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Introduction

Welcome to the 1998 Edition of the SEPA Handbook. The focus of this volume is to provide guidance on the State Environmental Policy Act (SEPA). We have included information on the history and purpose of SEPA and its relationship with other associated environmental laws. We have provided explanations of the purpose and importance of each step in the SEPA process, and tips on how to best complete them.

The 2003 updates include: (1) corrections, including new phone numbers and internet addresses; (2) an expanded section on categorical exemptions, including information on the 2003 SEPA amendment that allows cities and counties to create categorical exemptions for residential and mixed use infill; and (3) additional court case summaries.

A list of **Acronyms** immediately follows the **Table of Contents**. **Table 1** provides a brief overview of the SEPA process with references to the corresponding sections of the SEPA Rules. The appendices include a section on **Frequently Asked Questions**, another on SEPA-related **Significant Court Cases**, information on **Additional Resources**, and a selection of **Sample Letters and Forms**.

This handbook is also available via the Internet by accessing Ecology's homepage at http://www.ecy.wa.gov and selecting "Services" and "Environmental Review (SEPA)". The SEPA Statute (Chapter 43.21C RCW), the SEPA Rules (Chapter 197-11 WAC), the SEPA Model Ordinance (Chapter 173-806 WAC), the SEPA Register, other guidance documents, and the SEPA forms can also be accessed at this location. (See **Appendix C, Additional Resources** for more information.)

We hope you find the format and content of the SEPA Handbook helpful in your work with SEPA, whether you are a responsible official, reviewing agency, applicant, concerned citizen, or tribal member. If you have additional questions (or comments you would like to make on this publication), please contact our office:

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You may also contact any of our Regional Offices, particularly for questions on SEPA documents currently under review.

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(Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman Counties)

The SEPA Handbook is intended to be used in conjunction with the State Environmental Policy Act (Chapter 43.21C RCW) and the SEPA Rules (Chapter 197-11 WAC). Should a conflict be found at any time between the guidance in this handbook and either the SEPA Rules or the RCW, it should be understood that this handbook is intended as guidance only, and does not have the legal standing of the RCW or the Rule.

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Acronyms

DNS: determination of nonsignificance

DS: determination of significance

EIS: environmental impact statement

ESHB 1724: Engrossed Substitute House Bill 1724 (Enacted in 1995)

GMA: Growth Management Act

MDNS: mitigated determination of nonsignificance

NAT: notice of action (taken)

NEPA: National Environmental Policy Act

NOA: notice of application (under the Local Project Review Act)

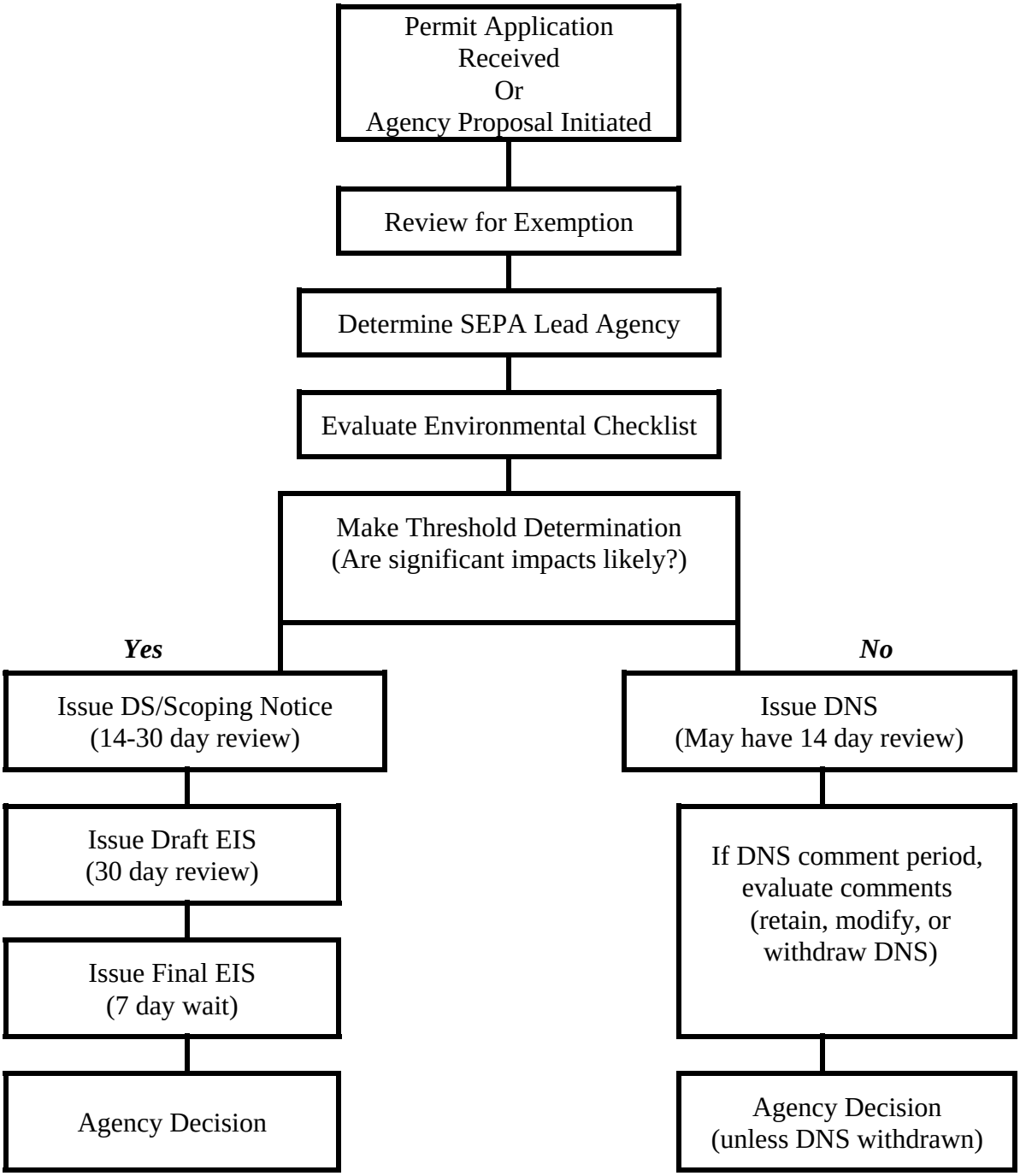
RCW: Revised Code of Washington

SEPA: the State Environmental Policy Act

WAC: Washington Administrative Code

Figure 1.

SEPA REVIEW PROCESS



1. SEPA—General Background

The State Environmental Policy Act (SEPA) may be the most powerful legal tool for protecting the environment of the state. Among other things, the law requires all state and local governments within the state to:

- "Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;" and
- Ensure that "...environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations...."[1]

The policies and goals in SEPA supplement those in existing authorizations of all branches of government of this state, including state agencies, counties, cities, districts, and public corporations. Any governmental action may be conditioned or denied pursuant to SEPA.[2]

1.1. Purpose and Intent

SEPA is intended to ensure that environmental values are considered during decision-making by state and local agencies. When SEPA was adopted, the legislature identified four primary purposes:

(1) “To declare a state policy which will encourage productive and enjoyable harmony between man and his environment;

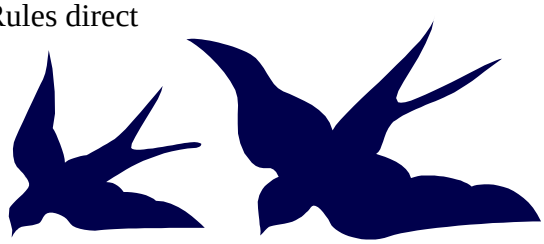
(2) to promote efforts which will prevent or eliminate damage to the environment and biosphere;

(3) and stimulate the health and welfare of man; and

(4) to enrich the understanding of the ecological systems and natural resources important to the state and nation."[3]

[1] RCW 43.21C. 030(2)(a) and (2)(b)
[2] RCW 43.21C.060
[3] RCW 43.21C.010

To implement these purposes, the SEPA Rules direct agencies to:



- Consider environmental information (impacts, alternatives, and mitigation) before committing to a particular course of action[4];
- Identify and evaluate probable impacts, alternatives and mitigation measures, emphasizing important environmental impacts and alternatives (including cumulative, short-term, long-term, direct and indirect impacts)[5];
- Encourage public involvement in decisions[6];
- Prepare environmental documents that are concise, clear, and to the point[7];
- Integrate SEPA with existing agency planning and licensing procedures, so that the procedures run concurrently rather than consecutively[8]; and
- Integrate SEPA with agency activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and seek to resolve potential problems[9].

The environmental review process in SEPA is designed to work with other regulations to provide a comprehensive review of a proposal. Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable impacts for all elements of the environment. Combining the review processes of SEPA and other laws reduces duplication and delay by combining study needs, combining comment periods and public notices, and allowing agencies, applicants, and the public to consider all aspects of a proposal at the same time.

SEPA also gives agencies the authority to condition or deny a proposal based on the agency's adopted SEPA policies and environmental impacts identified in a SEPA document. (See RCW 43.21C.060, WAC 197-11-660, and **Using SEPA in Decision Making** section on page 73.)

Proposals can be either **project proposals**, such as:

- new construction,
- demolition,
- landfills, or
- exchange of natural resources;

or **nonproject proposals,** such as:

- comprehensive plans,
- zoning, or
- development regulations.

[4] WAC 197-11-055(2)(c)
[5] WAC 197-11-030(2)(b) and (g)
[6] WAC 197-11-030(2)(f)
[7] WAC 197-11-030(2)(c)
[8] WAC 197-11-030(2)(e)
[9] WAC 197-11-055(2)

1.2. History

First adopted in 1971, the State Environmental Policy Act (SEPA) provided Washington State's basic environmental charter. Prior to its adoption, the public had voiced concern that government decisions did not reflect environmental considerations. State and local agencies had responded that there was no regulatory framework enabling them to address environmental issues. SEPA, modeled after the National Environmental Policy Act (1969), was created to fill this need. It gives agencies the tools to allow them to both consider and mitigate for environmental impacts of proposals. Provisions were also included to involve the public, tribes, and interested agencies in most review processes prior to a final decision being made.

SEPA gives agencies the tools to both consider and mitigate for environmental impacts of proposals.

The Act contains a number of broad policy statements, but little specific direction. In 1974, the Council on Environmental Policy was created by the Legislature and instructed to write rules to interpret and implement SEPA. The Council was directed to write consistent procedures, to reduce duplication and wasteful practices, encourage public involvement, and promote certainty. These regulations were adopted as the **SEPA Guidelines**, Chapter 197-10 WAC and became effective on January 16, 1976. The SEPA Guidelines included specific procedural requirements and introduced the concepts of categorical exemptions, lead agency responsibilities, and the threshold determination process.

In 1981 the Legislature created a second committee, the Commission on Environmental Policy, to evaluate and suggest possible amendments to SEPA and the SEPA Guidelines. The Commission's goals were to reduce unnecessary paperwork, duplication, and delay; simplify the guidelines; make the process more predictable; and improve the quality of environmental decision-making.

The Commission's evaluation resulted in several suggested changes to the SEPA process, including:

- a mitigated determination of nonsignificance process,
- requirements for shorter, more concise environmental impact statements,
- a new environmental checklist format, and
- clarification of SEPA's substantive authority and of the appeals procedures.

The work of the Commission formed the basis for the adoption of the **SEPA Rules**, Chapter 197-11 WAC, replacing the previous SEPA Guidelines. These rules became effective on April 4, 1984.

The first amendments to the SEPA Rules occurred in 1995 when Ecology added procedures for the integration of SEPA with the Model Toxics Control Act[10] and provisions for integration of SEPA into the planning process under the Growth Management Act[11]. The designation of environmentally sensitive areas was also changed to allow the use of critical area ordinances, adopted under GMA, as the basis for eliminating some categorical exemptions[12].

In November 1997, the second set of SEPA Rule amendments became effective, implementing the requirements of the 1995 legislation, ESHB 1724. The goal of ESHB 1724 was to establish new approaches to make government regulation more effective, and to make it easier and less costly for citizens and businesses to understand and comply with requirements. With these goals in mind, ESHB 1724 amended a number of laws, including the Growth Management Act[13], Shoreline Management Act[14], and SEPA. It also created the Local Project Review Act[15], the Permit Assistance Center, and the Land Use Study Commission.

The Local Project Review Act has brought additional emphasis to long-standing SEPA policy. The SEPA Rules indicate that environmental documents should be clear, concise, and to the point. Agencies are encouraged to find ways to reduce paperwork and the accumulation of extraneous background data—by emphasizing important environmental impacts and alternatives. To further encourage and promote public involvement in decisions that significantly affect environmental quality, and to avoid delay and duplication, the SEPA process should be initiated early and done in conjunction with other agency procedures.[16]

For further information on the Growth Management Act and the Local Project Review Act see sections 7 and 8 starting on page 75.

[10] WAC 197-11-250 thru 268
[11] WAC 197-11-210 thru 235
[12] WAC 197-11-908
[13] Chapter 36.70A RCW
[14] RCW 90.58.020
[15] Chapter 36.70B RCW
[16] WAC 197-11-030

2. SEPA Environmental Review

The State Environmental Policy Act (SEPA) is intended to provide information to agencies, applicants, and the public to encourage the development of environmentally sound proposals. The environmental review process involves the identification and evaluation of probable environmental impacts, and the development of mitigation measures that will reduce adverse environmental impacts. This environmental information, along with other considerations, is used by agency decision-makers to decide whether to approve a proposal, approve it with conditions, or deny the proposal. SEPA applies to actions made at all levels of government within Washington State. (See section 1.1 **Purpose and Intent** on page 1 for more information.)

Agency decisions are the hub of SEPA; if there is no agency action, SEPA is not required.

The SEPA Rules provide the basis for implementing SEPA, and establish uniform requirements for all agencies. By opening up the decision-making process and providing an avenue for consideration of environmental consequences, agencies and applicants are able to develop better proposals. Agencies may also deny proposals that are environmentally unsound.

Agency Actions

SEPA environmental review is required for any state or local agency decision that meets the definition of an "action" and is not categorically exempt. Actions are divided into two categories, "project actions" and "nonproject actions".

Project actions are agency decisions to license, fund, or undertake a specific project. For example, project actions include construction or alternation of:

- Public buildings such as city or county offices, jail facilities, public libraries, and school buildings;
- Public facilities such as water and sewer lines, electrical lines, and roads; and
- Private projects such as subdivisions, shopping centers, other commercial buildings, and industrial facilities.

Nonproject actions are agency decisions on policies, plans, and programs, including adoption or amendment of:

- Rules, ordinances, or regulations that will regulate future projects, such as water quality rules, critical area ordinances, and other state and local regulations;

- Comprehensive plans and zoning codes;
- Capital budgets; and
- Road and highway plans;

When deciding if a project requires SEPA review, remember that "agency action" includes not only a license, but also an agency decision to fund or undertake a proposal. Refer to WAC 197-11-704 for a complete definition of an agency action and WAC 197-11-760 for the definition of license.

If an agency action is not required for a proposal, SEPA environmental review is not required.

2.1. Summary of the SEPA Process

The environmental review process involves a number of steps that are briefly described below. Each step is described in more detail in this handbook.

1. **Provide a preapplication conference (optional).** Although not included in the SEPA Rules, we recommend that agencies offer a process for the applicant to discuss a proposal with staff prior to submitting a permit application or environmental checklist. The applicant and agency can discuss existing regulations that would affect the proposal, the steps and possible timeline for project review, and other information that may help the applicant submit a complete application.

2. **Determine whether SEPA is required**. Determine whether environmental review is required for the proposal by (1) defining the entire proposal, (2) identifying any agency actions (licenses, permits, etc.), and (3) deciding if the proposal fits one of the categorical exemptions. If the project does not involve an agency action, or there is an action but the project is exempt, environmental review is not required.

3. **Determine lead agency**. If environmental review is required, the "lead agency" is identified. This is the agency responsible for the environmental analysis and procedural steps under SEPA.

4. **Evaluate the proposal.** The lead agency must review the environmental checklist and other information available on the proposal and evaluate the proposal's likely environmental impacts. The lead agency and applicant may work together to reduce the probable impacts by either revising the proposal or identifying mitigation measures that will be included as permit conditions.

5. **Assess significance and issue a threshold determination**. After evaluating the proposal and identifying mitigation measures, the lead agency must determine whether a proposal would still have any likely significant adverse environmental impacts. The lead agency issues either a determination of nonsignificance (DNS), which may include mitigation conditions, or if the proposal is determined to have a likely significant adverse environmental impact, a determination of significance/scoping notice (DS/Scoping) is issued and the environmental impact statement (EIS) process is begun. The EIS will analyze alternatives and possible mitigation measures to reduce the environmental impacts of the proposal.

6. **Use SEPA in decision-making**. The agency decision-maker must consider the environmental information, along with technical and economic information, when deciding whether to approve a proposal. Decision-makers may use SEPA substantive authority to condition or deny a proposal based on information in the SEPA document and the agency's adopted SEPA policies. (RCW 43.21C.030(b) and 43.21C.060)

Table 1. **SEPA Process**

Is SEPA required?	Is the entire proposal defined?	WAC 197-11-060
	Is there an agency "action"?	WAC 197-11-704
	Is the action "categorically exempt"?	WAC 197-11-305 and 800 through 880
	Has SEPA already been completed?	WAC 197-11-164, 600, and 660
Who is lead agency?	Identify the "lead agency."	WAC 197-11-922 through 944
Are there likely to be impacts?	Review the checklist and identify likely significant adverse environmental impacts.	WAC 197-11-330
Are there existing documents that analyze the impacts?	Identify documents that analyze probable impacts of the proposal.	WAC 197-11-600 and 330(2)(a)
Can impacts be mitigated?	Identify mitigation required by development regulations, and other local and state laws.	WAC 197-11-158, and 330(1)(c)
	Is the applicant willing to change the proposal to reduce impacts?	WAC 197-11-350
	Consider using SEPA substantive authority for other impacts not adequately addressed.	WAC 197-11-660
After application of identified mitigation, is the proposal likely to have any significant adverse environmental impact?	If not, issue a determination of nonsignificance (which may include mitigation measures).	WAC 197-11-340, 350, and 355
	If yes, issue a determination of significance, and either include an adoption notice or begin the EIS process.	WAC 197-11-360 and Part Four
How is SEPA used in decision-making?	Mitigation under SEPA must be included as permit conditions, or in changes to permit applications for the proposal.	WAC 197-11-660
	Projects may be denied if identified significant adverse impacts cannot be mitigated.	

This table is intended as a general overview of the SEPA process, although many details are not included. Chief amongst these are the numerous points where the public, tribes, and/or other agencies have the opportunity to review and comment on proposals (as this will vary), and the consideration of those comments by the lead agency. Information on public comment periods and circulation requirements is depicted in Table 2.

Table 2. SEPA Public Involvement Requirements

DOCUMENT	Comment Period?	Public Notice?	Distribution?	
Determination of nonsignificance (DNS)	14-day comment period may be required	If comment period required	If comment period required	See WAC 197-11-340(2) for criteria on whether a comment period is required
Mitigated DNS	14 days	Yes	Yes	WAC 197-11-340 and 350
Optional DNS process Notice with the notice of application (NOA) DNS issued after NOA	 Combined with NOA (14 to 30 days) Optional 14 days	 Yes If a comment period is given	 Yes Yes	WAC 197-11-355
DNS integrated with GMA planning document	Combined with GMA document (14 to 60 days)	Yes	Yes	WAC 197-11-230(1) and (4)
Modified DNS	No	No	Yes	WAC 197-11-340(2)(f)
DNS after withdrawal of a DS	14 days	Yes	Yes	WAC 197-11-360(4) and 340(2)(iv)
Determination of significance (DS) with Scoping notice	21 days, up to 30 days for "expanded scoping"	Yes	Yes	WAC 197-11-360, 408, and 410
DS/Scoping notice with NOA	Combined with NOA (14 to 30 days)	Yes	Yes	WAC 197-11-408
Draft environmental impact statement (EIS)	30 days, with possible 15-day extension	Yes	Yes	WAC 197-11-455
Draft EIS integrated with GMA planning document	Combined with GMA document (30 to 60 days)	Yes	Yes	WAC 197-11-230(1) and (4)
Supplemental draft EIS	30 days, with possible 15-day extension	Yes	Yes	WAC 197-11-620(1) and 455
Final EIS	No, but a 7-day waiting period is required before agency action	No	Yes	WAC 197-11-460
Final supplemental EIS	No, but 7-day wait	No	Yes	WAC 197-11-620(1) and 460
Final EIS integrated with GMA planning document	No, and no 7-day wait	No	Yes	WAC 197-11-230(5)
Adoption Notice with DNS	14-day comment period may be required	If comment period required	If comment period required	WAC 197-11-340(2) and 630
Adoption notice with DS	No, but 7-day wait is required	No	Yes	WAC 197-11-630(3)
Addendum to a DNS	No	No	Encouraged	WAC 197-11-625(5)
Addendum to a EIS	No	No	May be required, always encouraged	See WAC 197-11-625 for criteria requiring distribution

Agencies may extend any comment period for their own proposals, WAC 197-11-050(7).

2.2. Provide a Preapplication Process

Environmental review of a proposal starts long before a lead agency makes a formal determination of whether a project is likely to have a significant environmental impact. Familiarizing the proponent with regulatory requirements and making an informal assessment of likely environmental impacts may lead to changes in the project's location or design that will speed up the formal environmental review and permit approval process. Early environmental project review can reduce expenses and save time for both the proponent and the lead agency.

All agencies are encouraged to offer some form of preapplication process for the applicant. This may be an informal meeting, a site visit, or a formal process with specific requirements. Whatever the format, a preapplication process gives the agency and the applicant an early opportunity to discuss permit application requirements and potential issues. It also provides an opportunity for a "reality check" for the viability of the project and an opportunity to help the applicant understand the review process.

The applicant should provide information on the proposed project, but should not be required to prepare or present detailed plans. Based on the information available, the agency should preliminarily identify applicable regulations and permit needs (including other agency requirements), possible study requirements, potential mitigation, the timeline for review, and other appropriate information.

Issues for agencies to consider when developing a preapplication process include:

- The level of detail needed for a preapplication meeting;
- Whether members of the public should be allowed to participate in the meeting;
- When to invite other agencies to participate;
- Whether to provide a preliminary consistency determination (for GMA jurisdictions);
- Whether and how to provide feedback to the applicant on the results of the meeting;
- How to keep track of the issues discussed and how to access that information when an application is submitted; and
- Methods of making potential applicants aware that the preapplication process is available.

2.3. Determine Whether SEPA Is Required

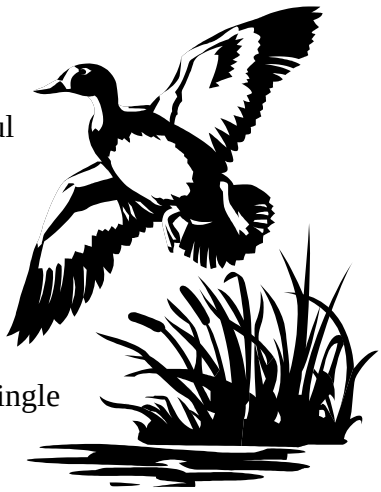
SEPA environmental review is required for all agency actions unless specifically exempted by the SEPA Rules (WAC 197-11-800 to 880) or statute (Refer to Section 2.3.3. Categorical Exemptions). Agency actions include providing funding or issuing permits for project proposals, and the adoption of plans, regulations, or ordinances for nonproject proposals. (For the full definition of an action under SEPA, see WAC 197-11-704.)

The following steps are used to determine whether SEPA is required:

1. Define the total proposal, including any interdependent parts;
2. Identify all agency actions required for the proposal (e.g., licenses, funding, etc.) (if there is no agency action, SEPA review is not required);
3. Determine whether the proposal or agency action is categorically exempt.

Some proposals may not require additional environmental review under SEPA if they qualify as a "planned action" under an ordinance adopted by a county or city planning under the Growth Management Act (GMA). (See section on **Planned Actions** on page 81.) In other cases, it may be possible to use existing environmental documents to meet SEPA requirements for a new proposal. (Refer to **Using Existing Documents** on page 33.)

2.3.1. Defining the entire proposal



Accurately defining the proposal is key to a successful SEPA process. It is necessary to define the entire proposal to:

- Determine if SEPA is required.
- Determine agencies with jurisdiction and/or expertise.
- Determine lead agency.
- Assure that all related actions are evaluated in a single document, when required (WAC 197-11-060(3)(b)).

Defining the total proposal involves the identification of all the related and interdependent pieces of the proposal. For example, the local agency (city or county) is likely to be lead for development of a dairy farm that consists solely of building construction. If the dairy also required creation of a large water reservoir, the Department of Ecology would become lead agency for the proposal per the lead agency criteria in WAC 197-11-938.

A large proposal involving actions in vastly different locations, such as material being mined at one site, then transported to and processed at another, is another

example of defining the entire proposal. Appropriate environmental review would look at the impacts of all the related activities.

It is important to remember that actions are related if they are dependent on each other, so that one will not happen without the other. Related actions may also be spread over time, such as the construction, operation, and closure phases of a proposal.

Related actions may have a single proponent or several. A golf course might be proposed by a private party. However, the city installing a water reuse system needed to serve the site would be a related action. Though the golf course and the water reuse system have separate proponents, since neither would/could proceed without the other, they should be considered together as one proposal under SEPA.

2.3.1.1. Phased Review

The SEPA Rules allow a proposal to be phased so that SEPA compliance can be done for each phase. Phased review allows agencies and the public to focus on issues that are ready for decision and excludes from consideration issues already decided or not yet ready. (WAC 197-11-060(5)(b))

The sequence of phased review of a project must be from a broad scope to a narrow scope. For example, the review of a multi-phase planned unit development would consist of a general review of the entire proposal and detailed review of those phases ready for construction. Additional review would occur prior to each future phase when adequate information was available to evaluate the environmental impacts.

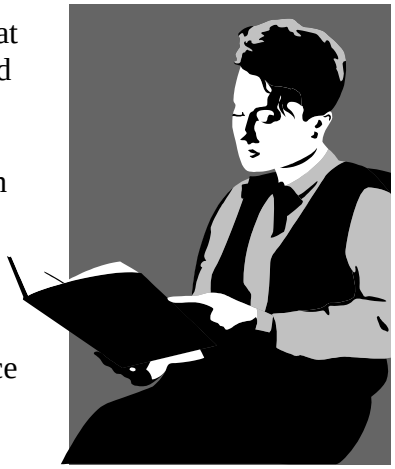
If the proposal consists of a series of actions that are individually exempt, but <u>together</u> may have a significant impact, then the proposal is <u>not</u> exempt.

Phased review is not appropriate when it would merely divide a project to avoid consideration of cumulative impacts or alternatives. For example, if an industrial facility is proposed, it is not appropriate to limit the review to the impacts of the grade and fill permit without considering construction and operation of the industrial facility.

The “broad to narrow” restriction of phased environmental review does not apply to planning proposals done under the Growth Management Act. For example, the environmental review for the adoption of an interim critical area ordinance (narrow focus) may occur before the review and adoption of the comprehensive plan (broad focus). This is allowed under the 1995 amendments to the SEPA Rules in WAC 197-11-228.

Whenever phased review is used, the SEPA document must clearly state that the proposal is being phased. Future environmental documents should identify the previous documents and should focus on those issues not adequately addressed in the previous documents.

2.3.2. Identify Permits



In defining the proposal, it is necessary to determine what permits or approvals will be needed from state, local, and federal agencies. Some resources that can help are the Office of Regulatory Assistance (Office), the Permit Handbook, and the Office's webpage, accessible through the Department of Ecology's homepage (http://www.ecy.wa.gov).

The Office can be reached at (360) 407-7037 or 1-800-917-0043, or emailed at ecypac@ecy.wa.gov. The Office is located at the Department of Ecology's headquarters building at 300 Desmond Drive, Lacey.

The Office's website includes an Online Permit Assistance System to help you determine which state and federal environmental permits may be needed based on information you provide about a proposal. The Permit Handbook is also available on the website or by contacting the Office.

When deciding which agency permits or approvals are needed, it may be necessary to consult with other agencies to determine if they have permits or approvals to issue for a specific project. This will help to ensure that all agency actions are identified before determining whether a proposal is categorically exempt.

2.3.3. Categorical Exemptions

Some types of projects and some agency actions have been exempted from the requirements of SEPA by the Legislature. These "statutory exemptions" are contained in SEPA, Chapter 43.21C RCW. Examples of the statutory exemptions include Class I, II, and III forest practice applications, air operating permits, and some water right applications.

The table below summarizes all of the statutory exemptions contained in the SEPA statute on November 1, 2003. Please check the statute for any exemptions adopted after this date.

Statutory Exemptions
As of November 1, 2003

Please remember that this is a summary and the entire exemption must be reviewed before determining if a proposal is exempt from SEPA review.

Statutory Exemption	RCW
Acquisition of forest lands in stream channel mitigation zones	43.21C.260
Acquisition of conservation easements pertaining to forest lands in riparian zones	43.21C.260
Air operating permits	43.21C.0381
Certain actions under a state of emergency declared by the Governor (also see the emergency exemption in WAC 197-11-880)	43.21C.210
City or town incorporation	43.21C.220
City or town annexation of territory	43.21C.225
City or town consolidation or annexation of all of a city/town by another city/town	43.21C.225
City or town disincorporation	43.21C.227
Fish enhancement projects being reviewed under RCW 77.55.290	43.21C.0382
Forest Practices Board emergency rules	43.21C.250
Forest practices Class I, II, and III	43.21C.037
Forest road maintenance and abandonment plans	43.21C.260
House Finance Commission plans	43.21C.230
Personal wireless services facilities (also see WAC 197-11-800(25))	43.21C.0384
School closures	43.21C.038
Secure transition facilities to house sexually violent predators	43.21C.270
Timber harvest schedules involving east-side clear cuts	43.21C.260
Unfinished nuclear power projects	43.21C.400
Waste discharge permits for existing discharges	43.21C.0383
Water appropriations of 50 cu ft per second or less for irrigation	43.21C.035
Watershed restoration projects implementing a watershed restoration plan that has been reviewed under SEPA	43.21C.0382

In addition to the statutory exemptions, the Legislature directed Ecology to identify in the SEPA Rules minor activities that would not require SEPA review. These "rule exemptions" are types of projects or agency actions that are not subject to SEPA review because the size or type of the activity is unlikely to cause a significant adverse environmental impact. (Refer to SEPA Rules Part Nine.)

Examples of categorically exempt construction activities include construction of four dwelling units or less, commercial buildings with 4,000 square feet or less of gross floor area and no more than 20 parking spaces, and water and sewer lines eight inches or less in diameter. Examples of specific license exemptions include granting of land use variances based on special circumstances, water quality certifications, licenses for open burning, and some hydraulic project approvals.

The Legislature also directed Ecology to identify circumstances when the categorical exemptions would not apply. To meet this requirement, some categorical exemptions include "exceptions". For example, the construction of a 4,000 square foot commercial building with 10 parking spaces is exempt from SEPA review *except* when the project is on lands covered by water or when the proposal requires a rezone, a license for an air emission or a discharge to water.

Other restrictions are contained in WAC 197-11-305. A proposal that would normally be exempt from SEPA review under Part Nine of the SEPA Rules is not exempt if any of the following apply.

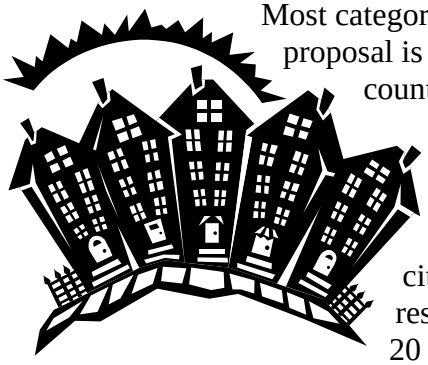
- The proposal is a segment of a proposal that includes a series of related actions, some of which are exempt and some of which are not. For example, the construction of a single family home is usually exempt from SEPA review. However, the single family exemption does not apply when a Class IV forest practice application is required. Since the SEPA statute requires Class IV applications to be evaluated under SEPA, the entire proposal requires SEPA review.

- The proposal includes a series of exempt actions and the lead agency's responsible official determines that together the actions may have a probable significant adverse environmental impact.

- The city or county where the proposal is located has eliminated the categorical exemption for proposals located within a critical area (see section 2.3.3.2. **Categorical Exemptions in Critical Areas**).

To determine if a proposal is exempt from SEPA, review the rule exemptions in Part Nine of the SEPA Rules and the statutory exemptions in SEPA. If the proposal meets the criteria for a categorical exemption in either the SEPA Rules or the SEPA statute, no further SEPA review or documentation is required. Remember to watch for "exceptions" and consider the restrictions in WAC 197-11-305.

2.3.3.1. Categorical Exemptions--Flexible Thresholds



Most categorical exemptions use size criteria to determine if a proposal is exempt. The SEPA Rules allow cities and counties to raise the exemption limit for minor new construction to better accommodate the needs in their jurisdiction. The exemptions may be raised up to the maximum specified in the SEPA Rules (WAC 197-11-800(1)(c). For example, cities and counties may choose to exempt residential developments at any level between 4 and 20 dwelling units. The exemption for commercial buildings can range between 4,000 to 12,000 square feet. These "flexible thresholds" must be designated through ordinance or resolution by the city or county. If this has not been done, the minimum level stands.

If a proposal lies within two jurisdictions, the lower level threshold controls the total proposal—no matter which agency is lead on the proposal. For example, the major portion of a proposed 16-unit residential development lies within the city-limits of Bigcity, which has raised the residential threshold to 20 units. A small portion of the development (for instance, the recreational building) lies within the city-limits of Quiettown, which has not raised the residential threshold above the 4-unit minimum. Though Bigcity is lead agency for the proposal and all 16 units will be constructed within Bigcity jurisdiction, Quiettown's lower 4-unit threshold must be applied to the entire proposal and the project would not be exempt.

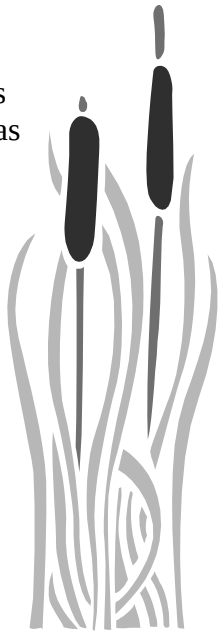
The exemptions defined under "Minor new construction—Flexible thresholds" do <u>not</u> apply when:

- A rezone is involved;
- A license is needed for emissions to air or a discharge to water; or
- The proposal involves work wholly or partly on lands covered by water.

The exemption level set by the county or city will also apply when an agency other than the county or city is lead agency. A state agency or special district may need to consult with the county or city to identify the adopted exemption level for a particular area.

It is also important to remember that the exemptions for "minor new construction—flexible thresholds" <u>do not apply</u> if any portion of the proposal involves work on lands covered by water, if a license is needed for a discharge to air or water, or if a rezone is required. (WAC 197-11-800(1)(a) and (2))

2.3.3.2. Categorical Exemptions in Critical Areas



Cities and counties are required to designate critical areas under the Growth Management Act (GMA). Critical areas are wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. To ensure adequate environmental review of development within these areas, cities and counties may also designate in their SEPA procedures categorical exemptions that do not apply within each critical area. (Refer to WAC 197-11-908 for the list of exemptions that can be eliminated.)

If a project is not categorically exempt because it is located within a critical area, the environmental review is limited to:

- Documenting whether the proposal is consistent with the requirements of the critical areas ordinance;
- Evaluating any significant adverse environmental impacts not adequately addressed by the GMA planning documents and development regulations; and
- Preparing a threshold determination, and an EIS if necessary. (WAC 197-11-908)

Other agencies should consult with the city or county that has jurisdiction over the project site to determine which categorical exemptions do or do not apply to a proposal.

2.3.3.3. Emergency Exemptions

An emergency exemption can be granted by a lead agency when 1) an action is needed to avoid an imminent threat to public health or safety, public or private property, or to prevent serious environmental degradation; and 2) there is not adequate time to complete SEPA procedures. Poor planning by the proponent should not constitute an emergency.

2.3.3.4 Categorical Exemptions for Infill – 2003 Legislation

Cities and counties planning under the Growth Management Act (GMA) must designate urban growth areas, develop comprehensive plans, and adopt implementing regulations to accommodate population growth expected to occur over the next 20 years. As part of this planning effort, GMA cities and counties identify the density of residential development and intensity of mixed use, commercial, and other types of development that will be needed to accommodate the projected population growth.

In 2003, a new section was added to SEPA to encourage infill development at the densities and intensities designated by GMA cities and counties in their comprehensive plans. This new section allows GMA counties and cities to establish categorical exemptions for "…new residential or mixed-use development proposed to fill in an urban growth area designated according to RCW 36.70A.110, where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan." (RCW 43.21C.229)

This legislation is intended to streamline the permit process for infill development in urban growth areas where a city or county is having difficulty meeting planned densities and intensities. Streamlining the permit process will encourage higher density and intensity of development where growth should occur.

Requirements for Adopting Infill Exemptions

Several criteria must be met for a GMA city or county to adopt a categorical exemption for infill:

- The exemption must be limited to new residential or mixed use development within a designated urban growth area;
- The existing density and intensity of use in the urban growth area must be lower than called for in the goals and policies of the applicable city or county comprehensive plan;
- An EIS must have been completed for the adoption of the comprehensive plan; and
- The proposed development must not exceed the density or intensity of use called for in the goals and policies of the applicable city or county comprehensive plan.

Any infill categorical exemption adopted by a GMA city and county is subject to the same limitations as the categorical exemptions adopted by Ecology in the SEPA Rules. Specifically, WAC 197-11-305 states that a proposal is not exempt if:

- The proposal is a segment of a proposal that requires both exempt and non-exempt actions (see section 2.3.3. **Categorical Exemptions** for an example);

- The responsible official determines that the proposal includes a series of exempt actions that together may have a probable significant adverse environmental impact; or

- The city or county has eliminated a categorical exemption for proposals located within a critical area (see section 2.3.3.2. **Categorical Exemptions in Critical Areas**).

In addition, many of the categorical exemptions adopted by Ecology do not apply when the proposal is on "lands covered by water". The exemptions for minor new construction in WAC 197-11-800(1) also do not apply if a rezone is required or the project requires a license governing emissions to the air or discharges to water. When establishing a new exemption, the GMA city or county should consider whether one or more of these limitations should be included in the exemption.

GMA cities and counties considering adoption of a new categorical exemption should consider whether the exemption would apply to a project proposed within a critical area. It is recommend that the new exemption not apply in critical areas unless the city or county has updated its critical areas policies and regulations to include best available science under RCW 36.70A.172. This will ensure that the functions and values of critical areas are protected within the urban growth area.

Any categorical exemption adopted under this legislation should be adopted as part of the GMA city or county's SEPA procedures. (Refer to WAC 197-11-904 and 906) A copy of any new categorical exemptions should be sent to the Department of Ecology, SEPA Unit, PO Box 47703, Olympia, WA 98504-7703.

Process for adopting infill categorical exemptions

The following steps are an example of the process that might be used by a GMA city or county to establish a categorical exemption for infill development.

1. Identify the density and intensity goals specified in the adopted comprehensive plan for residential and mixed use development. If the density/intensity goals have been clearly defined, continue to step 2.

If the density/intensity goals are not clearly defined, it may be necessary to update the comprehensive plan before adopting a new categorical exemption.

2. Evaluate recent residential and/or mixed use projects to identify a specific area(s) where the density/intensity goals in the comprehensive plan are not being met. This review should include consideration of restrictions in other regulations that may prevent the density/intensity from occurring. For example, development in a critical area may be limited due to a wetland buffer zone requirement in the critical area ordinance.

3. If review of the recent development indicates the density or intensity goals are not being met, identify the development level needed to meet the goals within the selected area.

4. Evaluate the EIS prepared for the comprehensive plan and determine if the density and intensity goals have been adequately analyzed. Is the analysis up-to-date and does it adequately evaluate the likely environmental impacts of proposed infill development?

A new categorical exemption to encourage infill cannot be adopted unless an EIS has been prepared for the comprehensive plan.

If the EIS analysis is not adequate, a supplemental EIS may need to be prepared before adopting an infill exemption. This supplemental EIS should be prepared in conjunction with the adoption or amendment of a subarea plan or an update of the comprehensive plan.

5. Draft a proposed categorical exemption. The exemption should clearly indicate:

   - The level of residential or mixed use development that will be exempt,
   - The area where the exemption will apply, and
   - How the exemption will be applied to a proposed project.

   Examples of infill exemptions might be:

   a. Within the Valley Subarea, proposals for construction of up to 50 residential units will be exempt except upon lands covered by water or within a designated critical area. This exemption will be applied on a case by case basis to ensure the proposal is within the density limits established in the comprehensive plan.

   b. Any residential or residential mixed use development will be categorically exempt if the proposal does not exceed 40% of the density or intensity allowed for the area bounded by xxxx.

6. Complete SEPA environmental review for the proposed categorical exemption. If the EIS adequately analyzes the likely impacts of the proposed categorical exemption, an adoption notice with an addendum may be appropriate.

7. Invite the public to comment on the proposed exemption. Public participation in the development of a new categorical exemption is important. Since a threshold determination is not required when a permit application is received for an exempt proposal, there may not be an opportunity for public review or administrative appeal at the project review stage. To build support for an abbreviated permit process, public awareness is needed when the categorical exemption is developed.

8. Amend the agency's SEPA procedures ordinance to include the new categorical exemption. Send a copy of the new exemption(s) to the Department of Ecology.

Review of Proposals

When an application for residential or mixed use development is submitted, the GMA county/city must:

1. Compare the proposal to the adopted categorical exemption.

    - Is the proposed density/intensity within the limit established in the exemption?
    - Do any "exceptions" in the categorical exemption apply?
    - Is the proposal within a critical area where the exemption does not apply?
    - Do the criteria in WAC 197-11-305 apply?

    If the proposal exceeds the density or intensity in the comprehensive plan, the proposal cannot be exempted.

2. Ensure the proposed density or intensity of the development does not exceed the density/intensity levels established in the comprehensive plan.

If the proposal meets the criteria in the categorical exemption and does not exceed the density/intensity levels in the comprehensive plan, the proposal is exempt from SEPA review. Agencies are not required to document that a proposal is categorically exempt from SEPA review. However, a note in the file may be useful for future reference.

Frequently Asked Questions About Infill Exemptions

Q. Is Ecology going to amend the SEPA Rules?

A. Ecology is not planning to amend the SEPA Rules at this time. Instead, guidance on adoption of infill exemptions has been included in the 2003 SEPA Handbook Update.

Q. Can the exemption be higher than the exemption level specified in the SEPA Rules?

A. Yes. RCW 43.21C.229(1) specifically states the categorical exemption adopted by the GMA county/city applies even if it differs from the categorical exemption specified in the SEPA Rules.

Q. Is "mixed use" defined?

A. "Mixed use" is not defined in SEPA. For purposes of developing an infill categorical exemption, the term should be defined as a mix of residential and commercial/retail development. The city or county comprehensive plan should define the type and level of development that will be allowed in the mixed use category.

Q. Can an infill exemption include exemption for grading and filling necessary for the residential or mixed use development?

A. When the GMA city/county develops a new infill exemption, they should consider whether or not to exempt the grading and filling needed for the construction of an exempt residential or mixed use development. (See WAC 197-11-800(2)(d) relating to exemption of grading and filling necessary for exempt buildings.)

Q. Are infrastructure improvements needed for an exempt residential or mixed use development also exempt?

A. No. If infrastructure improvements are needed, such as a sewer or water distribution line extension, the improvement will not be exempt from SEPA review unless it meets the exemption level specified in the SEPA Rules (see, for example, WAC 197-11-800(23) Utilities).

2.3.3.5. Tips

- New Categorical Exemption: Fish habitat enhancement projects meeting the criteria of, and being reviewed and approved according to the provisions of RCW 77.55.290, are exempt from SEPA review.

- The total proposal must be identified before the categorical exemptions can be applied. "Total proposal" means all interdependent parts of a proposal, including all proposed phases. This will limit the piecemeal review of projects, and allow an evaluation of all parts of a proposal. The SEPA Rules do allow phased review under certain circumstances, as defined in WAC 197-11-060(5).

- The SEPA Rules do not require any documentation when a proposal does not meet the definition of an action, or is categorically exempt. However, we recommend the placement of a note in the file or on the permit application to indicate that SEPA had been considered.

- Demolition of structures [WAC 197-11-800(2)(f)]: The Office of Archaeology has provided an interpretation of "recognized historical significance." "..(R)ecognition must be formal and conferred by a body with authority and expertise in what might constitute historical significance. To be more explicit, … a property listed in the State or National Register of Historic Places, or listed in a local register of historic properties..."”

- The Dept. of Ecology considers the exemption for additions or modifications to buildings within WAC 197-11-800(2)(e) to apply to any addition where the existing floor area plus the proposed addition has a total area less than the square footage exempted under WAC 197-11-800(1) for minor new construction. In other words, SEPA is required for any addition when the <u>total</u> square footage of the building (old plus new) exceeds the threshold adopted by the local jurisdiction.

  If a building is not exempt at the time of construction, neither would any additions to the building be exempt. WAC 197-11-800(3) does exempt minor repair, remodeling (not including additions), and maintenance activities which would not change the use of the building and that does not occur on lands covered by water.

2.4. The Lead Agency

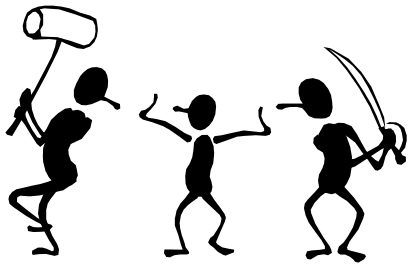
For most proposals, one agency is designated as lead agency under SEPA. The lead agency is:

- Responsible for compliance with SEPA procedural requirements.
- Responsible for compiling and assessing information on <u>all</u> the environmental aspects of the proposal for all agencies with jurisdiction.
- The **only** agency responsible for the threshold determination and for the preparation and content of an environmental impact statement when required.[17]

Federal agencies and tribes have no authority under SEPA and cannot be SEPA lead agency. If a federal agency or tribe proposes a project that needs a state or local permit, the federal agency would be considered a private applicant under SEPA and would be responsible for only those steps that are normally required of the applicant.

The responsible official represents the lead agency, and is responsible for ensuring adequate environmental analysis is done and the SEPA procedural requirements are met. The responsible official should be identified within the agency's SEPA procedures, and may be a specific person (such as the planning director or mayor), may vary within an agency depending on the proposal, or may be a group of people (such as an environmental review committee or the city council).

2.4.1. Determining Lead Agency



One of the first steps when an application for a new proposal is received is determining who will be the lead agency under SEPA. Usually the agency that receives the first application for a proposal is responsible for determining who is lead agency[18] and notifying them of the proposal. (See sample letter on page 153 for **Notifying Another Agency that They are Lead Agency**.) If the applicant has filled out an environmental checklist, that is sent to the lead agency with the notification letter.

If there is a dispute over who shall be lead agency and/or the lead agency cannot be identified, an agency with jurisdiction or the applicant may ask the Department of Ecology for resolution (WAC 197-11-946).

Lead agency status is determined according to WAC 197-11-922 through 948. The first step in determining the lead agency is defining the total proposal (see page 11) and

[17] WAC 197-11-050
[18] WAC 197-11-924

identifying all necessary permits. The following criteria are listed in the order of priority:

- If the proposal fits any of the criteria described in WAC 197-11-938, "Lead agencies for specific projects," the agency listed shall be lead.

- If the proponent is a non-federal government agency within Washington State, that agency shall be lead for the proposal[19].

- For private proposals requiring a license from a city or county, the lead agency is the city or county where the greatest portion of the project is located[20].

- If a city or county license is not needed, another local agency (for instance a local air authority) that has jurisdiction will be lead.

- If there is no local agency with jurisdiction, one of the state agencies with a license to issue will be lead, based on the priority set in WAC 197-11-936.

2.4.2. Lead Agency Agreements

Any non-federal agency within Washington State may be the lead agency as long as all agencies with jurisdiction agree[21]. The lead agency is not required to have jurisdiction on the proposal.

When the designated lead agency transfers all or part of the lead agency responsibilities to another agency, a "lead agency agreement" is made. Although we recommend that the agencies document the agreement in writing to avoid later confusion, this is not required.

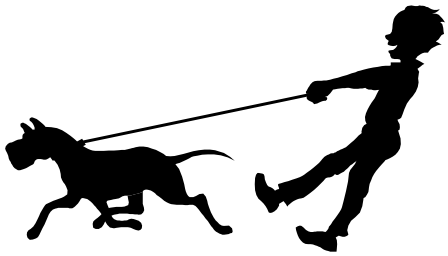
Lead agency agreements can transfer lead agency status, or create co-lead agencies.

Two or more agencies may become "co-lead" agencies if both agencies agree. One of the agencies is named "nominal lead" and is responsible for complying with the procedural requirements of SEPA[22]. All agencies sharing lead agency status are responsible for the completeness and accuracy of the environmental document(s). The written agreement between co-lead agencies, although not required, helps clarify responsibilities, and might typically contain: an outline of each agency's duties, a statement as to which agency is nominal lead, aspects on how disagreements will be resolved, who will hear appeals, and under what circumstances the contract can be dissolved.

[19] WAC 197-11-926
[20] WAC 197-11-932
[21] WAC 197-11-942
[22] WAC 197-11-944

Federal agencies may share lead agency status with a state or local agency to produce a combined NEPA/SEPA document. This allows both agencies to have input into the document preparation, saving time and money, and ensuring that the information needed to evaluate the federal, as well as the state and local permits, is included. This also helps ensure necessary and important coordination among agencies and a more unified understanding of the proposal and mitigation. The co-lead agency agreement can be formalized in a written agreement outlining the responsibilities of both agencies for the environmental review process.

2.4.3. Transfer of Lead Agency Status



A city with a population under 5,000, or a county with less than 18,000 residents may transfer lead agency status for a private proposal to a state agency that has a license to issue for the project[23]. The city or county must forward the environmental checklist and other relevant information on the proposal to the state agency, along with the notification of transfer of lead agency status. The state agency may not refuse.

If there is more than one state agency with jurisdiction, the order of priority in WAC 197-11-936 is used to determine which state agency will be the new lead agency.

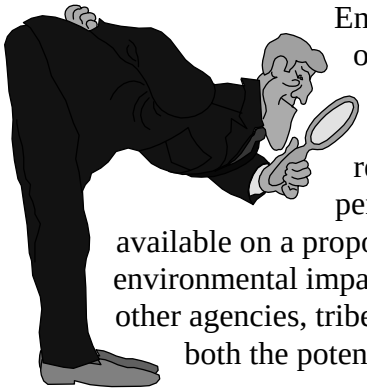
2.4.4. Assumption of Lead Agency Status

Assumption of lead agency status occurs when the original lead agency issues a determination of nonsignificance (DNS) and another agency with jurisdiction believes that the proposed project is likely to have significant adverse environmental impacts and that an EIS is needed to evaluate the impacts. After assuming lead agency status, the new lead agency is then required to issue a determination of significance and prepare an environmental impact statement (EIS)[24].

Any agency with jurisdiction may assume lead agency status during the 14-day comment period on a DNS. If, the lead agency uses the optional DNS process, assumption of lead agency status is made during the comment period on the notice of application. This is the only opportunity for an agency with jurisdiction to assume lead agency status during the optional DNS process. (WAC 197-11-948) (See page 94 for additional discussion on the optional DNS process.)

[23] WAC 197-11-940
[24] WAC 197-11-948

2.5. Evaluate the Proposal



Environmental review normally starts with the completion of an environmental checklist. The checklist provides information to the lead agency about the proposal and its probable environmental impacts. It is the lead agency's responsibility to review the environmental checklist, permit application(s), and any additional information available on a proposal to determine any probable significant adverse environmental impacts and identify potential mitigation. Consultations with other agencies, tribes, and the public early in the process can help identify both the potential impacts and possible mitigation.

Note:
Agencies should be aware of the timing requirements for making a threshold determination:

Mitigation is the avoidance, minimization, rectification, compensation, reduction, or elimination of adverse impacts. Monitoring and taking appropriate corrective measures is also mitigation.

- Cities and counties planning under GMA should complete project review and issue a notice of decision within 120 days of issuing a notice of completeness. The threshold determination must be issued early enough that the SEPA process (including comment or waiting periods) has been completed prior to issuing the notice of decision. Time needed for an applicant to submit additional information and/or for the preparation of an EIS is not counted in the 120-day time limit. (See section 8. **Local Project Review** on page 87 for additional information.)

- All other state and local agencies must issue a threshold determination (determination of significance or determination of nonsignificance) **within 90 days** of receiving a complete application.

2.5.1. The Environmental Checklist

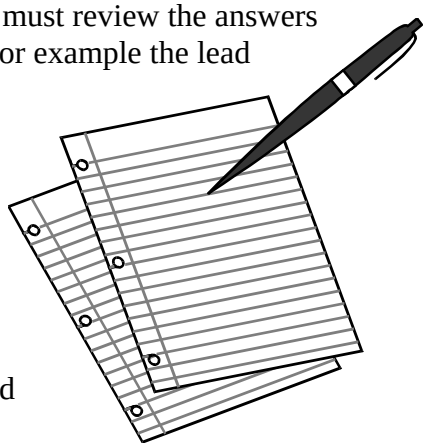
The environmental checklist is a standard form used by all agencies to obtain information about a proposal. It includes questions about the proposal, its location, possible future activities, and questions about potential impacts of the proposal on each element of the environment (such as earth, water, land use, etc.). The environmental checklist form is located in the SEPA Rules under WAC 197-11-960.

The lead agency may choose to fill out the checklist or may require the applicant to fill it out. An advantage to the applicant completing the checklist is that it

causes them to examine their proposal from an environmental perspective and they may be motivated to make improvements.

Guidance on completing the environmental checklist is available in the *SEPA Guide for Project Applicants* (Ecology Publication #02-06-018, revised August 2002). This guide provides information on each checklist question. For example, the Air section identifies types of activities that might generate air pollution emissions; the Animals section provides an Internet address for a list of threatened and endangered species. The guide is available on Ecology's SEPA website.

If the applicant completes the checklist, the lead agency must review the answers and make corrections and/or additions, if appropriate. For example the lead agency should verify:



- Is the project description complete?
- Have all interdependent pieces of the project been identified? (Refer to WAC 197-11-060(3))
- Have all necessary permits and licenses from local, state, and federal agencies been identified?
- Is the location adequately identified?
- Are the descriptions of the environment complete and accurate?

Review and written revisions to the checklist by the lead agency is particularly important because the checklist:

- Is used to solicit feedback from other agencies, tribes, and the public;
- Provides agencies with environmental information needed to make decisions on the proposal; and
- Is part of the environmental record for a proposal.

If the applicant and lead agency agree that an environmental impact statement (EIS) is required, the checklist does not need to be completed. [WAC 197-11-315(1)(b)]

The checklist was designed to be as generic as possible to ensure that it was applicable to every kind of proposal. The items in the checklist are not weighted. The mention of one or more adverse impacts does not necessarily mean they are significant. (WAC 197-11-315(5)) In most cases, if the questions are answered accurately and completely, the impacts of a proposal can be ascertained. If necessary, the lead agency may request additional information from the applicant after conducting the initial review of the checklist. (WAC 197-11-100, 315, 335)

The SEPA Rules allow an agency to amend part A, the background section of the checklist. In addition, a GMA county or city may further modify the checklist for

use in evaluating "planned actions" once the Department of Ecology has approved the revised form[25]. (Refer to the section on **Planned Actions**, page 81.)

2.5.2. Consultations

The SEPA rules encourage all lead agencies to solicit comments from agencies with expertise to evaluate the environmental impacts of a proposal[26]. GMA cities and counties must now solicit agency and public comment through notices of application for many projects (see page 92). Any agency may also choose to solicit comments through "consultations," or a request for review and response, prior to making a threshold determination.

A SEPA **threshold determination** is the formal decision as to whether or not the proposal is likely to cause a significant adverse environmental impact that requires review in an environmental impact statement.

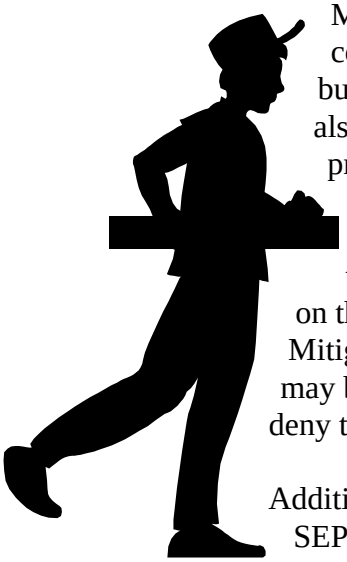
Consultations may involve meeting with other agencies, or circulating the checklist and other environmental documents for comment prior to a threshold determination. This can assist the lead agency in determining permits needed, appropriate mitigation to require, any additional information and/or studies needed, and when an environmental impact statement is or is not needed for a proposal. WAC 197-11-920 gives guidance on agencies with expertise for various categories in the environmental checklist.

There is no set form that a consultation must take. It is important that it contain sufficient information for agencies to provide valuable comments, including a clear description of the proposal. At a minimum, the environmental checklist should be included with a written consultation request. Information should also be included on when the comments must be returned for consideration by the lead agency, as well as an agency contact, address, and phone number.

Consultations are intended to gather information from agencies with expertise.

[25] WAC 197-11-315(2)
[26] WAC 197-11-335

2.5.3. Identify Mitigation



Mitigation is the avoidance, minimization, rectification, compensation, reduction, or elimination of adverse impacts to built and natural elements of the environment. Mitigation may also involve monitoring and a contingency plan for correcting problems if they occur.

In determining mitigation, the lead agency should review the environmental checklist and other information available on the proposal, including consultations with other agencies. Mitigation required under existing local, state, and federal rules may be sufficient to eliminate any adverse impacts—or even to deny the proposal.

Additional mitigation can be applied to a proposal with the use of SEPA substantive authority, based on identified potential adverse impacts related to the proposal and the agency's adopted SEPA procedures[27]. (See section on **Using SEPA in Decision Making** on page 73.) Mitigation conditions must also be reasonable and capable of being accomplished.

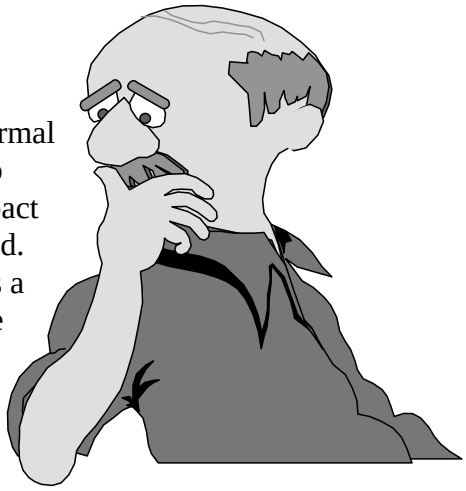
> Mitigation conditions must be included in the permit or approval to allow enforcement.

It may also be possible to work cooperatively with the proponent to make changes to the proposal that will reduce and eliminate the significant adverse impacts. Voluntary mitigation may sometimes exceed the level that could be required of the applicant under regulatory authority, and produce a much improved and more desirable project.

Other agencies with jurisdiction or expertise, and the public may assist the lead agency in determining appropriate mitigation for a proposal. This can be done prior to the threshold determination (see discussion on **Notices of Application** on page 92 and previous Section 2.5.2.2. **Consultations**), or may result from comments received on a threshold determination (DNS or DS/scoping notice), or draft EIS.

[27] Cities and counties should also be aware that they may be restricted from requiring mitigation for impacts that have been designated as acceptable or "adequately addressed" by their local legislative body. See section 6.3.4. on page 98.

2.6. Assess Significance



The SEPA "threshold determination" is the formal decision as to whether the proposal is likely to cause a significant adverse environmental impact for which mitigation cannot be easily identified. The SEPA Rules state that **significant** "means a reasonable likelihood of more than a moderate adverse impact on environmental quality"[28]. It is often non-quantifiable. It involves the physical setting, and both the magnitude and duration of the impact.

In evaluating a proposal, the lead agency reviews the environmental checklist and other information about the proposal, and should consider any comments received from the public or other agencies (through consultations, a notice of application, prethreshold meetings, etc.). Likely adverse environmental impacts are identified and potential mitigation is taken into account—particularly that already required under development and permit regulations. The responsible official must then decide whether there are any likely significant adverse environmental impacts that have not been adequately addressed.

> SEPA Rules state that the beneficial aspects of a proposal shall not be used to balance adverse impacts in determining significance.

The severity of the impact must be weighed as well as its likelihood of occurring. An impact may be significant if its magnitude would be severe, even if its likelihood is not great.

In determining if a proposal will have a significant impact, the responsible official may consider that a number of marginal impacts may together result in a significant impact. Even one significant impact is sufficient to require an environmental impact statement.

If significant impacts are likely, a determination of significance (DS) is issued and the environmental impact statement process is started. If there are no likely significant adverse environmental impacts, a determination of nonsignificance (DNS) is issued. The DS or DNS is referred to as a threshold determination. Additional guidance for making the threshold determination is included in WAC 197-11-330.

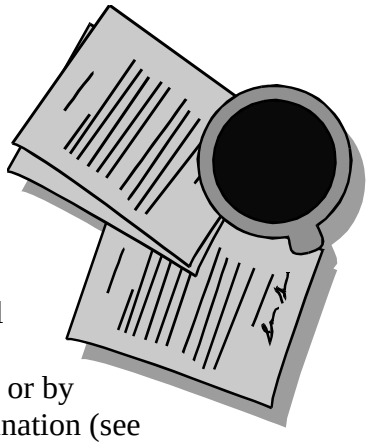
[28] WAC 197-11-794(1)

Table 3. Considerations During the Threshold Determination Process

When evaluating the proposal, the responsible official must consider a number of issues. The following are examples of the type of questions that need to be answered during the review process.

- Are the permit application(s) and environmental checklist accurate and complete?
- Are there any additional studies and/or information available that would help in the evaluation of the proposal? (I.e. an environmental impact statement on the comprehensive plan, or on a similar project, or on a project at a similar location.)
- Are specific studies needed under the (1) development regulations, (2) SEPA, or (3) other local, state, or federal regulations? For example, is a wetland study, a transportation study, or an archaeological review needed?
- Is early consultation with tribes, other agencies, and/or the public required or would it be beneficial? What form should this take?
- Is the project consistent with the local critical area ordinances, development regulations, and comprehensive plan? (GMA counties and cities should refer to Section 8.4.1. on **Analyzing Consistency**, page 98.)
- Is the proposal consistent with other local, state, and federal regulations (such as those governed by regional air authorities, health districts, and state natural resource agencies)?
- Will mitigation/conditions be required by the local development regulations or other local, state, or federal regulations?
- What are the likely adverse environmental impacts of the proposal? Have the reasonable concerns of tribes, other agencies, and the public been met?
- Is the applicant willing to change the proposal to eliminate or reduce the likely adverse environmental impacts of the proposal?
- Are there additional environmental impacts that have not been mitigated? Are there possible mitigation measures that could be required using SEPA substantive authority to mitigate those impacts?
- Are there likely significant adverse environmental impacts that have not been mitigated to a nonsignificant level?

2.7. Use of Existing Documents



It is often possible to use existing documents to satisfy all or part of the requirements of SEPA. Existing environmental documents that analyze all or part of the environmental impacts of a proposal may be adopted, addended, or incorporated by reference. If there are any remaining environmental concerns, they can be addressed in supplemental analysis—such as a supplemental EIS (see page 62) or by an addendum issued with the new threshold determination (see page 42).

The use of existing documents is particularly important for GMA cities and counties that have completed environmental analysis for their comprehensive plans and development regulations. This analysis should be used as the starting point for review of individual projects, allowing project review to focus on just those aspects that have not yet been addressed. GMA cities and counties also have available the new Planned Action process, where formal SEPA review is completed prior to proponents submitting permit applications for specific projects.

SEPA documents do not have expiration dates. After SEPA is completed, if a proposal is delayed so that new permits must be applied for, environmental review may be limited to verifying that there is no new information, regulatory changes, or changes to the proposal that would require additional review. (This is true even if the applicant has changed.) As long as there are no changes to be addressed, no additional paperwork is required and agencies may proceed with permit decisions[29].

Documents that may be adopted are limited to those that have been used in a previous SEPA or NEPA process. Any environmental information—report, study, etc.—may be incorporated by reference.

2.7.1. Adoption

If the impacts associated with a new proposal have been adequately evaluated in a previously issued SEPA or NEPA document, the document may be adopted to satisfy the requirements of SEPA[30]. It is also possible to adopt several documents, such as the EIS done on the local comprehensive plan and a document prepared for either a similar proposal or a proposal located in a similar location. The lead agency may adopt all or part of the information and environmental analysis in the adopted document(s), but a new threshold determination is still required[31].

[29] WAC 197-11-600
[30] WAC 197-11-630
[31] WAC 197-11-340(1) and 360(2)

A sample adoption form is found at WAC 197-11-965 in the SEPA Rules. Agencies may modify the form to better suit their needs but informational fields should not be omitted. (Examples of combined forms for a DNS with an adoption and a DS with adoption are found at the back of this handbook on pages 141 and 142.) It is very important to provide a thorough description of the current proposal, as well as to clearly identify the document(s) being adopted.

An addendum or supplemental EIS that contains additional information or analysis may also be issued in conjunction with the adoption of existing documents. Adoptions typically take four forms:

- **Adoption/determination of significance (DS):** Issued when an existing environmental impact statement addresses all probable significant adverse environmental impacts of a new proposal. (A combined form is provided on page 142.) A copy of the adoption notice must be circulated, but neither a comment period nor public notice is required. There is a seven-day waiting period before an agency can take an action (e.g., issue/deny a permit).

- **Adoption/DS and addendum:** The same procedure as the adoption/DS applies, except that an addendum that adds minor new information is circulated with the adoption notice.

- **Adoption/Supplemental EIS:** If an existing EIS addresses some, but not all of the probable significant adverse environmental impacts of the new proposal, the EIS can be used as the basis for a new supplemental EIS. The adoption notice must be included within the supplemental EIS[32]. (See the discussion on supplemental EISs in Section 3.6 on page 62.)

- **Adoption/Determination of Nonsignificance:** An existing environmental checklist or a NEPA environmental assessment may be adopted for a new proposal by using the combined adoption/DNS form on page 141. The procedures for a DNS must be followed, including a comment period, distribution, and public notice, if required by WAC 197-11-340(2). (An addendum may be included to provide minor new information.)

When adopting a document, a copy of the adopted document must be available for review—although the lead agency is not required to recirculate copies with the adoption notice except to agencies with jurisdiction that have not already received them[33]. Agencies are encouraged to also distribute copies of adopted or incorporated documents to agencies with expertise or interest in the proposal, and to affected tribes along with the SEPA

[32] WAC 197-11-630(3)(b)
[33] WAC 197-11-630(2)(a)

determination whenever the documents may assist in adequately evaluating the proposal.

2.7.1.1. Tips:

It is a common misconception that agencies must "adopt" the environmental checklist prepared for the current proposal. This is neither necessary nor appropriate. Adoption of a checklist is only appropriate when the lead agency chooses to use a checklist that has been issued as part of a previous environmental review process, to support their current threshold determination.

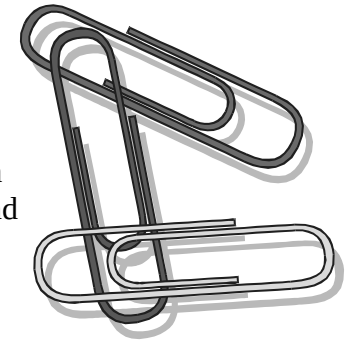
The lead agency is responsible for completing the environmental review process for all agencies with jurisdiction[34]. Other agencies with jurisdiction are not required to adopt the environmental documents issued by the lead agency for the same proposal.

2.7.2. Incorporation by Reference

Incorporation by reference[35] is very similar in substance to adopting a document, in that all, or part, of the incorporated document becomes part of the agency environmental documentation for a proposal. Unlike the adoption process that is limited to environmental documents issued under either SEPA or NEPA, any information may be incorporated by reference. This may include any study or report that provides information relevant to a proposal.

To incorporate documents by reference, the document must be identified in the current checklist, threshold determination, or EIS, and the content briefly described. The adoption form is not used.

2.7.3. Addendum



An addendum[36] contains minor new information that was not included in the original SEPA document. An addendum may be issued for any SEPA document, and there is no set format. The addendum should clearly identify the original document, as well as the new information.

An addendum is appropriate when a proposal has been modified, but the changes should not result in any new significant adverse impact. They can also be used if

[34] WAC 197-11-600(4)(a)
[35] WAC 197-11-625 and 754
[36] WAC 197-11-600(4)(c) and 625

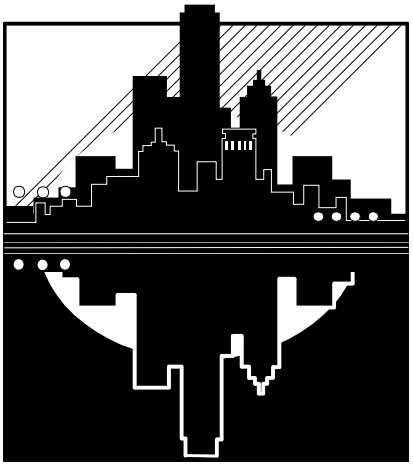
additional information becomes available that does not change the analysis of likely significant impacts or alternatives in the original SEPA document.

The lead agency is encouraged to distribute the addendum to affected agencies and to interested persons. Distribution is required for an addendum to a draft EIS, and for an addendum to a final EIS if the addendum is issued prior to an agency action on the proposal[37]. Addendums do not require a comment period.

> Addendums are not appropriate if the changes or new information indicates any new or increased significant adverse environmental impact.

2.7.4. Planned Actions

Cities and counties planning under GMA may also wish to consider using the Planned Action process, described on page 81. The impacts of the planned action are evaluated in an EIS (done for a comprehensive plan, subarea plan, or master plan resort, etc.) The planned action is then defined by an adopted agency ordinance or resolution. When a project is proposed as a planned action, environmental review consists of verifying that the proposal meets the requirements of the planned action ordinance or resolution, ensuring that the EIS evaluated all likely significant adverse impacts associated with the proposal, and applying mitigation identified in the EIS. When a proposal qualifies as a planned action, no new EIS or threshold determination is required, as the procedural aspects of SEPA have already been completed. If a proposal has any probable significant adverse impacts not addressed in the EIS, it is not a planned action.



[37] WAC 197-11-625

2.8. Issuing a Determination of Nonsignificance

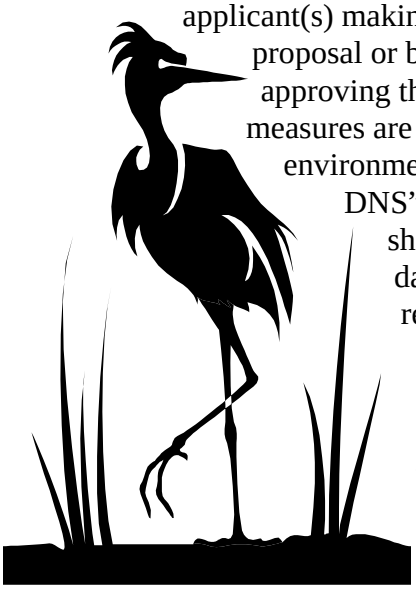
A determination of nonsignificance[38] (DNS) is issued when the responsible official has determined that the proposal is unlikely to have significant adverse environmental impacts, or that mitigation has been identified that will reduce impacts to a nonsignificant level. (For help making the threshold determination, refer to section on how to **Assess Significance** on page 31.) The DNS may or may not require a public comment period and circulation to other agencies[39].

If the lead agency is a GMA city or county, there are specific restrictions under the Local Project Review Act on when a DNS can be issued during the "integrated review process." To avoid needless delays sometimes caused by these restrictions, the "Optional DNS Process" was added to the SEPA Rules. (For more information, see page 94.)

2.8.1. Mitigated DNS

Mitigation of environmental impacts begins with the application of development and other permit regulations. Remaining impacts may be addressed by the use of SEPA substantive authority.

A primary goal of SEPA is to reduce or eliminate environmental impacts. If significant impacts are identified that would require the preparation of an EIS, those impacts can be reduced either by the applicant(s) making changes to the proposal or by requiring mitigation measures as a condition of approving the project. When changes to the proposal or mitigation measures are identified that will reduce likely significant adverse environmental impacts down to a nonsignificant level, a "mitigated DNS" is issued[40]. The mitigating measures are typically shown on the face of the DNS, or as an attachment. A 14-day comment period, distribution, and public notice are required for the mitigated DNS.



It can also be possible to require conditions through the use of SEPA substantive authority to reduce or eliminate adverse environmental impacts that may be less than "significant"[41]. (See section 6 on page 73 for more information on **Using SEPA in Decision Making**.)

[38] The standard DNS form is found in the SEPA Rules, WAC 197-11-970. The form can be modified by the lead agency, but no informational fields should be omitted.
[39] WAC 197-11-340
[40] WAC 197-11-350
[41] WAC 197-11-660(1)(b)

2.8.2. DNS Comment Period

With the exception of projects for which the optional DNS process is used[42], if any of the following criteria applies to the proposal, a 14-day comment period is required for the DNS prior to agency action.

- There is another agency with jurisdiction (license, permit, or other approval to issue).
- The proposal includes demolition of a structure not exempt under WAC 197-11-800(2)(f) or 197-11-880.
- The proposal requires a non-exempt clearing and grading permit.
- The proposal is changed or mitigation measures have been added under WAC 197-11-350 that reduce significant impacts to a nonsignificant level (mitigated DNS).
- The DNS follows the withdrawal of a determination of significance (DS) for the proposal. (This applies even if the DNS and the withdrawal are issued together.)
- The proposal is a GMA action.

If a comment period is not required, the lead agency is not required by SEPA to provide public notice or circulate the DNS[43]. The lead agency may simply add the DNS to the project file, so that it will be available for review if requested. Agencies may also choose to send the DNS and checklist for the proposal to the Department of Ecology's SEPA Unit for inclusion in the SEPA Register. (See **Additional Resources** in Appendix C for additional information on the SEPA Register.)

2.8.3. Public Notice and Circulation of a DNS

If a comment period is required for a DNS, public notice and circulation requirements must be met. This ensures agencies with jurisdiction, affected tribes, and concerned citizens know about the proposal and have an opportunity to participate in the environmental analysis and review.

[42] See discussion on page 94.
[43] Agencies using the Optional DNS Process are required to send the DNS to the Dept. of Ecology, agencies with jurisdiction, and any persons who had requested it, though a comment period is not required.

The DNS and the checklist must be sent to:

- The Department of Ecology;
- All agencies with jurisdiction;
- Affected tribes; and
- All local agencies or political subdivisions whose public services would be affected by the proposal[44].

Public notice procedures should be stipulated within the lead agency's adopted SEPA procedures. A list of reasonable methods to provide public notice is included in WAC 197-11-510(b). Those agencies that have no stipulated SEPA public notice procedures are required at a minimum to:

- Post the property, for site-specific proposals; and
- Publish notice in a newspaper of general circulation in the area where the proposal is located[45].

Additional public notice efforts are not required, but are encouraged for important or controversial proposals—regardless of environmental significance. Public hearings or meetings can provide additional avenues for public involvement, comment, and discussion. Many agencies have developed innovative means to "get the word out" to affected community members that may not be reached by more traditional methods. Examples include distributing bilingual flyers or advertising on non-English radio stations.

The issue date of a DNS is the date the DNS and the environmental checklist are sent to the Department of Ecology and agencies with jurisdiction, and are made available to the public (WAC 197-11-340(2)(d)).

Agencies who fail to mail the DNS and the environmental checklist to Ecology and all agencies with jurisdiction have not met SEPA requirements.

[44] WAC 197-11-340(2)(b)
[45] WAC 197-11-510(2)

Figure 2. Sample Public Notice for a DNS

NOTICE OF DETERMINATION OF NONSIGNIFICANCE

(Agency name) issued a determination of nonsignificance (DNS) under the State Environmental Policy Act Rules (Chapter 197-11 WAC) for the following project: (project description and location) proposed by (applicant's name). After review of a completed environmental checklist and other information on file with the agency, (agency name) has determined this proposal will not have a probable significant adverse impact on the environment.

Copies of the DNS are available at no charge from (name), (address and/or phone number). The public is invited to comment on this DNS by submitting written comments no later than (date) to (name) at (address).

TIP:

Whenever possible, the lead agency should combine the public notice for the DNS comment period with the public notice for any comment period and/or public hearing held on the permit or license. See Figure 3 for an example of a combined public notice.

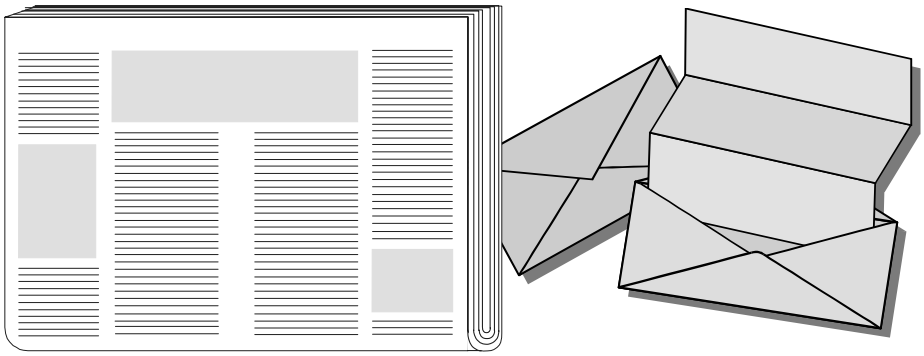


Figure 3. Sample Combined Public Notice

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

NOTICE OF APPLICATION TO APPROPRIATE PUBLIC WATERS
AND NOTICE OF SEPA DETERMINATION

Take notice that: _____
of _____ on _____
under Application No. _____
filed for permit to appropriate public waters, subject to existing rights, from _____
in the amount of _____
each year for _____.

The source of the proposed appropriation is located within _____
_____
of Section _____ , Township _____ N., Range _____
_____ W.M., in _____ County.

The project for which the appropriation has been requested is (briefly describe the entire proposal for which the DNS was issued).

The Department of Ecology, as SEPA lead agency for this project, has determined it will not have a probable significant adverse impact on the environment. The department has issued a DETERMINATION OF NONSIGNIFICANCE for the project, which can be obtained from the address shown below.

Protests or objections to approval of this application OR comments on the determination of nonsignificance must be filed with the department, at the address shown below, within thirty (30) days from _____ .

Protests or objections to the application must include a detailed statement of the basis for objections and be accompanied by a two dollar ($2.00) recording fee. Commenting on the determination of nonsignificance does not require a recording fee.

Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600

2.8.4. Responding to Comments on a DNS

The SEPA Rules require the responsible official to consider all timely comments made on a DNS. The lead agency may then choose to retain the DNS, issue a revised DNS, or—if significant adverse impacts have been identified—they may withdraw the DNS and issue a determination of significance (DS).

Retaining the DNS: If the lead agency decides to retain the DNS, agencies may take action on the proposal after the close of the comment period. A decision to retain a DNS requires no additional paperwork, although some agencies choose to circulate notice to agencies with jurisdiction and other interested parties. Other agencies place a memo in the file indicating the comments have been reviewed and no further review is needed. Sending a written response to commentors or arranging a meeting is at the discretion of the lead agency, but can be beneficial—both in establishing good public rapport and in developing an improved proposal.

Revising the DNS: A revised DNS is most often issued when there is a change in the mitigation conditions that will be applied to a proposal. It may also be used to document changes to a proposal that will not result in any likely significant adverse environmental impacts. A modified or revised DNS must be circulated to agencies with jurisdiction[46], but does not require an additional comment period. Public notice is generally not required. Since the format of a revised DNS is similar to other DNSs, the lead agencies should clearly indicate that it is a revised or modified DNS and identify the document being modified (project description, date of issue, etc.). Recirculation of the checklist to agencies that received the original document is not required, but is advisable when notable changes have been made or enough time has passed that the original may no longer be available.

Withdrawing the DNS: The lead agency must withdraw the DNS if:

- There are substantial changes to the proposal that are likely to result in significant environmental impacts;
- There is new information available on a proposal's probable significant adverse environmental impacts; or
- The DNS was obtained by misrepresentation or lack of material disclosure on the part of the proponent.

It is also advisable to withdraw a DNS if the lead agency determines that it needs time to reconsider the significance of the proposal, reassess mitigation needs, or to do additional investigation. A new threshold determination and comment period will be required, but this will prevent the "locking in" of the original DNS by another agency issuing a non-exempt permit[47]. Locking-in of the DNS can

[46] WAC 197-11-340(2)(f)
[47] WAC 197-11-340(3)

restrict the lead agency's ability to impose additional mitigation measures for impacts not identified in the original DNS, or to require that an EIS be prepared.

The notice of withdrawal must be circulated to all agencies with jurisdiction. There is no set format for a withdrawal notice, but agencies should clearly identify the document being withdrawn, the project description and location, and the applicant's name. It also may be helpful to include information on the reason for the withdrawal.

3. Environmental Impact Statement Process

An environmental impact statement (EIS) is prepared when the lead agency has determined a proposal is likely to result in significant adverse environmental impacts (see section on how to **Assess Significance** on page 31). The EIS process is a tool for identifying and analyzing probable adverse environmental impacts, reasonable alternatives, and possible mitigation.

The EIS process:

- **Provides opportunities for the public, agencies, and tribes to participate in developing and analyzing information**. Public, agency, and tribal input help to identify a proposal's significant adverse environmental impacts, reasonable alternatives, possible mitigation measures, and methods of analysis for the EIS. Outside participation during all phases of the process increases understanding of the proposal and garners trust.

- **Improves proposals[48] from an environmental perspective.** Proposals are improved through mitigation of identified adverse environmental impacts, and development of reasonable alternatives that meet the objective of the proposal. Changes may be made voluntarily by the proponent, or they may be mitigated through SEPA substantive authority[49] or other regulatory authority. Through the EIS process, areas of controversy and other significant issues are identified early when the opportunities to consider a broad range of solutions are greatest.

- **Provides decision-makers with environmental information.** An EIS provides decision-makers and the public with a complete and impartial discussion of the proposed project, existing site conditions, probable significant adverse environmental impacts, and reasonable alternatives and mitigation measures that would avoid or minimize adverse impacts. This provides the information needed for informed decisions.

- **Provides the information necessary for conditioning or denying the proposal.** Based on information in the EIS and the agency's adopted SEPA policies, SEPA substantive authority allows a decision-maker to:
  - Deny a proposal when "significant" environmental impacts cannot be reasonably mitigated;
  - Place additional conditions on the project to protect the environment from adverse environmental impacts; or
  - Approve the proposal without further mitigation.

  (See section on **Using SEPA in Decision Making**, page 73.)

There are several steps in the EIS process:

[48] WAC 197-11-400(4)
[49] WAC 197-11-660

1. Conducting "scoping," which initiates participation by the public, tribes, and other agencies and provides an opportunity to comment on the proposal's alternatives, impacts, and potential mitigation measures to be analyzed in the EIS;

2. Preparing the draft EIS, which analyzes the probable impacts of a proposal and reasonable alternatives, and may include studies, modeling, etc.;

3. Issuing the draft EIS for review and comment by the public, other agencies, and the tribes;

4. Preparing the final EIS, which includes analyzing and responding to all comments received on the draft EIS, and may include additional studies and modeling to evaluate probable impacts not adequately analyzed in the draft EIS;

5. Issuing the final EIS; and

6. Using the EIS information in decision-making.

There are two types of EISs: project and nonproject (often referred to as programmatic).

A **project EIS** is prepared for a proposal that generally involves physical changes to one or more elements of the environment (see WAC 197-11-444 for a list of the elements of the environment). Examples of the types of proposals that could be analyzed in a project EIS include:

- New construction,
- Facility operation changes,
- Demolitions
- Environmental clean-up projects, and
- The purchase, sale, lease, transfer, or exchange of natural resources (such as the lease of public lands for timber harvest).

A **nonproject EIS** is prepared for planning decisions that provide the basis for later project review. Nonproject actions are the adoption of plans, policies, programs, or regulations that contain standards controlling the use of the environment or that will regulate a series of connected actions. Examples include comprehensive plans, watershed management plans, shoreland master programs, and development regulations. (See **Nonproject Review** section, page 65.)

3.1. Encouraging Public Participation in the EIS

Including the public early in the EIS process is key to identifying public issues, establishing communication lines, and facilitating trust. Taking time up-front to plan how to involve the public and being responsive to the public's needs as the process proceeds can result in a more complete and accurate document and a more satisfied public. Early involvement can also avoid later pitfalls and unnecessary delays.

SEPA requires agencies to involve the public during:

1. The "scoping" period, where agencies, tribes, and the public are invited to comment on the range of alternatives, areas of impact, and possible mitigation measures that should be evaluated within the EIS; and

2. The draft EIS review period, where comments are requested on the merits of the alternatives and the adequacy of the environmental analysis.

Agencies are encouraged to think beyond regulatory requirements in determining how best to inspire public participation and create interagency cooperation. Agencies may enhance the required involvement opportunities or add to them, as the proposal warrants. For example, under "expanded scoping,"[50] SEPA suggests several methods for enhancing public involvement beyond the basic requirements. The intent is to provide agencies with maximum flexibility to meet the purposes of scoping. Additionally, the lead agency may elect to provide supplementary opportunities for communicating with the public, starting before the determination of significance/scoping notice is issued and continuing throughout the EIS process.

A public participation plan can be a valuable tool in the EIS process. The lead agency should begin planning for public participation prior to issuing the scoping notice, as this initiates the formal involvement of agencies, tribes , and the public. Agencies may also find that prethreshold meetings can be useful, even when it is certain that an EIS will be required. In developing the plan, the agency should consider each of the different stages of the process and then identify which methods would work best for the stage in question. The agency may also wish to consider extending the participation plan through the permitting stage as well.

[50] WAC 197-11-410

In developing the public participation plan, the lead agency should consider the value of:

- Mailings, such as newsletters, project updates, etc.;
- Public notices (e.g., paid announcement in the newspaper);
- Radio announcements;
- News releases;
- Internet web pages;
- One or more public hearings during scoping and draft EIS comment periods; and/or
- Public or interagency meetings.

Individual public involvement activities may take several weeks of prior preparation and should be carefully planned. This advance planning is particularly important for ensuring that adequate public notice is given.

As the plan is implemented, the agency may wish to collect feedback from participants on an activity's success. The information can be used to improve future planned events for the same proposal, and to assist in the planning of public participation on future proposals.

During scoping, any suitable means to promote agency and public communication and participation appropriate to the specific situation is encouraged.

3.2. Scoping

Scoping is the first step in the EIS process. The purpose of scoping is to narrow the focus of the EIS to significant environmental issues, to eliminate insignificant impacts from detailed study, and to identify alternatives to be analyzed in the EIS. Scoping also provides notice to the public and other agencies that an EIS is being prepared, and initiates their involvement in the process.

The scoping process not only alerts the lead agency, but also the applicant to areas of concern and controversy early in the process. As a result, it offers more opportunities for the applicant to consider and explore means to address the concerns. From an environmental perspective, this can result in changed proposals with fewer environmental impacts.

3.2.1. Issuing a Determination of Significance/Scoping Notice

Once the responsible official determines an EIS is needed, a determination of significance/scoping notice (DS/Scoping) is issued. The form is located in the SEPA Rules at WAC 197-11-980. This form may be modified by the lead agency, but informational fields (i.e. project description, applicant, etc.) should not be omitted. The scoping notice should give as thorough a description of the proposal as possible and should include information on the areas to be addressed

in the draft EIS. If the lead agency has identified possible alternatives, they should also be described in the scoping notice.

Scoping is optional when an agency decides to do a supplemental EIS.

The scoping process begins when the lead agency circulates the DS/scoping notice and gives public notice.[51] The date of issuance is the date the scoping notice is sent to the Department of Ecology, agencies with jurisdiction, and is made available to the public. Agencies and the public are encouraged to provide comments on the proposal and scope of the EIS, including commenting on alternatives, mitigation measures, and probable significant adverse impacts.

The lead agency may use various methods to involve the public in the scoping process:

- **Written comment periods.** The lead agency must give public notice and circulate the scoping notice for public and agency comment[52]. If a GMA county or city issues a scoping notice in combination with a notice of application, the comment period for the NOA is used (between 14 and 30 days, as determined by the lead agency). For non-GMA agencies, the comment period is 21 days, unless expanded scoping is used to extend the comment period to as many as 30 days.

If an existing EIS is adopted for a new proposal, scoping is not required An adoption notice is circulated with the DS. (Refer to Adoption section, page 24.)

- **Expanded scoping[53].** The use of expanded scoping is intended to enhance public and agency participation in identifying the scope of an EIS. Expanded scoping typically runs 30 days, rather than the standard 21-day written comment period. The additional time enables the lead agency to expand the methods used for informing agencies, tribes, and public of the proposal and to gain their input. It can involve the use of public or interagency meetings, the circulation of questionnaires or information packets, the coordination and integration of other government reviews, etc. (Refer to WAC 197-11-410 for other suggested methods of doing expanding scoping.)

[51] WAC 197-11-408 and 410
[52] WAC 197-11-408
[53] WAC 197-11-410

3.2.2. Responding to Scoping Comments

Although no formal response to the scoping comments is required, some agencies choose to prepare a scoping document that 1) summarizes the comments received during the scoping process; 2) identifies the elements of the environment, alternatives and mitigation measures to be analyzed; and 3) provides other relevant information.

The scoping document can be a valuable tool to:

- Provide a record of the scoping process;
- Provide a summary of the issues raised during scoping;
- Communicate the decisions made on what is to be analyzed in the EIS; and
- Provide a reference for the reader to assess whether the agency has heard all the concerns and is accurately interpreting them.

3.2.3. Determining the Scope of the EIS

After reviewing the comments received during scoping, the lead agency must determine the scope of the EIS. The lead agency selects the alternatives and the elements of the built and natural environment[54] that will be analyzed in the EIS. The alternatives selected must include the proposal, the no-action alternative, and other reasonable alternatives. The elements of the environment that are evaluated in the EIS should be narrowed to just those that may be significantly impacted. For example, an EIS for an apartment complex in a large city might focus only on transportation issues. Minimizing discussion of nonsignificant issues makes the document more readable for reviewers and useful to decision-makers. (Additional guidance on defining the no-action alternative and identifying reasonable alternatives can be found in Section 3.3.2. starting on page 53.)

3.2.3.1. Revising the Scope of the EIS

The scope of the EIS can be revised by the lead agency whenever changes to the proposal are made, or new information is learned. This does not mean the DS/Scoping notice must be reissued.

In making the decision whether to repeat the formal scoping process, the lead agency should consider whether the intent and purpose of preparing the EIS would be compromised (if scoping is not redone) or improved (if scoping is redone).

[54] A list of the elements of the built and natural environment is found in WAC 197-11-444

3.2.4. Withdrawing a DS/Scoping Notice

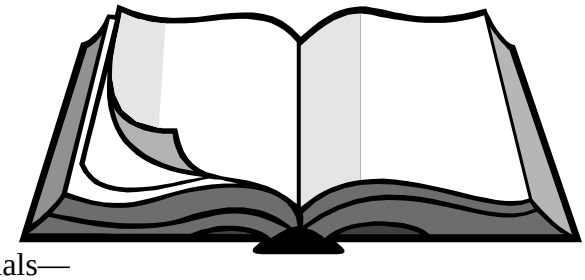
A determination of significance (DS) is withdrawn by the lead agency if:

- the applicant withdraws the proposal (no new threshold determination), or
- the proposal has been changed so there will no longer be any significant adverse impacts (DNS required)[55].

There is no set format for the notice of withdrawal; it may take the form of a memo or letter, or it may be combined with a new threshold determination. The notice of withdrawal should be circulated to the Department of Ecology and any agencies with jurisdiction.

When a DNS is issued for a proposal for which a DS has been withdrawn, a 14-day public comment period, public notice, and distribution of the DNS and checklist are required[56]. In addition to the Department of Ecology, agencies with jurisdiction, and affected tribes, a copy of the DNS must be sent to anyone who had commented on the DS/scoping notice[57].

3.3. Purpose and Content of an EIS



The primary purpose of an EIS is to provide an impartial discussion of significant environmental impacts, and reasonable alternatives and mitigation measures that avoid or minimize adverse environmental impacts. This environmental information is used by agency officials—in conjunction with applicable regulations and other relevant information—to make decisions to approve, condition, or deny the proposal. (See **Using SEPA in Decision Making** on page 73.)

An EIS is not meant to be a huge, unwieldy document. The text of a typical EIS is intended to be only 30 to 50 pages. It is not to exceed 75 pages unless the proposal is of unusual scope or complexity, in which case it may not exceed 150 pages[58]. The EIS should provide information that is readable and useful for the agencies, the applicant, and interested citizens.

[55] WAC 197-11-360(4)
[56] WAC 197-11-340(2)(a)(iv)
[57] WAC 197-11-360(4)
[58] WAC 197-11-425(4)

A readable document:

- Is well organized;
- Provides useful tools for the reader, such as a table of contents, glossary, index, references;
- Is not overly technical (technical details necessary to support information and conclusions in the EIS should be included in appendices or incorporated by reference); and
- Is brief and concise.

A useful document:

- Focuses on the most significant and vital information concerning the proposal, alternatives, and impacts;
- Provides sufficient information about each alternative so that impacts can be compared between alternatives; and
- Presents the lead agency's analysis and conclusions about the likely environmental impact of the proposal.

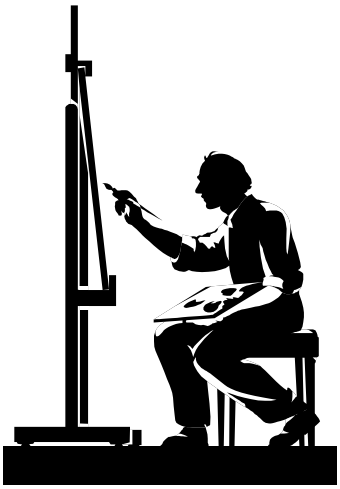
Format requirements for an EIS are outlined in WAC 197-11-430, 440, 442, and 443. A cover letter or memo is required and the fact sheet must be the first section of every EIS. (A sample fact sheet can be found in Appendix D, on page 140.) Otherwise, the lead agency has the flexibility to use any format they think appropriate to provide a clear understanding of the proposal and the alternatives.

The lead agency is responsible for the content of the EIS and for meeting the procedural requirements of the SEPA Rules. The lead agency, the applicant, or an outside consultant can prepare the EIS[59]. The lead agency must specify, within its own SEPA procedures, the circumstances and limitations under which the applicant will participate in the preparation of the EIS.

TIP:
A common misconception is that the requirement of an EIS for a project means that the proposal will probably be denied. This is not the intent or necessarily the outcome of an EIS. A determination to prepare an EIS means there are likely significant adverse environmental impacts that need to be carefully considered and understood, and alternative avenues for mitigating the issues that need to be investigated.

[59] WAC 197-11-420

3.3.1. Describing the Proposal



Explaining what is being proposed is fundamental to the usefulness of the EIS. Therefore, the EIS should:

1. Describe the total proposal:
   - For project actions, this includes construction activities, operation/use, and post operation/closure.
   - For nonproject actions, this includes adoption and implementation of a plan, policy or rule.

2. Describe any related physical activities and physical changes/disturbances. For example, the construction of an electrical line or water line extension needed to service the project, or the development of a borrow pit to provide fill for the project site, etc.

3. Include information on any agency requirements that would be applied to the proposal that relate to the elements of the environment. For example, mitigation required under a critical area ordinance, or requirements from a storm water rule, etc.

Agencies are encouraged to describe a proposal as an objective, particularly for agency actions. For example, a city could propose the construction of a series of settling ponds and a chlorination system at the wastewater treatment facility. Instead, the proposal could be described as meeting the wastewater treatment needs of future development for the next 15 years. This encourages the consideration of a wider range of alternatives, where different treatment processes, and even water reuse options are contemplated rather than limiting the consideration to size and location options.

3.3.2. Identifying Alternatives

The EIS evaluates the proposal, the no-action alternative, and other "reasonable alternatives"[60]. A reasonable alternative is a feasible alternate course of action that meets the proposal's objective at a lower environmental cost. Reasonable alternatives may be limited to those that an agency with jurisdiction has authority to control either directly or indirectly through the requirement of mitigation.

Alternatives are one of the basic building blocks of an EIS. They present options in a meaningful way for decision-makers. The EIS examines all areas of probable

[60] WAC 197-11-786, 197-11-440(5)

significant adverse environmental impact associated with the various alternatives including the no-action alternative and the proposal.

Project alternatives might include design alternatives, location options on the site, different operational procedures, various methods of reclamation for ground disturbance, closure options, etc. For public projects, alternative project sites should also be evaluated. For private projects, consideration of off-site alternatives may be limited prohibited except under certain circumstances (see WAC 197-11-440(5)(d)).

It is not necessary to evaluate every alternative iteration. Selecting alternatives that represent the range of options provides an effective method to evaluate and compare the merits of different choices. The final action chosen by decision-makers need not be identical to any single alternative in the EIS, but must be within the range of alternatives discussed. (Additional analysis in a supplemental EIS or in an addendum can be used to address any portions of the final proposal that lie outside the analysis in the EIS. See section on **Use of Existing Documents** on page 33.)

As potential alternatives are identified, they should be measured against certain criteria:

- Do they feasibly attain or approximate the proposal's objectives?
- Do they provide a lower environmental cost or decreased level of environmental degradation than the proposal?

It may not be evident at the beginning of the process whether an alternative meets all of these criteria. The lead agency should continue to analyze each alternative until information becomes available that indicates an alternative fails to meet the criteria. The alternative can then be eliminated from further consideration. Any decisions to eliminate an alternative and the reasons why should be documented in the EIS.

Occasionally, a lead agency may decide that there are no reasonable alternatives to a proposal. In this case, the no-action alternative and the proposed action would be the only alternatives examined in the EIS.

As part of the discussion of alternatives, the EIS must discuss the benefits and disadvantages of delaying implementation of the proposal[61]. The urgency of implementing the proposal can be compared to any benefits of delay. The foreclosure of other options should also be considered (i.e. conversion of

[61] WAC 197-11-440(5)(c)(vii)

timberland to residential development eliminates the possible use of the site for future timber production, conversion to farmland, etc.).

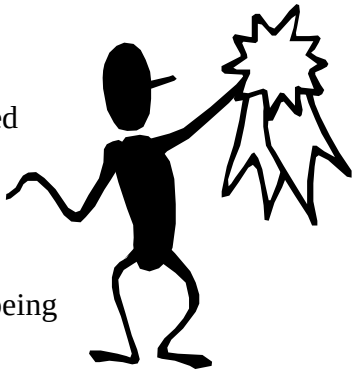
3.3.2.1. No-Action Alternative

SEPA requires the evaluation of the no-action alternative, which at times may be more environmentally costly than the proposal, or may not be considered "reasonable" by other criteria. Still, it provides a benchmark from which the other alternatives can be compared.

The identification of a no-action alternative can sometimes be difficult. It is typically defined as what would be most likely to happen if the proposal did not occur. If a rezone is proposed, what is the most likely development on the site under existing zoning? If the proposal involves conversion of forestland to another use, this can be compared to the impacts of continued use of the site for timber production.

There are other methods of defining the no-action alternative, such as "no new government action," or the "lock the gate and walk away" scenario where all current activities are also ceased. As the SEPA Rules do not define what the no-action alternative must look like, the lead agency has some discretion in its design.

3.3.2.2. Preferred Alternative



SEPA does not require the designation of a "preferred alternative" in an EIS. By identifying a preferred alternative, reviewers are made aware of which alternative the lead agency feels is best or appears most likely to be approved. This can be particularly helpful for agency proposals when what is actually being proposed may otherwise not be clear.

Identifying a preferred alternative may also have disadvantages. The public may feel that the decision has already been made, which can cause frustration with the process. Also, comments received may be limited to arguments against the agency "decision," with supporters of the preferred alternative not bothering to respond at all. This may result in a lack of feedback both on the problems related to other "non-preferred" alternatives and on the benefits of the preferred alternative.

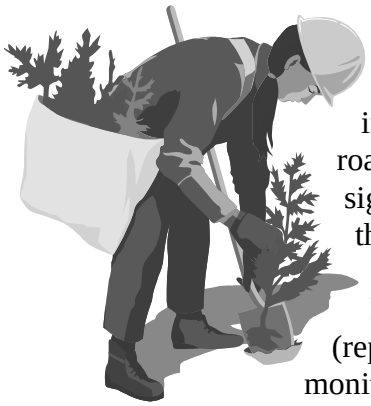
If used, the preferred alternative can be identified at any time in the EIS process—scoping, draft EIS, or final EIS. When designated early in the process, it should be expected that changes are likely to occur to the preferred alternative prior to issuing the final EIS. Early designation of a preferred alternative in no way restricts the lead agency's final decisions.

3.3.3. Affected Environment, Significant Impacts, and Mitigation Measures

An EIS describes the existing environment that will be affected by the proposal, analyzes significant adverse environmental impacts of each alternative, and discusses reasonable mitigation measures. This discussion should be concise, not overly detailed, and should focus on those elements of the environment that will be significantly impacted. For example, it would be a rare necessity to describe the impacts of the Ice Age on the project site. However, if the type of soil will affect the type of stormwater control needed for the site, the EIS should identify the type of soil on the site (affected environment), describe proposed stormwater controls (proposal), and identify other appropriate stormwater controls (mitigation measures).

When describing the environmental impacts of a proposal, the lead agency should consider direct, indirect, and cumulative impacts. For example:

- A new residential development may propose to place fill in a wetland in order to construct a road (a direct impact).
- The new road will encourage increased development in the area because of the improved access (an indirect impact).
- Increased runoff and contaminants from the development would be added to the volumes and levels of contamination from similar developments surrounding the wetland (cumulative impacts).



Impacts can be temporary, such as the short-term impacts associated with the construction phase of a proposal, or permanent, such as the long-term impact of increased runoff and contamination from a widened roadway. Both should be considered when identifying significant adverse environmental impacts to be analyzed in the EIS.

Mitigation is defined as avoiding, minimizing, rectifying (repairing), reducing, eliminating, compensating, or monitoring environmental impacts (see WAC 197-11-768). Mitigation may be suggested by the applicant; mandated by local, state, and federal regulations; or required through the use of SEPA Substantive Authority. (See **Using SEPA in Decision Making** section, page 73.)

The EIS should identify possible mitigation measures that will reduce or eliminate the adverse environmental impacts of a proposal. The discussion should include information on the intended environmental benefit of the proposed mitigation as it relates to the identified impact. If the technical feasibility or economic practicality is uncertain, the mitigation measure may still be discussed but discussion of the uncertainties should be included. The EIS should also

clearly identify the mitigation measures as either mandatory or as potential so reviewers may better assess the impacts of the proposal.

Mitigation measures must be reasonable and capable of being accomplished. The applicant may be required to implement mitigation measures only to the extent attributable to the identified adverse impacts of the proposal.[62]

3.3.4. EIS Summary Section

The summary section, which should be at the beginning of the EIS text, is the portion most likely to be read by decision-makers and members of the public. It should include a summation of the main issues in the EIS, including a concise description or discussion of:

- the proposal,
- the proposal's objective
- purpose and need
- environmental impacts,
- alternatives,
- mitigation measures, and
- significant adverse impacts that cannot be mitigated.

The summary should also identify: (1) the major conclusions and significant areas of controversy, and (2) any remaining uncertainties and issues to be resolved. The discussion is useful because it presents the proposal as a whole, rather than separated by individual element.

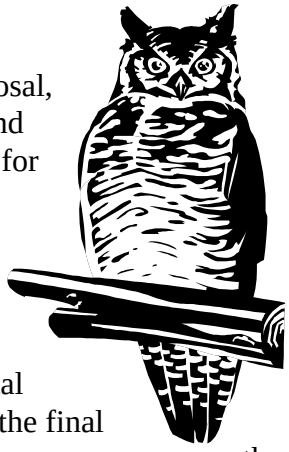
Matrices and charts, although not required, can be useful for summarizing alternatives, impacts and mitigation measures. See WAC 197-11-440(4) for additional detail.

3.3.5. Optional EIS Pieces

Other (non-environmental) impacts, such as a cost/benefit analysis, may be included in the EIS if the lead agency determines this information would be helpful in evaluating the proposal[63].

[62] WAC 197-11-660
[63] WAC 197-11-440(8)

3.4. Draft EIS



A draft EIS documents the lead agency's analysis of a proposal, and provides an opportunity for agencies, affected tribes, and the public to review the document and provide suggestions for improving the adequacy of the environmental analysis. Comments on the draft EIS stimulate discussion and thoughts about how to change or condition the proposal to further protect the environment. Lead agency review of those comments offers the opportunity to improve the completeness, accuracy, and objectivity of the environmental analysis of a proposal. Improvements can then be made in the final EIS that will provide information to decision-makers. In some cases, the proponent may choose to modify the proposal based on comments made during the draft EIS comment period. In that instance, the modifications would also be described and evaluated in the final EIS.

3.4.1. Issuing a Draft EIS

When the lead agency is satisfied with the content of the draft EIS, the EIS is issued and is circulated for review (see WAC 197-11-455 for specific requirements). The lead agency must also give public notice, and is encouraged to send a notice of availability or a copy of the draft EIS to anyone that has expressed an interest in the proposa1. Reviewers then have the opportunity to comment on the accuracy and completeness of the environmental analysis, the methodology used in the analysis, and the need for additional information and/or mitigation measures, so that improvements to the EIS can be made before it is finalized.

A 30-day comment period is required on the draft EIS[64]. The lead agency may extend the comment period up to an additional 15 days without consulting the applicant. The lead agency will sometimes include the additional days in the comment period when the EIS is issued, or they may grant an extension of the comment period on request. When an extension of the comment period is granted, the lead agency should whenever feasible provide notice of the extension to other reviewers. (The lead agency is not required to provide this notice, and there are no requirements regarding how notice is given.)

When the lead agency is also the proponent of the proposal, the time periods may be extended to whatever the lead agency thinks is appropriate[65].

[64] Integrated GMA documents may require a longer comment period. See discussion addressing a **GMA Action EIS** on page 69.
[65] WAC 197-11-050(7)

The lead agency is required to hold a public hearing if 50 or more persons, within the agency's jurisdiction or who would be adversely impacted by the proposal, make written request within 30 days of the issue date of the draft EIS. Lead agencies may also at their option provide this additional avenue and opportunity for agencies, tribes, and the public to comment on the document. The hearing must be held between 15 and 50 days after the draft EIS is issued[66], and a minimum of 10-days notice must be made[67]. If held, this hearing does not constitute the one open-record hearing that is allowed under RCW 36.70B.020(3).

Except when SEPA requires a document to be sent to an agency, lead agencies may charge for providing an EIS and related environmental documents[68]. Each agency should have policies regarding charges for requested documents. When requested by public interest organizations, agencies are encouraged to provide environmental documents free of charge.

3.5. Final EIS

The final EIS provides decision-makers with environmental information about a proposal to help them decide whether to approve the proposal, approve it with conditions (mitigation), or deny the proposal. It is the lead agency's record of the environmental analysis conducted for the proposal. The final EIS includes information and input from the applicant, lead agency, other agencies with jurisdiction or concern, tribes, and the public regarding the proposal. It is completed early enough so that there is still a choice between reasonable alternatives.

3.5.1. Responding to Comments on the Draft EIS

The lead agency must consider comments received during the draft EIS comment period, and respond to them in the final EIS[69]. Lead agency responses to comments should be as specific and informative as possible. Possible responses are to:

- Explain how the alternatives, including the proposed action, were modified;
- Identify new alternatives that were created;
- Explain how the analysis was supplemented, improved, or modified;
- Make factual corrections; or
- Explain why the comment does not warrant further agency response.

All timely and substantive comments and the lead agency's responses to them must be included in an appendix in the final EIS. If repetitive or voluminous, the comments may be summarized and the names of the commentors included. The

[66] WAC 197-11-535(3)
[67] WAC 197-11-502(6)(b)
[68] WAC 197-11-504
[69] WAC 197-11-560

lead agency may respond to each comment individually, respond to a group of comments together, cross-reference comments and the corresponding changes in the EIS, or any other reasonable method to provide an appropriate response.

Tips:
It may be appropriate to respond to a comment on the draft EIS with "comment noted" when the comment lacks substance (e.g. "I don't want the proposal"). If the comment is generic or nonspecific (e.g., "There will be unacceptable air quality impacts"), the response might be: "Your comment was noted, but the comment was not specific enough to respond to. Please see Section XX of the final EIS for a discussion of air quality impacts and possible mitigation."

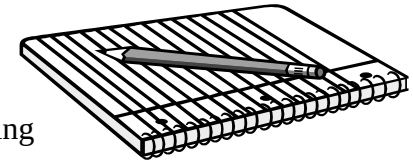
3.5.2. FEIS Timing

The final EIS is intended to follow closely after the draft EIS, if at all possible. The SEPA Rules state that a final EIS shall be issued within 60 days after the end of the comment period for the draft EIS, except when:

- the proposal is unusually large in scope;
- the environmental impacts are unusually complex; or
- responding to the draft EIS comments requires extensive modifications to the EIS and/or the project.[70]

If any of the exceptions apply, there is no time limit in which the final EIS must be issued.

3.5.3. FEIS Format



After considering comments on the draft EIS, the lead agency has several options for completing the EIS:

- If there are no substantial comments on the draft EIS, the lead agency may state that in an updated fact sheet. The final EIS is then composed of the draft EIS with the new fact sheet attached.

- If changes to the draft EIS are minor (e.g. response to comments involves factual corrections or an explanation that the comment does not warrant additional consideration), an "addendum[71]" may be prepared. In this case, the final EIS consists of the draft EIS, a new fact sheet, and the attached

[70] WAC 197-11-460(6)

[71] Use of an "addendum" format for issuing a final EIS is similar to issuing an addendum to an EIS or DNS in that it provides supplementary information but nothing that indicates new significant impacts that should be addressed. The difference lies in that the addendum final EIS completes the EIS process, rather than adds to it, and therefore distribution is always required.

addendum. The addendum must contain the comments received on the draft EIS, the lead agency's responses, and any changes to the information and analysis in the draft. Previous recipients of the draft EIS need only be sent the new fact sheet and the addendum.[72]

- If there are substantive comments that warrant substantial changes to the EIS, the final EIS is typically issued with a similar format to the draft. The draft EIS comments together with the lead agency's responses (see **Section 3.5.1 Responding to Comments on the draft EIS**) are included as an appendix, and the necessary changes are made throughout the EIS text. Using a similar format for both the draft and the final EIS makes the two documents easier to compare.

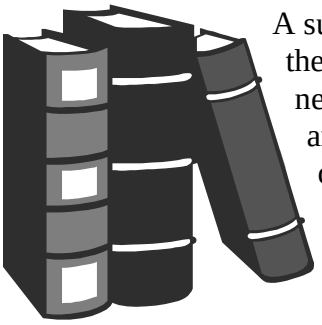
If any significant new issues have been raised, the lead agency may choose to issue a supplemental draft EIS with a second comment period prior to issuing the final EIS. This allows the public, tribes, and other agencies to review and comment on the new material and analyses before the document is finalized. (See the following **Section 3.6. Supplementing an EIS** for additional discussion.) The final EIS, when it is ultimately issued, may have any of the above formats.

3.5.4. Issuing a Final EIS

The final EIS is distributed to the Department of Ecology (two copies), all agencies with jurisdiction, any agency who commented on the draft EIS, and (though a fee may be charged) to any person requesting a copy. The final EIS or a notice that it is available must also be sent to anyone who had commented or received the draft EIS.[73] Agencies may take action on the proposal seven days after the final EIS has been issued.

[72] WAC 197-11-560(5)
[73] WAC 197-11-460

3.6. Supplementing an EIS



A supplemental EIS[74] adds information and analysis to supplement the information in a previous EIS. It may address new alternatives, new areas of likely significant adverse impact, or add additional analysis to areas not adequately addressed in the original document. (When the additional information is minor and does not involve the analysis of new significant impacts, an addendum may be issued. Please see Section 2.7.3., page 35 for additional discussion of the use of addendums.)

A supplemental EIS includes a draft (with comment period) and a final document, which essentially follows the same requirements as a draft EIS and final EIS[75]. Scoping for a supplemental EIS is optional.

The supplemental EIS process is normally used after a draft and final EIS have been issued. However, a supplemental draft EIS may be issued before a final EIS if there are significant changes in the draft EIS. In this case, the draft EIS is circulated for review, then a supplemental draft EIS is circulated for review, and a final EIS is issued which responds to comments on both the draft and supplemental draft EISs.

There are several situations when a supplemental EIS is appropriate:

- The proposal has changed and is likely to cause new or increased significant adverse environmental impacts that were not evaluated in the original EIS.

- New information becomes available indicating new or increased significant environmental impacts are likely.

- The lead agency decides that significant issues/impacts were missed in the draft EIS and/or additional alternatives or mitigation should be evaluated and SEPA goals would be better served with another draft EIS and comment period.

- The original EIS was issued for a different proposal (such as a comprehensive plan), but provides the basis for review of the current proposal. In this instance, the original EIS is adopted and the adoption form must be included within the draft supplemental EIS, which contains analysis of any likely significant adverse environmental impacts not yet evaluated.

[74] WAC 197-11-620
[75] WAC 197-11-400 to 600

- An agency with jurisdiction concludes its comments on the draft EIS were not adequately addressed in the lead agency's final EIS[76]. In this case, the agency with jurisdiction must prepare the supplemental EIS at their own expense.

3.6.1. Tips:

- To facilitate review and the comparison of options, it is helpful for the supplemental EIS to use the same organization and format as the original EIS.

- When a supplemental EIS is being prepared after the final EIS is issued, agencies with jurisdiction should consider waiting to issue permits until after the final supplemental EIS is issued. Although, the SEPA Rules do not address this, the additional analysis, changes to the proposal, or new mitigation may be relevant to other agencies' decisions. The agency preparing the document should notify all agencies with jurisdiction that a supplemental EIS is being prepared.

[76] WAC 197-11-600 (3) (c)

4. Nonproject Review

Nonproject actions are governmental actions involving decisions on policies, plans, or programs that contain standards controlling use or modification of the environment, or that will govern a series of connected actions. This includes, but is not limited to, the adoption or amendment of comprehensive plans, transportation plans, ordinances, rules, and regulations[77]. Any proposal that meets the definition of a nonproject action must be reviewed under SEPA, unless specifically exempted.

Nonproject review allows agencies to consider the "big picture" by conducting comprehensive analysis, addressing cumulative impacts, possible alternatives, and mitigation measures. This has become increasingly important in recent years for several reasons:

- **Provides the basis for future project decisions:** Environmental analysis at the nonproject stage forms the basis for later project review, providing greater predictability.

- **Expedites project analysis and decisions:** The more detailed and complete the environmental analysis during the nonproject stage, the less review needed during project review. Project review is able to focus on only those environmental issues not adequately addressed during the nonproject stage.

[77] WAC 197-11-704(2)(b)

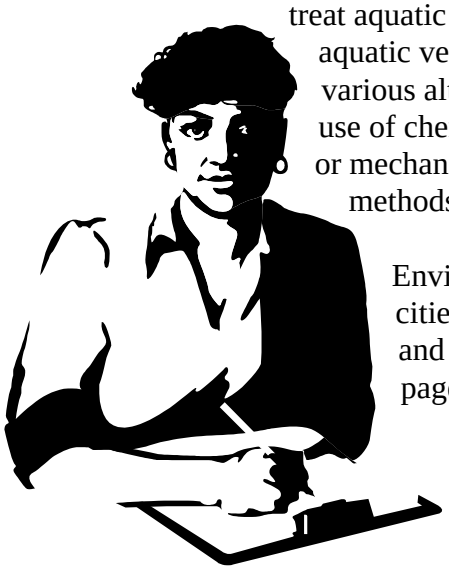
4.1. General Guidance for Nonproject Actions

The procedural requirements for SEPA review of a nonproject proposal are basically the same as a project proposal. Environmental review starts as early in the process as possible when there is sufficient information to analyze the probable environmental impacts of the proposal. The first step is usually to complete an environmental checklist (including Part D, Supplemental Sheet for Nonproject Activities), unless the lead agency has already determined that an environmental impact statement is needed or SEPA has already been completed.

Review of a nonproject proposal should include a consideration of other existing regulations and plans, and any under development. For example, during development of a critical area ordinance, the agency should consider the relationship to the Clean Water Act, Shoreline Management Act, and similar regulations.

If the nonproject action is a comprehensive plan or similar proposal that will govern future project development, the probable impacts need to be considered of the future development that would be allowed. For example, environmental analysis of a zone designation should analyze the likely impacts of the development allowed within that zone. The more specific the analysis at this point, the less environmental review needed when a project permit application is submitted.

Whenever possible, the proposal should be described in terms of alternative means of accomplishing an objective[78]. For example, a statewide plan for use of chemicals to treat aquatic vegetation could be described as a plan to control aquatic vegetation. This would encourage the review of various alternatives for treating vegetation in addition to the use of chemicals. This might include a review of biological or mechanical methods, or a combination of the various methods.



Environmental review of nonproject actions by GMA cities and counties have additional specific guidance and requirements, discussed in section 7, beginning on page 75.

[78] WAC 197-11-060(3)(a)

4.2. Contents of a Nonproject EIS

In most instances, the development of a nonproject action (i.e. plan or policy) involves an analysis of alternatives and the potential consequences of future project actions. Since an EIS also evaluates alternatives and probable impacts, it should be possible to combine the EIS with the analysis of the nonproject action and issue an integrated document.

Agencies have great flexibility in formatting a nonproject EIS and are encouraged to combine the EIS with the planning document. The EIS should discuss impacts and alternatives with the level of detail appropriate to the scope of the nonproject proposal. Although the format is flexible, the EIS must include a cover letter or memo, a fact sheet, a table of contents, and a summary.

In preparing a nonproject EIS the following areas should be considered for inclusion:

Background and Objectives
- Background of the issue, including the purpose and need for action.
- Legislative authority or mandate.
- Statement of the primary objective.
- Relationship to ongoing and future regulatory and planning efforts.

Existing Situation
- Description of the existing situation—current regulations, existing means of achieving the objective, current institutional structure.

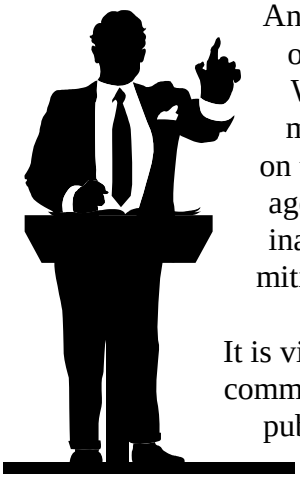
Proposal and Alternatives
- Description of the proposed regulation, policy, plan, etc.
- Alternatives to the proposal which could reasonably meet the primary objective.

Environmental Impacts
- Summary of the adverse environmental impacts relative to other policies. For example, the consequences of the transportation plan on housing policy or plans.
- Summary of environmental impacts from the proposal and alternatives.

Section 3. on the **Environmental Impact Statement Process,** starting on page 45, provides additional relevant information on the EIS process, including scoping, and encouraging public participation.

Tip: When preparing a nonproject environmental document, the lead agency should think about the use of the document during the environmental review of future project proposals. Will the information provide a solid foundation for additional analysis at the project phase? Will the information be easy to locate and cross reference in later environmental documents?

5. Commenting



An important part of SEPA is the opportunity for citizens and other agencies to review and comment on many proposals. When an opportunity to comment on a SEPA document is missed or ignored, the opportunity to have a beneficial effect on the proposal is often lost. Comments can provide the lead agency with missing information on the proposal, identify inaccurate information, and/or provide input on possible mitigation or alternatives.

It is vital that comments are filed with the lead agency before the comment period closes. Lack of timely comment by agencies or the public is construed as a lack of objection to the environmental analysis completed by the lead agency[79]. This is especially important with the new stricter timelines under the integrated project review process (see section 8. **Local Project Review Act**, page 87), agency permit decisions are often finalized immediately after the close of the comment period. Also, providing timely comments is usually a prerequisite to the appeal of a proposal. (See section 11. **Appeals** on page 103.)

It is particularly important for agencies with jurisdiction to comment when they have concerns about a proposal. Since the comments become part of the SEPA record, the information can be used by any agency with jurisdiction when making permit decisions. (See section 6. **Using SEPA in Decision Making**, on page 73.)

5.1. When to Comment

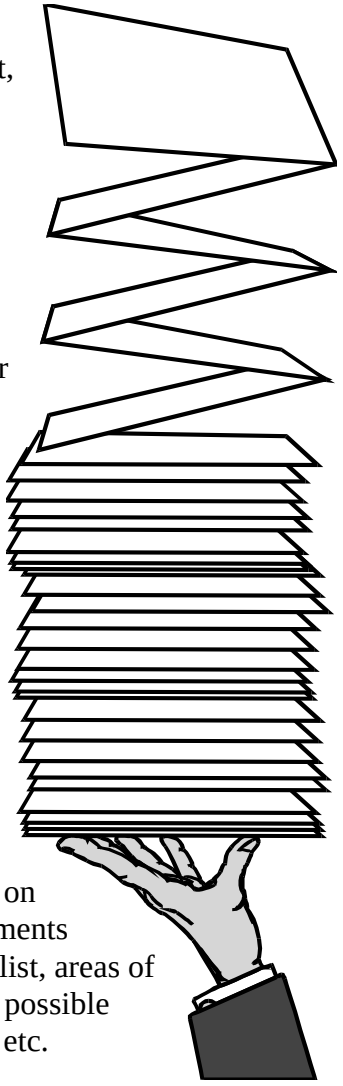
Citizens and agencies are accustomed to commenting on project proposals where it is easy to see the potential for on-the-ground impacts. It has become increasingly important to also review and comment on nonproject proposals. These include the adoption of state or local rules, resource management plans, comprehensive plans, critical area ordinances, development regulations, etc. Plans and the implementing regulations are likely to have a much more widespread influence, as they may affect the permitting, approval, or denial of unknown numbers of future project proposals or permit renewals.

As more cities and counties are planning under the Growth Management Act, many environmental concerns are considered during the development of plans and implementing regulations. Many of these issues cannot be reconsidered or appealed during later project review. (See section 8.4.1. **Analyzing Consistency** on page 98.)

[79] WAC 197-11-545

Table 2 contains information on the public comment periods, public notice, and circulation requirements for SEPA documents. Although the majority of SEPA documents require a comment period, some do not. The following types of documents may provide opportunities to comment on a proposal, although no proposal—project or nonproject—will offer all:

- **Notice of application (NOA):** Cities and counties planning under the Growth Management Act (GMA) are now required to issue a notice of application for many projects. The intent of the notice of application is to provide an early opportunity for other agencies and the public to review and comment on a project under review by a city or county. The format will vary between different jurisdictions, for instance it may or may not include the environmental checklist. The notice of application is sometimes the only opportunity to comment on a proposal and, because it occurs early in the process, gives the lead agency the greatest flexibility to act on comments received. Comments on the notice of application can give information on probable adverse impacts that would result, give suggestions on how to reduce or eliminate impacts (mitigation conditions), correct inaccuracies in the information provided, etc.



- **Consultations:** Lead agencies are encouraged to solicit input from other agencies with jurisdiction and expertise prior to making a threshold determination for a proposal. Consultations may be interagency meetings, which may or may not include the applicant, or they may be written requests for response. In either case the lead agency should provide sufficient information that agencies can understand the proposal and its likely impacts. Consulted agencies are encouraged to take advantage of this early opportunity to shape a proposal by identifying problems and potential solutions. Appropriate comments would also include any likely significant adverse environmental impacts that would indicate the need for an environmental impact statement.

- **Determination of nonsignificance (DNS):** The lead agency issues a determination of nonsignificance when a proposal is not likely to have a significant adverse impact on the environment. If the DNS has a comment period, comments may indicate any inaccuracies in the environmental checklist, areas of probable impact that have not been adequately addressed, possible mitigation measures that should be added to the proposal, etc.

- **Determination of Significance/Scoping Notice (DS/Scoping):** When the lead agency determines that a proposal is likely to have a significant adverse impact on the environment, the agency circulates the DS to other agencies and the public for comment on what should be analyzed in the environmental impact statement (EIS). Comments on the DS should focus on probable areas of impact that should be addressed in the EIS, methods of analysis that should be used, reasonable alternatives to the proposal that should be considered, and mitigation measures that may reduce or eliminate the adverse impacts.

- **Draft Environmental Impact Statement (EIS):** The purpose of an EIS is to provide the public and agency decision-makers with information on the probable significant adverse impacts associated with a proposal, reasonable alternatives, and possible mitigation measures. Comments on the draft should address the accuracy of the information provided, the appropriateness of the methodologies used, the need for additional study(ies), additional mitigation, the merits of the alternatives, etc

  If a consulted agency fails to comment on a draft EIS, the agency is barred from alleging any defect in the analysis in the EIS[80]. A consulted agency is any agency with jurisdiction or expertise that is requested by the lead agency to provide information or comments on a proposal during the SEPA process.

  If an agency with jurisdiction comments on a draft EIS and the lead agency does not provide adequate response to the concerns, the agency with jurisdiction may prepare a supplemental EIS[81]

- **Final Environmental Impact Statement:** There is no comment period for a final EIS, although there is a 7-day waiting period after it is issued before agencies are allowed to issue non-exempt permits and approvals.

5.2. Commenting Effectively

The lead agency may accept only written comments or they may hold a public meeting or hearing to allow oral comments to be heard. Oral comments have the added benefit of sharing views in a public forum, and during a public hearing, will be recorded exactly. Public meetings may be less formal, and an exact record may not be taken. Submitting comments in writing is the most common method of commenting and gives commentors assurance that an accurate record of their concerns has been made a part of the record.

[80] WAC 197-11-545(1)
[81] WAC 197-11-600(3)(c)

It is important to remember that the goal is to *communicate* to the lead agency both the concerns with the proposal and possible remediation. Simple tips the reviewer should keep in mind while commenting include:

- **Be clear, concise, and organized.**

- **Be specific.** Saying that you are against a project will not have as much effect as saying *why*. The SEPA Rules encourage agencies and the public to be as specific in their comments as possible[82].

- **Identify possible solutions.** Suggestions on reasonable alternatives and mitigation (conditions to avoid, minimize, or reduce adverse impacts) may help shape a questionable project into one with much less environmental impact . After identifying the problem, whenever possible, suggest potential solutions.

[82] WAC 197-11-550

6. Using SEPA in Decision Making

One of the most important aspects of the SEPA process is the consideration of environmental impacts and possible mitigation measures during agency decision-making. SEPA substantive authority[83] gives all levels of government the ability to condition or deny a proposal based on environmental impacts.

> Substantive authority is an essential part of SEPA. It allows decision-makers to use the environmental analysis required under SEPA to condition or deny proposals. Without this authority, "...the law would create meaningless and wasteful paperwork.…"[84]

Before requiring mitigation measures under SEPA substantive authority, agencies are to first consider whether local, state, or federal requirements and enforcement would mitigate the identified significant adverse impacts[85].

Decision-makers should judge whether possible mitigation measures are likely to protect or enhance environmental quality. Mitigation measures must be related to a specific adverse impact clearly identified in an environmental document[86] on the proposal, and must be reasonable and capable of being accomplished[87].

When using SEPA substantive authority, the decision-maker must:

1. Cite the agency SEPA policy that is the basis for conditioning or denying the proposal;
2. Document the decision in writing; and
3. Make available to the public a document that states the decision, and any mitigation measures will be required. This document may be the permit, license, or approval; or it may be combined with other agency documents;

> Mitigation must be included as permit conditions to be enforceable. The exception is when a proponent alters the permit application(s) to include the needed changes or conditions. Identification of mitigation in a DNS or EIS alone is not sufficient to allow enforcement.

[83] WAC 197-11-660
[84] Ten Years' Experience with SEPA, Final Report of the Commission on Environmental Policy, June 1983, pg. 11
[85] WAC 197-11-660(1)(e)
[86] WAC 197-11-744
[87] WAC 197-11-660(1)(b) and (c)

or the decision document may reference relevant portions of environmental documents.

To deny a proposal under SEPA, an agency must find that:

1. The proposal would be likely to result in a significant adverse environmental impact identified in a final EIS or final supplemental EIS; and
2. Reasonable mitigation measures are not sufficient to mitigate the identified impact to a non-significant level.

SEPA supplements the existing authority of all agencies. To exercise SEPA substantive authority each agency must adopt SEPA policies that will be the basis for conditioning or denying proposals. These policies must be readily available to the public for the benefit of applicants and concerned citizens. (See adoption procedures in WAC 197-11-902.)

7. SEPA and the Growth Management Act (GMA)

SEPA requires all state and local agencies to use an interdisciplinary, integrated approach to include environmental factors in both planning and decision-making. Although the terms "SEPA review" and "environmental review" include formal SEPA determinations and environmental analyses, these terms also refer to the basic concept of taking environmental quality into account in whatever an agency does.

Under GMA, cities and counties adopt policies, plans, and regulations to manage land use, environmental resources, and other aspects of growth within their own jurisdictions, and in a coordinated way with other jurisdictions. It is not possible to meet the goals or requirements of GMA or to make informed planning decisions without giving appropriate consideration to environmental factors. The GMA nonproject actions such as the adoption of policies, plans, and regulations form the basis for subsequent "on the ground" project decisions that directly affect our environment.

Environmental review at the planning stage allows the GMA city or county to analyze impacts and determine mitigation system-wide, rather than project by project. This allows cumulative impacts to be identified and addressed, and provides a more consistent framework for the review, conditioning, or denial of future projects.

It is not possible to meet the goals and requirements of GMA or to make informed planning decisions without giving appropriate consideration to environmental factors.

Plans that effectively integrate the goals and requirements of SEPA and GMA contribute to public knowledge, environmental protection, and fiscal efficiency for local government services. Benefits include:

- A more predictable future for the community;
- A better understanding of the capacity of the built and natural environment and the cumulative impacts of development community-wide, increasing the potential for protection of environmental values;
- Efficient use of public funds for the provision of public facilities, infrastructure, and services; and
- A decrease in the time and cost associated with obtaining permit approval for appropriate projects in suitable locations resulting from early decisions on land-use, services, and mitigation.

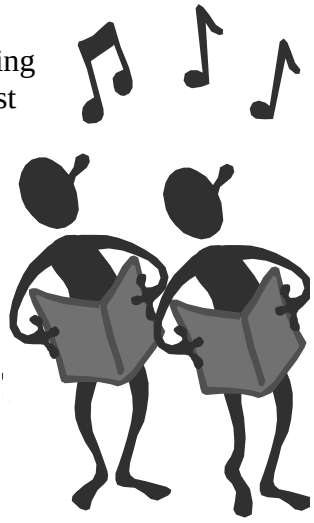
To the extent that plans and implementing regulations are more comprehensive, detailed, and consistently relied upon, environmental review for individual project proposals can be reduced. Environmental review at the project phase entails 1)

determining the project's consistency with the comprehensive plan, development regulations, and other local, state, and federal laws; and 2) using SEPA to address the gaps that may remain, by focusing on any project-specific environmental impacts not addressed under other regulations.

Formal SEPA documents issued by GMA jurisdictions for both project and nonproject proposals serve three purposes:

1. To document the consideration of environmental values;
2. To provide public, agency, and tribal review and comment prior to many agency decisions; and
3. To ensure coordination among the policies, plans, and regulations of various governments.

7.1. Principles for Integrating SEPA and GMA



The integration of SEPA and GMA results in improved planning and project decisions from the environmental prospective. Just as GMA goals cannot be addressed without consideration of environmental factors, the goals of SEPA are benefited by the examination of the "big picture" and identification of mitigation to address cumulative impacts of development that occurs during GMA planning. Jurisdictions planning under GMA should:

- Think about environmental quality as each community charts its future, by involving diverse sectors of the public and by incorporating early and informal environmental analysis into GMA planning and decision-making.

- Use SEPA review together with other analyses and public involvement to produce better planning decisions.

- Combine to the fullest extent possible the processes, analysis, and documents required under GMA and SEPA, so that GMA planning decisions and subsequent implementation will incorporate measures to promote the goals of GMA and SEPA.

- Recognize that different questions will need to be answered and different levels of detail will be required at each phase of GMA planning, from the initial development of plan concepts or elements to the creation of implementation programs.

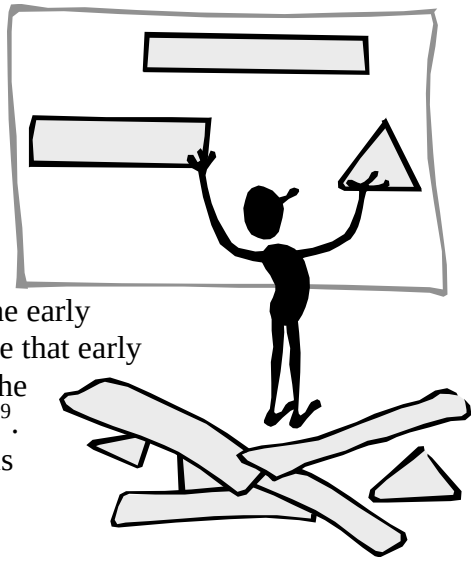
- Focus environmental review and the level of detail needed for different stages of plan and project decisions on the environmental choices most relevant to that

stage of the process, while not duplicating the review that has occurred for decisions that have already been made.

- Use environmental review on projects to help: 1) review and document consistency with GMA plans and regulations; 2) identify any impacts and mitigation needs that had not been considered and addressed at the plan level; and 3) provide the opportunity for review by agencies, tribes, and the public.

- Continue to maintain or improve the quality of environmental analysis for both plan and project decisions, while integrating these analyses with improved state and local planning and permitting processes.

7.2. GMA Nonproject Review



In 1995, the SEPA Rules were amended to help cities and counties combine SEPA and GMA processes and analyses, including issuing combined SEPA/GMA documents[88]. These amendments affirmed that environmental review should begin at the early stages of plan development in order to ensure that early studies are available and useful throughout the planning and environmental review process[89]. Planning and decision-making under GMA is best done concurrently with environmental analysis under SEPA.

Environmental analysis at each stage of the GMA planning process should, at a minimum, address the environmental impacts associated with planning decisions at that stage of the planning process. Impacts associated with later planning stages may also be addressed to the extent that sufficient information is known for the analysis to be meaningful.

7.2.1. Early (Preliminary) Environmental Analyses

Cities and counties are encouraged to integrate informal environmental analysis into preliminary planning considerations. These preliminary analyses can be prepared and used early in the process and may also be incorporated into later analyses. Early environmental analyses:

- Do not require a threshold determination;

[88] WAC 197-11-210 through 235
[89] WAC 197-11-030(2)(d)

- May be separate documents or included as part of other planning materials such as issue papers;
- May use the format of SEPA documents (e.g. environmental checklist, EIS); and
- May evaluate issues and concerns not required in SEPA documents such as economic or technical factors[90].

7.2.2. Timing of the Threshold Determination

A SEPA threshold determination is made:

- As soon as it can be determined whether a significant adverse environmental impact is likely to result from the implementation of the GMA action; or
- At any time, as long as it is early enough that the appropriate environmental document can accompany or be combined with a proposed GMA action[91].
- When using existing documents for which a previous threshold determination has been prepared and there are substantial changes or new information indicating significant impacts not previously analyzed[92].

A threshold determination is not required when:

- There has been a previous threshold determination on the proposal and there are no substantial changes or new information indicating significant impacts not previously analyzed; or
- A notice of adoption or an addendum is being prepared[93] (except when required by WAC 197-11-600(3)).

7.2.3. Expanded Scoping

Expanded scoping may be used for integrated documents without requiring the preparation of an EIS. Expanded scoping may begin or be combined with early GMA planning activities such as "visioning," development of alternative concepts or elements, or scoping of possible GMA actions.

Expanded scoping may be started before a threshold determination. A scoping notice may be issued separately from or without a threshold determination. If expanded scoping is used before making a threshold determination and a determination of significance (DS) is subsequently issued, additional scoping is optional.[94]

[90] WAC 197-11-232
[91] WAC 197-11-230
[92] WAC 197-11-230 and 600
[93] WAC 197-11-230 and 600
[94] WAC 197-11-232(2)

7.2.4. Issuing and Distributing an Integrated Document

A formal SEPA document must be issued no later than when a proposed GMA action is issued for public review. For comprehensive plans and development regulations, it is issued at least sixty days before final adoption.

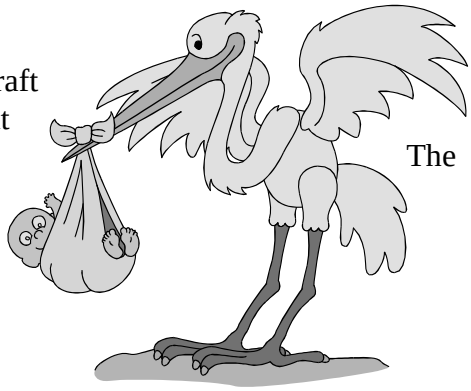
The public comment period on a formal SEPA document issued with a GMA document is the longer of:

- The comment period on the GMA action; or
- The comment period typically required for a SEPA document.

The document must be distributed to:

- The Department of Ecology;
- Any advisory body that makes a formal recommendation to the local legislative body regarding a GMA action;
- The legislative body that will consider a GMA action;
- Agencies, affected tribes, and citizens as mandated by WAC 197-11-455 (draft EIS) or 197-11-340 (DNS), as appropriate[95]; and
- The Department of Community Trade and Economic Development and other state agencies pursuant to RCW 36.70A.106.

7.2.5. Adopting the GMA document



When a GMA document is integrated with a draft EIS, the agency may adopt the GMA document at the same time that the final EIS is issued. The jurisdiction does not have to wait the seven days usually required. In other instances, the GMA document may be adopted after any required comment period is completed.

7.2.6. Integrated Document Format

Although there are a few requirements, which are defined below, there is no standard format for an integrated GMA document. The overriding consideration is the quality of information and analysis at the appropriate scope and level of detail for the particular GMA document and not the format, length, or bulk of the document.[96]

7.2.6.1. GMA Action EIS

[95] WAC 197-11-230(1)(b)(ii)
[96] WAC 197-11-235

An EIS for a GMA action should contain sufficient environmental analysis to provide a basis for future decisions on projects. SEPA documents may be separate and accompany the GMA documents or they may be integrated. An integrated document must include:

- **A fact sheet.** The fact sheet, containing the information required in WAC 197-11-440(2), must be the first section of the document.

- **An environmental summary.** The environmental summary emphasizes the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved including the environmental choices to be made and the effectiveness of mitigation measures. It should reflect SEPA's substantive policies and highlight the primary environmental options that would be preserved or foreclosed by the proposed GMA action, taking into account cumulative impacts. It may discuss non-environmental factors, and should do so if relevant to resolving issues concerning the main environmental choices.[97]

- **A concise analysis of alternatives.** This is a comparative environmental analysis of the principal alternative courses of action that are under consideration[98]. Evaluating options helps determine whether the proposal should be revised to avoid or reduce environmental or other impacts. Alternatives discussed may be those presently being considered or considered and discarded earlier.

- **Comments and responses.** The final integrated document must include the comments on the draft EIS/plan along with agency responses. Any comments received during the scoping process or on preliminary documents (or a summary of them) must be included in either the final integrated document or the supporting record, together with agency responses to these comments if prepared.[99]

- **Supporting record, analyses, and materials.** Materials in the supporting record allow interested parties to identify and review the planning basis for the conclusions and analyses presented in the integrated GMA document as provided in Chapter 365-195 WAC, "Procedural Criteria for Adopting Comprehensive Plans and Development Regulations. An integrated document must contain a list of the principal analytical documents and other materials (such as meeting minutes, maps, models, tapes or videos) that have been prepared, received, or used to develop the GMA action. These materials are part of the official supporting record for SEPA compliance (see WAC 197-11-090). Annotated lists are encouraged, but not required, to assist current and future reviewers.

[97] WAC 197-440(4) and 235(5)
[98] WAC 197-11-440(5)
[99] WAC 197-11-235(7)

7.2.6.2. Non-EIS Integrated Documents

If a proposed GMA action is not likely to have a significant adverse environmental impact, an integrated GMA document that combines the formal SEPA document (such as an environmental checklist/DNS, a notice of adoption, or an addendum) with the GMA document is prepared.

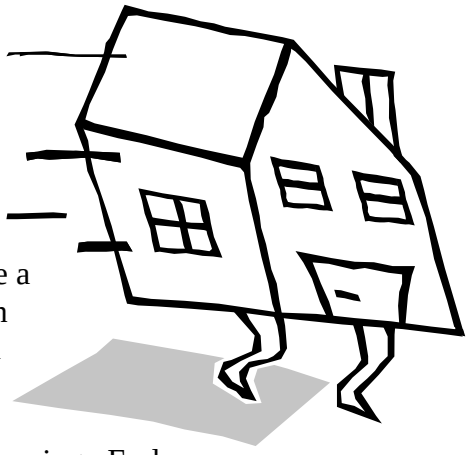
If an environmental checklist is prepared for a GMA action, only Parts A (which serves as a fact sheet), C (responsible official's signature), and D (nonproject checklist) must be completed. An environmental summary as specified in WAC 197-11-235(5) is also required and may be combined with Part D of the checklist.

If an addendum is to accompany or be incorporated into an integrated GMA document, it must contain the information specified in WAC 197-11-235(5) for an environmental summary.

7.3. GMA Project Review

The Local Project Review Act, adopted in 1995 added new requirements for cities and counties to consolidate their permit and environmental review processes. Included are many procedural mandates for those cities and counties planning under GMA. Please see section **8. Local Project Review Act** on page 87, for discussion of these requirements.

7.4. Planned Actions



In 1995, the legislature authorized a new category of project action in SEPA called a "planned action." Designating specific types of projects as planned action projects shifts environmental review of a project from the time a permit application is made to an earlier phase in the planning process. The intent is to provide a more streamlined environmental review process at the project stage by conducting more detailed environmental analysis during planning. Early environmental review provides more certainty to permit applicants with respect to what will be required and to the public with respect to how the environmental impacts will be addressed.

The GMA city or county must first complete an EIS which addresses the likely significant adverse environmental impacts of the planned action. After completing the EIS, the GMA city or county designates by ordinance or resolution those types of projects to be considered planned actions, including mitigation measures that will be applied. The types of project action must be limited to certain types of development or to a specific geographic area that is less extensive than a city or town's jurisdictional boundaries. (See RCW 43.21C.031, WAC 197-11-164 and 168 for requirements and restrictions on the designation of planned actions.)

Use of the planned action process is restricted to cities and counties planning under GMA. GMA jurisdictions are required to develop both a broader scope and deeper level of planning that provides the foundation for this early type of review.

While normal project review requires a threshold determination, a project qualifying as a planned action project does not require a new threshold determination. If the city or county reviews the project, verifies that it is consistent with the planned action project(s) previously designated, and determines that the impacts are adequately addressed in the EIS on which the planned action relies, project permit review continues without a threshold determination. All of the project's significant probable environment impacts must have been addressed at the plan level in order for the project to qualify as a planned action[100].

Designating planned action projects reduces permit-processing time. There are no SEPA public notice requirements or procedural administrative appeals at the project level because a threshold determination or new EIS is not required. The only notice requirements are those required for the underlying permit.

The designation of planned action projects will only be appropriate in limited situations. The designation of planned action projects is probably most appropriate for:

- Smaller geographic areas;
- Relatively homogenous geographic areas where future development types, site-specific conditions, and impacts can be more easily forecast;
- Development sites with significant overlapping regulatory requirements; or
- Routine types of development with few impacts.

Examples of appropriate project actions limited to a specific geographic area might be projects anticipated in a subarea or neighborhood plan with a limited number of development types. Another example could be a large parcel in single

[100] If a project does not qualify as a planned action because of likely significant adverse environmental impacts that were not adequately addressed in the EIS, a threshold determination is required. Environmental review for the project may rely on the environmental analysis in the EIS, and additional analysis need only address those impacts not addressed in the previous EIS.

ownership, such as a university campus or a large manufacturing complex where project construction will be done in phases.

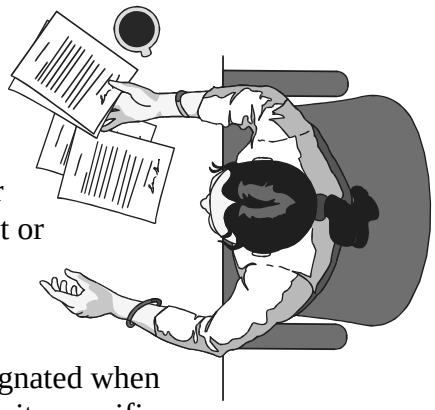
7.4.1. Tip

When considering whether to designate planned action projects, GMA counties and cities need to be aware that the process can be costly to the jurisdiction. More up-front environmental analysis and review by the county or city in the GMA planning process will be required. As a result, the county or city pays for studies and processes that would normally be paid for by private applicants.[101]

7.4.2. Designating Planned Action Projects

The basic steps in designating planned action projects are to prepare an EIS, designate the planned action projects by ordinance or resolution, and review permit applications for projects proposed as consistent with the designated planned action.

Step 1: Prepare the EIS (WAC 197-11-164)



The significant environmental impacts of projects designated as planned actions must be identified and adequately addressed in an EIS[102]. The EIS must be prepared for a GMA comprehensive plan or subarea plan, a master planned development or resort, a fully contained community, or a phased project[103].

Planned action projects should only be designated when a county or city can reasonably analyze the site-specific impacts that will occur as a result of the types of projects designated, and can adequately address those impacts in the EIS. A generalized analysis of cumulative environmental impacts will not provide enough information to address a project's impacts when it is time for the jurisdiction to issue permits for specific projects proposed as planned action projects.

Step 2: Adopt Planned Action Ordinance or Resolution

[101] Although there is no formal method under state law to recover the costs of up-front analysis, some jurisdictions have developed cost-sharing agreements with local property owners and associations interested in utilizing the planned action process.
[102] WAC 197-11-164
[103] RCW 43.21C.031

Planned action projects must be designated or identified in an ordinance or resolution adopted by a GMA county or city[104]. There are a number of procedural requirements for this. A GMA county/city considering the adoption of a planned action ordinance or resolution should review the requirements in RCW 43.21C.031 and WAC 197-11-164, 168, and 315. The following specific points should be considered:

- An extensive level of public review for both the EIS and the proposed planned action ordinance is crucial. Since a new threshold determination or EIS is not required when a permit application is received, there may not be an opportunity for public review or administrative appeal at the project review stage. In order to build support for an abbreviated permit process, public awareness is needed at these earlier phases.

- Although the statute allows a jurisdiction to designate planned action projects by an ordinance or resolution, adoption by resolution is not recommended. The provisions for adoption of a resolution do not allow sufficient opportunity for public participation.

- The planned action ordinance should be as specific as possible, should indicate where in the EIS or associated planning document the projects' environmental impacts have been addressed, and should include or reference mitigation measures which will be required for a project to qualify as a planned action project. For example, the ordinance should indicate what mitigation has been identified in the EIS or what level of service has been accepted in the subarea plan for traffic impacts.

- If desired, the city or county may set a time limit in the ordinance during which the planned action designation is valid. If a GMA county/city does set a time limit on the designation, it should consider how this affects any permits for which there is an expiration date. For example, a project with a permit valid for five years is found to qualify as a planned action project and the permit is issued just prior to the sunset date for the planned action designation. Is the project still considered a planned action project for the life of the permit after the sunset date?

- Although a GMA county or city must require the applicant to submit a SEPA environmental checklist with a project proposed as a planned action project, a revised format for the checklist may be developed by the city or county. A draft of the revised form must be sent to Ecology for a thirty-day review[105]. While not required at this phase, it would be helpful if the revised checklist were developed in conjunction with the ordinance or resolution designating planned action projects.

[104] WAC 197-11-168
[105] WAC 197-11-315(2)

Step 3: Review the Proposed Planned Action Project (WAC 197-11-172)

When a permit application and environmental checklist are submitted for a project that is being proposed as a planned action project, the city or county must verify:

- The project meets the description of any project(s) designated as a planned action by ordinance or resolution;
- The probable significant adverse environmental impacts were adequately addressed in the EIS; and
- The project includes any conditions or mitigation measures outlined in the ordinance or resolution.

If the project meets the above requirements, the project qualifies as a planned action project. Neither a threshold determination nor an EIS will be required. Consequently, there will be no administrative SEPA procedural appeal (an appeal of whether the proper steps in the SEPA process were followed). The planned action project will continue through the permit process pursuant to any notice and other requirements contained in the development regulations.

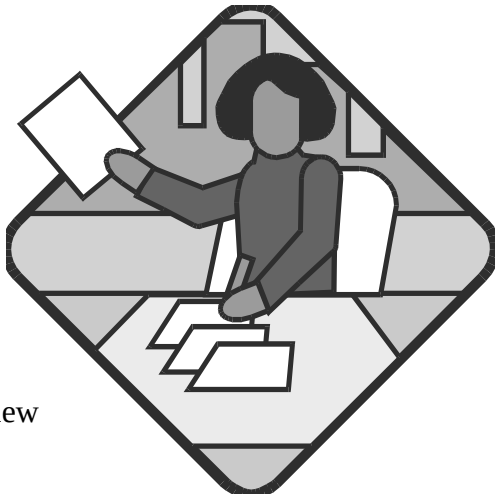
If the project does **not** meet the requirements of the planned action ordinance or resolution, or if the EIS did not adequately address all probable significant adverse environmental impacts, the project is not a planned action project. In this instance, the city or county must then make a threshold determination on the project. The project would go through normal environmental review as part of project review. The county or city may still rely on the environmental information contained in the EIS and supporting documents in analyzing the project's environmental impacts and making the threshold determination. If an EIS or SEIS is found to be necessary for the project, it only needs to address those environmental impacts not adequately addressed in the previous EIS. (See section 2.7. **Using Existing Documents** on page 33.)

7.4.3. Consistency Requirements for Planned Action Projects

A project proposed as a planned action project must still be analyzed for consistency with the local comprehensive plan and development regulations (see section on **Analyzing Consistency** on page 98). Designation of planned action projects does not limit a city or county from using other authority (e.g. transportation mitigation ordinances) to place conditions on a project; it only addresses procedural SEPA requirements[106]. The GMA county or city may still use its SEPA substantive authority or other applicable laws or regulations to impose conditions on a project qualifying as a planned action project.[107]

[106] WAC 197-11-172(2)(a) specifically states that "Nothing in this section limits a GMA county/city from using this chapter or other applicable law to place conditions on the project in order to mitigate nonsignificant impacts through the normal local project review and permitting process."
[107] RCW 43.21C.031(1)

8. Local Project Review Act



The Local Project Review Act was part of the Land Use Regulatory Reform Act signed into law in 1995 (ESHB 1724, codified in Chapter 36.70B RCW). It requires all counties and cities to combine permit review and environmental review, and to consolidate administrative appeals of permit and SEPA decisions. Integrated project review provides a more streamlined permit and environmental review process by reducing duplication and paperwork.

The Legislature recognized that counties and cities planning under the Growth Management Act (GMA) must rely on their comprehensive plans and development regulations as the building blocks for land use regulatory reform. GMA planning decisions provide "the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development."[108] Land use decisions made during the GMA planning process should not be revisited at the project level. At the same time, environmental impacts that were studied as part of the GMA planning process should not be reanalyzed at the project level.

8.1. Requirements for Integrated Project Review

8.1.1. Requirements for All Counties and Cities

All counties and cities are required to develop an integrated project review process that: combines both procedural and substantive environmental review with permit review; and allows only one open record hearing and one closed record appeal in an administrative appeal process.[109]

All cities and counties, regardless of whether they are planning under GMA, must integrate permit and environmental review.

Chapter 36.70B RCW has no specific requirements for how non-GMA counties and cities are to integrate their processes, except for administrative appeals (see **Appeals** section on page 109).

[108] Findings after RCW 36.70A.470
[109] RCW 36.70B.050

8.1.2. Requirements for GMA Cities and Counties

Counties and cities planning under GMA have additional requirements that must be adopted by ordinance or resolution. The following steps must be included in their project review process:

- Determination of Completeness
- Notice of Application
- Notice of Decision–issued within 120 days of the Determination of Completeness
- Combined permit and SEPA administrative appeals

There have been a number of questions on whether the project review requirements in Chapter 36.70B RCW apply to comprehensive plan or development regulation amendments, such as rezones. Comprehensive plan and development regulation amendments are nonproject actions and therefore not subject to project review requirements. Amendments to the comprehensive plan and development regulations are nonproject regardless of whether they are initiated by the county or city or by citizen request, however, in all instances they remain subject to SEPA and GMA requirements for public review and comment.

8.2. Steps in the Project Review Process for GMA Counties and Cities

Non-GMA cities and counties *may also choose to follow this process for integrating their permit and environmental review procedures.*

8.2.1. Preapplication Process

Project review normally begins when an applicant submits a permit application (usually accompanied by a SEPA environmental checklist). However, project review can begin earlier if a preapplication process is offered or required by the local jurisdiction. Counties and cities are not required to provide a preapplication process, but many do.

A preapplication process can be beneficial to the applicant and to reviewing agencies. The process usually involves a meeting between the applicant, various county or city departments, and other agencies that issue permits. A preapplication meeting allows the applicant to discuss the project and gather information on what studies and mitigation may be required. The county or city has an opportunity to inform the applicant whether the project appears to be consistent with the development regulations

and/or comprehensive plan, and to identify any environmental studies or mitigation that may be required. (Also see Section 2.2. on providing a preapplication process under SEPA Environmental Review, page 10.)

8.2.2. Determination of Completeness

A determination of completeness is issued when an application:

- meets agency submittal requirements, and
- is complete enough to continue processing.

Counties and cities planning under GMA are required to determine whether an application is complete enough to begin processing within 28 days of submittal[110]. If the application is determined complete, it is documented in a "determination of completeness" and sent to the applicant.

If the application is not complete, the GMA county or city may request additional information from the applicant. Once this information is submitted, the agency has 14 days to determine whether the application is now complete and to notify the applicant in writing.

Even though a county or city has determined an application to be complete, it is not precluded from later requesting additional information or studies[111].

The issuance of the determination of completeness also starts the "120-day clock." Once the determination of completeness is issued, the GMA county or city has 120 days to issue the notice of decision.

The determination of completeness may include the following optional information:

- A preliminary determination of those development regulations that apply to the proposal and will be used for project mitigation;
- A preliminary determination of consistency with applicable development regulations (see **Analyzing Consistency** below); or
- Other information the local government chooses to include.

SEPA considerations at this stage of project review:

Is SEPA review required? If this is the first permit application submitted for a proposal, the county or city will also determine whether the proposal is categorically exempt (or whether SEPA has already been completed). If SEPA

[110] RCW 36.70B.070
[111] RCW 36.70B.070(2)

review is not required, the county or city must still comply with the requirements of the Local Project Review Act[112].

Who is lead agency? In most instances, the county or city will be the lead agency. However, the county or city will not be the lead agency when another agency is the proponent or is designated lead under the SEPA Rules for a specific type of proposal (see WAC 197-11-938). If the county or city is not the lead agency, it will still analyze the consistency of the project with applicable development regulations and/or comprehensive plan policies. That information should be provided to the lead agency.

What if the lead agency is also the project proponent? When there is a public proposal, such as a road project or sewer system, the proponent is usually the SEPA lead agency. Public proposals often take several years to plan and implement. The public agency proponent usually does its environmental review under SEPA months or years prior to submitting a permit application to the county or city. The Local Project Review Act and SEPA were amended in 1997 to allow a public agency that is funding or implementing a proposal to conduct its environmental review and complete procedural appeals under SEPA prior to submitting a permit application[113].

Other issues to consider:

Issues that should be considered during initial project review by GMA counties or cities include the following:

Is the project description complete? Is the project properly defined? Have all interdependent pieces of the project been identified? (See WAC 197-11-060(3))

Is the project consistent with the development regulations, or in the absence of applicable development regulations, the comprehensive plan? (See RCW 36.70B.030 and 040, and the section below on Analyzing Consistency.)

Are specific studies needed under the development regulations and/or SEPA environmental review, or by other local, state, or federal regulations (e.g., a wetland study, transportation study, etc.)?

What are the environmental impacts of the proposal? Have they been addressed by existing environmental documents (for example, an EIS on the comprehensive plan or an EIS on a similar project or located in a similar geographic area)?

[112] Projects exempt from SEPA may be exempt from the NOA requirement. See RCW 36.70B.110(5)
[113] RCW 36.70B.110(1)) and to SEPA (43.21C.075(3)(b)(iii)

This table shows a general overview of how local project review integrates permit and environmental review processes when the GMA city or county is the SEPA lead agency for a project proposal and an environmental impact statement is required. See Table 5 for the typical integrated project review with the use of the optional DNS process, page 84.

Table 4. Typical GMA Project Review Process When an EIS Is Required

	Local Project Review Act	SEPA Component
≤ 28 days	**Permit application received** Verify that application is complete enough to start processing	**Environmental checklist received** Review checklist for accuracy and completeness
≤14 days	**Issue Determination of Completeness** Start evaluation of proposal's consistency with the comprehensive plan and/or development regulations, identifying mitigation required	Identify proposal's likely adverse environmental impacts and potential mitigation under SEPA and other regulations
	Issue Notice of Application (14 to 30-day comment period)	**Combine DS/Scoping Notice with NOA** Consider comments made on the DS/Scoping notice and determine scope of the EIS Prepare Draft EIS
≤120 days (clock stops during preparation of the EIS)	Continue project review process (process varies)	**Issue Draft EIS** (30 to 45-day comment period) Prepare Final EIS **Issue Final EIS** (7-day wait)
	Issue Notice of Decision	

Will mitigation/conditions be required by the development regulations; or other local, state, or federal regulations?

Are there environmental impacts that have not been addressed by the regulations?

It may not be possible to answer all of these questions during the initial review phase, but it is important to consider them as early in the review process as possible.

8.2.3. Notice of Application (NOA)

> The notice of application must be issued within 14 days after issuing the determination of completeness.

GMA counties and cities are required to issue a notice of application (NOA) within 14 days after determining the permit application is complete (with some exceptions, see RCW 36.70B.110(5)) and at least 15 days prior to any required open record public hearing for project permits[114].

The notice of application must include the following information:

- The date of application, date of determination of completeness, and date of the notice of application;
- Notice of the public's rights to comment and receive notices (the comment period is 14 to 30 days, as set by agency rule), and the date, time and place of any public hearing (if known);
- A project description, which should include sufficient detail to allow an understanding of what is proposed;
- A list of the permits that will be needed, including those from other agencies;
- A list of existing environmental documents that evaluate all or part of the proposal, as well as any additional studies that will be required;
- A preliminary determination of the project's consistency with development regulations and/or the comprehensive plan and any mitigation required through those regulations (if known).

> The notice of application gives the public and other agencies affected by the proposal the information they need to participate early in project review.

GMA counties and cities are required to use reasonable methods to distribute the NOA to the public and other agencies, and may use different types of notice for

[114] RCW 36.70B.110

different types of permits. The notice requirements are similar to those required under SEPA and are specified by adopted agency ordinance or resolution. (See RCW 36.70B.110(4).)

SEPA steps at this stage of project review:

The determination of significance (DS/Scoping notice) is combined with the NOA if a GMA county or city is also lead agency under SEPA and has determined an EIS is needed at the time it issues the notice of application. The county or city may also issue the DS and scoping notice prior to issuing the notice of application[115], or they may wait to consider comments received on the NOA before making a threshold determination.

An ambiguity in the law makes it unclear whether a determination of nonsignificance can be issued with the notice of application[116]. Although Ecology recommends that agencies wait to issue a DNS until after the close of the comment period on the NOA, new legislation may be needed to resolve the conflict. In the meantime, when the GMA city or county is also the SEPA lead agency, they may choose to use the "optional DNS process"[117]. The optional DNS process, when used, uses the comment period for the NOA to obtain comments on environmental issues, eliminating the need to require a second comment period on the DNS when it is issued. (See Section 7.3.3. on the **Optional DNS** process on page 94.)

8.2.4. Notice of Final Decision

Once the public comment period on the notice of application ends, the agency will review the comments and complete the project review process, including environmental analysis. At the end of the review, a notice of final decision on the permit is issued[118]. The county or city may include permit conditions in the notice of decision based on the development regulations or under the jurisdiction's SEPA substantive authority. (See **Using SEPA in Decision Making** section on page 73.)
The notice of decision must be issued within 120 days of the determination of completeness. However, certain periods of time are excluded from the 120 days. The 120-day clock stops when:

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[115] RCW 36.70B.110(1)

[116] The 1997 Legislature passed two bills amending RCW 36.70B.110 in relation to the timing of the threshold determination and the notice of application:

- SSB 5462 allows the threshold determination to be issued with the notice of application with a combined comment period.
- ESB 6094 amended the same section, but still prohibits a determination of nonsignificance from being issued prior to the close of the comment period on the notice of application.

[117] WAC 197-11-355

[118] RCW 36.70B.090 (scheduled to expire June 30, 2000, current legislation should be checked.)

- The city or county requires the applicant to correct plans, perform required studies, or provide additional required information;
- An environmental impact statement is being prepared[119]; and/or
- Any administrative appeal of project permits must be processed, if an open record appeal hearing and/or a closed record appeal are allowed.

The time limit does not apply if the proposed project:

- requires an amendment to the comprehensive plan or a development regulation;
- requires approval of a fully contained community[120] or master planned resort,[121]
- involves the siting of an essential public facility[122]; or
- is substantially revised by the applicant.

The 120-day limit may also be extended by agency and proponent agreement.

8.3. Optional DNS

The optional DNS process can only be used by GMA cities and counties.

As previously discussed, GMA counties and cities may not issue a DNS before the close of the public comment period on a notice of application (14 to 30 days) under RCW 36.70B.110(6)[123]. Although a comment period is not always required on a DNS, when it is required, this restriction results in two separate public comment periods. For minor projects, the requirement for two comment periods causes delay with little or no benefit.

When the GMA city or county is the SEPA lead agency for a proposal and they have completed their environmental review at the time they will issue the NOA, they may choose to use the optional DNS process. It is appropriate to use the optional DNS process when the GMA county/city has enough information at the time it issues the NOA to be reasonably certain that there are no significant impacts associated with a project. The optional DNS process may also be used when mitigation measures have been identified that will reduce all impacts to a nonsignificant level.

[119] The 120-day clock stops for the preparation of an EIS only if the local agency has set a time limit for the completion of the EIS or if the local agency and applicant agree in writing to a time period [RCW 36.70B.90(1)(b)].
[120] RCW 36.70A.350
[121] RCW 36.70A.360
[122] RCW 36.70A.200
[123] RCW 36.70B.110 (See Footnote 33 on page 68.)

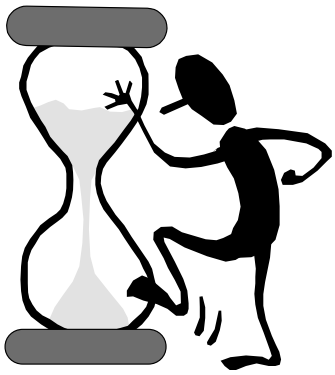
This table shows a general overview of how local project review integrates permit and SEPA review processes when the GMA city or county is the SEPA lead agency for a project proposal and has completed environmental review at the time the notice of application (NOA) is to be issued.

Table 5. Typical GMA Local Project Review with Optional DNS Process

	Local Project Review Act	SEPA Component
≤ 28 days	**Permit application received** Verify that application is complete enough to start processing	**Environmental checklist received** Review checklist for accuracy and completeness
≤14 days	**Issue Determination of Completeness** Start evaluation of proposal's consistency with the comprehensive plan and/or development regulations, identifying mitigation required	Identify proposal's likely adverse environmental impacts and potential mitigation under SEPA and other regulations
≤ 120 days	**Issue Notice of Application** (14 to 30-day comment period)	**Use Optional DNS Process** (NOA states Optional DNS Process being used, etc., and identifies all mitigation conditions that are being considered)
	Continue project review process (process varies)	Consider comments made on the NOA
		Issue DNS* (comment period optional) DNS must be issued at least 15 days prior to any required open record hearing
	Issue Notice of Decision	

* If likely significant adverse impacts have been identified the lead agency may instead issue a DS/Scoping notice and proceed with the EIS process as shown in Table 4 on page 89.

With the optional DNS process, the agency solicits comments on environmental issues during the NOA comment period. Reviewing agencies and the public are warned that they may have only the one opportunity to comment on the proposal. Later, when the DNS is formally issued at the end of the NOA comment period, the lead agency is not required to provide a second comment period. The optional DNS process gives GMA counties and cities the flexibility to reduce duplication and delays when appropriate.



A GMA county or city should consider the following points before deciding to use the optional DNS process:

- It is intended for minor projects that can be fully reviewed prior to issuing a NOA. If the proposed project is more complex, or environmental review cannot be completed within the time limits for the NOA, the regular DNS process should be used.

- The NOA must contain sufficient information on the proposed project, including proposed mitigation measures, to allow other agencies and the public to understand the proposal and comment on any areas of concern. This is particularly important since this is likely to be the only opportunity for the other agencies and public to comment on the probable impacts of the proposed project. It is also the only time that other agencies with jurisdiction will have the opportunity to assume lead agency status.[124]

- To comply with the prohibition against issuance of a DNS with the NOA in RCW 36.70B.110, the actual DNS is not issued until the comment period on the NOA closes. Instead, the lead agency states on the NOA that it is likely to issue a DNS later in the project review process.

WAC 197-11-355 contains specific information on how to use the optional DNS process. To use the process, the GMA county or city must also adopt the procedure into its SEPA ordinance.

The county or city must state on the first page of the NOA that:

- The optional DNS process is being used;
- The agency expects to issue a DNS for the proposal; and
- This may be the only opportunity to comment on the environmental impacts of the proposed project.[125]

The NOA and the environmental checklist are distributed to agencies with jurisdiction or expertise, affected tribes, and the public.

[124] WAC 197-11-948
[125] WAC 197-11-355

Figure 4. Sample Notice of Application with Optional DNS

(City or county name) has received a permit application for the following project that may be of interest to you. You are invited to comment on this proposed project.

Date of permit application: _____ Date of determination of completeness:_____

Date of notice of application: _____ **Comment due date: _____**

Project Description: (provide sufficient information for the public and agencies to understand the proposal and to provide meaningful comments)

Project Location: (should include a street address and/or nearest cross streets)

Project Applicant:

((NOTE: The Environmental Review Section below must appear on the first page of the notice of application.))

Environmental Review: (City or county name) has reviewed the proposed project for probable adverse environmental impacts and expects to issue a determination of nonsignificance (DNS) for this project. The optional DNS process in WAC 197-11-355 is being used. **This may be your only opportunity to comment on the environmental impacts of the proposed project.**

Agencies, tribes, and the public are encouraged to review and comment on the proposed project and its probable environmental impacts. **Comments must be submitted by the date noted above to _(agency contact and address) .**

The following conditions have been identified that may be used to mitigate the adverse environmental impacts of the proposal: (list mitigation measures/conditions that will be required under SEPA). (Note: These conditions are in addition to mitigation required by the development regulations listed below.)

Required Permits -- The following local, state and federal permits/approvals are needed for the proposed project:

Required Studies: (list any studies that have been completed or will be completed for this proposal)

Existing Environmental Documents: (list any existing environmental documents that will be used as part of the review process for this proposal.)

Preliminary determination of the development regulations that will be used for project mitigation and consistency:

Public Hearing -- (include date, time, place, and type of hearing, if applicable)

((Add any other information required by RCW 36.70B.110 or deemed appropriate.))

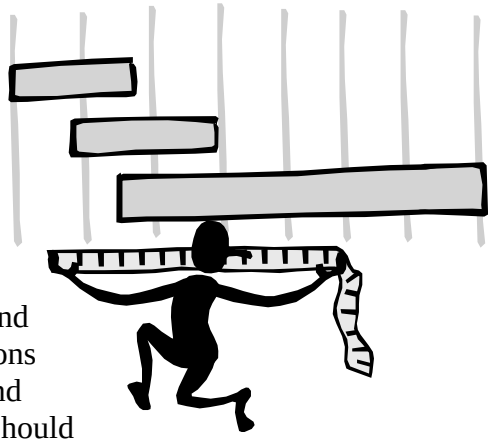
After the close of the comment period on the NOA, the agency reviews any comments on the environmental impacts of the project and decides whether to proceed with issuing a DNS. The choices at this point are:

- Issue a DNS without an additional comment period;
- Issue a DNS with a second comment period;
- Issue a DS; or
- Require additional information or studies prior to making a threshold determination.

The lead agency is required to circulate the DNS, if issued, to the Department of Ecology, agencies with jurisdiction, anyone who commented on the NOA, and anyone requesting a copy.

If the lead agency uses the optional DNS process, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application[126]. (See **Assumption of Lead Agency Status** on page 26.)

8.4. Analyzing Consistency and Environmental Impacts in Project Review



GMA counties and cities often incorporate considerable environmental analysis and mitigation measures into the development of comprehensive plans and development regulations. In the past, review of proposed projects had been used to reopen land-use planning decisions made through the comprehensive planning process. The Local Project Review Act encourages GMA counties and cities to rely on applicable development regulations and/or comprehensive plan policies to analyze and address environmental impacts. Project review should not be used to reconsider planning decisions already made.

The Legislature intended that proposed projects continue to receive environmental review, but the review would be integrated with and not duplicate other local, state and federal requirements. Agencies should only require studies or use their SEPA substantive authority to condition a project's impacts when the impacts cannot be adequately addressed by other regulations.

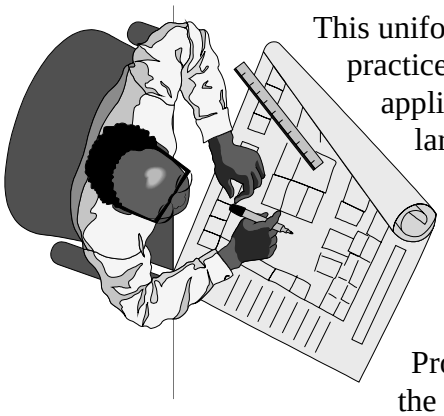
8.4.1. Analyzing Consistency

[126] WAC 197-11-355(3)

The Local Project Review Act requires GMA counties and cities to analyze the consistency of a proposed project with the applicable development regulations or, in the absence of applicable regulations, the adopted comprehensive plan. Conducting a consistency analysis and completing environmental review under SEPA involves asking many of the same questions and, thus, referring to many of the same studies and analyses[127].

All local jurisdictions routinely review projects for consistency with applicable regulations. However, RCW 36.70B.040 requires that at minimum GMA counties and cities must consider four factors found in their development regulations, or in the absence of applicable development regulations the comprehensive plan:

(1) The type of land use allowed, such as the land use designation;
(2) The level of development allowed, such as units per acre or other measures of density;
(3) Infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and
(4) The characteristics of the proposed development, measured by the degree to which the project conforms to specific development regulations or standards.



This uniform approach is based upon existing project review practices and should not place an additional burden on applicants or local government. Consistency analysis is largely a matter of code checking for most projects that are simple or routine. More complex projects may require more analysis of these factors, including possible studies. (See CTED's Consistency Rules for more information on consistency criteria and analysis)

Project review focuses on the project's compliance with the development regulations (e.g. critical area ordinances, building codes, street development standards). If the project is **not** consistent with the development regulations and comprehensive plan, the project can be conditioned to make it consistent, or denied[128].

If the project is found to be consistent with the type of land use, the density of residential development in urban growth areas, and the availability and adequacy of public facilities[129], the GMA county or city cannot reexamine alternatives to or hear appeals on these decisions. This limitation also applies to any subsequent reviewing body, such as the court. Once these planning decisions have been made, they cannot be reconsidered during project review. They can only be

[127] RCW 36.70B.030 and 040, and RCW 43.21C.240
[128] RCW 36.70B.030 and 040
[129] RCW 36.70B.030(3) and 36.70B.040(2)

reconsidered in an amendment to the comprehensive plan and/or development regulations.

> During project review, the GMA county/city cannot reexamine alternatives to or hear appeals on:
> (1) the type of land use;
> (2) the density of residential development in urban growth areas; or
> (3) the availability and adequacy of public facilities.

Please note, the factors that cannot be reconsidered during project review are more narrowly defined than the four factors considered in consistency analysis. For example, GMA cities and counties have not been precluded from reconsidering characteristics of development, or levels of development measures *other* than residential density within the urban growth area (e.g., residential density outside the urban growth area, or commercial building density in any area).

There are no requirements for the documenting of consistency, no set procedures for the consideration of consistency, and no restrictions to prevent an agency from requesting more information related to the four categories of consistency. Agencies are strongly encouraged, however, to begin analyzing a project for consistency early in the project review process and to provide some method to document that analysis, as they deem appropriate. The documentation then provides support for the final permit decision issued by the county or city.

8.4.2. Addressing Environmental Impacts of a Project

The primary role of SEPA in GMA project review is to focus on those environmental impacts that have not been addressed by the GMA county's or city's development regulations and/or comprehensive plan, or other local, state and federal laws and regulations. SEPA substantive authority should only be used when a project's environmental impacts cannot be adequately addressed by existing laws.

"Adequately addressed" is defined as having identified the impacts and avoided, otherwise mitigated, or designated as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning decisions required or allowed under the GMA[130]. Examples[131] include:

- **Avoided the impacts:** A GMA county adopts a critical areas ordinance that prohibits filling or building within 250 feet of a certain class of wetland. SEPA substantive authority would not be needed to address any impacts of

[130] RCW 43.21C.240(4)

[131] These examples are greatly simplified and are intended to be illustrative only and should not be applied to a more specific project application. The facts of an individual application and the applicable regulations will govern the outcome of any determination by the county or city.

filling or building within 250 feet of the wetland as the direct impacts have been avoided by prohibiting the activity.

- **Otherwise mitigated:** A GMA city identifies a sole source aquifer that is their primary source of potable water. To mitigate the impacts of dense development on recharge of the aquifer, the city minimizes the amount of impervious surface over the aquifer by designating a lower density of residential development and limiting the width of residential streets. When a subdivision is proposed that is consistent with the designated density and street widths, the city can determine that the project's impacts on the aquifer's ability to recharge have been addressed with respect to building density.

- **Designated as acceptable the impacts associated with certain levels of service:** GMA requires that counties and cities set levels of service for their transportation systems. Inside the urban growth area, a county decides that it will accept a certain level of traffic congestion (level of service standard) in the transportation element of its comprehensive plan. When an application for a grocery store is submitted, the county determines that the system-wide transportation impacts of the proposal have been addressed because the amount of traffic generated by the store will not cause the transportation level of service to fall below the standards established in the comprehensive plan. The transportation impacts associated with the established level of service were designated as acceptable in the comprehensive plan pursuant to GMA.

Once a determination has been made that an impact has been adequately addressed, the jurisdiction may not require additional mitigation for that particular impact under its SEPA substantive authority. However, the jurisdiction may find that its development regulations address some, but not all, of a project's impacts.

In the grocery store example, the jurisdiction may still need to rely on SEPA substantive authority to address transportation site-specific impacts such as safety, on-site traffic circulation, and direct access to the site if the transportation element and development regulations only dealt with impacts to the transportation system.

In the wetland example, the critical areas ordinance may prohibit filling the wetland, but does not address the stormwater run-off impacts of the proposed development's parking lot on the wetland's water quality. SEPA substantive authority could be used to avoid or mitigate the stormwater impacts.

8.4.3. How Analysis of Consistency and Environmental Impacts Works Together

Integration of permit review and environmental review is intended to eliminate duplicative processes and requirements. Consistency analysis and environmental review involve many of the same studies and analyses. Thus, through the project review process:

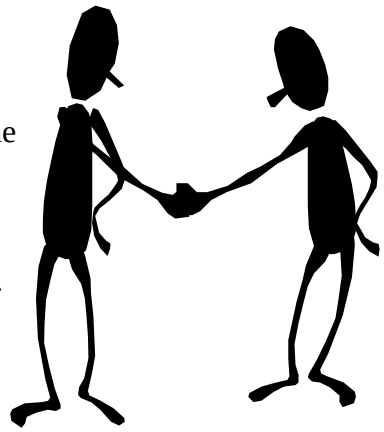
- If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies will not be necessary under SEPA;
- If the applicable regulations require measures that adequately address a proposal's environmental impacts, additional measures would not be required under SEPA; and
- If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, SEPA provides the authority and procedures for additional review.[132]

For example, a proposed project has a wetland on site. The city's critical areas ordinance requires that a wetlands study be done for the project so the city would not need to use its SEPA authority to require the study. Based upon the study, the city determines that stormwater runoff from the development will impact the wetland. However, the requirements of the critical areas or stormwater ordinance address the stormwater impacts by requiring that the developer reduce the amount of impervious surface and create a swale to filter runoff going into the wetland. Again, SEPA would not be required to address this impact. The city would only need to use its SEPA authority if there were other impacts to the wetland that were not addressed by the critical areas ordinance (or other laws).

All of the examples described above illustrate how good environmental analysis in the GMA planning process can streamline project review, but it will not eliminate the need for environmental review at the project level. Environmental review under SEPA at the plan and regulation level should address system-wide cumulative impacts and some site-specific impacts. However, some site-specific impacts can still only be addressed through SEPA at the project level. SEPA is the safety net for those impacts that cannot be easily anticipated in plans and regulations. SEPA also provides the flexibility to address those site-specific impacts that are better dealt with on a project-by-project basis.

[132] Note to RCW 43.21C.240

9. SEPA's Relation to NEPA



The National Environmental Policy Act (NEPA) was adopted by Congress in 1969 to ensure evaluation of the probable environmental consequences of a proposal before decisions are made by federal agencies. NEPA also allows federal agencies to change, condition, or deny proposals based on environmental considerations. NEPA applies to (1) federal projects, (2) any project requiring a federal permit, and (3) projects receiving federal funding.

Since SEPA was originally modeled after NEPA, the policies as well as the intent of the two laws are very similar:

- Integrate environmental review with other agency review processes;
- Integrate environmental review into early planning and use these reviews as the basis for analysis of future projects;
- Combine environmental documents with other documents;
- Use existing environmental information through incorporation by reference or adoption;
- Use categorical exclusions (exemptions) for actions that do not have a significant effect on the environment and, therefore, do not require environmental review;
- Involve the public and other agencies in the review process;
- Write environmental impact statements in plain language that focus on significant issues and only briefly discuss nonsignificant issues; etc. (40 CFR Part 1500.4 and 1500.5)

9.1. NEPA Review Process

Each federal agency must adopt its own procedures to meet the requirements and intent of NEPA. The review process of each agency will therefore vary. In general, the NEPA process includes the preparation of an environmental assessment (EA) followed by either a finding of no significant impact (FONSI) or by preparation of an environmental impact statement (EIS).

The EA contains information about the proposal that the lead agency uses to decide whether to prepare an EIS or a FONSI. It includes a description of the proposal, a discussion of the proposal's purpose and need, and identification of probable environmental impacts and possible alternatives. In some cases, the EA is circulated for public review and comment before the lead agency issues either a FONSI or an EIS.

A FONSI is a statement by the federal agency that briefly identifies the reasons why a proposal does not require the preparation of an EIS. Some federal agencies circulate the FONSI for public review and comment.

The NEPA EIS process is much like the EIS process under SEPA: starting with scoping, then issuance of a draft EIS, and finally the preparation of a final EIS. After completion of the EIS, the federal agency usually issues a record of decision that includes the decisions made, the alternatives considered, the factors that were considered in reaching a decision, etc.

9.2. Integrating NEPA and SEPA

Some projects may require approval from both federal agencies and state or local agencies, thus requiring compliance with both NEPA and SEPA. For example, a major dredging operation might need approvals from the U.S. Corps of Engineers, Washington Department of Ecology, and from the county or city. Since both federal and state/local licenses are required, compliance with both NEPA and SEPA would be needed.

Agencies are encouraged to issue combined documents that meet the requirements of both NEPA and SEPA. For example, when an EIS is needed for a proposal, the NEPA and SEPA lead agencies may agree to be co-lead agencies and issue a joint NEPA/SEPA EIS. The EIS will discuss all issues needed to meet the needs of both agencies.

9.3. Tips

SEPA allows the use of NEPA documents to meet SEPA requirements[133]. A NEPA document (EA or EIS) may be adopted or incorporated by reference. For example, an EA for a highway project could be adopted to satisfy the requirements of SEPA if the analysis was complete and accurate. (See section 2.7, **Use of Existing Documents**, page 33 and the adoption forms in Appendix D)

In some instances a federal agency may use existing SEPA documents to meet NEPA requirements, depending on the adopted NEPA policies of that agency.

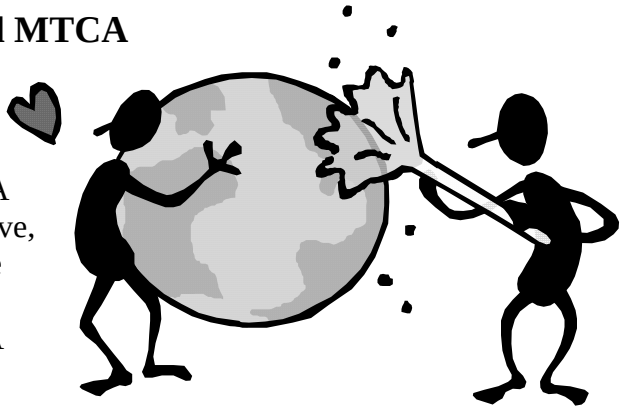
[133] WAC 197-11-610

10. SEPA and MTCA

In 1988, citizens passed Initiative 97, creating the Model Toxics Control Act (MTCA)[134]. MTCA gives the Department of Ecology the authority to order cleanups at contaminated sites and established a tax on hazardous substances sold in the state. These funds pay for cleanup and pollution prevention activities.

A remedial action conducted under a consent decree, order, or agreed order is exempt from the **procedural** requirements of many state and local permits. However, the Department of Ecology must ensure compliance with the **substantive** requirements of these permits.

10.1. Integration of SEPA and MTCA



An amendment to SEPA in 1994 directed the integration of the review requirements of MTCA and SEPA[135]. To meet this directive, several sections were added to the SEPA Rules in 1995 that contain procedures to combine the MTCA and SEPA processes to reduce duplication and improve public participation. These changes:

- Encourage concurrent review and comment periods for SEPA and MTCA actions;
- Encourage combined documents for SEPA and MTCA actions; and
- Allow the use of expanded scoping prior to making a SEPA threshold determination.

WAC 197-11-250 through 268 apply to interim and final hazardous site cleanup activities conducted by the Department of Ecology, or by a potentially liable party under an order, agreed order, or decree. They do **not** apply to independent cleanup actions (which are reviewed under the normal SEPA process). If the Department of Ecology is not SEPA lead agency (see criteria below), the SEPA/MTCA integration procedures are used to the extent practicable[136].

[134] Chapter 70.105D RCW and Chapter 173-340 WAC.

[135] RCW 43.21C.036

[136] WAC 197-11-250(4)

10.1.1. Review Process

The following briefly outlines the process for combining the procedural requirements of SEPA and MTCA. For additional information see WAC 197-11-250 through 268.

- **Identify the lead agency**[137]: Identify the SEPA lead agency after the potentially liable party (PLP) has been identified and prior to issuing an order, agreed order, or consent decree. The Department of Ecology will normally be lead agency unless the PLP is a public agency, or the remedial action is part of a larger proposal.

- **Conduct early review**[138]: Prior to conducting a remedial investigation/feasibility study (RI/FS), the lead agency considers available information and makes a preliminary determination of the probable adverse environmental impacts. Any additional studies needed under SEPA should be identified at this point so the studies can be combined with the RI/FS.

- **Perform early scoping**[139]: If the lead agency determines during the early review process that additional information is needed to identify probable impacts, the public is invited to comment on the proposed study areas. This early scoping will typically be combined with the public review process for the order, consent decree, or agreed order for the RI/FS.

- **Make threshold determination/complete environmental review:**

  If the lead agency determines the remedial action will not have a probable significant adverse environmental impact, a determination of nonsignificance (DNS) is issued[140]. The DNS must be issued no earlier than the RI/FS and no later than the draft cleanup action plan. If there is a comment period on the DNS (see criteria in WAC 197-11-340(2)(a)), then the comment period on the DNS must be combined with the comment period on the MTCA document.

  If the lead agency determines that a significant adverse environmental impact is likely a determination of significance (DS)[141] is issued and the preparation of an environmental impact statement (EIS) is begun. If the early scoping process was used, then no additional SEPA scoping is required. The draft EIS may be issued no earlier than the issuance of the RI/FS and no later than the issuance of the draft cleanup action plan. The EIS may be combined with the RI/FS using the procedures in WAC 197-11-262(4).

[137] WAC 197-11-253
[138] WAC 197-11-256
[139] WAC 197-11-256
[140] WAC 197-11-259
[141] WAC 197-11-262

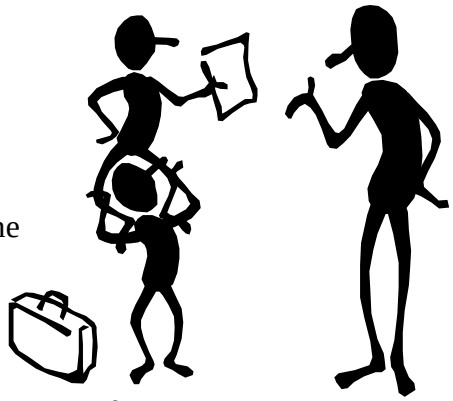
10.1.2. MTCA Interim Actions

In some cases, an interim action[142] is needed before the final remedial action occurs. SEPA environmental review is required for these interim actions unless the action meets the criteria for an emergency under SEPA. If a DNS is issued, it may be combined with the public notice for the interim action.

If a DS is issued and early scoping was used, no additional scoping is needed. If early scoping was not used, then a scoping notice with a minimum 21-day comment period is required. The final EIS must be issued no later than the issuance of the interim action report or the issuance of an order, agreed order, or decree.

[142] WAC 197-11-268

11. Appeals



SEPA provides a process for citizens and others to challenge both procedural and substantive decision made under SEPA. **Procedural appeals** include the appeal of a threshold determination—both determinations of significance (DS) and nonsignificance (DNS)—and of the adequacy of a final environmental impact statement (EIS). **Substantive appeals** are challenges of an agency's use (or failure to use) SEPA substantive authority to condition or deny a proposal.

Appeals may also be heard at two levels:

- **administrative appeals**, heard by agencies; and
- **judicial appeals**, which are heard by courts when the administrative appeal process is either not available or has been exhausted.

Administrative appeals, when offered, provide the first opportunity to appeal a SEPA decision and are normally used before the judicial appeal process. However, not all agencies provide an administrative appeal process, or they may provide for a substantive appeal or a procedural appeal but not both. In this case, the first appeal may be a judicial appeal.

For more information on the SEPA appeal process, refer to RCW 43.21C.060, 075, and 080; and WAC 197-11-680. Also refer to the Local Project Review Act (Chapter 36.70B RCW), since it contains provisions relating to SEPA administrative appeals. Anyone interested in appealing a SEPA procedural issue should contact the lead agency to determine what administrative appeal, if any, will be allowed. Questions on the availability of administrative appeals for substantive decisions should be directed to the agency that made the decision (i.e. to deny, condition, or not to condition a permit or other approval).

11.1. Administrative Appeals

Each agency must decide whether or not to offer administrative appeals. If an agency offers an administrative appeal, the agency must specify its appeal procedure by ordinance, resolution, or rule.[143]

An agency may provide appeals of some, but not all, reviewable SEPA decisions. The only decisions that may be appealed at the agency level are a final threshold determination or EIS (including a final supplemental EIS), and SEPA substantive

[143] WAC 197-11-680(3)(a)(i)

decisions. Other decisions, for example the applicability of categorical exemptions, may only be appealed to the courts.

A DS, DNS, or EIS are each subject to a single administrative appeal proceeding. Successive reviews within the same agency are not allowed. For example, a hearing examiner's decision on the appeal of a DS cannot be further reviewed by the local legislative body. Further consideration is limited to review by a court as part of a judicial appeal.

Procedural and substantive SEPA appeals in most instances must be combined with a hearing or appeal on the underlying governmental action (such as the approval or denial of a permit). If a SEPA appeal is held prior to the agency making a decision on the underlying action, it must be heard at a proceeding where the person(s) deciding the appeal will also be considering what action to take on the underlying action.

SEPA appeals that do not have to be consolidated with a hearing or appeal on the underlying action are related to:

- A determination of significance (DS);
- An agency proposal;
- A non-project action; or
- The appeal of a substantive decision to local legislative bodies.[144]

A local agency must also decide whether or not to allow an appeal of a non-elected official's decision to use SEPA substantive authority to condition or deny a proposal. If a local agency chooses not to allow an appeal to a local legislative body, the agency must clearly state that decision in its procedures.[145]

11.1.1. Requirements for Counties and Cities

Under the Local Project Review Act (Chapter 36.70B RCW), each county and city is allowed to have no more than one "open record hearing" and one "closed record appeal" on the underlying governmental action (e.g., permit decisions)[146]. An open record hearing is one at which testimony is received and a record is created. A closed record appeal is based on the record created at the open record hearing with no or limited new evidence or information.

[144] Additional information can be found in WAC 197-11-680(3)(a)(vi)
[145] WAC 197-11-680(2)
[146] RCW 36.70B.050

An open record hearing can be either:

- A predecision hearing (held prior to county/city's decision to approve or deny a project); or
- An appeal hearing (held after the decision).

If the county or city allows a SEPA administrative appeal, the appeal must be heard at the open record hearing. Any SEPA appeal (procedural or substantive) that is not heard at the open record hearing of the underlying government action may not be later considered in a subsequent local hearing.

The limitation on appeals restricts the practice of filing one appeal after another to delay a proposal.

Agencies should be particularly aware of the consolidation requirements if they have chosen to hold open record predecisional hearings. The SEPA substantive determinations (project denials or attachment of mitigating conditions) are not made until the agency makes its decision on the underlying governmental action (e.g., permit approval). Since an agency cannot hold a second open record hearing on the SEPA substantive determinations (if an agency allows for substantive SEPA appeals), it is essential that testimony on substantive SEPA issues be allowed at any predecision hearing. This hearing is the only time for an administrative appeal of substantive issues and creates the record for any subsequent closed record appeal to a local legislative body[147]. Administrative appeals offered by counties or cities must also comply with the time limits set in RCW 36.70B.110.

11.2. Judicial Appeals

Judicial appeals are those appeals heard in court. A judicial appeal in most instances must be of the underlying governmental action (permit decision, adoption of a regulation, etc.) and the SEPA document (DNS or final EIS). (Information on exceptions is given on page 110.) If the agency allows a SEPA administrative appeal, it must be used prior to initiating judicial review[148].

The time period for filing a judicial appeal will depend on several factors:

- **Time limit on the underlying governmental action** (issuance of permit, adoption of a plan, etc.). If there is a time limit established by statute or ordinance for appealing the underlying governmental action, then appeals raising

[147] RCW 43.21C.060
[148] WAC 197-11-680(3)(c)

SEPA issues must be filed within that time period. (see RCW 43.21C.075(5) for additional information.)

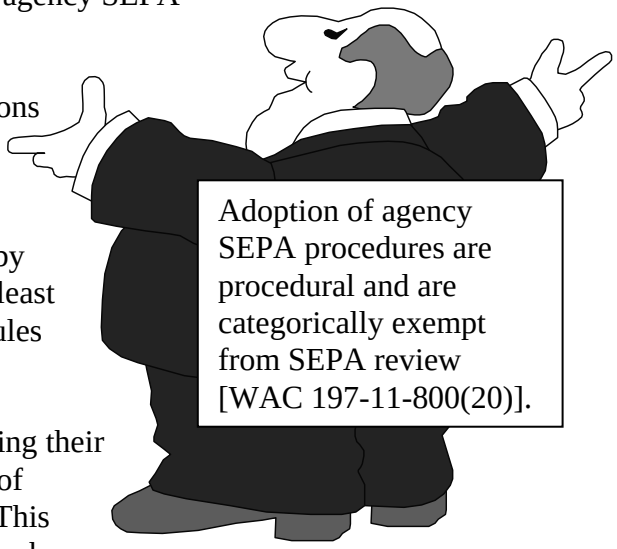
- **Time limit with optional notice of action.** If there is no time limit for appealing the underlying governmental action, the notice of action provisions in RCW 43.21C.080 may be used to establish a 21-day appeal period.

If there is **no time limit** for appealing the underlying governmental action and the notice of action is not used, then SEPA does not provide a time limit for judicial appeals. However, the general statutes of limitation or the common law may still limit appeals.

12. Adopting Agency SEPA Procedures and Policies

Each state and local agency must adopt its own rules and procedures for implementing SEPA. These "agency SEPA procedures" must be formally designated by rule, ordinance, or resolution. Before adopting their agency SEPA procedures, the agency must provide public notice and an opportunity for public comment[149].

An agency's SEPA procedures identify the agency's responsible official, the method(s) for public notice, the procedures for administrative appeal, if any, and other information about the agency's review procedures. If an agency does not adopt agency SEPA procedures, the defaults in the SEPA Rules will apply. For example, if the agency has not identified procedures for public notice, the agency must publish notice for SEPA documents in a newspaper of general circulation and post the site (for site-specific proposals)[150]. Another example is the administrative appeal process. To offer an administrative appeal of procedural and/or substantive issues, an agency must specify their administrative appeal process in their agency SEPA procedures.



Adoption of agency SEPA procedures are procedural and are categorically exempt from SEPA review [WAC 197-11-800(20)].

Agencies have the option of adopting sections of the SEPA Rules by reference. This allows an agency to list the section title and a brief summary without repeating the entire text of the section. If incorporation by reference is used, the agency must have at least three copies of the full text of the SEPA Rules on file for public review[151].

To assist the counties and cities in developing their agency SEPA procedures, the Department of Ecology adopted a "model ordinance."[152] This model provides a sample ordinance that may be used as a guide in developing a local SEPA ordinance. The latest version is on Ecology homepage on the Internet at http://www.wa.gov/ecology under "SEPA".

Each agency must also adopt policies that will be used as the basis for conditioning or denying an action using SEPA substantive authority. These "agency SEPA policies" must be formally designated by rule, ordinance, or resolution, and may be part of the agency's SEPA procedures. If an agency does not adopt SEPA policies, the agency cannot use SEPA substantive authority to condition or deny an action[153].

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[149] WAC 197-11-904(2)
[150] WAC 197-11-510(2)
[151] RCW 43.21C.135
[152] Chapter 173-806 WAC
[153] RCW 43.21C.060 and WAC 197-11-902

WAC 197-11-900 through 918 contains specific requirements for agency SEPA procedures and SEPA policies. WAC 197-11-906 specifically identifies provisions of the SEPA Rules that an agency cannot change or add to, and those that an agency cannot change but can add to (provided any additions are consistent with SEPA).

Examples of mandatory provisions that cannot be added to or changed include:

- Definitions of "proposal," "action," "significant," "mitigation," "etc.;
- Criteria for determining lead agency;
- Information required from applicants; and
- Style and size of an EIS.[154]

Examples of provisions that cannot be changed but can be added to include:

- Part 4 (of the SEPA Rules), Environmental Impact Statement;
- Part 5, Commenting; and
- The list of agencies with environmental expertise[155].

Examples of provisions that are optional include:

- Establishment of an administrative appeal procedure[156];
- Elimination of some categorical exemptions in critical areas (counties and cities only)[157];
- Establishing the categorical exemption level for minor construction within the minimum and maximum specified in the SEPA Rules (counties and cities only)[158]; and
- Specifying procedures for enforcement of mitigation measures[159].

Agencies must adopt their agency SEPA procedures and agency SEPA policies within 180 days after the effective date of the SEPA Rules or the effective date of any amendments to the Rules. If an agency is created after the effective date of the Rules, the agency has 180 days after its creation to adopt its SEPA procedures and policies.[160]

An agency may amend it agency SEPA procedures at any time. If the agency's SEPA procedures change after the review of a proposal has started, the revised procedures will apply to any portions of SEPA that have not yet been started. For example, if a permit application and checklist are submitted before the new agency SEPA procedures become effective but the threshold determination is not made until after the effective date, the revisions would apply to the threshold determination but would not affect the checklist. The amended procedures cannot be used to invalidate or require modification of a threshold determination or EIS.

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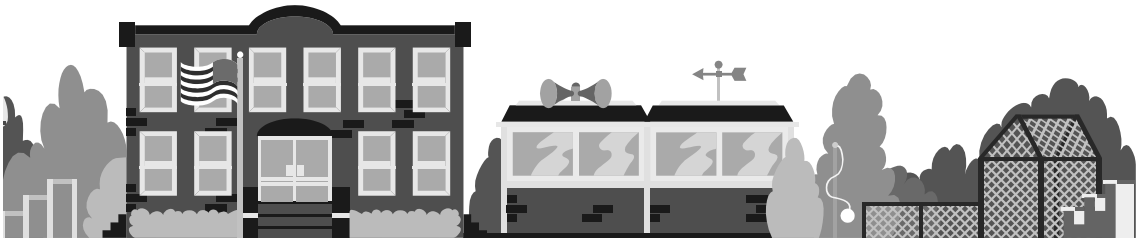
[154] WAC 197-11-906(2)
[155] WAC 197-11-906(3)
[156] WAC 197-11-680(3)
[157] WAC 197-11-908
[158] WAC 197-11-800(1)(c)
[159] WAC 197-11-350(7)
[160] RCW 43.21C.120



13. Special Districts and State Agencies

State agencies and special districts, such as ports, school districts, health districts, etc. must comply with SEPA and consider the environmental consequences of a proposal before taking an action (see definition of action in WAC 197-11-704). In some instances, a state agency or district will be SEPA lead agency and will be responsible for conducting the environmental review of a proposal. In other instances they will be consulted agencies or agencies with jurisdiction, and will review and comment on SEPA documents from other agencies. State agencies and district will also consider the information in the SEPA document during decision-making and may use SEPA substantive authority to condition or deny a proposal.

When special districts or state agencies are proposing or permitting projects, they must also be aware of the city or county regulations that may have a bearing on the proposal. An example is the need to check with the city or county before determining whether a proposal is exempt. The local jurisdiction may raise the level of the flexible threshold exemptions and/or exclude some exemptions within a designated critical area. (See discussion of **Categorical Exemptions** on page 13.)

A state agency or special district should work closely with the county or city to ensure the proposal meets the requirements of the local development regulations and comprehensive plan. This includes identifying mitigation measures or studies required by the local development regulations. For example, a critical area ordinance may require a wetland study or require a specific size buffer around a wetland.

13.1. GMA and the Local Project Review Act

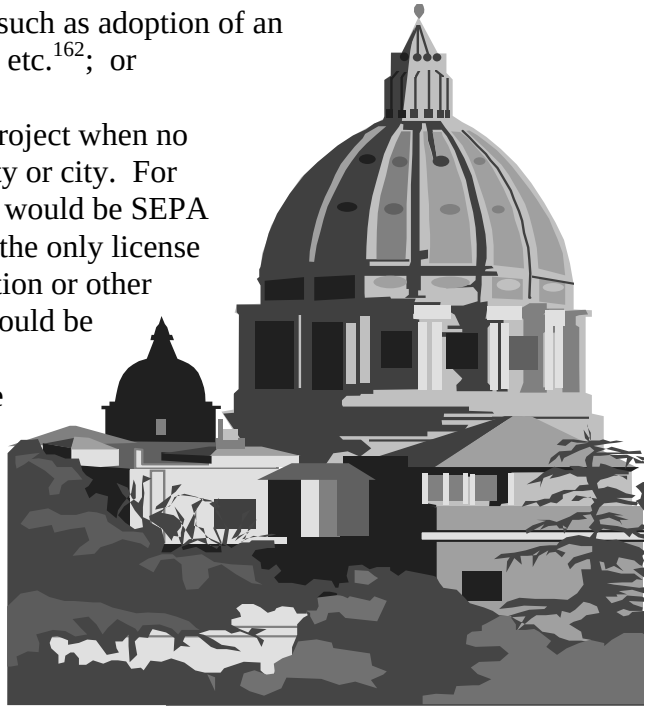
When a GMA city or county has a permit to issue for a project where the SEPA lead agency is a state agency or special district, the GMA county or city must comply with the requirements of the Local Project Review Act and the 120-day project review process. When a state agency or special district is the proponent, they may choose to issue appropriate SEPA documents (DNS, EIS, adoption, etc.) and hear SEPA procedural appeals prior to submitting a permit application to the GMA county/city. This assures that environmental review is completed prior to the GMA city or county's 120-day time frame. A further benefit is that environmental review may then occur early in the development of a proposal where it is most meaningful in developing a project with fewer environmental impacts.

If a state agency or special district chooses to conduct environmental review after a permit application is submitted to a GMA county or city, they can issue the threshold determination at any point in the review process. The lead agency could decide to issue the threshold determination prior to the notice of application, concurrent with the notice of application, or after the notice of application. However, the threshold determination must be final prior to a GMA county or city open record hearing or issuing a notice of decision. To avoid delays in the 120-day process, the threshold determination should be issued early in the review process when it will be most useful to the GMA county/city and others reviewing the proposal.

13.2. When State Agencies or Special Districts Are Lead Agency

A state agency or district will be the SEPA lead agency when the state agency or district is:

- Proposing a specific project, such as constructing a new building or installing utility lines, etc.[161];
- Proposing a nonproject action, such as adoption of an ordinance, policy, or plan, rule, etc.[162]; or
- Issuing a license for a private project when no license is required from a county or city. For example, the local air authority would be SEPA lead agency for a project when the only license required is a notice of construction or other air permit.[163] A state agency would be lead agency for a project that requires a license from the state agency and no permits from a local agency[164];
- Designated under the SEPA Rules as lead agency for the specific type of proposal, whether or not they have jurisdiction[165]; and
- Transferred lead agency status by a city with a population under 5,000 or a county with less than 18,000 residents[166].



[161] WAC 197-11-704(2)(a)
[162] WAC 197-11-704(2)(b)
[163] WAC 197-11-930 and 197-11-934
[164] WAC 197-11-936
[165] WAC 197-11-938, this applies to state agencies only

Agencies may also transfer or share lead agency status through a lead agency agreement[167]. (For more information see Section 2.4.1. on page 24)

13.2.1. Environmental Review Process

The SEPA review process discussed in the SEPA Environmental Review Section is the same process used by a state agency or district. The following tips may also be useful.

- The environmental review process should be integrated with the review of the proposal to avoid delays and duplication. Studies required under other laws should not be repeated under SEPA, but should be used as part of the environmental review of the proposal.

- A threshold determination must be made within 90 days after determining the permit application and supporting documentation are complete.

- When the proposal is a private project, we encourage the use of a preapplication process that allows the agency and applicant to discuss permit requirements and the review process before a permit application is submitted (see page 10).

- Once the SEPA review process has been completed, the environmental analysis in the SEPA document must be considered by decision-makers, and may be used as the basis for conditioning or denying a license using SEPA substantive authority. (See **Using SEPA in Decision Making** section on page 73.)

[166] WAC 197-11-940, this applies only to state agencies with jurisdiction on a proposal,.
[167] WAC 197-11-942

Appendix A

Frequently Asked Questions

A.1. General Questions

Q: What is SEPA?

A: SEPA is the abbreviation or acronym for the State Environmental Policy Act, Chapter 43.21C RCW. Enacted in 1971, it provides the framework for agencies to consider the environmental consequences of a proposal before taking action. It also gives agencies the ability to condition or deny a proposal due to identified likely significant adverse impacts. The Act is implemented through the SEPA Rules, Chapter 197-11 WAC.

Q: When is SEPA environmental review required?

A: Environmental review is required for any proposal which involves a government "action," as defined in the SEPA Rules (WAC 197-11-704), and is not categorically exempt (WAC 197-11-800 through 890). Project actions involve an agency decision on a specific project, such as a construction project or timber harvest. Nonproject actions involve decisions on policies, plans, or programs, such as the adoption of a comprehensive plan or development regulations, or a six-year road plan.

Q: Who is responsible for doing SEPA environmental review?

A: One agency is identified as the "lead agency" under the SEPA Rules WAC 197-11-924 to 938, and is responsible for conducting the environmental review for a proposal and documenting that review in the appropriate SEPA documents (DNS, DS/EIS, adoption, addendum). Two or more agencies may share lead agency status by agreement, but a single environmental analysis would be conducted and all SEPA documentation is issued jointly.

Q: When is phased review appropriate?

A: Phased review is appropriate when the sequence is from a broad review to narrower, more specific review. For example, review of site selection and general development issues, and subsequent review on specific design impacts when more information is available on the specific development. A planned unit development might be phased with the first phase evaluating the entire development in general terms and later phases evaluating specific construction.

Q: What are "elements of the environment"?

A: The elements of the environment, as used in SEPA, are listed in WAC 197-11-444, and include both the natural environment (earth, air, water, plants and animals, energy and natural resources) and the built environment (environmental health, land and shoreline use, transportation, public services and utilities).

A.2. Categorical Exemptions

Q: What is a "categorical exemption"?

A: A categorical exemption is a type of government action that is specifically designated as being exempt from SEPA compliance because it is unlikely to have a significant adverse environmental impact. The categorical exemptions are found in Part Nine of the SEPA Rules, and in the SEPA statute.

Q: What types of proposals are categorically exempt?

A: Certain proposals are exempt because they are of the size or type to be unlikely to cause a significant adverse environmental impact. Examples include minor new construction, such as, four dwelling units or less, commercial buildings with 4,000 square feet or less, and minor road and street improvements. Other exemptions include enforcement and inspection activities, issuing business licenses, storm/water/sewer lines eight inches or less, etc. Some proposals are exempt by statute, regardless of environmental impact.

Q: What are "flexible thresholds"?

A: The SEPA Rules allow the counties and cities to raise the exemption levels to the maximum specified in the SEPA Rules. These flexible threshold levels allow the counties and cities to determine what level of exemption is appropriate for their jurisdiction. For example, 20 dwelling units in a large city would not have the same impact as they would in a rural community. So the large city may set the exemption at the maximum level of 20 units, and the rural community may set it at the minimum level at 4 units.

Q: When do categorical exemptions not apply?

A: Some exemptions contain conditions under which they do not apply, such as projects undertaken wholly or partly on lands covered by water; projects requiring a license to discharge to the air or water; or projects requiring a rezone. A city or county may also eliminate some exemptions if the project is located within a designated critical area. WAC 197-11-305 outlines further instances where an exempt action must be reviewed under SEPA.

Q: If a county or city has raised the categorical exemption level for minor new construction activities, or eliminated some of the categorical exemptions in critical areas, do these decisions apply when a state agency or special district is lead agency (for example, the state Department of Transportation, a port district, or school district)?

A: Yes, before deciding if a proposal is categorically exempt, state agencies and special districts should consult with the city or county with jurisdiction to determine the exemption level for that area, or whether an exemption has been eliminated within a particular critical area.

Q: When are annexations exempt? Are annexations to a district exempt?

A: The 1994 Legislature specifically exempted annexations to cities or towns,[168] although the adoption of zoning pursuant to the annexation is not exempt. Annexations to districts are specifically identified as agency actions[169] and are not exempt.

Q: When would it be appropriate to use the emergency exemption?

A: Emergency exemptions apply to actions that must be undertaken immediately or within a time too short to allow full compliance with SEPA to:
(1) Avoid an imminent threat to public health or safety,
(2) Prevent an imminent danger to public or private property, or
(3) Prevent an imminent threat of serious environmental degradation.

Q: Can an emergency exemption be used for part of a project and SEPA review be required for other parts of the project?

A: If portions of the project meet the definition of emergency, those portions can be done immediately without SEPA environmental review. Other portions may require SEPA review. For example, if a marina collapses in a storm, cleanup may need to occur immediately to prevent a threat to the public or the environment. This would probably be considered an emergency exemption. However, the additional reconstruction/repair that can be done over a longer period of time would require SEPA review.

A.3. Lead Agency

[168] RCW 43.21C.222
[169] WAC 197-11-704(2)(b)(iv)

Q: What is the difference between lead agency, responsible official, and decision-maker?

A: The lead agency is the agency responsible for all procedural aspects of SEPA compliance. The responsible official represents the lead agency and is responsible for the documentation and the content of the environmental analysis. Decision-makers may be either staff members or elected officials who are responsible for taking an agency action, such as issuing a license, or adopting a plan or ordinance.

Q: Can a special district, such as a school district or port district, be SEPA lead agency?

A: The SEPA Rules define a local agency as "...any political subdivision, regional governmental unit, district, municipal or public corporation..." (WAC 197-11-762). If an agency is proposing a project or nonproject action, that agency is lead agency under SEPA. Therefore, a school district would be lead agency for school construction; a port would be lead agency for a port comprehensive plan; State Parks and Recreation would be lead agency for development or remodeling of a state park.

A special district or state agency may also be lead agency if a proposal requires a license from the district or state agency, but does not require a license from the county or city. For example, if the only permit required for an asphalt batch plant is a notice of construction from the local air authority, then the local air authority is SEPA lead agency.

Q: Which agency is SEPA lead agency when an agency is proposing a project that is located within the jurisdiction of another agency? For example, if the city is proposing a project on a site within the county, or State Parks and Recreation is proposing a project within an incorporated city.

A: The agency proposing the project is lead agency under the SEPA Rules, although lead agency status may be transferred by agency agreement.

Q: Which agency is lead agency for a private proposal?

A: When a license is required from a city or county, the city or county will usually be lead agency for the project. There are some exceptions for larger proposals where a state agency is designated as lead agency (see WAC 197-11-938 for criteria). If the city or county does not have a license to issue for the proposal, another agency with a permit to issue will be lead agency, such as a health district, local air authority, or a state agency.

Q: Can two or more agencies share lead agency status?

A: Yes, any number of agencies may agree to share lead agency status, with one agency designated as "nominal lead agency." The agencies should develop an agreement that defines the duties and responsibilities of each agency, how to deal with differing opinions, etc.

Q: Who resolves lead agency disputes?

A: The Department of Ecology may be petitioned by the proponent or any agency with jurisdiction to resolve disputes over who is lead agency for a proposal.[170]

A.4. Threshold Determination Process

Q: What is the "threshold determination" process?

A: The threshold determination process is the process used to evaluate the environmental consequences of a proposal and determine whether the proposal is likely to have any "significant adverse environmental impact." This determination is made by the lead agency and is documented in either a determination of nonsignificance (DNS), or a determination of significance (DS) and subsequent preparation of an environmental impact statement (EIS).

Q: What is a "significant" adverse environmental impact?

A: WAC 197-11-794 defines "significant" as "a reasonable likelihood of more than a moderate adverse impact on environmental quality." What is considered significant will vary from one site to another, and from one jurisdiction to another, both because of the conditions surrounding the proposal at a particular location, and because of the judgement of the responsible official.

Q: Is an environmental impact statement required if the local development regulations or other local, state, or federal regulations mitigate all significant impacts?

A: No, if all significant impacts have been or will be mitigated to a nonsignificant level through the requirements in local, state, or federal regulations, or with the use of SEPA substantive authority, an EIS is not required.

Q: If mitigation is required by the local development regulations or other local, state, or federal regulations, do these mitigation measures need to be included in the DNS?

A: No, but the lead agency may choose to include information on mitigation required by local, state, or federal regulations with the DNS or in the checklist so that reviewers are aware of the conditions that will be placed on the final proposal.

[170] WAC 197-11-946

Q: Can studies be required as a mitigating condition on a DNS?

A: Court cases have allowed the use of future studies as a mitigating condition. However, agencies are encouraged to obtain the necessary studies to identify probable impacts before a threshold determination is issued. This allows appropriate mitigation to be added to the permit before any construction activities occur.

A.5. Use of Existing Documents

Q: Can information in existing environmental documents be used for a new or amended proposal?

A: Yes, there are several ways that information in existing documents can be used: 1) adoption, 2) incorporation by reference, 3) addendum, or 4) supplemental EIS. Using existing information reduces duplication and delays caused by conducting duplicate studies and analysis.

A new threshold determination is required for a new proposal, except those qualifying as planned actions. Agencies may adopt all or part of existing documents to support a new threshold determination, or the information may be "incorporated by reference." A revised proposal generally does not require a new threshold determination, so adoption of the original document would not be required for the revised proposal.

An addendum may be used for either a new or revised proposal, if the analysis in the existing document (DNS or EIS) addresses all likely significant adverse impacts. The addendum would explain the differences between the original and the current proposal, and other minor new information. For a new proposal, the addendum would be issued with the adoption notice and new threshold determination. For the revised proposal, the addendum can be issued alone.

A supplemental environmental impact statement is prepared if the new or amended proposal has likely significant adverse impacts that have not been analyzed in an existing EIS. The supplemental EIS adds to the analysis in an existing EIS without needing to duplicate it. (See Section 2.7 of the handbook for additional information on using existing documents.)

Q: Can an agency prepare an addendum to a DNS? If so, what is the format? Are public notice and distribution required?

A: Yes, an addendum to a DNS can be prepared. There is no set format for an addendum to a DNS, and public notice and distribution are encouraged but are not required.

Q: If a project has been reviewed under SEPA but new information indicates supplemental review is needed for a portion of the project, can construction of the unaffected portion of the project proceed? For example, an EIS was done on site selection and building construction, but it is discovered that the utility line extensions will impact a wetland area. The lead agency determines a supplemental EIS is needed for the utility line extensions, but no further review of the building construction is needed.

A: The SEPA Rules state that no action that would foreclose options shall be taken until SEPA has been completed. In the example, the project should not be allowed to move forward until the supplemental EIS is complete, since denial of the utility extension would stop the project.

A.6. Determination of Nonsignificance (DNS)

Q: What is a "DNS"?

A: A DNS or "determination of nonsignificance" documents the responsible officials decision that a proposal is not likely to have significant adverse environmental impacts.

Q: Does a DNS always have a public comment period?

A: No, there are five criteria to determine whether a comment period is required: (1) another agency with jurisdiction; (2) non-exempt demolition activities; (3) non-exempt grade and fill permits; (4) a mitigated DNS issued under WAC 197-11-350(2) or 350(3), or a DNS issued after a determination of significance is withdrawn[171]; and (5) an action under the Growth Management Act, Chapter 36.70A RCW. [172] If a comment period is required, the lead agency must give public notice and circulate the DNS and checklist as specified in WAC 197-11-340(2). If a comment period is not required, no public notice or distribution is required.

[171] WAC 197-11-360(4)
[172] WAC 197-11-340(2)(a)

Q: What is the difference between a DNS and mitigated DNS?

A: A mitigated DNS is a DNS that contains mitigation or conditions that reduce likely significant adverse environmental impact(s) to a nonsignificant level. A mitigated DNS requires a comment period (unless the optional DNS process has been used).

Q: What is the "optional DNS" process?

A: The optional DNS process allows a GMA city or county, when they are also the SEPA lead agency for a proposal, to use the comment period on the notice of application (NOA) to obtain comments on environmental issues. The NOA must state that the optional DNS process is being used and that this may be the public's only opportunity to comment. All mitigation conditions being considered must also be identified. After the end of the NOA comment period, the lead agency may issue the DNS without a second comment period.

Q: What is the issue date of a DNS?

A: The issue date is the day the DNS is sent to the Department of Ecology and is made publicly available. The 14-day comment period starts from the date of issuance.

Q: How does the responsible official handle comments on a DNS?

A: The responsible official must consider all timely comments received on a DNS and may retain (no documentation needed), modify (reissue with changes), or withdraw a DNS. Formal response to commentors is not required, but may be done at the discretion of the lead agency.

Q: Is the lead agency required to distribute comments received during the comment period on a DNS? If not, how will another agency with jurisdiction consider the comments prior to making a decision?

A: The lead agency is not required to distribute comments received on a DNS. Since the comments are part of the public record, agencies with jurisdiction (or anyone else) may request a copy.

A.7. Environmental Impact Statement (EIS)

Q: What is an EIS?

A: An environmental impact statement must be prepared when the lead agency determines a proposal is likely to have significant adverse environmental impacts. The EIS provides an impartial discussion of significant environmental impacts, reasonable alternatives, and mitigation measures that would avoid or minimize adverse impacts. The lead agency will issue a draft EIS is issued with a 30-day comment period to allow other agencies, tribes, and the public to comment on the environmental analysis and conclusions. The lead agency will use these comments to finalize the environmental analysis and issue a final EIS.

Q: When is an environmental impact statement required?

A: An EIS is required for any proposal that is likely to have a significant adverse environmental impact that mitigation has not been for that would reduce the impact to a nonsignificant level. The applicant and lead agency may work together to revise the proposal's impacts or identify mitigation measures that would allow the lead agency to issue a determination of nonsignificance.

Q: What is "scoping"

A: If the lead agency issues a determination of significance, the first step in the process is to determine the "scope" of the EIS—those issues and alternatives that need to be evaluated. The scoping process allows the public and other agencies to comment on the scope of the EIS and assist the lead agency in identifying issues and concerns. The lead agency can either use a standard scoping notice with a written comment period, or they can use expanded scoping that might include public meetings, surveys, and other methods to involve the public in the scoping process.

Q: What documentation is needed after the close of the comment period on a scoping notice?

A: A determination of the scope of the EIS may be requested by the proponent after the close of the comment period. No other documentation is required by SEPA, although agencies may choose to issue a scoping document to agencies, commentors, or concerned citizens giving information on the comments received and the issues or alternatives that will be addressed in the EIS.

Q: Are there page limits for an EIS?

A: Yes, the text of an EIS shall not exceed 75 pages, except for proposals of unusual scope or complexity, which shall not exceed 150 pages[173]. If appendices and background material exceed 25 pages and together the entire EIS would exceed 100 pages, they must be bound in a separate volume.

Q: Must the EIS include an alternative besides the proposed action and no-action alternative?

A: The EIS must evaluate reasonable alternatives that could feasibly attain the proposal's objective, and are within a jurisdictional agency's authority to control. The lead agency may determine that there are no reasonable alternatives, and may then evaluate only the proposed action and the no-action alternative.

Q: Does the final EIS include all of the information in the draft EIS?

A: Yes, in most cases. The draft EIS is exactly that—a draft. The final EIS may be significantly different from the draft because the lead agency revises the EIS based on comments and new information learned. The fianl EIS also includes all comments received on the draft EIS, and the lead agency's responses. If no significant comments are received, the lead agency may choose to simply issue a new fact sheet (which may also include an addendum) to be attached to the draft document. (See section 3.5 **Final EIS** on page 59, or WAC 197-11-560 for specific requirements.)

Q: Does the EIS have to include the addresses of commentors and the agencies and citizens on the distribution list?

A: The SEPA Rules require the inclusion of a "distribution list" and that the commentors' names shall be included, but does not mention the need for addresses.

Q: Does Ecology maintain a list of consultants that prepare environmental impact statements?

A: No.

[173] WAC 197-11-425(4)

A.8. Substantive Authority

Q: What is SEPA substantive authority?

A: It is the regulatory authority granted to all state and local agencies under SEPA to condition or deny a proposal to mitigate environmental impacts identified in a SEPA document. To use SEPA substantive authority, the agency must have adopted agency SEPA policies.

Q: Are the mitigation measures identified in the SEPA document (DNS or EIS) mandatory?

A: Not necessarily. Mitigation conditions required with use of SEPA substantive authority must be included as conditions on a permit, license, or approval, before becoming mandatory or enforceable. Mandatory mitigation required under other local, state, or federal laws may also be included on the DNS by the lead agency for the information of reviewers.

A.9. Appeals

Q: Are there any opportunities to appeal SEPA documents or the use of SEPA substantive authority?

A: The lead agency has the option of allowing an administrative appeal and may allow an appeal of either procedural issues or substantive decisions, or both. If the administrative appeal process has been exhausted or is not available, a judicial appeal that is heard by the court can be pursued. (See section 11. **Appeals** on page 109.)

Q: What is an "underlying governmental action"?

A: The underlying governmental action[174] is the action that must be taken by an agency to authorize a proposal. Actions include the issuing of a permit or license, the approval of funding, the adoption of a plan, ordinance, or rule, or other actions defined in WAC 197-11-704.

Q: Is an agency required to have a SEPA administrative appeal process?

A: No, each agency must decide whether or not to offer an administrative appeal. If an administrative appeal process is offered, the agency must identify the type of appeal that will be allowed (procedural issues, substantive decisions, or both;

[174] WAC 197-11-704 and 799

including appeal of a non-elected official's substantive decision). (See RCW 43.2lC.060, .075 and WAC 197-11-680)

Q: Can an applicant appeal an agency's decision to require mitigation measures?

A: Yes, if the agency does not offer an administrative appeal on the substantive use of SEPA, the applicant may file a judicial appeal of the mitigation.

Q: What is the appeal process when a state agency is SEPA lead agency and the county or city has a permit to issue?

A: Procedural issues (process and content of the environmental review) would be appealable to the state agency if the agency offers a procedural administrative appeal. Appeals of the local agency's use or non-use of SEPA substantive authority to condition or deny the proposal may be filed with the local agency if they offer an appeal of substantive issues. (When administrative appeals are exhausted or not available, judicial appeals may be filed.)

Q: What is a "notice of action"?

A: A notice of action is the document used to limit the time a SEPA appeal can be filed when the underlying government action has no set appeal limitations. The form is located in WAC 197-11-990. Procedures for using a notice of action are found in RCW 43.21C.080.

Q: What is the "action" referred to in part 2 of the notice of action (WAC 197-11-990)?

A: It is the underlying government action for the proposal, such as the adoption of a comprehensive plan, ordinance, or rezone; or the issuing of a permit or approval. It is <u>not</u> the issuance of a SEPA document.

Q: If a notice of action (RCW 43.21C.080) is filed for the first permit decision, can future permit decisions be challenged? If so, are there any limits on what can be challenged (for example, compliance with SEPA procedural steps, or use of SEPA substantive authority, or both)?

A: Future procedural appeals will not be allowed, but future appeals of the use of SEPA substantive authority in respect to future permit decisions may be permitted.

A.10. Nonproject Review

Q: What is a nonproject action?

A: A nonproject action is defined as a decision on policies, plans, or programs. This includes adoption or amendment of a comprehensive plan, regulations that contain standards controlling use or modification of the environment, highway plans, etc. (see WAC 197-11-704).

Q: How does SEPA review fit into the planning process?

A: Environmental review of a proposal should be incorporated into the entire planning process. Documentation of this review should be issued with the draft planning document; either as a combined document or as separate documents issued together.

Q: When should a county or city begin environmental review in the GMA planning process?

A: Adopting interim regulations, county-wide planning policies, comprehensive plans, and development regulations are all government actions that require environmental review under SEPA. The lead agency must determine what type of environmental review is appropriate at each stage of GMA planning. An EIS should be prepared when a planning action will have probable significant adverse environmental impacts.

Q: Is environmental review necessary for a jurisdiction that is updating an existing comprehensive plan to satisfy GMA?

A: Yes, updating an existing comprehensive plan is an action that requires environmental review under SEPA. The type of environmental review required will vary depending on whether an EIS was prepared for the existing plan, how recently the EIS was prepared, and how extensive the revisions will be. As a general rule, the environmental review should address any probable significant adverse impacts that will result from the revised plan that were not analyzed when the existing plan was adopted.

Q: Is environmental review required for a public participation plan developed under GMA?

A: No, the adoption of resolutions or ordinances relating solely to governmental procedures are exempt from SEPA review. A public participation plan, in most cases, will be solely procedural and should be exempt from environmental review.

Q: How and when are cumulative impacts evaluated?

A: SEPA requires agencies to address cumulative impacts. This can be difficult if each project is evaluated individually in isolation from other related proposals. With comprehensive planning under GMA, cities and counties are able to look at the "big picture," evaluate cumulative impacts of development, and determine appropriate mitigation measures to apply to individual, future proposals. Agencies also have a responsibility to look at cumulative impacts within project EISs. The EIS should look at how the impacts of the proposal will contribute towards the total impact of development in the region over time. (Proponents are only responsible for mitigation of the portion attributable to their own proposal, though voluntary mitigation beyond that level is allowed.[175])

Q: How much review is required at the planning stage for project impacts?

A: Lead agencies are responsible for considering the probable significant adverse impacts of planning actions such as the adoption of comprehensive plans and development regulations. If the plans or regulations proposed would allow activities to occur that are likely to have significant adverse impacts, those impacts must be addressed in the environmental review of the planning action. The more detailed the review at the planning phase, the less review that is needed at the project stage.

Q: Is integration of SEPA and GMA just combining documents?

A: No, the intent of SEPA/GMA integration is to ensure that environmental considerations inform decision-making at every GMA step from early policy development through project permit review. Combining processes and procedures like SEPA scoping and GMA visioning, documenting existing conditions under SEPA and conducting inventories of land use, housing, transportation and other capital facilities under GMA, or coordinating SEPA and GMA requirements for notice and comment periods, facilitate this substantive integration. Combining documents is optional.

Q: How are GMA and SEPA documents combined?

A: Comprehensive or subarea plans and EISs are the documents most often combined. A community's unique planning circumstances and timing requirements will influence how this is accomplished. There are a number of options to integrating the GMA and SEPA documents, including preparing the draft plan prior to preparing the draft EIS, and issuing them together with a combined comment period.

The most seamless option is to document how environmental values were considered at the time each plan choice (goal, policy, program, strategy, designation, etc.) was formulated and decided. The draft plan and draft EIS are

[175] WAC 197-11-660(1)(d)

written together and are indistinguishable. Perhaps the simplest and most efficient method of presentation is to weave brief discussions about environmental impacts and alternatives into the plan narrative wherever choices are declared in the plan. Other methods include summarizing environmental issues in each plan element or in a stand-alone environmental chapter.

When the GMA document is integrated with the draft EIS, the final plan can be adopted when the final EIS is issued without waiting the standard 7 days. The final EIS must be issued at least 7 days prior to adopting the final plan if the SEPA and GMA documents are issued separately.

Q: Must a nonproject EIS on a GMA plan or subarea plan follow a specific format?

A: The only requirements are that the document begin with a fact sheet and contain an environmental summary[176]. An agency may choose whatever format they feel would best present the alternatives and environmental analysis[177]. Separate sections on affected environment, significant impacts, and mitigation measures are not required in integrated documents as long as this information is summarized and supported in the record[178]. The rules for integrated documents stress that format should be dictated by attention to the quality, scope, and level of detail of the information and analysis[179] .

Q: What is an "alternative" when preparing an EIS for a comprehensive plan? How is the no action alternative defined?

A: A range of alternatives should be evaluated, exploring the different land use options, including different urban growth area boundaries, characteristics and densities of development, etc. The no-action alternative for a comprehensive plan is generally defined as no change in existing regulation—zoning, development regulations, critical area ordinances, etc. (or the lack thereof) would be unchanged. The environmental impacts of predicted growth under this "no-action" scenario is then compared to that of the other alternatives.

Q: What is the timing of a final EIS when integrated with a comprehensive plan?

[176] WAC 197-11-235(4) and (5)
[177] WAC 197-11-430(2) and 442
[178] WAC 197-11-235(2)(b)
[179] WAC 197-11-235(1)

A: When the integrated document contains the final EIS and the plan, the issuance of the final EIS and the adoption of the GMA document may occur together (no 7–day waiting period)[180].

Q: Is additional environmental review required when the final action is different from the alternatives analyzed in an EIS?

A: If the final approved proposal falls within the range of alternatives analyzed in the EIS and all likely significant adverse impacts have been evaluated, additional review would not be required. For example, one of the EIS alternatives evaluates the impacts of four urban centers and another alternative evaluates the impacts of six urban centers. If the agency selects five urban centers as the preferred alternative, it is possible that the impacts would have been covered by the range of alternatives in the EIS.

[180]WAC 197-230(5)

Appendix B

Significant SEPA Appellate Court Decisions

The broad language in SEPA provides many opportunities for interpretation. In their decisions and interpretation, Washington State courts recognize SEPA as an important law and tool for protecting the environment, and provide more definitive direction regarding how SEPA is expected to work. As a result of the courts' decisions, the level of attention SEPA receives from agencies, the public, and the development community is greater.

The Attorney General's Office has summarized the Supreme Court and Court of Appeals cases from 1973 to August 1998 that they felt had significant discussions of SEPA. (See the Supplement following this section for cases from 1999 thru May 2002.) The resulting cases have been selected by their office as most consequential. The cases are ordered first by the main SEPA subject raised in the case and then in chronological order within each section—with the most recent case listed first. Each case listing contains a short paragraph describing the important SEPA holdings of the case. Please note that all issues regarding SEPA within a case may not be included within the following descriptions. Anyone interested in these cases to the full text of the court decision. Also, subsequent amendments to SEPA and the SEPA Rules may affect the holdings of any given case.

B.1. Activities Subject to SEPA

Indian Trail Property Owner's Ass'n v. City of Spokane, 76 Wn. App 430, 886 P.2d 209 (1994)
A request for a zoning interpretation coupled with an application for a building permit constitutes a "major action" that triggers review under SEPA.

Harris v. Hornbaker, 98 Wn.2d 650, 658 P.2d 1219 (1983)
A six-year road plan is not an action under SEPA. Implies that comprehensive plans also are not actions. Contrary SEPA Guidelines provisions are not discussed.

Bellevue v. King County Boundary Review Bd., 90 Wn.2d 856, 586 P.2d 470 (1978)
Annexations are actions under SEPA. The burden is upon an agency subject to SEPA to show that it actually considered environmental matters in a threshold determination.

Carpenter v. Island County, 89 Wn.2d 881, 577 P.2d 575 (1978)
Annexations to a sewer district are not actions requiring SEPA compliance. The decision suggests that the this result is consistent with the SEPA Guidelines.

Lassila v. City of Wenatchee, 89 Wn.2d 804, 576 P.2d 54 (1978)
Establishment of a Community Center Fund, purchase and resale of realty with no development plan, and contracting for market analysis and land use studies are not actions under SEPA. Proposed amendment of the comprehensive plan is an action, and the city must demonstrate that it was preceded by a threshold determination.

Marino Property Co. v. Port of Seattle, 88 Wn.2d 822, 567 P.2d 1125 (1977)
Purchase of property without change in use does not trigger SEPA. SEPA is directed at use of property, not ownership. Failure to object to use changes for over four years results in the objection being barred by laches.

Byers v. Board of Clallam County Comm'rs, 84 Wn.2d 796, 529 P.2d 823 (1974)
SEPA compliance is required on proposals for legislation, which includes adoption of a zoning ordinance. Difficulty of compliance is no excuse.

Lovelace v. Yantis, 82 Wn.2d 754, 513 P.2d 1023 (1973)
An early major SEPA case. SEPA compliance is required for any discretionary nonduplicative stage of the governmental approval process. This includes preliminary plats. Early SEPA review is emphasized.

Eastlake Community Council v. Roanoke Assocs., 82 Wn.2d 475, 513 P.2d 36 (1973)
SEPA applies to projects ongoing at the time the Act passed so long as a discretionary, nonduplicative governmental action is left to be taken. SEPA is triggered by proposals to permit private projects. Another early major SEPA case.

Stempel v. Department of Water Resources, 82 Wn.2d 109, 508 P.2d 166 (1973)
The first SEPA appellate decision. SEPA applies to issuance of permits which did not become final until after enactment of SEPA. Strong language suggests that agencies must consider (and perhaps act upon) all potential impacts of projects before them for licensing, including impacts normally within the jurisdiction of other agencies. (A water resource agency is directed to consider septic tanks associated with homes for which a water right is sought.)

B.2. Exemptions

Dioxin/Organochlorine Ctr. v. Boise Cascade Corp. (Dioxin II), 131 Wn.2d 345, 932 P.2d 158 (1997)
Actions that fit within categorical exemptions promulgated by the Department of Ecology pursuant to RCW 43.21C.110(1)(a) may not be reviewed on a case by case basis to determine whether they have probable significant adverse environmental impacts. The categorical exemption rule itself may be challenged on the basis that the type of action addressed by the exemption involves probable significant adverse environmental impacts. An action claimed to be categorically exempt may be challenged on the basis that the specific action itself is not of the type addressed by the exemption.

Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm'rs of Pub. Hosp. Dist. No. 304, 78 Wn. App 333, 897 P.2d 1267 (1995)
Actions of hospital boards operating jointly to consolidate some hospital services were exempt from SEPA review under WAC 197-11-800(15)(h).

Snohomish County v. State, 69 Wn. App 655, 850 P.2d 546 (1993)
Except when WAC 197-11-305(1) applies, the State Department of Natural Resources is not required to determine whether forest practices that are statutorily exempt from EIS requirements have a potential for a substantial environmental impact. The exemption from environmental review applies to environmental checklists, threshold determinations, and draft EISs as well as to final EISs.

Noel v. Cole, 98 Wn.2d 375, 655 P.2d 245 (1982)
Footnote 2 of this opinion supports the notion that the categorical exemptions in the SEPA Guidelines are only presumptively applicable, and that the courts may require an EIS for an action with significant environmental impacts even though it is exempt under the SEPA Guidelines. (But see Dioxin II.)

Downtown Traffic Planning Comm. v. Royer, 26 Wn. App. 156, 612 P.2d 430 1980)
The SEPA Guidelines' categorical exemptions are only presumptively applicable. Agencies should consider likely environmental effects before applying exemptions. If there are potential significant impacts, agencies should require full SEPA compliance. (But see Dioxin II.)

B.3. Lead Agency/Responsible Official

Northwest Steelhead v. Department of Fisheries, 78 Wn. App. 778, 896 P.2d 1292 (1995)
State Department of Fisheries was not required to assume lead agency status after city issued DNS despite the department's statutory mandate to preserve and protect fish life in state waters.

Spokane County Fire Protection Dist. No. 8 v. Spokane County Boundary Review Bd., 27 Wn. App. 491, 618 P.2d 1326 (1980)
A boundary review board may rely on the threshold determination by the lead agency to comply with SEPA. Upholds the lead agency rules in the SEPA Guidelines.

D.E.B.T., Ltd. v. Clallam County Comm'rs, 24 Wn. App. 136, 600 P.2d 628 (1979)
The County Commissioners could retain "responsible official" duties with themselves, and reject a planning commission recommendation not to require an EIS for a preliminary plat.

B.4. Threshold Determination

Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 (1997)
The decision to use the mitigated DNS process under the SEPA rules to address significant impacts rather than an EIS is within the discretion of the governmental agency and is entitled to substantial weight. A mitigated DNS will be upheld under the clearly erroneous standard if (1) environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with SEPA, (2) it is based on information sufficient to evaluate the development's probable environmental impacts, and (3) the mitigation measures are reasonable and capable of being accomplished.

Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm'rs of Pub. Hosp. Dist. No. 304, 78 Wn. App 333, 897 P.2d 1267 (1995)
Remote impacts and impacts on property values need not be considered under SEPA.

Indian Trail Property Owner's Ass'n v. City of Spokane, 76 Wn. App 430, 886 P.2d 209 (1994)
A proposal to expand a shopping center and proposals to install underground fuel tanks and a car wash in the center were, in effect, a single course of action. They should have been evaluated in the same environmental document and their cumulative impacts considered. Error held to be harmless. For purposes of review under SEPA, economic competition, in and of itself, is not an element of the environment.

King County v. Boundary Review Bd., 122 Wn.2d 648, 860 P.2d 1024 (1993)
A proposed land use related action is not insulated from EIS requirements simply because there are no existing specific proposals to develop the land or because no immediate land use changes will result from the proposal. Instead, an EIS is required if, based on the totality of the circumstances, future development is probable following the action and if that development will have a significant adverse effect upon the environment.

Pease Hill Community Group v. County of Spokane, 62 Wn. App. 800, 816 P.2d 37 (1991)
The agency issued a mitigated DNS with addendum rather than requiring the preparation of an EIS prior to the issuance of a permit. When a governmental body determines that an environmental impact statement is not mandated, the record must demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA. The determination must be based on information reasonably sufficient to determine the environmental impact of the proposed project.

West 514, Inc. v. Spokane County, 53 Wn. App. 838, 770 P.2d 1065 (1989)
The entity responsible for determining the environmental significance of a new project may, in a mitigated DNS, specify environmental studies on which the ultimate approval of the project will depend.

Murden Cove Preservation Ass'n v. Kitsap County, 41 Wn. App. 515, 704 P.2d 1242 (1985)
A determination of nonsignificance is given substantial weight and is reviewed under the clearly erroneous standard. The imposition of mitigative conditions is not by itself sufficient to require an EIS in the absence of more than a moderate effect on the environment. In the absence of specific plans for future development, SEPA does not require consideration of every remote and speculative consequence of an action.

Brown v. City of Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981)
A negative threshold determination (DNS) for a 34-unit condominium in an urban area is affirmed. The Court approved, under the old SEPA Guidelines, a process somewhat similar to the "mitigated DNS" in the new SEPA Rules.

Hayden v. Port Townsend, 93 Wn.2d 870, 613 P.2d 1164 (1980), overruled on other grounds, Save a Neighborhood Env't v. Seattle, 101 Wn.2d 280, 676 P.2d 1006 (1984).
A written threshold determination is not required. The SEPA Guidelines are not discussed. Strong dicta to the effect that SEPA compliance is not required for nonproject rezones. The contrary holding in Byers is not discussed.

ASARCO, Inc. v. Air Quality Coalition, 92 Wn.2d 685, 601 P.2d 501 (1979)
The environmental impact of a proposed air emission standards variance includes pollutants which would be emitted under the variance (even though they are existing emissions). The federal doctrine of functional equivalence (excusing an EIS for regulatory activities under certain environmental laws) is rejected. A short statutory time period for processing an application can be reconciled with the requirements of SEPA. Strong language on fundamental and inalienable rights.

Short v. Clallam County, 22 Wn. App. 825, 593 P.2d 821 (1979)
Affirmative threshold determinations (DSs) are reviewed under the arbitrary and capricious, rather than the clearly erroneous, standard.

Sisley v. San Juan County, 89 Wn.2d 78, 569 P.2d 712 (1977)
Record of a negative threshold determination (DNS) by local government must demonstrate that environmental factors were considered. Letters of federal and state agencies were used as evidence to reverse local negative threshold determination.

Swift v. Island County, 87 Wn.2d 348, 552 P.2d 175 (1976)
A negative threshold determination is reversed under the "clearly erroneous" standard primarily because of impacts on wildlife and a state park.

Norway Hill Preservation and Protection Ass'n v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976)
Negative threshold determinations (DNSs) under SEPA (including those of local government) will be reviewed under the "clearly erroneous" standard in the state administrative procedure act --a standard of review broader than would otherwise apply. An EIS is required whenever more than a moderate effect on the quality of the environment is a reasonable probability.

Narrowsview Preservation Ass'n v. City of Tacoma, 84 Wn.2d 416, 526 P.2d 897 (1974)
The decision not to prepare an EIS on a rezone is affirmed because development under the new zoning would not have a substantially greater impact than development under the old zoning. Consideration of the impacts of the particular development in question could be postponed until the preliminary plat or building permit stage "when details of the specific structure and use of the property are more clearly defined."

Juanita Bay Valley Community Ass'n v. City of Kirkland, 9 Wn. App. 59, 510 P.2d 1140 (1973)
The first appellate case addressing threshold determinations. Before deciding not to prepare an EIS, an agency must actually consider environmental factors (and later be able to demonstrate this consideration to a court on appeal). SEPA introduces an element of discretion into decisions that were formerly considered ministerial.

B.5. Environmental Impact Statement

King County v. Central Puget Sound Growth Management Hearings Bd., 91 Wn. App. 1, 951 P.2d 1151 (1998)
Alternatives in an EIS need not be legally certain and uncontested. EIS for residential development was adequate even though it included an alternative allowed under the prior zoning code but not the current code, where the vested status of the alternative had not been finally determined.

Concerned Taxpayers Opposed to the Modified Mid-South Sequim Bypass v. Department of Transportation, 90 Wn. App. 225, 951 P.2d 812 (1998)
An EIS for a state highway bypass is upheld even though it considered only four-lane alternatives, did not evaluate a scaled-down version of the project, and only two lanes will be built in the short-term until funding becomes available.

Organization to Preserve Agric. Lands v. Adams County, 128 Wn.2d 869, 913 P.2d 793 (1996)
Whether a project is public or private requires a factual assessment of the level of public involvement in the project. A regional landfill was held to be a private project where the project proponent was not under contract with the county to build the landfill, the facility would serve customers throughout the Pacific Northwest, and the county had not decided whether to use the landfill. Phased review is appropriate where the early-stage EIS focuses on issues related to site selection, decision-makers have an opportunity to demand greater detail at a later project design stage, and the two phases are not interdependent.

Citizens Alliance to Protect Our Wetlands v. City of Auburn, 126 Wn.2d 356, 894 P.2d 1300 (1995)
A proposed development qualifies as a “private project”, and is exempt from the requirement to discuss offsite alternatives in an EIS, if it is initiated and sponsored by a private organization and is neither a traditional nor historical governmental function. When a project and nonproject action are interrelated, the lead agency may discuss the environmental significance of both in the same EIS. When the project qualifies as a “private project”, the discussion of offsite alternatives in the EIS must, at a minimum, satisfy the requirements for offsite alternatives to nonproject actions established by SEPA. Under WAC 197-11-440(5)(b)(iii), a municipality may choose to limit alternatives in EIS to sites within city limits.

Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 873 P.2d 498 (1994)
Sanitary landfill proposed by private company under contract with the county held to be a "public project", requiring evaluation of offsite alternatives in the EIS, because handling and disposal of solid waste is a governmental function. EIS must include a reasonably detailed analysis of a reasonable number and range of alternatives. Conclusory statements concerning sites examined in site selection process failed to meet requirements in WAC 197-11-440(5)(c) for evaluating alternatives in an EIS.

Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn.2d 619, 860 P.2d 390, 866 P.2d 1256 (1993)
The degree of detail in an environmental impact statement must be commensurate with the importance of the environmental impacts and the plausibility of alternatives. A nonproject plan EIS need only analyze environmental impacts at a highly generalized level of detail, but cursory superficial discussion will not suffice.

Solid Waste Alternative Proponents v. Okanogan County, 66 Wn. App 439, 832 P.2d 503 (1992)
SEPA requires only a discussion of reasonable alternatives to the project action proposed in the EIS, not of nonproject alternatives. Alternatives discussed need not be exhaustive, but must present sufficient information for a reasoned choice of alternatives. Agency's decision on which alternatives are reasonable should be given great weight. Court upheld county's policy decision that long-haul alternative was not a reasonable alternative to siting a landfill in the county. General discussion of mitigation measures not invalid for failure to include cost and effectiveness of measures.

City of Richland v. Franklin County Boundary Review Bd., 100 Wn.2d 864, 676 P.2d 425 (1984)
An EIS for annexation with accompanying zoning that would allow a shopping center is not invalid for failing to consider socio-economic consequences of a large regional shopping center, because no shopping center was proposed at the time of decision.

Save Our Rural Env't v. Snohomish County, 99 Wn.2d 363, 662 P.2d 816 (1983)
SEPA requires discussion of alternatives in an EIS, but does not require that government pick the best alternative. Government is required, however, to act to mitigate adverse impacts in entire affected area. (The source of this requirement is not clear.)

Toandos Peninsula Ass'n v. Jefferson County, 32 Wn. App. 473, 648 P.2d 448 (1982)
Alternatives in an EIS are limited by a rule of reason.

Cathcart - Maltby - Clearview Community Council v. Snohomish County, 96 Wn.2d 201, 634 P.2d 853 (1981)
Approved phased or "piecemeal" EIS. A "bare bones" EIS on a rezone for a large residential development is okay so long as more complete compliance is done for the later, more detailed approval stages. Follows Narrowsview.

Barrie v. Kitsap County, 93 Wn.2d 843, 613 P.2d 1148 (1980)
This is "Barrie II." Holds that an EIS must discuss socio-economic issues. (Holding is affected by subsequent legislative amendments.) The adequacy of an EIS is a question of law. Extensive discussion of alternatives in an EIS is related to the objective of the proposal.

Save a Valuable Env't v. City of Bothell, 89 Wn.2d 862, 576 P.2d 401 (1978)
During a rezone for a shopping center, a city may not act in disregard of impacts outside of its boundaries; rather the "zoning body must serve the welfare of the entire affected community." This rule is derived at least in part from the fundamental and inalienable right to a healthful environment which SEPA grants all citizens, including those in adjoining areas.

Mentor v. Kitsap County, 22 Wn. App. 285, 588 P.2d 1226 (1978)
An agency need not follow its procedural rules when justice requires that the rules be relaxed. EIS adequacy is reviewed using a "rule of reason." Minor errors in an EIS description of a comprehensive plan are not fatal.

Ullock v. City of Bremerton, 17 Wn. App. 573, 565 P.2d 1179 (1977)
An EIS for a nonproject rezone is adequate if impacts of the maximum potential development of the property are discussed. It is very difficult for a rezone to violate the substantive policies of SEPA because, without further governmental action, a rezone has no immediate environmental consequences.

Cheney v. City of Mountlake Terrace, 87 Wn.2d 338, 552 P.2d 184 (1976)
SEPA does not require that every remote and speculative consequence be included in an EIS. An EIS for a highway need not consider later specific development proposals for adjoining private property.

Merkel v. Port of Brownsville, 8 Wn. App. 844, 509 P.2d 390 (1973)
Upland work on a project should not be commenced before a shoreline substantial development permit is secured for the shoreline portion. SEPA's provisions help lead to this result.

B.6. Using Existing Environmental Documents

Concerned Taxpayers Opposed To The Modified Mid-South Sequim Bypass v. Department of Transportation, 90 Wn. App. 225, 951 P.2d 812 (1998)
Procedural errors in the EIS process are subject to the rule of reason. Failure to formally incorporate by reference a document into an EIS constitutes harmless error if the document was circulated with the EIS and considered by the agency making the decision.

Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn.2d 619, 860 P.2d 390, 866 P.2d 1256 (1993)
The court upheld the incorporation by reference of a draft environmental document into a draft EIS where the incorporated document became final by the date the final EIS was issued. A document incorporated by reference into an EIS is subject to the entire review and comment process required under SEPA. County's failure to fully respond to comments on incorporated document was inconsequential procedural error which did not, under the rule of reason, render the EIS inadequate.
Incorporating by reference, in a nonproject plan EIS, impact statements for specific projects that implement the plan is not improper if the agency reserves the decision on the projects until after the decision on the nonproject action is made.

Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 785 P.2d 447 (1990)
A minor change in location of a project is not sufficient to require the preparation of a supplemental EIS pursuant to WAC 197-11-600(4)(d). The EIS, containing some information regarding potential fogging problems at the airport, held sufficient so that a supplemental EIS was not mandated to address fogging issues in more detail as new information did not significantly impact conclusions drawn concerning the environmental effect of a project.

West 514, Inc. v. Spokane County, 53 Wn. App. 838, 770 P.2d 1065 (1989)
A supplemental EIS is only required when the new information is based on more than mere speculation. Testimony that the building of a shopping mall could cause a decline in retail sales in the central business area held not an environmental effect necessitating an EIS. No evidence of physical impacts of decline in retail sales was present.

SEAPC v. Cammack II Orchards, 49 Wn. App. 609, 744 P.2d 1101 (1987)
A developer submitted a proposal for a planned housing development containing 234 units of manufactured housing and for approval to subdivide the perimeter area into 31 lots. The developer later withdrew the manufactured housing plan. The court held that a new EIS was not needed when an amended proposal does not have a substantially different impact on the environment from the previous proposal. The court also ruled that the possibly adverse impact of a proposal on the value of surrounding property is not a factor that must be considered under SEPA.

Nisqually Delta Ass'n v. City of Dupont, 103 Wn.2d 720, 696 P.2d 1222 (1985)
This is the second Nisqually Delta case. The EIS discussed a proposed and alternative export dock location, while the final proposed location (not discussed in the EIS) was midway between them. No significant differences in impacts existed between the actual location chosen and those described in the EIS. The notice referencing the EIS was held adequate for the Shoreline Management Act. Absent differing impacts, no new notice to adjoining jurisdictions was required. The proposed action was not "a new proposed action" requiring either a supplemental EIS or notice that an old EIS was being used for a new proposed action under provisions of the old SEPA Guidelines.

Save a Neighborhood Env't v. City of Seattle, 101 Wn.2d 280, 676 P.2d 1006 (1984)
Upholds and applies SEPA Guidelines requirement that lead agency's threshold determination is binding upon other agencies and that no agency shall repeat the threshold determination procedures for substantially the same proposal.

Barrie v. Kitsap County Boundary Review Bd., 97 Wn.2d 232, 643 P.2d 433 (1982)
This is "Barrie III." Construes the old WAC 197-10-495 as to when an amended or supplemental EIS is required. Passage of time, alone, is not "significant new information" requiring an amended EIS.

B.7. SEPA Substantive Authority

Levine v. Jefferson County, 116 Wn.2d 575, 807 P.2d 363 (1991)
An agency may attach environmental mitigation measures as conditions for approval even after issuing a DNS. The agency must include in the record the policies on which the measures are based and findings of fact setting forth the adverse environmental impacts sought to be mitigated. If the record is devoid of evidence supporting the need for mitigation measures, the court may require that the permit be issued without mitigation measures rather than remanding to the agency to complete the record.

Victoria Tower Partnership v. City of Seattle (Victoria II), 59 Wn. App. 592, 800 P.2d 380 (1990)
A substantive decision based on SEPA is reviewed under the clearly erroneous standard. The fact that a proposed project complies with zoning does not prevent the decision-maker from denying or limiting the project based on SEPA grounds. The consideration of aesthetics is proper under SEPA.

Maranatha Mining, Inc. v. Pierce County, 59 Wn. App. 795, 801 P.2d 985 (1990)
SEPA does not require that all adverse impacts be eliminated but merely seeks a balance, restraint and control of development. A decision based on community displeasure and not on reasons backed by policies and standards will not withstand review. In denying the proposal based on SEPA, the county failed to identify policies relied on or reasons why impacts could not be mitigated.

Cougar Mt. Assocs. v. King County, 111 Wn.2d 742, 765 P.2d 264 (1988)
Review of decisions under SEPA shall be made under the "clearly erroneous" standard of review which holds that only when the court is left with the definite and firm conviction that a mistake has been committed can the court then reverse the decision. Before denying a proposal on SEPA grounds, the agency must (1) specifically set forth potential adverse environmental impacts that would result from the project, and (2) specifically set forth reasonable mitigation measures, or, if such measures do not exist, (3) specifically state why the impacts are unavoidable and development should not be allowed.

Nagatani Bros. v. Skagit County Bd. of Comm'rs, 108 Wn.2d 477, 739 P.2d 696 (1987)
SEPA mandates that a denial action be based only on specific proven significant impacts. The agency must make a complete record establishing those facts.

West Main Assocs. v. City of Bellevue, 49 Wn. App. 513, 742 P.2d 1266 (1987)
To justify denial of a project under SEPA, adverse impacts included in an EIS need not be specifically labeled "significant" as long as the decision-maker concludes they are significant. Comprehensive plan policies, a land use code, and the SEPA statute's statements of purpose and policy may be adopted as SEPA policies and used as the basis for denial of a proposal under SEPA.

Prisk v. City of Poulsbo, 46 Wn. App. 793, 732 P.2d 1013 (1987)
The city enacted an ordinance that required developers to pay a park fee in lieu of dedication of land as a condition of subdivision approval. The Supreme Court in another case had held that those types of ordinances were invalid as they constituted an unconstitutional taxing. The city attempted to rely on the invalid ordinance by citing to the ordinance as a city policy under SEPA. The court held that since the ordinance was invalid it could not be used as a basis under SEPA.

Buchsieb/Danard, Inc. v. Skagit County, 99 Wn.2d 577, 663 P.2d 487 (1983)
SEPA empowers county to deny preliminary plat based on environmental impacts. No mention of RCW 43.21C.060.

Department of Natural Resources v. Thurston County, 92 Wn.2d 656, 601 P.2d 494 (1979)
SEPA's substantive authority allows the county to deny a preliminary plat to protect eagles, even though the Shorelines Hearings Board had previously ruled that the same project would not inappropriately impact eagles and had reversed the county's denial of a shoreline substantial development permit. The Court implied that the county's environmental discretion under SEPA is broader than the discretion of the Shorelines Hearings Board in reviewing a permit decision.

Polygon Corp. v. City of Seattle, 90 Wn.2d 59, 578 P.2d 1309 (1978)
The landmark case holding that SEPA grants substantive authority to condition or deny proposals to avoid adverse environmental impacts, even though the project in question meets all express requirements of other statutes and ordinances. (This authority is limited by later amendments to RCW 43.21C.060). Denials may be based upon primarily aesthetic grounds, so long as other types of impacts would also be avoided. Exercises of SEPA's substantive authority are also reviewed under the "clearly erroneous" standard.

B.8. Vested Rights

Victoria Tower Partnership v. City of Seattle (Victoria I), 49 Wn. App. 755, 745 P.2d 1328 (1987)
The vested rights doctrine, which requires that a building permit application be evaluated under the zoning and building regulations in effect at the time of application, applies to land use decisions made under SEPA. Policies proposed but not adopted at the time of application could not be used as basis for mitigation under SEPA.

B.9. Appeals

Saldin Securities, Inc. v. Snohomish County, 134 Wn.2d 288, 949 P.2d 370, (1998)
Interlocutory judicial review of a determination of significance may be obtained through a constitutional writ of certiorari (inherent review power). The project proponent must allege facts that, if verified, indicate the agency's determination of significance was illegal or arbitrary and capricious.

CLEAN v. City of Spokane, 133 Wn.2d 455, 947 P.2d 1169 (1997)
An aggrieved person must exhaust administrative remedies before seeking judicial review of a mitigated determination of nonsignificance. If the record does not show that a party attempted to use the administrative appeal process, a court may conclude that no administrative appeal was made.

Felida Neighborhood Ass'n v. Clark County, 81 Wn. App 155, 913 P.2d 823 (1996)
If official notice of the date and place for commencing a judicial appeal is not provided in substantial compliance with SEPA, the SEPA rules adopted by the Department of Ecology, and any implementing ordinance, the time limit for filing an appeal is tolled.

Snohomish County Property Rights Alliance v. Snohomish County, 76 Wn. App 44, 882 P.2d 807 (1994)
Economic interests are not within the zone of interests protected by SEPA such as to provide standing to challenge a SEPA determination.

State of Washington ex rel. Friend & Rikalo Contractor v. Grays Harbor County, 122 Wn.2d 244, 857 P.2d 1039 (1993)
SEPA requires that administrative review procedures be exhausted before judicial review is sought. Judicial review under SEPA must be of the underlying governmental action together with the accompanying environmental determinations (the "linkage" requirement). A county ordinance that mandated judicial review of the underlying governmental action before completion of the administrative SEPA appeal process violated both these requirements. When neither the contingent nor optional time periods for appeal in SEPA apply, the court will apply the longer of analogous appeal periods.

Dioxin/Organochlorine Ctr. v. Department of Ecology (Dioxin I), 119 Wn.2d 761, 837 P.2d 1007 (1992)
Under RCW 43.21B.310(1) and the doctrines of primary jurisdiction and exhaustion of remedies, the Pollution Control Hearings Board, and not the superior court, was the proper forum to hear a challenge to the Department of Ecology's determination that certain permits were categorically exempt from SEPA.

Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 785 P.2d 447 (1990)
WAC 197-11-680(5)(a) applies to judicial appeals but not to administrative appeals.

Nolan v. Snohomish County, 59 Wn. App. 876, 802 P.2d 792 (1990)
A county had an ordinance that required the notice of intent to seek judicial review of a land use decision on environmental grounds to be served on the clerk of the quasi-judicial body that reviewed the decision. SEPA requires service be on the lead agency. County ordinance held invalid as it conflicted with SEPA.

Waterford Place Condominium Ass'n v. City of Seattle, 58 Wn. App. 39, 791 P.2d 908 (1990)
A letter sent by the city informing the parties of record of the decision of the council is not an "Official Notice of Agency Action" pursuant to RCW 43.21C.080(3). A city ordinance required that a filing for a judicial writ of review must be done within 15 days. The issue before the court was whether SEPA extends the 15 day period to 30 days. The court held that SEPA did not extend the time period. An appeal of underlying governmental actions must be filed within the local time limits prescribed (here, 15 days), and the appellant has up to 30 days to amend or supplement its claim to include SEPA issues.

West Main Assocs. v. City of Bellevue, 49 Wn. App. 513, 742 P.2d 1266 (1987)
A city ordinance had a shorter appeal period for SEPA decisions than is found in its ordinance for appeal time for the underlying action. The court held that SEPA required the consolidation of local appeal procedures for the underlying government action and SEPA determination into one action. Therefore, the shorter SEPA appeal period was not applicable.

Akada v. Park 12-01 Corp., 103 Wn.2d 717, 695 P.2d 994 (1985)
SEPA challenges using writs of certiorari must be filed within 30 days of the governmental decision. (Now, RCW 43.21C.075 affects timing of appeal.)

Nisqually Delta Ass'n v. City of Dupont, 95 Wn.2d 563, 627 P.2d 956 (1981)
This is the first Nisqually Delta case, holding that people living outside an annexed area have no statutory right to appeal the Boundary Review Board decision approving the annexation. The court held that an allegation of impairment of plaintiffs' fundamental and inalienable right to a healthful environment would not expand a statutory right to appeal. However, if plaintiffs had made the same allegation in a petition for a writ (addressing the court's inherent jurisdiction) the result may have been different.

Citizens Interested in the Transfusion of Yesteryear v. Board of Regents of the Univ. of Washington, 86 Wn.2d 323, 544 P.2d 740 (1976)
A private project being undertaken on government land pursuant to a government lease is still private for the purposes of RCW 43.21C.080, and any appeal governed by that section must be brought within the shorter time frame.

Leschi Improvement Council v. Washington State Highway Comm'n, 84 Wn.2d 271, 525 P.2d 774 (1974)
Plaintiffs who allege their fundamental and inalienable right to a healthful environment is impaired may go to court even though they did not exhaust an available administrative remedy. (Note that only a four-judge opinion reaches this conclusion.) The adequacy of an EIS is a question of law for the court to decide.

Appendix B Supplement

Significant SEPA Appellate Court Decisions
1999 thru May 2002

The following is a summary of significant SEPA appellate court decisions prepared by the Washington State Attorney General's Office for the period 1999 through May 2002. Please note that all issues regarding SEPA within a case may not be included within the following descriptions. Also, subsequent amendments to SEPA and the SEPA Rules may affect the holdings of any given case.

Exemptions

Plum Creek Timber Co., L.P. v. Washington State Forest Practices Appeals Board, 99 Wash.App. 579 (2000).
WAC 197-11-305 can require SEPA review of a Class III forest practice which is otherwise exempt, if such forest practice is a segment of a proposal which as a whole has a probable significant adverse environmental impact.

Threshold Determinations

Boehm v. City of Vancouver, 2002 WL 960272 (May 10, 2002).
The Boehms argued that the threshold determination should be remanded because the City didn't consider the site specific impacts of Fred Meyer's proposed gas station. The court held that SEPA review need not address cumulative impacts when speculative; when a party can point to no specific impact, those impacts are speculative.

Moss v. Bellingham, 109 Wash.App. 6 (2001).
Large-scale subdivision development did not per se have significant environmental impacts requiring an environmental impact statement (EIS), regardless of attempts to mitigate the impacts prior to permitting. In reviewing the environmental impacts of a project and making a threshold determination, a Growth Management Act (GMA) county/city may, at its option, determine that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations and comprehensive plan adopted under RCW 36.70A and in other applicable local, state, or federal laws or rules, provide adequate analysis of and mitigation for some or all of the specific adverse environmental impacts of the project.

Donwood, Inc. v. Spokane County, 90 Wash.App. 389 (1998).
Counties have the authority under SEPA to condition or deny a land use action based on adverse environmental impacts even where the proposal complies with local zoning and building codes. The comments noted on the environmental checklist indicated that the reviewing official was unable to determine various impacts from the proposed development without a specific site plan. Accordingly, the County had the authority, limited by legitimate governmental interest, to mitigate the impact of the project's development.

Alpine Lakes Protection Society v. Washington State Department of Natural Resources, 102 Wash.App. 1 (2002).
Forest Practices Appeals Board was required to consider impact of unproposed but probable future forest practices in determining the necessity of an EIS under SEPA for a watershed analysis prepared by a timber company. Although the watershed analysis made no mention of any future forest practices, it was unlikely that the timber company would go to the expense of performing it without making a future application for forest practices in the watershed. Even proposals intended to protect or improve the environment may require an EIS under SEPA. For purposes of determining the necessary of preparing an EIS, the absence

of specific development plans should not be conclusive of whether an adverse environmental impact is likely.

Environmental Impact Statement

Association of Rural Residents v. Kitsap County, 141 Wn.2d 185 (2000)
Neighboring landowners sought review after county commissioners approved residential development proposed for an area outside the interim urban growth area designated by Kitsap County under GMA. The Supreme Court held that clearly erroneous standard of review, rather than deference to hearing officer's recommendation, applied to county commissioners' decision not to require an EIS for developer's preliminary plan and planned unit development. Hearing officer who concluded EIS was warranted was not the final decision-maker and only made recommendation to county commissioners, who concluded that a mitigated determination of nonsignificance was sufficient.

Bellevue Farm Owners Ass'n v. State of Washington Shorelines Hearings Bd., 100 Wash.App. 341 (2000).
County's threshold determination of nonsignificance did not preclude the Shoreline Hearings Board's independent review of association of property owners permit application for a shoreline substantial development permit to build a 345 foot dock over partly public tidal mudflats.

King County v. Central Puget Sound Growth Management Hearings Bd., 138 Wn.2d 161 (1999).
An EIS for an urban planned development was not fatally flawed based on its discussion of an alternative not authorized by any current zoning law. An alternative may be taken into account for comparative purposes in an EIS, even if the alternative's legal status is contested or uncertain. An alternative need only to be reasonable, and the EIS indicated that the alternative in question posed no greater environmental costs than the proposed project.

City of Des Moines v. Puget Sound Regional Council, 98 Wash.App. 23 (1999).
Cities surrounding the airport brought action against Port of Seattle, Puget Sound Regional Council, and City of Sea-Tac, challenging the approval and implementation of a project to construct a third runway at the airport. Court of Appeals held that: (1) Earlier federal court litigation determining that the supplemental EIS satisfied the Federal Airport and Airway Improvement Act did not collaterally stop the cities from challenging the EIS under the more detailed procedural requirements of SEPA; (2) Evidence supported finding in the EIS that airport expansion would not cause an increase in airport's passenger use. Expert testimony, including expert's use of methodology used at most of the country's major airports for estimating future aviation demand, supported the finding. Further, the Port of Seattle and the FAA are agencies with expertise in forecasting aviation demand and should receive deference in choosing the appropriate methodology for forecasting aviation activity for purposes of evaluating an EIS under SEPA; and (3) Inclusion in an EIS prepared in 1996 for proposed third runway of impacts beyond the year 2010 would have been too speculative, where volatility in airfares, forecasts, fleet mix, and other areas after 1994 made it difficult to predict impacts beyond 2010 with substantial accuracy.

Using Existing Environmental Documents

Wells v. Whatcom County Water District No. 10, 105 Wash.App. 143 (2001).
City's unsigned interim agreement that it would temporarily reduce the amount of diversion from a river to a lake if certain levels of stream flow did not occur was not "new information" and therefore, did not require the county water district to provide a supplemental environmental impact statement (SEIS). No scientific information supported the hypothesis that the agreement, if implemented, would increase pollution in the lake.

Appeals

Wells v. Whatcom County Water District No. 10, 105 Wash.App. 143 (2001).
Failure to comply with the twenty-one day limit for bringing a challenge alleging noncompliance with SEPA barred the argument that allegedly new information required further environmental review and a SEIS.

Attorneys Fees

Plum Creek Timber Co., L.P. v. Washington State Forest Practices Appeals Board, 99 Wash.App. 579 (2000).
Because State Equal Access to Justice Act (EAJA) is patterned after the federal act, federal standard for determining whether action of administrative agency was substantially justified as will bar award of attorney fees to prevailing party in judicial review of agency action is applied. Under this standard, "substantially justified" means justified in substance or in the main. In other words, justified to a degree that could satisfy a reasonable person. Determination of whether action was substantially justified to bar award of attorney fees under the EAJA is reviewed for an abuse of discretion.

Apline lakes Protection Society v. Washington State Dept. of Natural Resources, 102 Wash.App 1 (2000).
Attorneys fees incurred at the administrative level are ordinarily not available under the state EAJA. Under the EAJA, fees are available to a qualified party that prevails in a judicial review of an administrative action. The statute is silent as to fees incurred at the administrative level. The clear implication is that the Legislature did not intend to make fees incurred at the administrative level available under the act.

Standing

Kucera v. State Dept of Transportation, 140 Wn.2d. 200 (2000)
Shoreline property owners pleaded a sufficient injury in fact to have standing under SEPA to challenge the operation of a passenger ferry whose large wakes allegedly caused damage to the shoreline environment. Their SEPA claim was based on the State's alleged failure to consider the environmental effects of the ferry, not its economic effects, and they alleged damage to both private and public shorelines.

Injunctive Relief

Kucera v. State Dept of Transportation, 140 Wn.2d. 200 (2000).
The Superior Court entered a preliminary injunction limiting the speed of a passenger ferry along a portion of its run pending compliance with SEPA. The Supreme Court held that (1) Shoreline property owners had an adequate remedy at law in the form of monetary damages for erosion allegedly caused by large wakes from the ferry and thus were not entitled to preliminary injunctive relief; (2) Trial court's failure to make any finding as to whether deployment or operation of the ferry caused harm to shoreline property when determining whether to issue preliminary injunctive relief under SEPA was an abuse of discretion. Absent such a finding, shoreline property owners could not satisfy their burden of establishing actual and substantial harm; and (3) Even assuming that deployment or operation of the ferry was causing actual and substantial injury to the environment, issuance of a preliminary injunction pursuant to SEPA without balancing the relative interests of the parties and the public was an abuse of discretion. SEPA does not require that those evaluating a proposed action consider environmental factors alone. Rather, the essential factors balanced frequently are the substantiality and likelihood of environmental cost and economic cost.

Appendix C

Additional Resources

SEPA Website

Additional information about SEPA is available on the Internet at http://www.ecy.wa.gov under the heading of "Services" and the subheading of "Environmental Review (SEPA)". This information includes:

- Regulations
    - SEPA, Chapter 43.21C RCW
    - SEPA Rules, Chapter 197-11 WAC
    - Model Ordinance, Chapter 173-806 WAC
    - Information on proposed SEPA Rule amendments (if any)

- Guidance
    - SEPA Handbook
    - SEPA Guide for Project Applicants (including a guide for completing the SEPA environmental checklist)
    - Citizen's Guide to SEPA Review and Commenting

- SEPA Register (see below)
- Upcoming SEPA Training offered by Ecology
- Frequently asked questions about SEPA
- SEPA forms in a variety of formats
- SEPA contact list for state agencies, counties, larger cities, and air authorities
- A link to the Council on Environmental Quality for NEPA information

SEPA Register

One important source of information for both agencies and the public is the SEPA Register. The SEPA Register contains a summary of each of the environmental documents sent to the Department of Ecology. Since all agencies within the state are required to send environmental documents to Ecology, the SEPA Register provides a single point for identifying proposals currently under review anywhere in the state. Someone interested in reviewing and possibly commenting on a particular proposal can call the lead agency and request a copy of the specific document.

The SEPA Rules require state and local agencies to send the following environmental documents to the Department of Ecology (WAC 197-11-508):

- DNSs issued with a comment period (under WAC 197-11-340(2));
- Notices of application when the optional DNS process is being used, and the subsequent DNS when issued (under WAC 197-11-355);
- DS/scoping notices (under WAC 197-11-408);
- Draft EISs (under WAC 197-11-455);
- Final EISs (under WAC 197-11-460);
- Supplemental EISs (under WAC 197-11-620);
- Addenda for a draft EIS, or an addenda to a final EIS if prior to an agency decision on the proposal (under WAC 197-11-625);
- Adoption notices (under WAC 197-11-630); and
- Notices of action (under RCW 43.21C.080).

Although not required by the SEPA Rules, agencies are also encouraged to send DNSs with no comment period and other addenda for listing on the SEPA Register. Any federal documents issued under the National Environmental Policy (NEPA) that are sent to Ecology are also listed on the SEPA Register.

The SEPA Register is updated daily and posted on Ecology's Internet site at http://www.ecy.wa.gov under the heading of “Services” and "Environmental Review (SEPA)". Documents are listed on the SEPA Register for two weeks, or until the end of the comment period if it is longer than two weeks. The listings can be sorted and viewed in a number of different ways, including by:

- County (or multiple counties)
- Lead agency (or multiple lead agencies)
- Document type
- Documents received during the last business day or from a specific date
- Entire register (documents received during the previous two weeks)

The SEPA Register includes an “additional information” section that provides a description of each field in the Register. There is also a link to an e-mail site for those who have questions related to SEPA (sepaunit@ecy.wa.gov).

Office of Regulatory Assistance

The Office of Regulatory Assistance (ORA) can:

- Answer questions about environmental permits and requirements;
- Help you get started with the permitting process; and
- Help with special projects.

ORA also provides a formal service for larger projects called the Coordinated Permit Process. This process provides a central point for coordination of the numerous permits

and approvals required for a specific project. There is usually a fee associated with this service. Anyone interested in more information should contact ORA at (360) 407-7037 or 1-800-917-0043 (e-mail ecypac@ecy.wa.gov).

Additional information about the Office of Regulatory Assistance is available on the Internet at http://www.ecy.wa.gov/programs/sea/pac/index.html. This includes an on-line permit assistance system and links to other sources of information, including:

- Joint Aquatic Resources Permit Application (JARPA)
- Stormwater General Permits
- Wetland Regulation Guidebook
- Water Right Applications Information
- Washington's Air Quality Business Assistance Program
- Department of Licensing's Business Licenses Pages
- Washington Administrative Codes (WACs)
- Revised Code of Washington (RCWs)

Office of Community Trade and Economic Development

The Local Government Division of the Office of Community Trade and Economic Development (CTED) provides information and assistance on the Growth Management Act (GMA) and the Local Project Review Act. They have a number of documents available to assist counties and cities in complying with the GMA. These documents are listed on CTED's homepage on the Internet at http://www.cted.wa.gov. The Local Government Division can be reached at (360) 725-3000.

Department of Natural Resources

The Department of Natural Resources has a publication called "SEPA Checklist Resource Guide". This Guide provides supplemental information to help applicants complete the environmental checklist. Although the primary purpose is to help applicants with proposals that may require approval from DNR, others may also find the information useful. This Guide is available from DNR's SEPA Center at (360) 902-1634.

Appendix D

Sample Letters & Forms

Notifying Another Agency That They Are Lead Agency

SEPA Coordinator

Agency

(Address)

Dear _____ :

The (agency name) recently received an application for (permit) and/or and environmental checklist from (applicant name) for (project description).

The (agency name) has determined under WAC 197-11-924 that (agency name) is the SEPA lead agency for this proposal, because a (permit) is required from you.

Accordingly, I am enclosing the completed environmental checklist and a copy of the permit application. Please keep us informed of your progress in reaching a threshold determination.

If you have any questions, or if we can be of any assistance, please contact (name) at (phone).

Sincerely,

Enclosures

Sample Responses to a "Request For Early Notice"

(1) You Are Lead Agency: DNS Likely

(name and address)

Dear_____ :

This is the (agency name) response to your "request for early notice" on (name or describe project) under WAC 197-11-350.

(Agency name) currently considers a determination of nonsignificance (DNS) likely for your proposal. However, our formal threshold determination has not been completed and this letter is not a DNS.

If you have any questions, call (name) at (phone).

Sincerely,

(2) You Are Lead Agency: DS Likely - General or Specific Areas of Concern

(name and address)

Dear_____ :

(Agency name) currently considers a determination of significance (DS) likely for your proposal. We are concerned about probable significant adverse impacts in the following area(s): (list general or specific areas of concern).

You may change or clarify your proposal to mitigate these impacts. Either submit a changed or clarified environmental checklist (and/or permit application), or prepare a written attachment to your existing environmental checklist. If you submit attachments, the proposal, as changed or clarified, must be easily understood when one reads the checklist and attachment(s).

We are suspending the threshold determination on your proposal until you respond in writing. You may either change or clarify your proposal or ask that we base the threshold determination on your original checklist and permit application.

If you change or clarify your proposal, we will begin the threshold determination process based on the changes or clarifications. Changes to or clarifications of your proposal to mitigate significant adverse impacts do not guarantee issues of a determination of nonsignificance (DNS).

If you have any questions, call (name) at (phone).

Sincerely,

(3) You Are Lead Agency: DS Likely - Mitigation Measures Specified

(name and address)

Dear _____ :

(Agency name) currently considers a determination of significance (DS) likely for your proposal. If you incorporate the following mitigation measures to your proposal, probable significant adverse environmental impacts will be eliminated and the (agency name) will issue a determination of nonsignificance (DNS).

(Describe the mitigation measures. Remember, if the proponent agrees to change the project to include these measures, you must issue a DNS.)

You may change or clarify your proposal to include these mitigation measures. Either submit a changed or clarified environmental checklist (and/or permit application), or prepare a written attachment to your existing environmental checklist. If submit an attachment, the proposal, as changed or clarified, must be easily understood when one reads the checklist and attachment(s).

We are suspending the threshold determination on your proposal until you respond in writing. You may either change or clarify your proposal or ask that we base the threshold determination on your original checklist and permit application.

If you changed or clarify your proposal to include the mitigation measures listed above, we will issue a DNS for a fourteen-day comment period. (Describe public notice your agency must perform.) The information gained during the comment period will determine of the DNS will then be retained, modified, or withdrawn.

If you have any questions, call (name) at (phone).

Sincerely,

(4) YOU ARE NOT LEAD AGENCY

(name and address)

Dear _____ :

We have determined that (agency name) is the SEPA lead agency for this proposal and have forwarded your completed environmental checklist and/or a copy of your permit to them.

If you want to pursue a mitigated determination of nonsignificance (DNS), contact (agency name or person at the agency) to determine their procedures for a "request for early notice."

If you have any questions, contact me at (your phone and/or address).

Sincerely,

Sample EIS Fact Sheet

Project Title and Description: *include a brief description of the proposal and its location, include description and location of the alternatives if different*
Name and Address of Proponent (with proposed date for implementation):
Name and Address of Lead Agency Responsible Officials:
Contact Persons for Lead Agencies:
List of Permits and Approvals: *should be as complete as possible, note any which may be tentative or potential, include federal, state and local jurisdiction permits*
e.g.: Okanogan County
Shoreline Substantial Development Permit
Conditional Use Permit/Zoning Requirements
Etc.
Authors and Principal Contributors:
e.g.: **The following are Agency individuals who were either reviewers or principal contributors to the preparation of the EIS:**
Washington Department of Natural Resources
1. David Hogan - Reclamation Geologist
2. Etc.

The following are Contract individuals who were either reviewers or principal contributors to the preparation of the EIS:
Earth Resources Associates
1. George Davis – Vegetation and Wetlands, Streams and Fisheries
2. Etc.

Date of Issue of the Draft EIS:
Date DEIS Comments are due: *generally this will be 30 days after the date of issue*
Public Meetings: *identify public meetings, field trips, hearings – date, time location, and whether activity is to present information, answer questions, hear comment, etc.*
Projected Date of Issue of Final EIS:
Agency Action and projected date for action: *identify the lead agency decisions (permits, approvals, licenses) that need to be made for the proposal and identify the projected timing for those decision. If the projected timing is unknown, the agency can simply state no decisions can be made until at least 7 days after issuance of the FEIS. Often other agencies are also making decisions. If information about the timing for their decisions is available, it can be mentioned here also.*
Subsequent Environmental Review: *identify whether the lead agency knows if any subsequent environmental review is expected. For example if the EIS is for a comprehensive plan, the lead agency should explain whether additional environmental review is anticipated for site specific projects.*
EIS Availability: *identify how copies of the EIS can be acquired and their cost, if applicable.*

DETERMINATION OF NONSIGNIFICANCE
AND ADOPTION OF EXISTING
ENVIRONMENTAL DOCUMENT

Description of current proposal _____

_____

Proponent _____

Location of current proposal _____

_____

Title of document being adopted _____

Date adopted document was prepared _____

Description of document (or portion) being adopted _____

_____

_____

If the document being adopted has been challenged (WAC 197-11-630), please describe:

_____

_____

The document is available to be read at (place/time) _____

_____

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

❑ There is no comment period for this DNS.

❑ This DNS is issued under WAC 197-11-340(2); the lead agency will not act on the proposal for 14 days from the date below. Comments must be submitted by _____

We have identified and adopted this document as being appropriate for this proposal after independent review. The document meets our environmental review needs for the current proposal and will accompany the proposal to the decision-maker.

Name of agency adopting document _____

Contact person, if other than responsible official _____
Phone _____

Responsible official _____

Position/title _____ Phone _____

Address _____

Date _____ Signature _____

ECY 050-46(b) (Rev. 4/98)

DETERMINATION OF SIGNIFICANCE
AND ADOPTION OF EXISTING
ENVIRONMENTAL DOCUMENT

Description of current proposal _____

_____

_____

Proponent _____

Location of current proposal _____

_____

_____

Title of document being adopted _____

Agency that prepared document being adopted _____

Date adopted document was prepared _____

Description of document (or portion) being adopted _____

_____

_____

If the document being adopted has been challenged (WAC 197-11-630), please describe:

_____

_____

The document is available to be read at (place/time) _____

_____

EIS REQUIRED. The lead agency has determined this proposal is likely to have a significant adverse impact on the environment. To meet the requirements of RCW 43.21C.030(2)(c), the lead agency is adopting the document described above. Under WAC 197-11-630, there will be no scoping process for this EIS.

We have identified and adopted this document as being appropriate for this proposal after independent review. The document meets our environmental review needs for the current proposal and will accompany the proposal to the decision maker.

Name of agency adopting document _____

Contact person, if other than responsible official _____

_____ Phone _____

Responsible official _____

Position/title _____

_____ Phone _____

Address _____

Date _____ Signature _____

ECY 050-46(a) (Rev. 4/98)