Title 18

ENVIRONMENT

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Chapter 18.04

STATE ENVIRONMENTAL POLICY ACT

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18.04.010 State Environmental Policy Act. 1. The city of Kettle Falls hereinafter referred to as "City", adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

2. The SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this Ordinance.

3. The City adopts the following sections and future amendments of Chapter 197-11 of the Washington Administrative Code by reference:

197-11-040 Definitions.
197-11-050 Lead Agency.
197-11-055 Timing of SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.

18.04.020 Additional Definitions. In addition to those definitions in WAC 197-11-700 through 799, the following terms have the meanings described unless the context indicates otherwise:

1. "Department" means any division, subdivision, or organizational unit of the City.

2. "SEPA Rules" means Chapter 197-11 WAC as now or hereafter adopted.

3. "Early Notice" means the City's notice to an applicant that it considers a determination of significance likely for this proposal (mitigated DNS procedures).

18.04.030 Designation of Responsible Official. The head (administrative official) of the department making the proposal or with primary responsibility for approving the permits and licenses for the proposal shall be the Responsible Official if the City is lead agency. He will make threshold determinations, determine the scope and supervise the preparation of EIS's, and perform any other necessary or proper task to carry out this Chapter.

18.04.040 Lead Agency Determination. 1. Any department receiving or initiating a proposal must prepare an environmental checklist. The Responsible Official will determine the lead agency in accord with WAC 197-11-050 and WAC 197-11-922 through WAC 197-11-940; unless the lead agency has been previously determined or he is aware that another agency is in the process of determining the lead agency.

2. If the City is the lead agency the department receiving or initiating a proposal will forward the application to the Responsible Official who will make the threshold determination and, if an EIS is necessary, supervise its preparation.

3. If the City is not the lead agency, the department must use and consider the DNS or the final EIS of the lead agency in making decisions on its proposal. No department will prepare or require a DNS or EIS in addition to that prepared by the lead agency unless required by WAC 197-11-600. The City may conduct supplemental environmental review under WAC 197-11-600.

4. If the City receives a lead agency determination which appears inconsistent with WAC 197-11-922 through 197-11-940, it may object to the determination. The objection must be made to the agency originally making the determination. If not resolved within fifteen days, the Responsible Official may petition the Department of Ecology for a lead agency determination.

5. Departments may make agreements as to lead agency status or shared lead agency duties, but the Responsible Official and any affected department must approve the agreement.

6. Any department taking a license application must obtain sufficient information to identify other agencies which may have jurisdiction over the proposal.

18.04.050 Transfer of Lead Agency Status to a State Agency. The Responsible Official may transfer lead agency status over a private project to the State agency with jurisdiction appearing first on the priority list of WAC 197-11-936. The City will remain an agency with jurisdiction. The Responsible Official must send notice of the transfer together with all relevant information on the proposal to the State agency. He will also give notice of the transfer to the private applicant and all other agencies with jurisdiction.

18.04.060 Time for making Threshold Determinations. The following limits (expressed in calendar days) apply to all private projects and proposals by other agencies:

1. Categorical Exemptions: The City will identify categorical exemptions within seven days of receiving a complete application.

2. Threshold Determination:

a. The City will make a threshold determination which can be based solely upon the environmental checklist within fifteen days of receiving an adequate application and completed checklist.

b. If the Responsible Official needs more information from the applicant or another agency, he will request it within fifteen days, wait no more than thirty days for a consulted agency to respond and complete his determination within fifteen days of receiving the information.

c. If the City must further study a proposal, including making field investigations, to make a threshold determination, it will attempt to complete the study within thirty days but may take more time if needed.

d. The City will make a threshold determination within fifteen days if the applicant indicates that an EIS should be prepared.

18.04.070 Use of Environmental Review. City staff will submit DNS's and EIS's along with all recommendations to advisory and final bodies such as Planning Commission and City Council.

18.04.080 Applicant's Request for Review. If the City's only action is issuance of a Building Permit or other license requiring detailed project plans and specifications, the applicant may request in writing that the City conduct its environmental review before he submits his plans and specifications.

18.04.090 State Environmental Policy Act and Growth Management Act. The city adopts the following sections and future amendments of the Washington Administrative Code by reference:

197-11-210	SEPA/GMA integration.
197-11-220	SEPA/GMA definitions.
197-11-228	Overall SEPA/GMA integration procedures.
197-11-230	Timing of integrated GMA/SEPA process.
197-11-232	SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
197-11-235	Documents.

18.04.100 Categorical Exemptions and Threshold Determinations. The City adopts the following sections and the future amendments of the Washington Administrative Code by reference:

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

18.04.110 Categorical Exemptions. 1. The following types of construction are categorically exempt except when undertaken in any part on lands covered by water:

a. The construction or location of any residential structures of twenty dwelling units or less.

b. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural zone covering 30,000 square feet or less, and to be used only by the property owner or his agent in farming the property. This exemption does not apply to feed lots.

c. The construction of an office, school, commercial, recreational, service, or storage building with 4,000 square feet of gross floor area, or less, and with associated parking facilities designed for twenty automobiles or less.

d. The construction of a parking lot designed for twenty automobiles or less.

e. Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

2. If the Responsible Official believes that special circumstances warrant further environmental review, he may so direct even for categorically exempt projects.

18.04.120 Use of Exemptions. 1. Each department receiving an application for a license or making a proposal will determine if it is exempt. Its determination is final and not subject to review and none of the procedural requirements of this chapter apply. No environmental checklist is required for exempt proposals.

2. Each department will properly define each proposal and identify the permits and licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the City will determine the lead agency even if the license is exempt.

3. The City may authorize exempt actions before nonexempt so long as there is no significant adverse impact on the environment and choices are not limited, but may withhold approval which might lead to modification of the physical environment which would serve no purpose if nonexempt action were not approved, or might financially burden a private applicant if nonexempt action were not approved.

18.04.130 Environmental Checklist. 1. A completed environmental checklist must be filed with all permit or license applications or other approvals unless exempt, but a checklist is not needed if the City and applicant agree that an EIS is required or SEPA compliance has been completed or initiated by another agency. The City will use the checklist to determine the lead agency and make the threshold determination.

2. The applicant must complete the environmental checklist. The City will assist as necessary. The department making a proposal must complete the environmental checklist.

3. The City and not the private applicant will complete the environmental checklist if the City has technical information that is unavailable to the applicant or the applicant has previously given inaccurate information. The costs of preparing the checklist must be paid by the applicant before final approval.

4. During the review of the environmental checklist the City may make such changes or additions to the environmental checklist as are necessary to make it an accurate statement. Alternatively, the City may return the checklist to the applicant for revisions and/or additional information.

18.04.140 Mitigated DNS - Early Notice. 1. As provided in this section and in WAC 197-11-350, the Responsible Official may issue a determination of non-significance (DNS) based on conditions he attaches to the proposal, or on changes to, or clarifications of, the proposal made by the applicant.

2. An applicant may request early notice of the likelihood of a DS. His written request must be made after his application and environmental checklist but before the City's actual threshold determination.

3. The Responsibility Official will respond within fifteen working days indicating whether the City considers issuance of a DS likely, and, if so, the areas of concern. The applicant may change or clarify his proposal to mitigate the indicated impacts and revise his environmental checklist or permit/license application.

4. The City will assist in identifying the impacts to the extend necessary to formulate mitigating measures.

5. If an applicant submits a changed or clarified proposal or a revised environmental checklist, the City will base its threshold determination on the changed or clarified proposal within fifteen days.

a. If the proposal includes sufficient specific, mitigating measures, the City will issue and circulate a determination of non-significance.

b. The City will make the threshold determination if the proposal does not include sufficient, specific, mitigating measures.

c. Proposed mitigating measures must be in writing and specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate. Proposals to "muffle machinery to "X" decibel" or "construct 200 feet storm water retention pond at "Y" location" are adequate.

d. Mitigating measures may be incorporated in the DNS by reference to agency reports, studies, or other documents.

6. A mitigated DNS is subject to a fifteen-day comment period and public notice.

7. Mitigating measures incorporated in a DNS become conditions of the permit/license and will be enforced accordingly.

8. The City's Early Notice is not a determination of significance. Discussion on clarifications or changes to a proposal, as opposed to a written request for early notice, do not bind the City to consider the clarifications or changes in its threshold determination.

18.04.200 Environmental Impact Statements. The City adopts the following sections and future amendments of the Washington Administrative Code by reference:

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 non-project proposals.
197-11-443	EIS contents when prior non-project EIS.
197-11-444	Elements of the environment.
197-11-448	Relationship of EIS to other considerations.
197-11-450	Cost-benefit analysis.
197-11-455	Issuance of DEIS.
197-11-460	Issuance of FEIS.

18.04.210 Preparation of EIS. 1. The preparation of draft and final EIS's and SEIS's is the responsibility of the City under the direction of the Responsible Official.

2. The draft and final EIS or SEIS will be prepared by the City, the applicant, or by a consultant selected by the City or the applicant. If the Responsible Official requires an EIS and someone other than the City will prepare an EIS, he will notify the applicant immediately after making the threshold determination.

3. The City may require an applicant to provide information it does not possess and make specific investigations, but the applicant need not supply information that is not required by this chapter or that is not being requested from another agency. This does not apply to information the City may request under another ordinance or statue.

18.04.220 Additional Elements to be Covered in an EIS. The City may require consideration of any or all of the following additional elements as part of an EIS. These elements do not effect threshold determinations.

1. Economy.
2. Social policy analysis.
3. Cost benefit analysis.

18.04.300 Commenting. The City adopts the following sections and future amendments of the Washington Administrative Code by reference:

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 costs to assist lead agency.

18.04.310 Public Notice. 1. Whenever the City issues a DNS or a DS, it will give public notice.

a. If public notice is required for the license or action, it will state whether a DS or DNS has been issued and when comments are due.

b. If no public notice is required for the license or action, the City will:

(i) Publish notice in a newspaper of general circulation in the general area where the proposal is located; or

(ii) Notify groups which have ex-pressed interest in a certain proposal or in the type of proposal being considered.

c. Notice of a DS will indicate the scope of the EIS and indicate the method and deadline for receiving comments from interested parties.

2. Whenever the City issues a DEIS or SEIS, notice of the availability of those documents will be given in at least one of the following ways:

a. Posting the property for site-specific proposals;

b. Publishing notice in a newspaper of general circulation;

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

d. Notifying the news media;

e. Placing notices in appropriate regional neighborhood, ethnic, or trade journals; or

f. Publishing notice in agency news-letters or sending notice from agency mailing lists.

3. Whenever possible, the City will integrate this notice with other public notices.

4. The City may require an applicant to give notice at his expense.

18.04.320 Consulting Responsibilities for the City. The Responsible Official will prepare written comments for the City as a consulted agency. He will ensure that responses to consultation request are specific, prepared in a timely manner, and include information from appropriate departments.

18.04.400 Existing Environmental Documents. The City adopts the following sections and future amendments of the Washington Administrative Code by reference:

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.

18.04.410 SEPA and Agency Decisions. The City adopts the following sections and future amendments of the Washington Administrative Code by reference:

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

18.04.420 Substantive Authority. 1. This Chapter supplements all existing regulations, powers, and duties.

2. The City may attach reasonable, written conditions to any permit/license if the conditions are necessary to mitigate specific, probable, significant, adverse environmental impacts and based on one or more policies in subsection (4) below.

3. The City may deny a permit/license if it finds that the proposal would result in a probable, significant, adverse environmental impact for which there are no reasonable mitigating measures and if the denial is based on one or more policies identified in subsection (4) below.

4. The following policies are the basis for exercising authority under this section:

a. The City will use all the practical means to ensure that the State and its citizens:

(i) Fulfill their responsibilities to future generations as trustees of the environment;

(ii) Provide a safe, healthful, productive, and aesthetically and culturally pleasing environment.

(iii) Make the most beneficial use of the environment without degrading it, risking their health or safety, or causing other undesirable or unintended consequences by their actions;

(iv) Preserve important historic, cultural, and natural places and things;

(v) Maintain a diverse environment;

(vi) Achieve a balance between population and resources permitting high standards of living and a sharing of life's amenities; and

(vii) Conserve natural resources.

b. Everyone has a fundamental and inalienable right to a healthful environment and a concomitant responsibility to preserve and improve it.

c. All City ordinances, rules, policies, and actions shall be construed consistently with these policies.

18.04.430 Appeals. 1. Relief from a decision of the Responsible Official is requested from the legislative or policy-making body of the City. The appeal shall be made within ten calendar days. The Responsible Official's determinations must be accorded substantial weight.

2. The City's legislative or policy-making body reviews all procedural and substantive determinations made by or proposed to the Responsible Official together, except threshold determinations which may be reviewed without reference to substantive matters. The City's legislative or policy-making body must keep a record of all proceedings, prepare adequate findings and conclusions, take testimony only under oath, and maintain a verbatim recording of all proceedings.

3. An application for review of a decision of the City's legislative or policy-making body must be made to the Stevens County Superior Court within thirty (30) days of issuance unless a different time period applies to the underlying governmental action. Review of procedural decisions must be initiated within ten days.

18.04.440 Notice. The City will give a public notice whenever it issues a permit/license for which a statute or ordinance establishes a time limit for seeking judicial review. The City or applicant may publish a notice of action pursuant to RCW 43.21C.080. The form of the notice shall be substantially in the form provided in WAC 197-11-990 and published by the City Clerk or applicant pursuant to RCW 43.21C.080.

18.04.500 Definitions. The City adopts the following sections and future amendments of the Washington Administrative Code by Reference:

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 City.
197-11-730 Decision-maker.
197-11-732 Department.
197-11-734 Determination of non-significance (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 Non-Project.
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.

18.04.510 Categorical Exemptions. 1. The City adopts by reference the following sections and future amendments of the Washington Administrative Code for categorical exemptions, as supplemented in this chapter.

197-11-800 Categorical exemptions.
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.

18.04.520 Agency Compliance. The City adopts the following sections and future amendments of the Washington Administrative Code by reference.

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 city/county.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a city/county, 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.

18.04.530 Environmentally Sensitive Areas. 1. The City will designate critical areas under the standards of WAC 197-11-908 and file maps of such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas with the Department of Community Trade and Economic Development and the Department of Ecology.

2. The City will treat proposals located wholly or partially within a critical area no differently than other proposals in making threshold determinations. The City will not automatically require an EIS for a proposal merely because it is located in a critical area.

3. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not the lands covered by water are mapped.

18.04.540 Fees. The following fees will be charged: 1. Threshold Determination: The City will collect $25.00 from the proponent before undertaking a threshold determination. The time for making a threshold determination does not begin to run until payment of the fee.

2. Environmental Impact Statement. a. When the City is the lead agency for a proposal requiring an EIS and the Responsible Official determines that the EIS will be prepared by employees of the City, the City will charge and collect a reasonable fee from the applicant to cover its costs. The Reasonable Official will advise the applicant of the projected costs and obtain security for them.

b. When the Responsible Official determines that the City will contract for the preparation of an EIS, he will charge costs directly to the applicant. Consultants will be selected by mutual agreement of the City and applicant after a call for proposals. The Responsible Official will obtain security for the costs.

c. If a proposal is modified so that an EIS is no longer required, the Responsible Official will fund any fees collected under a. or b. of this subsection which remain after incurred costs are paid.

3. The City will collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter.

4. The City will not collect a fee for performing its duties as a consulted agency.

5. The City will charge for copies and for mailing.

18.04.550 Forms. The City adopts the following forms and sections of the Washington Administrative Code by reference:

197-11-960 Environmental Checklist.
197-11-965 Adoption notice.
197-11-970 Determination of non-significance (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. 1527, 1995)