.50, and [68.60](#) RCW.

- Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.

(d) The maximum exemption levels applicable to (c) of this subsection are:

	Fully planning GMA counties		All other counties
Project types	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential	30 units	20 units	20 units
Multifamily residential	60 units	25 units	25 units
Barn, loafing shed, farm equipment storage, produce storage or packing structure	40,000 square feet	40,000 square feet	40,000 square feet
Office, school, commercial, recreational, service, storage building, parking facilities	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
Fill or excavation	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

(2) Other minor new construction.

(a) The exemptions in this subsection apply to all licenses required to undertake the following types of proposals except when the project:

- (i) Is undertaken wholly or partly on lands covered by water;
- (ii) Requires a license governing discharges to water that is not exempt under RCW [43.21C.0383](#);
- (iii) Requires a license governing emissions to air that is not exempt under RCW [43.21C.0381](#) or WAC 197-11-800 (7) or (8); or

- (iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.

(c) The construction and/or installation of commercial on-premise signs, and public signs and signals.

(d) The construction or installation of minor road and street improvements by any agency or private party that include the following:

- (i) Safety structures and equipment: Such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators;

- (ii) Transportation corridor landscaping (including the application of state of Washington approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC [248-54-660](#));

- (iii) Temporary traffic controls and detours;

- (iv) Correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required;

- (v) Adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required;

- (vi) Channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation;

- (vii) Installation of catch basins and culverts for the purposes of road and street improvements;

- (viii) Reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders where capacity is not increased and no new right of way is required;

- (ix) Addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

(e) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(f) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

(g) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance such as listing in a historic register.

(h) The installation or removal of impervious underground or above-ground tanks, having a total capacity of 10,000 gallons or less except on agricultural and industrial lands. On agricultural and industrial lands, the installation or removal of impervious underground or above-ground tanks, having a total capacity of 60,000 gallons or less.

- (i) The vacation of streets or roads.

- (j) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

- (k) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

- (l) The installation of accessory solar energy generation equipment on or attached to existing structures and facilities whereby the existing footprint and size of the building is not increased.

(3) **Repair, remodeling and maintenance activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

- (a) Dredging of over fifty cubic yards of material;
- (b) Reconstruction or maintenance of groins and similar shoreline protection structures;
- (c) Replacement of utility cables that must be buried under the surface of the bedlands; or
- (d) Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) **Water rights.** Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.

(5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

- (a) The purchase or acquisition of any right to real property.
- (b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to a specifically designated and authorized public use established by the public landowner and used by the public for that purpose.
- (c) Leasing, granting an easement for, or otherwise authorizing the use of real property when the property use will remain essentially the same as the existing use for the term of the agreement, or when the use under the lease, easement or other authorization is otherwise exempted by this chapter.

(6) **Land use decisions.** The following land use decisions shall be exempt:

- (a) Land use decisions for exempt projects, except that rezones must comply with (c) of this subsection.
- (b) Other land use decisions not qualified for exemption under subsection (a) (such as a home occupation or change of use) are exempt provided:
 - (i) The authorized activities will be conducted within an existing building or facility qualifying for exemption under WAC 197-11-800 (1) and (2); and
 - (ii) The activities will not change the character of the building or facility in a way that would remove it from an exempt class.
- (c) Where an exempt project requires a rezone, the rezone is exempt only if:
 - (i) The project is in an urban growth area in a city or county planning under RCW [36.70A.040](#);
 - (ii) The proposed rezone is consistent with and does not require an amendment to the comprehensive plan; and
 - (iii) The applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption; and the EIS adequately addressed the environmental impacts of the rezone.
- (d) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW [58.17.060](#), and short plats or short subdivisions within the original short subdivision boundaries provided the cumulative divisions do not exceed the total lots allowed to be created under RCW [58.17.020](#). This exemption includes binding site plans authorized by RCW [58.17.035](#) up to the same number of lots allowed by the jurisdiction as a short subdivision.
- (e) Granting of variance based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(f) Alteration of property lines as authorized by RCW [58.17.040](#)(6).

(7) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(8) **Clean Air Act.** The granting of variances under RCW [70.94.181](#) extending applicable air pollution control requirements for one year or less shall be exempt.

(9) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

(10) **Activities of the state legislature.** All actions of the state legislature are exempted.

(11) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(12) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(13) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities including, but not limited to, cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities including, but not limited to, peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services including, but not limited to, detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities including, but not limited to, taxicabs, ambulances, and tow trucks: Provided, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution including, but not limited to, restaurants, liquor, and meat.

(h) All animal control licenses including, but not limited to, pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(14) Activities of agencies. The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: Provided, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection.

(k) Classification of land for current use taxation under chapter [84.34](#) RCW, and classification and grading of forest land under chapter [84.33](#) RCW.

(15) Financial assistance grants. The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

(16) Local improvement districts and special purpose districts. The formation of local improvement districts and special purpose districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and [197-11-880](#). A special district or special purpose district is a local government entity designated by the Revised Code of Washington (RCW) and is not a city, town, township, or county.

(17) Information collection and research. Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC [197-11-070](#).)

(18) Acceptance of filings. The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(19) Procedural actions. The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment.

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

(c) Agency SEPA procedures.

(20) **Reserved.**

(21) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter [70.107](#) RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations, SEPA compliance may be limited to those items which differ from state regulations.

(22) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines twelve inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (up to and including 115,000 volts); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station vault, pipe, or well: Additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, the chemicals used are approved by Washington state and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC [248-54-660](#).

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(24) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

(b) Licenses or approvals to remove firewood.

(c) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(d) Issuance of leases for Christmas tree harvesting or brush picking.

(e) Issuance of leases for school sites.

(f) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(g) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(h) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC [248-54-660](#).

(i) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(j) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter [79.70](#) RCW.

(25) Wireless service facilities.

(a) The siting of wireless service facilities are exempt if:

(i) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures that does not substantially change the physical dimensions of such structures; or

(ii) The siting project involves constructing a wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) "Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "Wireless service facilities" means facilities for the provision of wireless services.

(iii) "Collocation" means the mounting or installation of equipment on an existing tower, building, structure for the purposes of either transmitting or receiving, or both, radio frequency signals for communication purposes.

(iv) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(v) "Substantially change the physical dimensions" means:

(A) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(B) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW [36.70A.060](#)).

(26) The following Washington department of transportation projects and activities shall be exempt: The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation, as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF RICHLAND**

Regarding the Application to Rezone a
0.55 acre site located within the Island
View Subarea from C-2 (Retail
Business) to C-3 (General Business), to
allow businesses that require both a
small office space and warehouse space
for storage and/or assembly of products,
submitted on behalf

GAUNTT NW, LLC,

Applicant,

*(The site is located on two vacant parcels, addressed as
1788 and 1790 Fowler Street, in the City of Richland)*

File No. Z2014-109

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

I. SUMMARY OF RECOMMENDATION.

The applicant has met its burden of proof to demonstrate that its rezone application merits approval. Accordingly, the undersigned Examiner recommends APPROVAL by the Richland City Council, subject to conditions.

II. BACKGROUND and APPLICABLE LAW.

In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing on the site-specific rezone application at issue, and is directed to issue a written recommendation for consideration and final action by the Richland City Council. See Richland Municipal Code (RMC) 19.20.010(C)(2)(identifies “site-specific rezone” as a Type III permit application); RMC 19.20.030(jurisdiction to conduct public hearing, issue recommendation); RMC 19.25.110(authority for Examiner actions, including conditions of

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1 approval on applications or appeals); and RCW 35A.63.170(state statute regarding hearing
2 examiner system).

3 The applicant bears the burden of proof to show that its application conforms to the
4 relevant elements of the city's development regulations and comprehensive plan, and that
5 any significant adverse environmental impacts have been adequately addressed. RMC
6 19.60.060. And, because a site-specific rezone application is a Type III matter, the City's
code mandates that a concurrency review must be undertaken to determine the
transportation impacts (if any) that could be created by the proposed action. RMC
19.50.010(C).

7 Unlike many Washington jurisdictions, the City of Richland does not have a
8 specific section of its municipal code that sets forth supplemental decision criteria or
9 development regulations for a rezone application. The City Council is well within its
authority to adopt such criteria as it sees fit, so long as such provisions are consistent with
state statutes and case law on the topic.

10 Washington Courts apply three basic rules when reviewing appeals of rezone
11 applications: (1) there is no presumption favoring the rezone request; (2) the proponent of a
12 rezone must demonstrate that there has been a change of circumstances since the original
13 zoning, PROVIDED if a proposed rezone implements the policies of a comprehensive plan,
14 a showing of changed circumstances is usually not required¹; and (3) the rezone must have
15 a substantial relationship to the public health, safety, morals, or general welfare. *Woods v.*
Kittitas County, 162 Wn.2d 597 (2007), citing *Citizens for Mount Vernon*, 133 Wn.2d 861,
at 875 (1997); *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462 (1978).

16 III. QUESTIONS PRESENTED.

17 For purposes of the pending rezone application, the central questions presented are:

18 A. Whether the requested rezone implements policies of the City's Comprehensive
19 Plan, and/or whether there has been a change of circumstances since the original C-2
20 zoning was adopted for the site?

21 Short Answer: Yes.

22
23 ¹ *Save Our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 370-71 (1983); *Henderson v. Kittitas County*, 124 Wn. App.
747, 754 (Div. III, 2004); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846 (Div. III, 1995).

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1 B. Whether the rezone bears a substantial relationship to the public health, safety,
2 morals, or general welfare?

3 Short Answer: Yes.

4
5 **IV. RECORD AND EXHIBITS.**

6 Exhibits entered into evidence as part of the record, and an audio recording of the
7 public hearing, are maintained by the City of Richland, and may be examined or reviewed
8 by contacting the City Clerk's Office.

9 ***Hearing Testimony:*** The following individuals presented testimony under oath at
10 the duly noticed public hearing for the underlying application, held on Thursday, January
22, 2015:

- 11 1. Rick Simon, Development Service Manager for the City of Richland;
12 2. Chep Gauntt, for the property owner/applicant, Gaunt NW, LLC²;
13 3. Marcee Woffinden, with Senior Life Resources, which owns the vacant lot
14 north/northwest of the site; and
15 4. Aaron Lambert, Senior Planner for the City of Richland.

16 At the public hearing, Mr. Simon made a brief presentation regarding the
17 application, the site, and his recommendation, as explained in the Staff Report. Mr.
18 Lambert assisted Mr. Simon, and they each were available to answer questions posed by the
19 Examiner. Mr. Gauntt spoke on behalf of himself and his wife, as owners of Gauntt NW,
20 LLC, the applicant in this matter. Ms. Woffinden testified that she works with Senior Life
21 Resources, that she does not oppose the rezone, and basically expressed her desire that any
22 building or development on the site will be attractive looking from the north, where SLR
may want to locate sometime soon. The Examiner noted that his authority to approve or
deny the proposed rezone does not include aesthetic, design considerations, and that such
concerns would be more appropriate for consideration if and when a building or other
development permit application is submitted. The participants answered several questions,

23 ² Mrs. Gauntt (Kay), also appeared at the hearing, but chose not to provide substantive testimony.

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1 and no one testified or submitted any written comments in opposition to the proposed
2 rezone. The entire hearing took less than one hour.

3 ***Exhibits:*** The Development Services Division Staff Report, including a
4 recommendation of approval subject to a proposed property use and development
5 agreement, was provided to the Examiner on January 15, 2015. The Staff Report, and the
6 following Exhibits, were all accepted into the Record in their entirety without modification:

- 7 1. Application Form and proposed site plan.
- 8 2. Commercial Zoning Regulations, Chapter 18.22 of the Richland Municipal
9 Code.
- 10 3. Site photos.
- 11 4. Public Notices.
- 12 5. Proposed Property Use and Development Agreement.

13 The Examiner confirmed through City staff and others present at the hearing that no
14 one submitted any written comments regarding the pending rezone application.

15 The Examiner visited the site of the proposed rezone on the day of the public
16 hearing, and is fully advised on matters at issue herein, including without limitation
17 applicable law, application materials, and relevant comprehensive plan provisions.

18 **V. FINDINGS OF FACT.**

19 Based upon the record, the undersigned Examiner issues the following Findings of
20 Fact.

21 ***Application, Public Notice, and Review***

22 1. In late November of 2014, the applicant/owners of the subject-property, Gauntt NW,
23 LLC (Chep and Kay Gauntt, of Pasco) submitted its/their application seeking a rezone of a
24 vacant site comprised on two parcels, addressed as 1788 and 1790 Fowler Street, in the City
25 of Richland. The Application is stamped "Received" by the City's "Permit and
26 Inspections" office on November 25, 2014, and the applicants' signatures are dated
November 20th. *Exhibit 1.*

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2. Following receipt, City staff complied with all applicable public notice requirements for the rezone application and the public hearing held for the matter. *Staff Report, Page 5, and Exhibit 4, copies of various public notices published and mailed.*

3. Because staff deemed the application to be consistent with the City's Comprehensive Plan, and the City's plan was analyzed in an environmental impact statement at the time of its adoption, the pending application is categorically exempt from SEPA review as provided in WAC 197-11-800(6)(c). *Staff Report, page 6.*

4. The application accurately describes the site as East of Columbia Center Blvd., and across Fowler Street from the McCurley Honda dealership. The site is currently vacant. It is a corner-property, bound on the south and east sides by paved, open and improved public roads, now known as Fowler Street. *Exhibit 3 (site photos); Site Visit.*

5. Under the City's transportation plan, Fowler Street is classified as an arterial collector. Consistent with the previously mentioned transportation concurrency requirements found in RMC 19.50.010(C), City staff confirmed that Fowler Street has existing capacity to support additional commercial development, and that an assessment of transportation-related improvements, if any are required, will be determined when specific development plans are submitted for review by the City. *Staff Report, page 3.*

6. As part of the review process, City staff confirms that adequate utilities, including without limitation water, power, and sewer, are in place and/or readily available to serve the Gauntt property. *Staff Report, page 5.*

Surrounding uses and zones.

7. The Gauntt property is surrounded by properties holding a mix of existing uses and zoning designations, described moving clockwise:

A. Northeast of the site: The property is developed with an apartment complex, and is zoned WF (Waterfront);

B. East of the site: The property is developed with an office complex, and is zoned CLB (Limited Business);

C. South of the site: As noted in the description provided on the face of the application, the site is immediately across the street from a local Honda car dealership, which is zoned C-3;

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1 D. West: The property immediately west of the site is developed with an
2 existing office building, and is zoned C-2; and

3 E. Northwest and immediately North of the site: The property is vacant, and is
4 zoned WF.

5 ***Site size.***

6 8. The Gauntt property is much smaller than most sites observed in the Tri-Cities area
7 that are developed with “big box” retail stores and other uses that are commonly known as
“large-format retail establishments”. *Site visit.*

8 9. Mr. Simon testified and explained in his staff report that the size of the Gauntt site
9 does not lend itself to large format retail establishments. *Staff Report, testimony of Mr.*
Simon.

10 10. Taking administrative notice of publicly available online records maintained by the
11 Benton County Assessor’s Office in accord with laws of the State of Washington, the
12 Examiner concurs with Mr. Simon’s finding, noting that the size of the Gauntt property
13 (0.55 acres) is far too small to achieve development of a “large format retail establishment”
14 like a Costco (Kennewick store listed at over 150,000 finished sq/ft), Wal-Mart (Richland
15 store listed at over 200,000 finished sq/ft) or even something the size of the Richland
Albertson’s store on Lee Boulevard, which is listed at approximately 41,300 finished square
feet, or 0.94 acres – nearly double the size of all the land available on the Gauntt site.

16 ***Commercial zoning.***

17 11. The City’s Commercial Zoning Districts are established and described in Chapter
18 23.22 RMC. For purposes of the pending application, the focus is upon the existing C-2
zoning and the requested rezone to C-3.

19 12. RMC 23.22.010(B), (C), and (D) include identical language, and explain that the C-
20 1, C-2, or C-3 zoning classifications are “intended to be applied to some portions of the
City that are designated Commercial under the City of Richland Comprehensive Plan.”

21 13. The Gauntt property is designated “Regional Retail” under the City’s existing
22 Comprehensive Plan. *Comprehensive Plan Map.* The term “Regional Retail” is one of the
23 many “Commercial” uses addressed in the City’s Comprehensive Plan and zoning
regulations.

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1 14. The Glossary section of the City's Comprehensive Plan defines the term
2 "Commercial Uses" as follows: "Businesses involved in: 1) the sale, lease or rent of new or
3 used products to the consumer public; 2) the provision of personal services to the consumer
4 public; 3) the provisions of leisure services in the form of food or drink and passive or
5 active entertainment; or 4) the provision of product repair or servicing of consumer goods."

6 15. The following definitions/explanation of terms that are relevant to the pending
7 rezone also appear in the City's Comprehensive Plan.

8 Commercial (C) - The commercial land use category includes a variety of retail, wholesale, and
9 office uses. Within this category are professional business offices, hotels, motels, and related uses. It
10 also includes a variety of retail and service uses oriented to serving residential neighborhoods, such
11 as grocery stores, hardware supply, and garden supply. Other commercial uses include automobile
12 related uses, and uses that normally require outdoor storage and display of goods. In transitional
13 areas between more intensive commercial uses and lower density residential uses, high-density
14 residential development may also be located within the Commercial designated areas.

15 Island View Retail Business (IVRB) - This designation is applied to the existing retail area that is
16 commonly known as Columbia Center North, as well as other nearby locations on Columbia Center
17 Boulevard and Fowler Street. Within this designation infill development is encouraged. Large format
18 region-serving retail establishments are also encouraged on parcels large enough to support such
19 uses.

20 Island View General Commercial (IVGC) - This designation is applied to lands in the southernmost
21 portions of Island View that are adjacent to and visible from SR 240. Within this category, new and
22 used auto sales, RV, truck dealers and similar retail uses are encouraged. Service related businesses
23 that require a central location within the Tri-Cities are also included in this designation.

24 16. The City's zoning code does not include a separate set of zoning districts for the
25 Island View subarea, where the Gauntt property is located. Instead, the designated zones
26 for the Gauntt site and other commercial uses in the vicinity are as set forth in Chapter
23.22 RMC. Again, both the existing C-2 and the proposed C-3 zones are among the
Commercial Zoning designations available for properties in the Island View area.

Consistency with Comprehensive Plan and city codes.

17 17. The proposed rezone appears to implement and achieve objectives set forth in both
18 the IVRB and IVGC provisions of the City's Comprehensive Plan, including without
19 limitation: infill development for service related businesses that will take advantage of
20 their central location within the Tri-Cities, adjacent to and visible from SR 240.

21 18. Because the requested rezone seeks to change the zoning classification from one (C-

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2) to another (C-3) of the Commercial Zoning Districts expressly intended to apply to portions of the City that are designated Commercial under the City's Comprehensive Plan, the application is consistent with existing city codes, particularly RMC 23.22.010(C) and (D), as well as the City's Comprehensive Plan.

19. The proposed Development Agreement is a reasonable and appropriate measure intended to fully comply with the City's existing zoning code provisions for General Business uses, specifically those that seek to ensure that commercial business uses located in a C-3 zoning district do not inflict adverse impacts on surrounding residential areas. RMC 23.22.020(C).

20. Based on the record, particularly existing types of development and the various Commercial zoning district classifications available for properties in the area of the rezone, the Examiner finds and concludes that the requested rezone from C-2 to C-3 is not totally different from or inconsistent with existing land uses located on or zoning designations assigned to surrounding properties in the area.

21. Standing alone, the requested rezone conforms to the Comprehensive Plan, because the plan already identifies the property as "Commercial". The City's zoning code includes multiple varieties of Commercial Zoning Districts available for "some portions of the City that are designated Commercial" in the City's Comprehensive Plan. The change from one Commercial zoning district to another, in this case from C-2 to C-3, is not an unreasonable request, and if approved, it is highly unlikely that any reviewing court could construe the rezone as anything remotely close to arbitrary and capricious spot zoning. The Gauntt's application is well within the scope of commercial uses envisioned in the Comprehensive Plan for the site, and would not involve a "dramatic" change or incongruity with neighboring properties. It simply substitutes a different sort of commercial use (C-3 businesses that require small office and warehouse space), for which the final dimensional requirements of a structure will be same – no taller or larger than would have been permitted under the existing C-2 zone for the site. *Testimony of Mr. Simon; Staff Report, Comparison of C-2 and C-3 Dimensional Standards.*

22. On behalf of the applicant, Mr. Gauntt testified and confirmed that he supports the findings and recommendations reflected in the Staff Report, specifically including the proposed Property Use and Development Agreement for the subject property. *Testimony of Mr. Gauntt.*

23. The applicant submitted preliminary plans depicting a building for the site, which could house a business or small businesses that desire small office space, with adjoining warehouse space to store or assemble products. Mr. Gauntt indicated his desire to move

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forward with construction as soon as possible, certainly within the current year. *Testimony of Mr. Gauntt; Staff Report, Exhibit 1, page 3.*

24. The Examiner finds that the applicant's plans for the site would transform a currently vacant site into a development for one or more small business operators in a commercial area with easy access to and visibility from SR 240, which would serve community residents, make efficient use of existing infrastructure, and "strengthen and expand" the City's tax base – all of which implement policies found in the City's Comprehensive Plan.

25. When combined with the proposed development agreement for the property (Exhibit 5), which expressly limits the types of uses and other activities that might be perceived as having a potential impact or conflict with neighboring multi-family residential property, the requested rezone would eliminate the possibility of more intense commercial uses that may not conform to the surrounding area. Thus, the requested rezone bears a substantial relationship to the public health, safety, and general welfare.

26. The requested rezone is appropriate in the context of adjacent properties, some of which already allow similar or even more-intense or impactful uses. Even as conditioned through the voluntary development agreement, the requested rezone is shown to allow for the reasonable development of the Gauntt's property.

27. In this matter, the record demonstrates general conformance with the City's comprehensive plan. The proposed rezone would provide for more commercial-development options on a relatively small site, which is consistent with the Comprehensive Plan, including without limitation:

- LU Goal 1, which explains that the City will establish land uses that encourage cost-effective development;
- Policy 1 of LU Goal 1, which reads "The City will encourage new development consisting of a variety of land uses adjacent to existing development, which will take advantage of the existing infrastructure network;"
- LU Goal 3, which promotes commercial growth and revitalization that serves residents and strengthens and expands the tax base;
- Policy 1 of LU Goal 3, which reads in relevant part: "The City will accommodate all types of commercial land uses"; and

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- Policy 2 of LU Goal 3, which reads in relevant part: “The City will create new land use and zoning designations to facilitate both new development and redevelopment where required to implement the City’s goals.”

28. The applicant’s proposed rezone and intended use for the site would be consistent with the “Island View General Commercial” land use designation, because it would include “service related businesses that require a central location within the Tri-Cities.” *Staff Report, Testimony of Mr. Simon.*

29. The Development Services Manager’s Staff Report (making a Recommendation of Approval) dated January 22, 2015 includes a number of specific findings and explanations that establish how the underlying application satisfies provisions of applicable law and is consistent with the city’s Comprehensive Plan and zoning regulations. Except as modified in this Recommendation, all Findings contained in the Staff Report are incorporated herein by reference as Findings of the undersigned hearing examiner.

30. Any factual matters set forth in the foregoing or following sections of this Recommendation are hereby adopted by the Hearing Examiner as findings of fact, and incorporated into this section as such.

VI. CONCLUSIONS.

Based upon the record, and the Findings set forth above, the Examiner issues the following Conclusions:

1. The applicant has met its burden to demonstrate that the requested rezone conforms to, and in fact implements objectives of, the City’s Comprehensive Plan. *Findings, including without limitation Nos. 3, 17, 18, 21, 24, 27, 28, and 29.*

2. The applicant has met its burden to demonstrate that the requested rezone bears a substantial relationship to the public health, safety, or welfare. *Findings, including without limitation Nos. 3, 5, 6 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, and 29.*

3. Comprehensive plans are not ordinarily used to make specific land use decisions but rather function as a “guide” or “blueprint” to be used when making land use decisions. *Barrie v. Kitsap County*, 93 Wn.2d 843, at 849 (1980). In a rezone process, all that is required is general conformance, not substantial conformance, with the general blueprint provided by the comprehensive plan. *Cathcart v. Snohomish County*, 96 Wn.2d 201, at 212 (1981).

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1 4. Here, the request is to substitute one type of Commercial Zoning designation for
2 another, a change that is further minimized if the proposed development agreement
3 (Exhibit 5) is adopted concurrently, thereby reducing the types of uses that can occupy the
4 space after any rezone is approved. In any event, the building height and final dimensional
requirements of a structure will be same – no taller or larger than would have been
permitted under the existing C-2 zone for the site. *Finding No. 21.*

5 5. The Staff Report and testimony on the record demonstrate that the proposed rezone
6 will not require new public facilities and that there is capacity within the transportation
7 network, the utility system, and other public services such as fire, to accommodate
8 additional development such as that envisioned for the rezone site. The rezoned property
9 can provide for an appropriate level of commercial development in a manner that is
compatible with the character of the existing uses and zoning districts surrounding the
property.

10 6. The rezoned site, especially if developed in a manner consistent with the terms of the
11 proposed development agreement (Exhibit 5), will not be materially detrimental to uses or
12 property in the immediate vicinity of the subject property – in fact, it will increase
13 commercial activity on a currently vacant, underutilized corner property in an area zoned
for commercial uses and businesses. The applicant testified that his plans are to promptly
move forward and develop the site, achieving a comprehensive plan goal for infill
commercial development on the site.

14 7. The rezone supports Richland's commitment to promote commercial growth and
15 expand the city's tax base.

16 8. As in all dynamic urban areas, circumstances in the area of the rezone site have,
17 and will continue to change, from those in existence when the original C-2 zoning was
18 imposed. In today's world, the types of uses desired under C-2 zoning demand larger
19 properties, especially large format retail, which is highly unlikely on the site, despite its
20 current C-2 zoning, because such projects need a much larger property. Infill is possible,
but is much more likely to occur through the requested rezone, which will allow for
commercial uses that seem more realistic for the small site, along the lines of the project
envisioned by the applicant.

21 9. While the pending rezone application is categorically exempt from formal SEPA
22 review, the record demonstrates that the potential for adverse impacts is very unlikely, and
23 even further reduced through adoption of the proposed development agreement for the site.

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10. As required by RMC 19.50.010(C), the record includes staff assurances that the transportation system is sufficient to accommodate the type of development envisioned with the proposed rezone, and that any specific improvements to such system, if any, will be determined when formal development plans are submitted for review by the City.
Finding No. 5.

11. Despite ample public notice and outreach efforts by City staff in conformance with applicable city requirements, no one stepped forward to provide any written comments or public testimony in opposition to the proposed rezone. Simply put, the application is unopposed.

12. Based on the record, the applicant demonstrated its rezone application merits approval, meeting its burden of proof imposed by RMC 19.60.060.

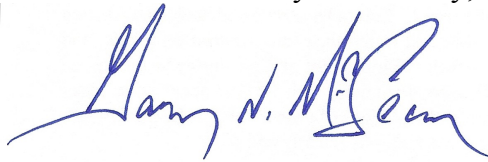
13. Approval of this rezone will not and does not constitute, nor does it imply any expectation of, approval of any administrative permit or subsequent reviews that may be required for project development on the site of the subject rezone, including without limitation design and construction of a building.

14. Any finding or other statement contained in this Recommendation that is deemed to be a Conclusion is hereby adopted as such and incorporated by reference.

VII. RECOMMENDATION.

Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that Gauntt NW, LLC's application to rezone a 0.55 acre site located within the Island View Subarea from C-2 to C-3, should be **APPROVED**, subject to compliance with all terms of the proposed Property Use and Development Agreement for the property.

ISSUED this 4th Day of February, 2015



Gary N. McLean
Hearing Examiner

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