State Environmental Policy Act Handbook

2018 Updates

Washington State Department of Ecology

This SEPA guidance 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) and consequently does not have the legal effect as the RCW or the Rule.

Table of Contents

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 SEPA 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.

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...."

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.

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."

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;
- 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);
- Encourage public involvement in decisions;
- Prepare environmental documents that are concise, clear, and to the point;

- Integrate SEPA with existing agency planning and licensing procedures, so that the procedures run concurrently rather than consecutively; 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.

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**.)

Proposals can be either
project proposals, such as:
- new construction,
- demolition, or
- remodeling

or **nonproject proposals,** such as:
- rulemaking
- comprehensive plans,
- subdivisions, zoning, or
- development regulations.

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.

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. 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 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.

Summary of the SEPA Process

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. **Distribute draft Checklist for inter-agency and tribal consultation.** Often the best opportunity to make changes to a proposal based on environmental impacts is prior making the threshold determination and issuing the Determination of Nonsignificance or Determination of Significance.

6. **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.

7. **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)

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 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.

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. 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:

- Define the total proposal, including any interdependent parts;
- Identify all agency actions required for the proposal (e.g., licenses, funding, etc.); 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). 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)**

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.

Phased Review

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. However, the environmental review can be phased or tiered 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.

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.

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 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.

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.

Categorical Exemptions

There are three separate authorities that contain SEPA exemptions:

1. Statutory exemptions in SEPA listed in RCW 43.21c.
2. SEPA Rule exemptions in WAC 197-11 Part Nine
3. GMA city and county optional provisions
    a. Flexible exemption levels for minor new construction
    b. Eliminate exemptions in critical areas
    c. In-fill 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 state law, Chapter 43.21C RCW. The table below summarizes all of the statutory exemptions contained in the SEPA statute as of 2017. Please check the statute for any exemptions adopted after this date. 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
Water right for fifty cubic feet of water per second or less for irrigation projects irrigation projects decisions	43.21C.035
Forest practices Class I, II, and III	43.21C.037
School closures	43.21C.038
Air operating permits	43.21C.0381
Watershed restoration projects—Fish habitat enhancement projects	43.21C.0382
Waste discharge permits for existing discharges and certain construction stormwater permits	43.21C.0383
Wireless services facilities (cell towers)	43.21C.0384
Certain actions during state of emergency	43.21C.210
City or town incorporation, consolidation, disincorporation, or annexation of all of a city/town by or of another city/town	43.21C.220 43.21C.222 43.21C.225 43.21C.227
Infill development	43.21C.229
House Finance Commission plans	43.21C.230
Forest Practices Board emergency rules	43.21C.250
Conservation easements, road maintenance & abandonment, Timber harvest schedules involving east-side clear cuts	43.21C.260
Unfinished nuclear power projects	43.21C.400
Battery charging and exchange station installation	43.21C.410
Certain fish protection standards	43.21C.430
Nonproject actions – certain local development regulations	43.21C.450
Categorical exemption for structurally deficient bridges	43.21C.470 43.21C.480

In addition to the statutory exemptions, the Legislature directed rulemaking for 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 minor projects 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 facilities related to lines twelve inches or less in diameter. Examples of specific types of agency decisions that are exempt include short plat subdivisions, forest practice class I,II, and III, public property transactions, and business licenses.

Many exemptions for minor new construction or minor land use decisions do not 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.**

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.

To determine if a proposal is exempt from SEPA, review the rule exemptions in Part Nine of the SEPA Rules, the statutory exemptions in SEPA, and any local exemptions and exceptions that may apply. 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.

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 30 dwelling units in the urban growth area. The exemption for commercial buildings can range between 4,000 and 30,000 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 applies.

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 and minor land use decisions do not apply if any portion of the proposal/decision involves 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)).

Requirements for Adopting Flexible Thresholds

Several criteria must be met for a city or county to adopt flexible thresholds. Most importantly, the proposal to amend SEPA policies to increase the size of projects exempt from SEPA review must include sufficient documentation that impacts to all elements of the environment have been adequately addressed. There also must be a disclosure of any loss of notice and comment opportunities for future permitting decisions that will be exempt from SEPA.

The documentation that impacts have been adequately address should describe the types, sizes and locations of projects proposed for new exemption level. Impacts to the entire list of SEPA's applicable elements of the environmental must be considered. The proposal should also list the applicable authorities and regulations and describe how much these regulations reduce impacts on each element of the environment for each project types, sizes and locations.

The jurisdiction must also document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. A local ordinance or resolution that addresses cultural resources shall include at minimum:

- Use of Available data and other project level review tools, i.e. inventories and predictive models provided by the Department of Archeology and Historic Preservation, other agencies and tribal governments.
- Planning and permitting processes that ensure compliance with applicable cultural resource state laws including chapters 27.44, 27.53, 68.50 and 68.50 RCW.
- Local development regulations that include preproject cultural resource review, where warranted and standard inadvertent discovery (SIDL) for all projects.

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

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.

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)

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 for the purposes of a SEPA exemption.

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 the SEPA statute 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)

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.

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).

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.

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.

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.

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.

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?

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.

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.

Review of Proposals

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

- 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?
  - Do the criteria in WAC 197-11-305 apply?
  - Is the proposal within a critical area where the exemption does not apply?

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

- 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.

Exemption Tips

- 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 (if applicable) to indicate that SEPA compliance had been satisfied or did not apply.

- 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 entire facility (old plus new) exceeds the threshold adopted by the local jurisdiction. This can include a multi-structure facility.

- 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.

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 all the environmental aspects of the proposal for all agencies with jurisdiction.
- The agency responsible for the threshold determination and for the preparation and content of an environmental impact statement when required.

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).

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 the lead agency and notifying them of the proposal. If the applicant has filled out an environmental checklist, that is sent to the lead agency with the notification letter.

Lead agency status is determined according to WAC 197-11-922 through 948. 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). Determining the lead agency requires defining the total proposal and 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.
- 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.
- 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.

Lead Agency Agreements

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

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. 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.

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.

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. 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.

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. The notice for lead agency assumption must include a determination of significance.

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)

Evaluating 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.

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 on the SEPA Templates webpage. Guidance on completing and reviewing the environmental checklist is available on the Checklist Guidance webpage and help links are included in the downloaded Checklist template.

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. 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?

A thorough review and written revisions to the checklist by the lead agency is critically important because the checklist (and other reports if available) supports the legal validity of the threshold determination. It is also:

- Important for receiving useful feedback from other agencies, tribes, and the public;
- necessary for providing other agencies with jurisdiction with environmental information prior to making decisions on the proposal, and;
- part of the environmental record for an agency decision.

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)

Consultations

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 includes a list of agencies with expertise on elements of the environment.

Consultations are intended to gather information from agencies with expertise. 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.

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.

When considering the need for mitigation measures, 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 not be sufficient to avoid, minimize or compensate for significant impacts. It is important to identify applicable regulations and then analyze and disclose the extent to which they reduce the specific impacts of the specific proposal under SEPA review.

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. (See section on Using SEPA in Decision Making) Mitigation conditions must also be reasonable and capable of being accomplished.

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 may be required of the applicant under regulatory authority, and produce a much improved and more desirable project. Mitigation conditions must be included in the permit, license or other approval to be binding.

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 and Consultations), or may result from comments received on a threshold determination (DNS or DS/scoping notice), or draft EIS.

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". It is often non-quantifiable. It involves the physical setting, and both the magnitude and duration of the impact. SEPA Rules state that the beneficial aspects of a proposal shall not be used to balance adverse impacts in determining significance.

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.

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. Additional guidance for making the threshold determination is included in WAC 197-11-330.

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 that must be made available prior to making the threshold determination? 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 plans?
- 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?

Revising and adopting existing documents

For agency decisions (actions) on the same proposal, existing SEPA documents can be revised and supplemented to provide new information. Instead of preparing a new environmental checklist or Environmental Impact Statement (EIS), agencies can adopt and use previous reviews that include a relevant analysis of all or part of a new proposal.

Revising SEPA documents for the same proposal

The lead agency is responsible for completing the environmental review process for all agencies with jurisdiction. This means other agencies with jurisdiction do not prepare separate SEPA documents or adopt the environmental documents issued by the lead agency for the same proposal.

However, SEPA documents do not have arbitrary expiration dates and can be modified — including revised Determinations of Nonsignificance (DNS), EIS Addendums, or Supplemental EIS — to better inform a pending agency decision. Modifying, revising, and supplementing exiting SEPA documents can be done for the same proposal.

If a DNS or mitigated determination of nonsignificance (MDNS) was previously issued and new information warrants additional analysis, the lead agency can withdraw or modify the DNS and issue a Revised DNS with additional supporting information such as a new staff report, or a new or revised checklist or addendum.

A draft EIS can be modified using an addendum or changes can be reflected in a revised draft EIS. A final EIS can be modified by issuing an addendum or supplemental EIS.

If a proposal is delayed so new permits must be applied for after SEPA review is done, then the additional review process could be limited to:

- Verifying that there is no new environmental information.
- Determining regulatory changes or changes to the proposal require additional SEPA review.

Any notice and comment provided for the underlying permit should still include previous SEPA documents to ensure the permitting agency considers any new or additional information.

Adopting previous SEPA reviews for new proposals

If the impacts associated with a new proposal have been adequately evaluated in a previously-issued SEPA or NEPA document, the document can be adopted to satisfy SEPA requirements. While a lead agency may adopt all or part of the information and environmental analysis in the adopted documents, they will need to make a new threshold determination.

Using existing documents is particularly important cities and counties planning development under the state **Growth Management Act (GMA)**. Jurisdictions that have completed an environmental analysis for their comprehensive plans and development regulations can use the analysis as starting point for reviewing individual projects, allowing them to focus just on those aspects that have yet to be addressed. GMA cities and counties can also use the new Planned Action process in which formal SEPA review is done before proponents submit permit applications for projects.

Agencies can only use documents from a previous SEPA or NEPA review. This is why it is critical to provide a thorough description of the current proposal and clearly identify the SEPA documents being adopted.

In addition, agencies adopting existing environmental documents must independently determine if they meet environmental review standards and a proposal's needs. To be adopted, previous SEPA documents are not required to meet an agency's own preparation procedures. However, in all cases, agencies are required to issue new threshold determinations. They can use the following previous SEPA documents:

- **Adoption / determination of significance (DS)** is issued when an existing EIS addresses all probable significant adverse environmental impacts and reasonable proposal alternatives. While a new comment period is not required, a agency must distribute the adoption notice. There is a 7-day waiting / reading period before an agency can take an action.
- **Adoption / DS and addendum** follows the same procedure as the adoption / DS, except an addendum adding minor new information is circulated with the adoption notice.
- **Adoption / DS and Supplemental EIS** is used when an existing EIS addresses some, but not all, of a new proposal's probable significant adverse environmental impacts. The EIS can be used as the basis for a new supplemental EIS and the adoption notice must be included in the draft and final supplemental EIS.
- **Adoption / Determination of Nonsignificance** is used for existing DNS and environmental checklist, NEPA environmental assessment, or documented categorical exclusion is adopted for a new proposal using the combined adoption / DNS template. The agency must follow DNS procedures including a comment period, distribution, and public notice.

When adopting a document, a copy 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. Agencies are encouraged to distribute copies of adopted or incorporated SEPA documents to agencies with expertise or interest in the proposal, as well as affected tribal governments. Include the SEPA determination whenever possible since

these documents assist in adequately evaluating a proposal.

Incorporation by reference

Incorporation by reference is similar to directly adopting a previous SEPA document. This is because all or part of the incorporated document becomes part of the agency environmental documentation for a proposal. Unlike the adoption process which is limited to environmental documents issued under either SEPA or NEPA, any information may be incorporated by reference such as studies or reports that provide information relevant to a proposal. To incorporate documents by reference, the agency must identify and describe the documents in the current environmental checklist, threshold determination, or EIS.

Issuing a Determination of Nonsignificance

A determination of nonsignificance (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**)** The DNS may or may not require a public comment period and circulation to other agencies.

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.

Mitigated DNS

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 the identified significant adverse impacts down to a nonsignificant level, a "mitigated DNS" is issued in lieu of a Determination of Significance and preparation of an EIS. 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 always required for mitigated DNS.

SEPA substantive authority can also reduce or eliminate adverse environmental impacts that may be less than "significant". (See section 6 for more information on Using SEPA in Decision Making.)

DNS Comment Period

With the exception of projects for which the optional DNS process is used, if <u>any</u> 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.

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.

The DNS and the checklist must be sent to:

- The Department of Ecology;
- All agencies with jurisdiction (state, local and federal);
- Affected tribes; and
- All local agencies or political subdivisions whose public services would be affected by the proposal.

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.

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.

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.

Table 2: SEPA Document Distribution/Notification Requirements

Document	Comment Period	Public Notification	Agency Distribution *(jurisdiction, expertise, services affected, Tribes) Send electronic or paper copy*	SEPA Register Submittal separegister@ecy.wa.gov *send electronic copy (except one hardcopy of EISs)*
Determination of Nonsignificance (DNS) WAC 197-11-340(2)	Minimum 14 days -if required per WAC 197-11-340(2)	If comment period required, Per agency procedures or SEPA rules	Required to distribute If comment period DNS letter **plus checklist** Staff report if available	Required for all DNSs **Require electronic documents** DNS letter **plus checklist** Staff report if available
Mitigated DNS WAC 197-11-340 and 350	Minimum 14 days	Required	Same as above	**Require electronic documents** DNS letter **plus checklist** Staff report if available
Optional DNS process WAC 197-11-355 **DNS- NOA** **DNS issued after NOA**	Combined with NOA (14 to 30 days) Optional 14 days	Required Optional (but required if there's a comment period)	Required to distribute Include checklist Required – but not the Checklist unless it's been revised	Required to submit **Require electronic documents** Clearly stating *NOA and Optional Process* **Include checklist** **Require electronic documents** but no checklist unless it's been revised
Revised/Modified DNS or MDNS WAC 197-11-340(2)(f)	Not required but recommended – especially if it's an MDNS	Not required but recommended – especially if it's an MDNS	Required – but not the Checklist unless it's been revised	**Require electronic documents** No checklist unless revised

DNS after withdrawal of a DS or previous DNS WAC 197-11-360(4) and 340(2)(iv)	Minimum 14 days	Required	Required to distribute -Include checklist	Required to submit **Require electronic documents** Include checklist
Determination of significance (DS) with Scoping notice WAC 197-11-360, 408, and 410	21 days, up to 30 days for "expanded scoping"	Required	Required to distribute	Required to submit **Require electronic documents**
Draft environmental impact statement (EIS) WAC 197-11-455	30 days, with possible 15-day extension	Required Public Hearing required upon request	Required to submit Distribute DEIS (hardcopy or electronic)	Required to submit **One hardcopy plus one CD**
Supplemental draft EIS WAC 197-11-620(1) and 455	Minimum 30 days	Same as above	Same as above	Same as above
Final EIS WAC 197-11-460	No, but a 7-day waiting period is required before agency action	Not required, but notification to interested parties/parties of record	Same as above	Same as above
Final supplemental EIS WAC 197-11-620(1) and 460	No, but 7-day wait	Same as above	Same as above	Same as above
Adoption Notice with DNS WAC 197-11-340(2) and 630	Minimum 14 day comment period. (unless it's not required under WAC 197-11-340.	Yes, if comment period required	Required Distribute document adopted or provide website access	Required to submit **Require electronic documents** Include document adopted or provide website access
DS/Adoption of EIS (no Supplemental or Addendum) WAC 197-11-630(3)	Not required but 7-day wait	Not required, but encouraged, to notify parties of interest	Same as above	Same as above
Addendum to an EIS WAC 197-11-625	Not required unless comment period on underlying action	Distribute to recipients of EIS	Required Distribute addendum plus CD or access to original EIS	Required to submit **One hardcopy and one CD** of addendum and CD or website access to original EIS

Note: Agencies may automatically extend any comment period for public proposals WAC 197-11 050(7).

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 commenters 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 and a comment period is generally not required unless there is an additional comment period on the underlying action (permit or plan). The format of a revised DNS is similar to other DNSs so the lead agency 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 an un-changed checklist is not required, but is required 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. Locking-in of the DNS can 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**). 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 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 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**)

There are several steps in the EIS process:

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, shoreline master programs, and development regulations. (See **Nonproject Review** section)

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," 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 pre-threshold 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.

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.

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.

The scoping process begins when the lead agency circulates the DS/scoping notice and gives

public notice. 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.

- **Expanded scoping.** 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.)

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.

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)

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 always require a new DS/Scoping notice. The lead agency should consider whether the intent and purpose of preparing the EIS would be compromised –if scoping is not reissued or improved –if scoping is redone.

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 or MDNS required).

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. 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.

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)

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. The EIS should provide information that is readable and useful for the agencies, the applicant, and interested citizens.

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.

Describing the Proposal

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

1. Describe the <u>total proposal</u>:
   - 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.

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 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**)**

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

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

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 helpful for public proposals when the purpose and objectives are more general.

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.

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)

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.

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.

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.

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.

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. 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. 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, and a minimum of 10-day notice must be made. 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.

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.

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. 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 commenters included. The 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.

Tip: If the comment is generic or nonspecific (e.g., "There will be unacceptable air quality impacts"), the response might be: "Your comment was considered but it was not specific or applicable enough to respond to. Please see Section XX of the final EIS for a discussion of air quality impacts and possible mitigation."

Timing of Final EIS

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.

Format of Final EIS

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

- If there are no substantial comments or changes proposed 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" may be prepared. In this case, the final EIS consists of the draft EIS, a new fact sheet, and the attached 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.
- 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 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 Supplementing an EIS for additional discussion.) The final EIS, when it is ultimately issued, may have any of the above formats.

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. Agencies may take an action/make a decision on the proposal seven days after the final EIS has been issued.

Supplementing an EIS

A supplemental EIS 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.

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

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.

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.

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. 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.

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.

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. Agencies Role in Review & 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.

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**). Additionally, the SEPA rules include a list of state agencies "with expertise" on each element of the environment. They should be consulted at the earliest opportunity to review a Checklist or other draft SEPA document.

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.

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:

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. 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.

6. Using SEPA in Decision Making

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.
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 gives all levels of government the ability to condition or deny a proposal based on environmental impacts.

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.

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.

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.

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; or
4. 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)

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.

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 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.440, WAC 197-11-164 and 168 for requirements and restrictions on the designation of planned actions.)

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.

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

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

The significant environmental impacts of projects designated as planned actions must be identified and adequately addressed in an EIS. 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.

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

Planned action projects must be designated or identified in an ordinance or resolution adopted by a GMA county or city. 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.440 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.

Step 3: Review the Proposed Planned Action Project

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.

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**). 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. 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.

8. GMA and SEPA: 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 counties and cities to combine permit review and environmental review, and to consolidate administrative appeals of

permit and SEPA decisions. Integrated project review can provide a more streamlined permit and environmental review process for proposals projected in the comprehensive plan.

Requirements for Integrated Project Review

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.

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.

Preapplication Process
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.

Determination of Completeness
Counties and cities planning under GMA are required to determine whether an application is complete enough to begin processing within 28 days of submittal. 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.

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

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.

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)?
- 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.

Notice of Application (NOA)

The determination of significance (DS/Scoping notice) may be 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, or they may wait to consider comments received on the NOA before making a threshold determination.

Optional DNS

The optional DNS process gives GMA counties and cities the flexibility to consolidate the notice and comment process prior to issuing the DNS. 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 and receive comments on the Checklist prior to formal issuance of the DNS –which occurs with the Notice of Decision.

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.

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.
- A DNS may be issued at the time of NOA and avoid the need for the optional process because the comment period for SEPA automatically coincides with the NOA comment period.

If the optional process is being used, 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.
- The NOA and the environmental checklist are distributed to agencies with jurisdiction or expertise, affected tribes, and the public.

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.

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. 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**)

9. SEPA's Relation to NEPA

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.

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, and the factors that were considered in reaching a decision.

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.

SEPA's purpose and goals are almost identical but federal agencies may have procedures for environmental review (aside from the list of categorical exclusions) that are not fully aligned with SEPA requirements. The main areas of divergence could include the scope of the review, types of impacts and range of alternatives. SEPA provides an expressed substantive provision that authorizes agencies to deny or condition a proposal based upon the impacts addressed in the environmental documents. RCW 43.21C.060. This affords agencies and the public with an important purpose and need for SEPA review regardless of the extent of NEPA review established by the lead federal agency.

Proposals covered under a specific NEPA exclusion but also involve "agency actions" by state or local agencies – may require SEPA review. The environmental review requirements under SEPA are separate and independent from those required or exempted under NEPA. Both the process and criteria are different for establishing and applying exemptions under each statute and their implementing regulations.

1. NEPA EA/FONSI is completed first and the SEPA lead agency issues a DNS and "adopts" the EA in lieu of preparing an Environmental Checklist. A minimum 14-day SEPA comment period is required and additional information and analysis can be included in the DNS or added to the EA in the form of an Addendum. This option often involves close coordination between the NEPA and SEPA lead agencies to ensure that the NEPA analysis is sufficient for SEPA purposes;

2. NEPA EIS is completed first and the SEPA lead agency issues a DS and adopts the EIS in lieu of preparing a separate EIS. Technically the ROD does not have to have been issued prior to adoption under SEPA, however the NEPA EIS cannot have been found "inadequate" by a court, EPA or CEQ.

3. NEPA and SEPA processes are concurrent and a joint NEPA/SEPA EIS or a combined EA/FONSI/DNS is issued by the relevant "cooperating" agencies; or

4. NEPA documents and SEPA documents are issued independently and no adoption of previously prepared NEPA documents is involved.

Additionally, a "documented categorical exclusion" can also be adopted under SEPA when issuing a DNS, in lieu of preparing a Checklist –as long as all of SEPA's environmental elements have been adequately addressed in the NEPA documentation.

Federal public projects are considered "private" proposals for the purpose of determining the SEPA "lead agency." Local government agencies are typically designated as the SEPA lead for private projects if there is a corresponding local permit or approval for the project.

The table below compares NEPA and SEPA terms and procedural requirements:

NEPA	SEPA
Categorical Exclusion (CE), 40 CFR 1508.4, 40 CFR 1507.3	Categorical Exemption, WAC 197-11-800-880.Statutory Exemptions, RCW 43.21c
Environmental Assessment, 40 CFR 1508.9, 40 CFR 1501.3	Environmental Checklist, WAC 197-11-960,
Finding of No Significant Impact, 40 CFR 1508.13	Determination of Nonsignficance (DNS), WAC 197-11-340.
Notice of Intent, 40 CFR 1508.22	Determination of Significance (DS) and Scoping notice. WAC 197-11-360.
Draft Environmental Impact Statement (DEIS), 40 CFR 1502, 40 CFR 1508.11 Review	Draft Environmental Impact Statement (EIS), WAC 197-11-455.
Final Environmental Impact Statement (FEIS), 40 CFR 1502, 40 CFR 1508.11	Final EIS (FEIS), WAC 197-11-460.
Supplemental EIS,	Supplemental EIS,
Record of Decision, 40 CFR 1505.2	Agency decision – but SEPA agencies must wait seven days before taking action. WAC 197-11-460

10. SEPA and MTCA

In 1988, citizens passed Initiative 97, creating the Model Toxics Control Act (MTCA). An amendment to the SEPA statute in 1994 directed the integration of the review requirements of MTCA and SEPA. To meet this directive, several sections were added to the SEPA Rules that contain procedures to combine the MTCA and SEPA processes to reduce duplication and improve public participation.

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, the SEPA/MTCA integration procedures are used to the extent practicable.

11. Appeals

SEPA provides a process for citizens and other agencies to challenge both procedural and substantive decision made using SEPA review. **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 are not required but some local agencies provide this process and appellants must complete this process prior to pursuing a judicial challenge. Not all agencies provide an administrative appeal process, or they may provide for a substantive appeal or a procedural appeal but not both. In some situations, the first appeal may be a judicial appeal filed in superior court.

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).

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.

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 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.

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.

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.

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 SEPA issues must be filed within that time period. (see RCW 43.21C.075(5) for additional information.)
- **Time limit when publication of notice of action taken.** 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.

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). 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.

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.

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.

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.

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.

Examples of provisions that are optional include:

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

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.

SEPA REVIEW PROCESS