

Ordinance No. 2830

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELATING TO THE STATE ENVIRONMENTAL POLICY ACT.

WHEREAS, the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, sets forth an environmental policy for Washington State and requires that the environmental impacts of proposals be analyzed and where appropriate, mitigated; and

WHEREAS, SEPA applies to state agencies, counties and municipal and public corporations; and

WHEREAS, SEPA has been amended to require the State Department of Ecology to issue new uniform state wide rules for carrying out SEPA; and

WHEREAS, the City of Kirkland is required to adopt SEPA policies and procedures that are consistent with the SEPA rules adopted by the Department of Ecology and Chapter WAC-197-11 and may adopt by reference any and all the provisions of those rules and the model ordinance as adopted by the Department of Ecology in Chapter 173-806-WAC; and

WHEREAS, the City's Subdivision Ordinance (Ordinance No. 2766) defines a short plat or short subdivision as nine (9) lots or less, and exempting nine (9) dwelling units or less is therefore consistent with our local Subdivision Ordinance regulations; and

WHEREAS, the City's Zoning Ordinance (Ordinance No. 2740, as amended) exempts all land surface modification of 500 cubic yards or less from a Zoning Permit; and

WHEREAS, the City of Kirkland has provided public notice and opportunity for public comment as part of the process for adopting its SEPA procedures and formally designating its SEPA policies;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKLAND, WASHINGTON AS FOLLOWS:

Section 1. There is hereby added a new chapter to Title 24 of the Kirkland Municipal Code designated Chapter 24.02 entitled "SEPA Procedures and Policies for the City of Kirkland" to read as follows:

Chapter 24.02-SEPA PROCEDURES AND POLICIES FOR THE CITY OF  
KIRKLAND

Sections:

- Section 24.02.05 - User Guide
- Section 24.02.10 - SEPA Process
- Section 24.02.15 - Definitions
- Section 24.02.20 - Designation of Responsible Official
- Section 24.02.25 - Environmental Coordinator
- Section 24.02.30 - Use of Environmental Documents
- Section 24.02.35 - SEPA Timing
- Section 24.02.40 - General - Categorical Exemptions and Threshold Determinations
- Section 24.02.45 - Threshold Levels for Categorical Exemptions
- Section 24.02.50 - Use of Exemptions
- Section 24.02.55 - Environmental Checklist
- Section 24.02.60 - Mitigated DNS
- Section 24.02.65 - General - Environmental Impact Statement
- Section 24.02.70 - Preparation of EIS-Additional Considerations
- Section 24.02.75 - Additional Elements to be Covered in an EIS or SEIS
- Section 24.02.80 - General - Commenting
- Section 24.02.85 - Public Notice
- Section 24.02.90 - General - Using Existing Environmental Documents
- Section 24.02.95 - General - SEPA and Agency Decisions
- Section 24.02.100 - SEPA Policies
- Section 24.02.105 - Administrative Appeals
- Section 24.02.110 - Judicial Review
- Section 24.02.115 - General - Definitions
- Section 24.02.120 - General - Categorical Exemptions
- Section 24.02.125 - General - Agency Compliance
- Section 24.02.130 - Environmentally Sensitive Areas Map Adopted by Reference
- Section 24.02.135 - Fees
- Section 24.02.140 - General - Forms

#### PART ONE - PURPOSE/AUTHORITY

##### Section 24.02.05 - User Guide:

This Chapter contains the City's laws that implement the State Environmental Policy Act (RCW 43.21C). This Chapter contains several parts. These parts correspond to the parts contained in Chapter 197-11 of the Washington Administrative Code, which also implements the State Environmental Policy Act. At the beginning of each part of this Chapter is a list of Sections of the Washington Administrative Code, Chapter 197-11, that are adopted by reference. These WAC Sections, as well as RCW 43.21C, should be consulted for complete information regarding SEPA.

#### PART TWO - GENERAL REQUIREMENTS

##### Section 24.02.10 - SEPA Process:

This part, Section 24.02.10 - Section 24.02.35, contains information on the basic requirements that apply to the SEPA process. The City hereby adopts by reference the following Sections of the WAC which contain related information:

197-11-040	Definitions
197-11-050	Lead Agency
197-11-055	Timing of the SEPA Process
197-11-060	Content of Environmental Review
197-11-070	Limitations on Action During SEPA Process
197-11-080	Incomplete or Unavailable Information
197-11-090	Supporting Documents
197-11-100	Information Required of Applicants

Section 24.02.15 - Definitions:

- (1) In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this Ordinance, the following terms shall have the following meanings unless the context indicates otherwise:
  - a. "City Department" means any Department of the City of Kirkland established by Chapter 3.16-Kirkland Municipal Code.
  - b. "SEPA Rules" means Chapter 197-11 WAC adopted by the Department of Ecology.
  - c. "Complete Application" means an application which has been reviewed by the appropriate Department(s) of the City with all information found to be adequate except for information required under this Chapter.
  - d. "City" means the City of Kirkland.
  - e. "Improvement" means any structure or man-made feature.
- (2) The following abbreviations are used in this Chapter:
  - a. "DNS" means Determination of Non-significance.
  - b. "DS" means Determination of Significance.
  - c. "SEIS" means Supplemental Environmental Impact Statement.
  - d. "WAC" means Washington Administrative Code

Section 24.02.20 - Designation of Responsible Official:

For all proposals for which the City of Kirkland is the Lead Agency, the Responsible Official shall be the Director

of the Department of Planning and Community Development, or his/her designee. For these proposals the Responsible Official shall make the Threshold Determination, supervise Scoping and preparation of any required EIS, and perform any other functions assigned to the "Lead Agency" or "Responsible Official" by this Chapter.

Section 24.02.25 - Environmental Coordinator:

The City Manager shall designate an employee of the City to act as Environmental Coordinator. It shall be the responsibility of the Environmental Coordinator to:

- (1) Assure that all SEPA-related City Ordinances and Policies are in compliance with corresponding regulations and policies at the State level;
- (2) Assist all City Departments in the interpretation and implementation of this Chapter;
- (3) Coordinate the processing of appeals pursuant to Section 24.02.105 of this Chapter;
- (4) Assist the public with inquiries concerning environmental policy and other SEPA-related information;
- (5) Maintain all public information on SEPA;
- (6) Coordinate the review of and response to Impact Statements submitted by the City as a consulted agency by other governmental agencies;
- (7) Coordinate the preparation and distribution of EIS's and SEIS's undertaken by the City or its consultant;
- (8) Review each Environmental Checklist submitted to the City and make a recommendation to the Responsible Official on each action or proposal;
- (9) Determine whether or not the proposal is an exempt action, make certain the proposal is properly defined and identify the governmental licenses required (WAC 197-11-060).
- (10) Be responsible for preparation of written comments for the City in response to consultation requests prior to a Threshold Determination, participation in Scoping, and reviewing a draft EIS.
- (11) Be responsible for the City's compliance with WAC 197-11-550 whenever the City is a consulted agency. The Environmental Coordinator is authorized to develop operating procedures that will insure that responses to consultation requests are prepared in a timely

fashion and include data from all appropriate Departments of the City.

- (12) Perform all other activities required to implement SEPA in the City except those performed by the Responsible Official.

Section 24.02.30 - Use of Environmental Documents:

For non-exempt proposals, the DNS or final EIS or SEIS for the proposal shall accompany the City's staff recommendation to the appropriate decision maker.

Section 24.02.35 - SEPA Timing:

- (1) If the City's only action on a proposal is a decision on a Building Permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the City conduct environmental review prior to submission of detailed plans and specifications. A decision as to whether or not to do early environmental review, prior to receiving a complete application, shall be at the discretion of the Responsible Official.
- (2) The Responsible Official may elect to do early environmental review if adequate information is available to determine the size and scope of the proposed action, including dimensions and use of all proposed improvements, project timing, and the extent of clearing and grading.
- (3) The City may initiate preliminary environmental review and have informal conferences with applicants prior to receipt of a complete application. However, this review shall not be binding on the City or the applicant.
- (4) Any request for early notice of whether or not a DS is likely under WAC 197-11-350 shall be in writing.

PART THREE - CATEGORICAL EXEMPTIONS AND  
THRESHOLD DETERMINATIONS

Section 24.02.40 - General - Categorical Exemptions and Threshold Determinations

This part, Section 24.02.40 - Section 24.02.60, contains information for deciding whether or not a proposal has a "probable significant, adverse environmental impact," and for evaluating the impact of proposals not requiring an EIS. The City hereby adopts by reference the following Sections of the WAC which contain related information:

197-11-300	Purpose of this Part
197-11-305	Categorical Exemptions

197-11-310	Threshold Determination Required
197-11-315	Environmental Checklist
197-11-330	Threshold Determination Process
197-11-335	Additional Information
197-11-340	Determination of Non-Significance (DNS)
197-11-350	Mitigated DNS
197-11-360	Determination of Significance (DS)/ Initiation of Scoping
197-11-390	Effect of Threshold Determination

Section 24.02.45 - Threshold Levels for Categorical Exemptions:

WAC 197-11-800 establishes certain actions as exempt from SEPA. Under (1)(c) of that Section, the City establishes raised levels of exemptions for the following types of actions as exempt from SEPA except as provided in WAC 197-11-305 and WAC 197-11-800(1)(a).

- (1) The construction or location of any residential structures of nine (9) or fewer dwelling units (WAC 197-11-800(1)(b)(i));
- (2) Any landfill or excavation of 500 or fewer cubic yards throughout the total lifetime of the fill or excavation, and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations there under (WAC 197-11-800(1)(b)(v)).

Section 24.02.50 - Use of Exemptions:

Each City Department receiving an application for a license or, in the case of governmental proposals, the Department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The Department's determination that a proposal is exempt shall be subject to review by the Environmental Coordinator. If a proposal is exempt, none of the procedural requirements of this Chapter apply to the proposal.

Section 24.02.55 - Environmental Checklist:

For private proposals, the City will require the applicant to complete the Environmental Checklist, providing assistance as necessary. For City-initiated proposals, the Department initiating the proposal shall complete the Environmental Checklist for that proposal.

Section 24.02.60 - Mitigated DNS:

- (1) For a mitigated DNS, the applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle

machinery to X decibels" or "construct a 200-foot storm water retention pond at Y location" are adequate.

- (2) Mitigation measures incorporated in the mitigated DNS are deemed Conditions of Approval of the permit decision and shall be enforced in the same manner as any term or condition of the permit, or enforced in any manner available to the City.
- (3) If the City's final decision on a proposed action does not include the mitigation measures that were incorporated in a mitigated DNS for the proposal, the City shall re-evaluate the Threshold Determination to insure that the DNS is still valid or determine if it should be withdrawn under WAC 197-11-340(3) (a).

#### PART FOUR - ENVIRONMENTAL IMPACT STATEMENT

##### Section 24.02.65 - General - Environmental Impact Statement

This part, Section 24.02.65 - Section 24.02.75, contains information on the rules for preparing EIS's. The City hereby adopts by reference the following sections of the WAC which contain related information:

197-11-400	Purpose of EIS
197-11-402	General Requirements
197-11-405	EIS Types
197-11-406	EIS Timing
197-11-408	Scoping
197-11-410	Expanded Scoping
197-11-420	EIS Preparation
197-11-425	Style and Size
197-11-430	Format
197-11-435	Cover Letter or Memo
197-11-440	EIS Contents
197-11-442	Contents of EIS on Non-Project Proposals
197-11-443	EIS Contents When Prior Non-Project EIS
197-11-444	Elements of the Environment
197-11-448	Relationship of EIS to Other Considerations
197-11-450	Cost-Benefit Analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS

##### Section 24.02.70 - Preparation of EIS-Additional Considerations:

- (1) The Responsible Official shall determine whether the draft, or final EIS, or SEIS will be prepared by the City or by a private consultant. If the action for which the EIS or SEIS is being prepared is one proposed by a private applicant, and if the Responsible Official determines the draft and final EIS or SEIS will be prepared by a private consultant, that consultant shall be selected in the manner prescribed by paragraph (3) of this Section.

- (2) Regardless of who prepares the EIS the Responsible Official shall insure that the EIS or SEIS is prepared in accordance with all applicable laws, regulations, and ordinances. The Responsible Official shall determine the elements of the environment to be included in the document through the scoping process described below.
  - a. Whenever the City issues a DS under WAC 197-11-360(3), the City shall provide notice as prescribed in Paragraph (1) of Section 24.02.85 of this Chapter and shall circulate copies of the DS to the applicant; agencies with jurisdiction and expertise, if any; affected tribes and the public.
  - b. All comments on a DS and Scoping Notices must be in writing and received within 21 days from the date of issuance of the DS, except where a public meeting on EIS Scoping occurs, pursuant to WAC 197-11-410(1)(b).
- (3) If the Responsible Official determines that the EIS or SEIS is to be prepared by a consultant, the City shall enter into any necessary agreements with the applicant and the consultant in conformance with this Chapter. The Responsible Official shall review the consultants recommended by the applicant and, if the Responsible Official finds one of the consultants suitable to prepare the EIS or SEIS, shall select that consultant for the preparation of the EIS or SEIS. In the event the Responsible Official does not find one of the consultants suitable to prepare the EIS or SEIS, he/she shall request the applicant to provide the names of additional consultants and/or interview additional consultants of the City's choosing.
- (4) A consultant who prepares an EIS or SEIS for a proposal by a private applicant, shall have no involvement in the proposed project other than the preparation of the EIS or SEIS.
- (5) Cost of preparation of EIS:
  - a. The applicant shall deposit with the City the entire estimated cost of preparation of a draft and final EIS determined by the selected consultant within ten days of signing the agreement for preparation of those documents with the City and the consultant.
  - b. If the City requires additional work beyond the terms of the agreement in order to complete the draft or final EIS or SEIS, the applicant shall deposit, with the City, the entire estimated cost



of the additional work within ten days of signing an addendum to the agreement.

- c. The City will not authorize work on the draft or final EIS or SEIS until the applicant has made the required deposits.

(6) City Review and Processing:

- a. The applicant shall deposit with the City an amount for review and processing of the Environmental Impact Statement or SEIS as required by Ordinance No. 2776, as amended.
- b. The City will not begin to review and process any EIS or SEIS until this deposit is received by the City.
- c. The City will send the applicant a monthly itemized billing for costs incurred in review and processing of an EIS or SEIS.
- d. If the amount deposited exceeds the cost of review and processing, the City will refund the excess to the applicant following issuance of the final EIS or SEIS.
- e. If the cost of review and processing exceeds the amount deposited, the applicant shall pay the full amount due within 30 days of receipt of an itemized billing by the City.
- f. The City will cease all work on the proposal, including review and processing of the EIS or SEIS, if the amounts due to the City have not been paid in full in the manner specified in this Section.

- (7) Before the City issues an EIS or SEIS, the Responsible Official shall be satisfied that it complies with this Chapter and Chapter 197-11 WAC.

PART FIVE - COMMENTING

Section 24.02.80 - General - Commenting:

This part, Section 24.02.80 and Section 24.02.85, contains rules for consulting, commenting and responding to environ-

mental documents including rules for public notices and hearings. The City hereby adopts by reference the following sections of the WAC which contain related information:

197-11-500	Purpose of this Part
197-11-502	Inviting Comment
197-11-504	Availability and Cost of Environmental Documents
197-11-508	SEPA Register
197-11-535	Public Hearings and Meetings
197-11-545	Effect of No Comment
197-11-550	Specificity of Comments
197-11-560	FEIS Response to Comments
197-11-570	Consultant Agency Costs to Assist Lead Agency

Section 24.02.85 - Public Notice:

- (1) Whenever the City issues a DNS under WAC 197-11-340(2), or DS under WAC 197-11-360(3), the City shall give public notice by publishing notice in a newspaper of general circulation in the City where the proposal is located.
- (2) The Responsible Official may require notice by alternative methods, as specified in WAC 197-11-510, if deemed necessary to provide public notice of impending action.
- (3) Whenever the City issues a draft EIS or SEIS under WAC 197-11-455(5) or WAC 197-11-620, notice of availability of those documents shall be given by:
  - a. Posting the property for site-specific proposals; and
  - b. Publishing notice in a newspaper of general circulation in the City.

PART SIX - USING EXISTING ENVIRONMENTAL DOCUMENTS

Section 24.02.90 - General - Using Existing Environmental Documents

This part, Section 90 contains information on using and supplementing the existing environmental documents prepared under SEPA or NEPA for the City's own environmental compliance. The City hereby adopts by reference the following sections of the WAC which contain related information:

197-11-600	When to Use Existing Environmental Documents
197-11-610	Use of NEPA
197-11-620	Supplemental Environmental Impact Statement - Procedures
197-11-625	Addenda Procedures
197-11-630	Adoption Procedures
197-11-635	Incorporation by Reference Procedures
197-11-640	Combining Documents

## PART SEVEN - SEPA AND AGENCY DECISIONS

### Section 24.02.95 - General - SEPA and Agency Decisions

This part, Section 24.02.95 - Section 24.02.105, contains information on SEPA's substantive authority and procedures for appealing SEPA determinations to agencies or the courts. The City hereby adopts by reference the following sections of the WAC which contain related information:

197-11-650	Purpose of this Part
197-11-655	Implementation
197-11-660	Substantive Authority and Mitigation
197-11-680	Appeals

### Section 24.02.100 - SEPA Policies:

(1) The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this Chapter:

- a. The policies of the State Environmental Policy Act - RCW 43.21C.
- b. Ordinance No. 2346, as amended - Land Use Policies Plan (LUPP).
- c. Ordinance No. 2740, as amended - Zoning Code.
- d. Ordinance No. 2699, as amended - The Zoning Map.
- e. Ordinance No. 2766 as amended - Subdivision Ordinance.
- f. The City of Kirkland Shoreline Master Program - Ordinance 2256 as well as the Shoreline Policies adopted in Kirkland Municipal Code Chapter 24.04.
- g. Building and Construction - Title 21 of the Kirkland Municipal Code.
- h. The perpetual Six-Year Transportation Improvement Program established by 19.08.051, Kirkland Municipal Code including annual amendments (Resolution R-3106 or its successor).

- i. Park and Open Space Plan - Ordinance No. 2117, as amended.
- j. East Planning Area Comprehensive Sewer Plan - Ordinance No. 2796, as amended.
- k. Flood Protection - Kirkland Municipal Code Chapter 21.56
- l. Policies and Regulations Relating to Water and Sewer Extensions established in Title 15, Kirkland Municipal Code.

Section 24.02.105 - Administrative Appeals:

- (1) Appealable Decisions: Only the following decisions of the City are appealable under this section:
  - a. The issuance of a Declaration of Non-significance, including mitigation measures and conditions that are required as part of that Declaration of Non-significance;
  - b. The issuance of a Declaration of Significance;
  - c. The adequacy of a Final EIS or a Final SEIS and any conditions or denials of the proposed action under the authority of SEPA.
- (2) Who May Appeal. Only the following may appeal:
  - a. The applicant or proponent.
  - b. Any agency with jurisdiction.
  - c. Any individual or other entity who is specifically and directly affected by the proposed action.
- (3) Time to Appeal.
  - a. An appeal of a DS or DNS must be filed with the Environmental Coordinator within seven (7) days of the date the Declaration is final. Except for DNS's listed in WAC 197-11-340(2), a DNS is final on the day it is issued by the Responsible Official. DNS's listed in WAC 197-11-340(2) are final fifteen (15) days after issuance by the Responsible Official. A DS is final on the date it is published under Section 85 of this Chapter.
  - b. An appeal on the adequacy of a Final EIS or Final SEIS or any condition or denial of the proposed action under the authority of SEPA must be filed with the Environmental Coordinator within seven

(7) days of the date the City decides upon the proposed action.

(4) How to Appeal: The appeal must be in the form of a written Notice of Appeal, and must contain a brief and concise statement of the matter being appealed, the specific components or aspects that are being appealed, the appellant's basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include.

(5) Who Will Hear and Decide Upon the Appeal.

a. Threshold Determinations: Appeals of Threshold Determinations will be heard and decided upon by the Hearing Examiner using the appeals provisions, as applicable, of Process I of the Kirkland Zoning Code, Ordinance No. 2740, as amended Sections 145.55 - 145.100, except that

....

(1) The matters to be considered and decided upon in the appeal are limited to the matters raised in the Notice of Appeal; and

(2) The decision of the Responsible Official shall be accorded substantial weight; and

(3) All testimony will be taken under oath.

b. Adequacy of Environmental Impact Statements and Conditions of the Proposed Action or Denials Based on SEPA. Appeals of Final EIS or Final SEIS adequacy and conditions or denials based on SEPA will be heard and decided upon as follows:

(1) If the proposed action requires approval through the quasi-judicial process that includes a Public Hearing in Ordinance Nos. 2766 or 2740, as amended, or Chapter 24.04 of the Kirkland Municipal Code, the appeal will be heard and decided upon using the procedures established for appealing the decision on the proposed action, except as listed in paragraphs 2(a) and 2(b) below. To the greatest extent possible, these appeals will be consolidated with any appeal that is filed on the proposed action.

(2) In all other cases, the appeal will be heard and decided upon by the Hearing Examiner, using the provisions as applicable of Process I of the Kirkland Zoning Code, Ordinance No. 2740, as amended, except that;

- (a) The matters to be considered and decided upon in the appeal are limited to the matters raised in the Notice of Appeal; and
  - (b) All testimony will be taken under oath.
  - (c) The decision of the Hearing Examiner may be appealed to the City Council under Paragraph 6 of this Section.
- (6) Further Appeal to City Council. Following the completion of the appeal under Paragraph 5 of this Section, any individual or entity who has a right to appeal, and who has appeared and given testimony at this prior hearing, may appeal any decision to condition or deny a proposed action (under the authority of RCW 43.21C060) to City Council. This appeal must be filed with the Environmental Coordinator within seven (7) days of the decision on the prior appeal, and must contain the information specified in Paragraph 4 of this Section. The City Council may, at its option, either hold its own public hearing on the matter, or without a public hearing review the record of the appeal under Paragraph 5 of this Section. If the City Council relies on the record of the appeal under Paragraph 5 of this Section, it may make whatever decision it deems appropriate so long as this is supported by the record. If City Council holds its own public hearing on the matter, the appeals provisions, as applicable, of Process IIA of the Kirkland Zoning Code, Ordinance No. 2740, as amended, will be followed except that:
- a. The matters to be considered and decided upon in the appeal are limited to the matters raised in the Notice of Appeal; and
  - b. All testimony will be taken under oath.

Section 24.02.110 - Judicial Review:

Judicial Review of SEPA determinations are by RCW 43.21C.075 required to be heard only at the time of judicial review of the underlying action i.e. approval or disapproval of the proposal for which SEPA review was required. For rules on perfecting and timing of the SEPA determination and judicial appeal see RCW 43.21C.075 and WAC 197-11-680(4). The notice required by WAC 197-11-680(5) shall be appended to the permit or "Notice of Appeal" at the time of final City action.

PART EIGHT - DEFINITIONS

Section 24.02.115 - General - Definitions

This part, Section 24.02.115, contains information on usage and definition of terms under SEPA. The City adopts the following sections by reference as supplemented by Section 24.02.15 of this Chapter:

197-11-700	Definitions
197-11-702	Act
197-11-704	Action
197-11-706	Addendum
197-11-708	Adoption
197-11-710	Affected Tribe
197-11-712	Affecting
197-11-714	Agency
197-11-716	Applicant
197-11-718	Built Environment
197-11-720	Categorical Exemption
197-11-722	Consolidated Appeal
197-11-724	Consulted Agency
197-11-726	Cost-Benefit Analysis
197-11-728	County/City
197-11-730	Decision Maker
197-11-732	Department
197-11-734	Determination of Non-Significance (DNS)
197-11-736	Determination of Significance (DS)
197-11-738	EIS
197-11-740	Environment
197-11-742	Environmental Checklist
197-11-744	Environmental Document
197-11-746	Environmental Review
197-11-748	Environmentally Sensitive Area
197-11-750	Expanded Scoping
197-11-752	Impacts
197-11-754	Incorporation by Reference
197-11-756	Lands Covered by Water
197-11-758	Lead Agency
197-11-760	License
197-11-762	Local Agency
197-11-764	Major Action
197-11-766	Mitigated DNS
197-11-768	Mitigation
197-11-770	Natural Environment
197-11-772	NEPA
197-11-774	Non-Project
197-11-776	Phased Review
197-11-778	Preparation
197-11-780	Private Project
197-11-782	Probable
197-11-784	Proposal
197-11-786	Reasonable Alternative
197-11-788	Responsible Official
197-11-790	SEPA
197-11-792	Scope
197-11-793	Scoping
197-11-794	Significant
197-11-796	State Agency

197-11-797      Threshold Determination  
 197-11-799      Underlying Governmental Action

PART NINE - CATEGORICAL EXEMPTIONS

Section 24.02.120 - General - Categorical Exemptions

This part Section 24.02.120 contains information on the rules for categorical exemptions. The City hereby adopts by reference the following sections of the WAC which contain related information:

197-11-800      Categorical Exemptions  
 197-11-880      Emergencies  
 197-11-890      Petitioning DOE to Change Exemptions

PART TEN - AGENCY COMPLIANCE

Section 24.02.125 - General - Agency Compliance

This part, Section 24.02.125 - Section 24.02.135, contains information on rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting lead agency, and applying these rules to current agency activities. The City hereby adopts by reference the following sections of the WAC which contain related information:

197-11-900      Purpose of this Part  
 197-11-902      Agency SEPA Policies  
 197-11-908      Environmentally Sensitive Areas  
 197-11-916      Application to On-Going Action  
 197-11-920      Agencies with Environmental Expertise  
 197-11-922      Lead Agency Rules  
 197-11-924      Determining Lead Agency  
 197-11-926      Lead Agency for Governmental Proposals  
 197-11-928      Lead Agency for Public and Private Proposals  
 197-11-930      Lead Agency for Private Projects with  
                   One Agency Jurisdiction  
 197-11-932      Lead Agency for Private Projects Requiring  
                   Licenses From More Than One Agency, When  
                   One of the Agencies is a County/City  
 197-11-934      Lead Agency for Private Projects Requiring  
                   Licenses From a Local Agency, Not a  
                   County/City; and One or More State Agencies  
 197-11-936      Lead Agency for Private Projects Requiring  
                   Licenses From More Than One State Agency  
 197-11-938      Lead Agencies for Specific Proposals  
 197-11-940      Transfer Lead Agency Status to a State Agency  
 197-11-942      Agreements on Lead Agency Status  
 197-11-944      Agreements on Division of Lead Agency Duties  
 197-11-946      DOE Resolution of Lead Agency Disputes  
 197-11-948      Assumption of Lead Agency Status



Section 24.02.130 - Environmentally Sensitive Areas Map  
Adopted by Reference:

The map entitled "Environmentally Sensitive Areas Map of the City of Kirkland," bearing the date of August 4, 1980 and the signature of the Director of the Department of Planning and Community Development of the City, is hereby adopted by reference as though fully set forth herein. That map shows environmentally sensitive areas of the City and shows the exemptions from SEPA that do not apply to each environmentally sensitive area.

Section 24.02.135 - Fees:

The City shall require fees as set forth in Ordinance No. 2776, as amended, for its activities in accordance with provisions of this Chapter.

PART ELEVEN - FORMS

Section 24.02.140 - General - Forms:

This part, Section 24.02.140 contains information on Forms. The City hereby adopts by reference the following sections of the WAC which contain related information:

197-11-960	Environmental Checklist
197-11-965	Adoption Notice
197-11-970	Determination of Non-Significance (DNS)
197-11-980	Determination of Significance and Scoping Notice (DS)
197-11-985	Notice of Assumption of Lead Agency Status
197-11-990	Notice of Action

Section 2 - Severability:

If any provision of this Ordinance, or its application to any person or circumstance, is held invalid, the remainder of this Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3 - Repealer:

Ordinance Nos. 2319, 2473, 2538 and 2662, all as amended, are each hereby repealed, as well as all other City SEPA Procedures Ordinances.

Section 4 - Adoption of Regulations by Reference - Public Hearing

Three copies of this ordinance, including those portions of RCW 43.21C and Chapter 197-11 WAC, which are by reference adopted as parts of this ordinance were filed in the City Clerk's office on August 28, 1984 and were available for public inspection during the time this Ordinance was under consideration by

the City Council. The City Council held a public hearing on this ordinance on September 4, 1984.

Section 5 - Effective Date:

This Ordinance shall take effect five (5) days from and after its passage by the City Council and posting or publication as required by law.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this 4th day of September, 1984.

SIGNED IN AUTHENTICATION thereof this 4th day of September, 1984.

*Loris Cooper*  
Mayor

Attest:

*Janece Perry*  
Deputy City Clerk

Approved as to Form:

*[Signature]*  
City Attorney

7688B/0075A/SW:jh

I hereby certify under penalty of perjury that the foregoing ordinance was posted on the 5th day of September, 1984, in accordance with the provisions of RCW 35.22.260 and City of Kirkland Ordinance No. 2600.

*Janece Perry*  
Deputy City Clerk



**STATE  
ENVIRONMENTAL  
POLICY  
ACT  
RULES**

**CHAPTER 197-11  
WASHINGTON ADMINISTRATIVE CODE**

**EFFECTIVE APRIL 4, 1984**

State of  
Washington

John Spellman  
Governor

Department  
of Ecology

Donald W. Moore  
Director

## FOREWORD

Adoption of these rules culminates a three year process initiated in 1981, when the legislature established the Commission on Environmental Policy. The commission was directed to study the State Environmental Policy Act (SEPA, Chapter 43.21C RCW) and the SEPA guidelines (Chapter 197-10 WAC). The intent of the study was to recommend changes to the act and/or the guidelines that would reduce paperwork, duplication and delay; simplify the rules and increase certainty; and improve environmental decision making, including public involvement. In its report the commission recommended amendments to the act and a rewrite of the rules, with Chapter 197-10 WAC being repealed and a new Chapter 197-11 being adopted.

In amending SEPA in 1983, the legislature directed the Department of Ecology to adopt rules interpreting and implementing SEPA and providing uniform rules applying to all branches of government in the state. The department circulated the Commission on Environmental Policy's draft of proposed rules for review and comment in September 1983.

After receiving and evaluating 100 individual letters and public hearing testimony, the department revised the proposed Chapter 197-11 WAC and circulated it for review and comment in December 1983.

On January 26, 1984, the department adopted Chapter 197-11 WAC and repealed Chapter 197-10 WAC. The new rules became effective on April 4, 1984.

All agencies must adopt their own SEPA procedures by October 1, 1984. After that date, these statewide rules apply if an agency has not adopted SEPA procedures pursuant to these rules.

If you have any questions regarding these rules or the department's annual SEPA workshops and handbook, call the Environmental Review Section; the phone number is (206) 459-6026.

## SUMMARY OF THE SEPA PROCESS

This summary is included to help the reader and the general public understand SEPA and the SEPA rules. It provides information only and is not regulatory. Some cross-references are given, but the reader should refer to the index for more complete direction.

**Substantive Policy Mandate.** SEPA is intended to help everyone make better environmental decisions. SEPA contains specific substantive policies and goals which apply to actions of all levels of government within the state. (RCW 43.21C.020; RCW 43.21C.030(1).) SEPA works together with other laws to accomplish its mandate. (RCW 43.21C.050; RCW 43.21C.060.)

**Procedural Mandate.** The requirements of the act apply to all agencies, including local governments, but not the judiciary or state legislature. When agencies take certain actions, they must follow specific procedures to assure that they give appropriate consideration to environmental factors and carry out the act's substantive policies. (RCW 43.21C.030(2).)

**Environmental Significance.** The act's procedural provisions distinguish between actions that are likely to have "significant" environmental impacts and actions that are not. (RCW 43.21C.030(2)(c); RCW 43.21C.031; RCW 43.21C.110.) Actions likely to have significant adverse environmental impacts are analyzed in an environmental impact statement (EIS).

**Threshold Determination.** The environmental review process under SEPA generally begins when someone submits a permit application to an agency or when an agency proposes some activity, policy, plan, ordinance, or regulation (197-11-784). A "lead agency" has the principal responsibility for implementing SEPA procedures for a specific proposal (197-11-050). The rules provide direction on how the lead agency is determined for specific proposals; however, the lead agency for a project will normally be the city or the county in which the project will be located. (197-11-922.) In the threshold determination, the lead agency decides whether a proposal is likely to have a probable significant adverse environmental impact. (See Part Three of the rules.)

**Categorical Exemptions.** Experience has shown that many proposed actions (or categories of actions) are not likely to have significant adverse environmental impacts, even though they may have some modest environmental impacts. Rather than requiring agencies to review the potential impacts of every proposal, the rules contain a list of "categorical exemptions." (197-11-305 and Part Nine of these rules.) If a proposal falls within a categorical exemption, no environmental documents are required (RCW 43.21C.031; 197-11-310). Categorical exemptions do not apply to certain proposals in environmentally sensitive areas (197-11-108) or to certain proposals that include a series of individually exempt actions (197-11-305). (RCW 43.21C.110(1)(a).)

**Environmental Checklist.** If a proposal is not categorically exempt, the proponent completes an "environmental checklist", which helps the lead agency identify environmental impacts due to the proposal and decide if the impacts are significant. The checklist need not be completed if the applicant and lead agency agree that an EIS is necessary. (197-11-325 and 960.) If a determination of nonsignificance is issued, the checklist also helps provide information on the proposal.

**Determination of Significance/Nonsignificance.** If an agency decides that a proposal would not have a probable significant adverse environmental impact, the lead agency issues a determination of nonsignificance (DNS), and no EIS is prepared. (197-11-310 and 340.) If an agency decides that a proposal would have a probable significant adverse environmental impact, the lead agency issues a determination of significance (DS). (197-11-310 and 360.) If a proposal has some environmental impact, agencies may consider whether mitigation measures will reduce or eliminate impacts. If so, agencies may issue a mitigated DNS (197-11-350), which documents mitigation measures that will be implemented. (197-11-340 and 350.)

**Scoping; Draft and Final EIS.** If an EIS will be prepared, the lead agency must decide the scope of the EIS, which means the range of actions, alternatives, and impacts discussed in the EIS (197-11-408 and 792). EISs must cover a proposal's probable significant adverse environmental impacts (RCW 43.21C.031; 197-11-440). The lead agency will invite agency and public comment on its scope; this is called "scoping." The scoping process leads to a draft EIS, which is circulated for a 30-day comment period. (See Parts Four and Five of the rules.) After considering the comments and revising the draft EIS accordingly, the lead agency issues a final EIS; all agencies must wait seven days before acting on the permit or other approval (197-11-460).

**Agency Decision.** After considering the appropriate environmental concerns and documents, along with other relevant factors, agencies may act upon the permit or other approval required for a proposal to proceed. An environmental document does not have to be an agency's only decisionmaking document. An agency may condition or deny an applicant's proposal based on information in a DNS or EIS under certain rules (RCW 43.21C.060; 197-11-660). To avoid duplication and delay, an agency may rely on background environmental documents; however, an agency must provide additional environmental review under certain conditions (Part Six). Since a major purpose of SEPA is to link meaningful environmental review with government activities, agencies must decide when and how best to integrate the SEPA process with their existing planning and decisionmaking (197-11-055, 060, and 640). Challenges or appeals to agency SEPA compliance must be linked to a specific government action and be brought in a timely manner. (RCW 43.21C.075; 197-11-680.)

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# Chapter 197-11 WAC

## SEPA RULES

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197-11-985	Notice of assumption of lead agency status.
197-11-990	Notice of action.

## PART ONE - PURPOSE/AUTHORITY

**WAC 197-11-010 Authority.** These rules are promulgated under the State Environmental Policy Act (SEPA), chapter 43.21C RCW. RCW 43.21C.110 specifies the content of these rules and grants authority for promulgation. As required in RCW 43.21C.095, these rules shall be given substantial deference in the interpretation of SEPA.

**WAC 197-11-020 Purpose.** (1) The purpose of these rules is to establish uniform requirements for compliance with SEPA. Each agency must have its own SEPA procedures consistent with these state-wide rules. The effective date of these rules is stated in 197-11-955.

(2) These rules replace the previous guidelines in chapter 197-10 WAC.

(3) The provisions of these rules and the act must be read together as a whole in order to comply with the spirit and letter of the law.

**WAC 197-11-030 Policy.** (1) The policies and goals set forth in SEPA are supplementary to existing agency authority.

(2) Agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and laws of the state of Washington in accordance with the policies set forth in SEPA and these rules.

(b) Find ways to make the SEPA process more useful to decisionmakers and the public; promote certainty regarding the requirements of the act; reduce paperwork and the accumulation of extraneous background data; and emphasize important environmental impacts and alternatives.

(c) Prepare environmental documents that are concise, clear, and to the point, and are supported by evidence that the necessary environmental analyses have been made.

(d) Initiate the SEPA process early in conjunction with other agency operations to avoid delay and duplication.

(e) Integrate the requirements of SEPA with existing agency planning and licensing procedures and practices, so that such procedures run concurrently rather than consecutively.

(f) Encourage public involvement in decisions that significantly affect environmental quality.

(g) Identify, evaluate, and require or implement, where required by the act and these rules, reasonable alternatives that would mitigate adverse effects of proposed actions on the environment.

## PART TWO - GENERAL REQUIREMENTS

**WAC 197-11-040 Definitions.** The terms used in these rules are explained in Part Eight, Definitions, 197-11-700 to 197-11-799. This terminology shall be uniform throughout the state as applied to SEPA, chapter 43.21C RCW. References in these rules to 197-11 refer to chapter 197-11 of the Washington Administrative Code (chapter 197-11 WAC).

**WAC 197-11-050 Lead agency.** (1) A lead agency shall be designated when an agency is developing or is presented with a proposal, following the rules beginning at 197-11-922.

(2) The lead agency shall be the agency with main responsibility for complying with SEPA's procedural requirements and shall be the only agency responsible for:

(a) The threshold determination; and

(b) Preparation and content of environmental impact statements.

**WAC 197-11-055 Timing of the SEPA process.** (1) *Integrating SEPA and agency activities.* The SEPA process shall be integrated 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 to seek to resolve potential problems.

(2) *Timing of review of proposals.* The lead agency shall prepare its threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decisionmaking

process, when the principal features of a proposal and its environmental impacts can be reasonably identified.

(a) A proposal exists when an agency is presented with an application or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the environmental effects can be meaningfully evaluated.

(i) The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts.

(ii) Preliminary steps or decisions are sometimes needed before an action is sufficiently definite to allow meaningful environmental analysis.

(b) Agencies shall identify the times at which the environmental review shall be conducted either in their procedures or on a case-by-case basis. Agencies may also organize environmental review in phases, as specified in 197-11-060(5).

(c) Appropriate consideration of environmental information shall be completed before an agency commits to a particular course of action (197-11-070).

(3) *Applications and rulemaking.* The timing of environmental review for applications and for rulemaking shall be as follows:

(a) At the latest, the lead agency shall begin environmental review, if required, when an application is complete. The lead agency may initiate review earlier and may have informal conferences with applicants. A final threshold determination or FEIS shall normally precede or accompany the final staff recommendation, if any, in a quasi-judicial proceeding on an application. Agency procedures shall specify the type and timing of environmental documents that shall be submitted to planning commissions and similar advisory bodies (197-11-906).

(b) For rulemaking, the DNS or DEIS shall normally accompany the proposed rule. An FEIS, if any, shall be issued at least seven days before adoption of a final rule (197-11-460(4)).

(4) *Applicant review at conceptual stage.* In general, agencies should adopt procedures for environmental review and for preparation of EISs on private proposals at the conceptual stage rather than the final detailed design stage.

(a) If an agency's only action is a decision on a building permit or other license that requires detailed project plans and specifications, agencies shall provide applicants with the opportunity, for environmental review under SEPA prior to requiring applicants to submit such detailed project plans and specifications.

(b) Agencies may specify the amount of detail needed from applicants for such early environmental review, consistent with 197-11-100 and 197-11-335, in their SEPA or permit procedures.

(c) This subsection does not preclude agencies or applicants from preliminary discussions or exploration of ideas and options prior to commencing formal environmental review.

(5) An overall decision to proceed with a course of action may involve a series of actions or decisions by one

or more agencies. If several agencies have jurisdiction over a proposal, they should coordinate their SEPA processes wherever possible. The agencies shall comply with lead agency determination requirements in 197-11-050 and 197-11-922.

(6) To meet the requirement to insure that environmental values and amenities are given appropriate consideration along with economic and technical considerations, environmental documents and analyses shall be circulated and reviewed with other planning documents to the fullest extent possible.

(7) For their own public proposals, lead agencies may extend the time limits prescribed in these rules.

#### WAC 197-11-060 Content of environmental review.

(1) Environmental review consists of the range of proposed activities, alternatives, and impacts to be analyzed in an environmental document, in accordance with SEPA's goals and policies. This section specifies the content of environmental review common to all environmental documents required under SEPA.

(2) The content of environmental review:

(a) Depends on each particular proposal, on an agency's existing planning and decisionmaking processes, and on the time when alternatives and impacts can be most meaningfully evaluated;

(b) For the purpose of deciding whether an EIS is required, is specified in the environmental checklist, in 197-11-330 and 197-11-444;

(c) For an environmental impact statement, is considered its "scope" (197-11-792 and Part Four of these rules);

(d) For any supplemental environmental review, is specified in Part Six.

(3) *Proposals.*

(a) Agencies shall make certain that the proposal that is the subject of environmental review is properly defined.

(i) Proposals include public projects or proposals by agencies, proposals by applicants, if any, and proposed actions and regulatory decisions of agencies in response to proposals by applicants.

(ii) A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, or as a particular or preferred course of action.

(iii) Proposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions. A proposal could be described, for example, as "reducing flood damage and achieving better flood control by one or a combination of the following means: Building a new dam; maintenance dredging; use of shoreline and land use controls; purchase of floodprone areas; or relocation assistance."

(b) Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased review is allowed under subsection (5).) Proposals or parts of proposals are closely related,

and they shall be discussed in the same environmental document, if they:

(i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or

(ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.

(c) *(Optional)* Agencies may wish to analyze "similar actions" in a single environmental document.

(i) Proposals are similar if, when viewed with other reasonably foreseeable actions, they have common aspects that provide a basis for evaluating their environmental consequences together, such as common timing, types of impacts, alternatives, or geography. This section does not require agencies or applicants to analyze similar actions in a single environmental document or require applicants to prepare environmental documents on proposals other than their own.

(ii) When preparing environmental documents on similar actions, agencies may find it useful to define the proposals in one of the following ways: (A) Geographically, which may include actions occurring in the same general location, such as a body of water, region, or metropolitan area; or (B) generically, which may include actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, environmental media, or subject matter.

(4) *Impacts.*

(a) SEPA's procedural provisions require the consideration of "environmental" impacts (see definition of "environment" in 197-11-740 and of "impacts" in 197-11-752), with attention to impacts that are likely, not merely speculative. (See definition of "probable" in 197-11-782 and 197-11-080 on incomplete or unavailable information.)

(b) In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries (See 197-11-330(3) also).

(c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

(d) A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.

(e) The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, 197-11-792) may be wider than the impacts for which mitigation measures are required of applicants (197-11-660). This will depend upon the specific impacts, the extent to

which the adverse impacts are attributable to the applicant's proposal, and the capability of applicants or agencies to control the impacts in each situation.

(5) *Phased review.*

(a) Lead agencies shall determine the appropriate scope and level of detail of environmental review to coincide with meaningful points in their planning and decisionmaking processes. (See 197-11-055 on timing of environmental review.)

(b) Environmental review may be phased. If used, phased review assists agencies and the public to focus on issues that are ready for decision and exclude from consideration issues already decided or not yet ready. Broader environmental documents may be followed by narrower documents, for example, that incorporate prior general discussion by reference and concentrate solely on the issues specific to that phase of the proposal.

(c) Phased review is appropriate when:

(i) The sequence is from a nonproject document to a document of narrower scope such as a site specific analysis (see, for example, 197-11-443); or

(ii) The sequence is from an environmental document on a specific proposal at an early stage (such as need and site selection) to a subsequent environmental document at a later stage (such as sensitive design impacts).

(d) Phased review is not appropriate when:

(i) The sequence is from a narrow project document to a broad policy document;

(ii) It would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts; or

(iii) It would segment and avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document under 197-11-060(4)(b) or 197-11-305(1); however, the level of detail and type of environmental review may vary with the nature and timing of proposals and their component parts.

(e) When a lead agency knows it is using phased review, it shall so state in its environmental document.

(f) Agencies shall use the environmental checklist, scoping process, nonproject EISs, incorporation by reference, adoption, and supplemental EIS's, and addenda, as appropriate, to avoid duplication and excess paperwork.

(g) Where proposals are related to a large existing or planned network, such as highways, streets, pipelines, or utility lines or systems, the lead agency may analyze in detail the overall network as the present proposal or may select some of the future elements for present detailed consideration. Any phased review shall be logical in relation to the design of the overall system or network, and shall be consistent with this section and 197-11-070.

**WAC 197-11-070 Limitations on actions during SEPA process.** (1) Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:

(a) Have an adverse environmental impact; or

(b) Limit the choice of reasonable alternatives.

(2) In addition, certain DNSs require a fifteen-day period prior to agency action (197-11-340(2)), and FEISs require a seven-day period prior to agency action (197-11-460(4)).

(3) In preparing environmental documents, there may be a need to conduct studies that may cause nonsignificant environmental impacts. If such activity is not exempt under 197-11-800(18), the activity may nonetheless proceed if a checklist is prepared and appropriate mitigation measures taken.

(4) This section does not preclude developing plans or designs, issuing requests for proposals (RFPs), securing options, or performing other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection (1).

**WAC 197-11-080 Incomplete or unavailable information.** (1) If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents.

(2) When there are gaps in relevant information or scientific uncertainty concerning significant impacts, agencies shall make clear that such information is lacking or that substantial uncertainty exists.

(3) Agencies may proceed in the absence of vital information as follows:

(a) If information relevant to adverse impacts is essential to a reasoned choice among alternatives, but is not known, and the costs of obtaining it are exorbitant; or

(b) If information relevant to adverse impacts is important to the decision and the means to obtain it are speculative or not known;

Then the agency shall weigh the need for the action with the severity of possible adverse impacts which would occur if the agency were to decide to proceed in the face of uncertainty. If the agency proceeds, it shall generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed.

(4) Agencies may rely upon applicants to provide information as allowed in 197-11-100.

**WAC 197-11-090 Supporting documents.** If an agency prepares background or supporting analyses, studies, or technical reports, such material shall be considered part of the agency's record of compliance with SEPA, as long as the preparation and circulation of such material complies with the requirements in these rules for incorporation by reference and the use of supporting documents.

**WAC 197-11-100 Information required of applicants.** Further information may be required if the responsible official determines that the information initially supplied is not reasonably adequate to fulfill the purposes for which it is required. An applicant may, at

any time, voluntarily submit information beyond that required under these rules. An agency is allowed to require information from an applicant in the following areas:

(1) *Environmental checklist.* An applicant may be required to complete the environmental checklist in 197-11-960 in connection with filing an application (see 197-11-315). Additional information may be required at an applicant's expense, but not until after initial agency review of the checklist (197-11-315 and 197-11-335).

(2) *Threshold determination.* Any additional information required by an agency after its initial review of the checklist shall be limited to those elements on the checklist for which the lead agency has determined that information accessible to the agency is not reasonably sufficient to evaluate the environmental impacts of the proposal. The lead agency may require field investigations or research by the applicant reasonably related to determining a proposal's environmental impacts (197-11-335). An applicant may clarify or revise the checklist at any time prior to a threshold determination. Revision of a checklist after a threshold determination is issued shall be made under 197-11-340 or 197-11-360.

(3) *Environmental impact statements.* The responsible official may require an applicant to provide relevant information that is not in the possession of the lead agency. Although an agency may include additional analysis not required under SEPA in an EIS (197-11-440(8), 197-11-448(4) and 197-11-640), the agency shall not require the applicant to furnish such information, under these rules. An applicant shall not be required to provide information requested of a consulted agency until the agency has responded or the time allowed for the consulted agency's response has elapsed, whichever is earlier. Preparation of an EIS by the applicant is in 197-11-420.

### PART THREE - CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATION

**WAC 197-11-300 Purpose of this part.** This Part provides rules for:

(1) Administering categorical exemptions for proposals that would not have probable significant adverse impacts;

(2) Deciding whether a proposal has a probable significant adverse impact and thus requires an EIS (the threshold determination);

(3) Providing a way to review and mitigate nonexempt proposals through the threshold determination; and

(4) Integrating SEPA into early planning to ensure appropriate consideration of SEPA's policies and to eliminate duplication and delay.

**WAC 197-11-305 Categorical exemptions.** (1) If a proposal fits within any of the provisions in Part Nine of these rules, the proposal shall be categorically exempt

from threshold determination requirements (197-11-720) *except* as follows:

(a) The proposal is not exempt under 197-11-908, environmentally sensitive areas.

(b) The proposal is a segment of a proposal that includes:

(i) A series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not; or

(ii) A series of exempt actions that are physically or functionally related to each other, and that together may have a probable significant adverse environmental impact in the judgment of an agency with jurisdiction. If so, that agency shall be the lead agency, unless the agencies with jurisdiction agree that another agency should be the lead agency. Agencies may petition the department of ecology to resolve disputes (197-11-946).

For such proposals, the agency or applicant may proceed with the exempt aspects of the proposals, prior to conducting environmental review, if the requirements of 197-11-070 are met.

(2) An agency is not required to document that a proposal is *categorically exempt*. Agencies may note on an application that a proposal is categorically exempt or place such a determination in agency files.

**WAC 197-11-310 Threshold determination required.** (1) A threshold determination is required for any proposal which meets the definition of action and is not categorically exempt.

(2) The responsible official of the lead agency shall make the threshold determination, which shall be made as close as possible to the time an agency has developed or is presented with a proposal (197-11-784).

(3) In most cases, the time to complete a threshold determination should not exceed fifteen days. Complex proposals, those where additional information is needed, and/or those accompanied by an inaccurate checklist may require additional time. Upon request by an applicant, the responsible official shall select a date for making the threshold determination and notify the applicant of such date in writing.

(4) All threshold determinations shall be documented in:

(a) A determination of nonsignificance (DNS) (197-11-340); or

(b) A determination of significance (DS) (197-11-360).

**WAC 197-11-315 Environmental checklist.** (1) Agencies:

(a) Shall use the environmental checklist substantially in the form found in 197-11-960 to assist in making threshold determinations for proposals, *except* for: Public proposals on which the lead agency has decided to prepare its own EIS, or proposals on which the lead agency and applicant agree an EIS will be prepared.

(b) May use an environmental checklist whenever it would assist in their planning and decisionmaking, but

shall not require an applicant to prepare a checklist under SEPA, unless a checklist is required by (1)(a) of this section.

(2) The lead agency shall prepare the checklist or require an applicant to prepare the checklist.

(3) The items in the environmental checklist are not weighted. The mention of one or many adverse environmental impacts does not necessarily mean that the impacts are significant. Conversely, a probable significant adverse impact on the environment may result in the need for an EIS.

**WAC 197-11-330 Threshold determination process.** An EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. The lead agency decides whether an EIS is required in the threshold determination process, as described below.

(1) In making a threshold determination, the responsible official shall:

(a) Review the environmental checklist, if used:

(i) Independently evaluating the responses of any applicant and indicating the result of its evaluation in the DS, in the DNS, or on the checklist; and

(ii) Conducting its initial review of the environmental checklist and any supporting documents without requiring additional information from the applicant.

(b) Determine if the proposal is likely to have a probable significant adverse environmental impact, based on the proposed action, the information in the checklist (197-11-960), and any additional information furnished under 197-11-335 and 197-11-350; and

(c) Consider mitigation measures which an agency or the applicant will implement as part of the proposal.

(2) In making a threshold determination, the responsible official should determine whether:

(a) All or part of the proposal, alternatives, or impacts have been analyzed in a previously prepared environmental document, which can be adopted or incorporated by reference (see Part Six).

(b) Environmental analysis would be more useful or appropriate in the future in which case, the agency shall commit to timely, subsequent environmental review, consistent with 197-11-055 through 197-11-070 and Part Six.

(3) In determining an impact's significance (197-11-794), the responsible official shall take into account the following, that:

(a) The same proposal may have a significant adverse impact in one location but not in another location;

(b) The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment;

(c) Several marginal impacts when considered together may result in a significant adverse impact;

(d) For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified.

(e) A proposal may to a significant degree:

(i) Adversely affect environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness;

(ii) Adversely affect endangered or threatened species or their habitat;

(iii) Conflict with local, state, or federal laws or requirements for the protection of the environment; and

(iv) Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety.

(4) If after following 197-11-080 and 197-11-335 the lead agency reasonably believes that a proposal may have a significant adverse impact, an EIS is required.

(5) A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

**WAC 197-11-335 Additional information.** The lead agency shall make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal (197-11-055(2) and 197-11-060(3)). The lead agency may take one or more of the following actions if, after reviewing the checklist, the agency concludes that there is insufficient information to make its threshold determination:

(1) Require an applicant to submit more information on subjects in the checklist;

(2) Make its own further study, including physical investigations on a proposed site;

(3) Consult with other agencies, requesting information on the proposal's potential impacts which lie within the other agencies' jurisdiction or expertise (agencies shall respond in accordance with 197-11-550); or

(4) Decide that all or part of the action or its impacts are not sufficiently definite to allow environmental analysis and commit to timely, subsequent environmental analysis, consistent with 197-11-055 through 197-11-070.

**WAC 197-11-340 Determination of nonsignificance (DNS).** (1) If the responsible official determines there will be no probable significant adverse environmental impacts from a proposal, the lead agency shall prepare and issue a determination of nonsignificance (DNS) substantially in the form provided in 197-11-970. If an agency adopts another environmental document in support of a threshold determination (Part Six), the notice of adoption (197-11-965) and the DNS shall be combined or attached to each other.

(2) When a DNS is issued for any of the proposals listed in (2)(a), the requirements in this subsection shall be met.

(a) An agency shall not act upon a proposal for fifteen days after the date of issuance of a DNS if the proposal involves:

(i) Another agency with jurisdiction;

(ii) Demolition of any structure or facility not exempted by 197-11-800(2)(f) or 197-11-880;

(iii) Issuance of clearing or grading permits not exempted in Part Nine of these rules; or

(iv) A DNS under 197-11-350(2), 197-11-350(3) or 197-11-360(4).

(b) The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the department of ecology, and affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under 197-11-510.

(c) Any person, affected tribe, or agency may submit comments to the lead agency within fifteen days of the date of issuance of the DNS.

(d) The date of issue for the DNS is the date the DNS is sent to the department of ecology and agencies with jurisdiction and is made publicly available.

(e) An agency with jurisdiction may assume lead agency status only within this fifteen-day period (197-11-948).

(f) The responsible official shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS or supporting documents. When a DNS is modified, the lead agency shall send the modified DNS to agencies with jurisdiction.

(3)(a) The lead agency shall withdraw a DNS if:

(i) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;

(ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or

(iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.

(b) Subsection (3)(a)(ii) shall not apply when a non-exempt license has been issued on a private project.

(c) If the lead agency withdraws a DNS, the agency shall make a new threshold determination and notify other agencies with jurisdiction of the withdrawal and new threshold determination. If a DS is issued, each agency with jurisdiction shall commence action to suspend, modify, or revoke any approvals until the necessary environmental review has occurred (see also 197-11-070).

**WAC 197-11-350 Mitigated DNS.** The purpose of this section is to allow clarifications or changes to a proposal prior to making the threshold determination.

(1) In making threshold determinations, an agency may consider mitigation measures that the agency or applicant will implement.

(2) After submission of an environmental checklist and prior to the lead agency's threshold determination on a proposal, an applicant may ask the lead agency to indicate whether it is considering a DS. If the lead agency indicates a DS is likely, the applicant may clarify or change features of the proposal to mitigate the impacts which led the agency to consider a DS likely. The applicant shall revise the environmental checklist as may be necessary to describe the clarifications or changes. The lead agency shall make its threshold determination based upon the changed or clarified proposal. If a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS shall be prepared.

(3) Whether or not an applicant requests early notice under subsection (2), if the lead agency specifies mitigation measures on an applicant's proposal that would allow it to issue a DNS, and the proposal is clarified, changed, or conditioned to include those measures, the lead agency shall issue a DNS.

(4) Environmental documents need not be revised and resubmitted if the clarifications or changes are stated in writing in documents that are attachments to, or incorporate by reference, the documents previously submitted. An addendum may be used, see Part Six.

(5) Agencies may clarify or change features of their own proposal, and may specify mitigation measures in their DNSs, as a result of comments by other agencies or the public or as a result of additional agency planning.

(6) An agency's indication under this section that a DS appears likely shall not be construed as a determination of significance. Likewise, the preliminary discussion of clarifications or changes to a proposal shall not bind the lead agency to a mitigated DNS.

(7) Agencies may specify procedures for enforcement of mitigation measures in their agency SEPA procedures.

**WAC 197-11-360 Determination of significance (DS)/initiation of scoping.** (1) If the responsible official determines that a proposal may have a probable significant adverse environmental impact, the responsible official shall prepare and issue a determination of significance (DS) substantially in the form provided in 197-11-980. The DS shall describe the main elements of the proposal, the location of the site, if a site-specific proposal, and the main areas the lead agency has identified for discussion in the EIS. A copy of the environmental checklist may be attached.

(2) If an agency adopts another environmental document in support of a threshold determination (Part Six), the notice of adoption (197-11-965) and the DS shall be combined or attached to each other.

(3) The responsible official shall put the DS in the lead agency's file and shall commence scoping (197-11-408) by circulating copies of the DS to the applicant, agencies with jurisdiction and expertise, if any, affected

tribes, and to the public. Notice shall be given under 197-11-510. The lead agency is not required to scope if the agency is adopting another environmental document for the EIS or is preparing a supplemental EIS.

(4) If at any time after the issuance of a DS a proposal is changed so, in the judgment of the lead agency, there are no probable significant adverse environmental impacts, the DS shall be withdrawn and a DNS issued instead. The DNS shall be sent to all who commented on the DS. A proposal shall not be considered changed until all license applications for the proposal are revised to conform to the changes or other binding commitments made by agencies or by applicants.

**WAC 197-11-390 Effect of threshold determination.** (1) When the responsible official makes a threshold determination, it is final and binding on all agencies, subject to the provisions of this section and 197-11-340, 197-11-360, and Part Six.

(2) The responsible official's threshold determination:

(a) For proposals listed in 197-11-340(2), shall not be final until fifteen days after issuance.

(b) Shall not apply if another agency with jurisdiction assumes lead agency status under 197-11-948.

(c) Shall not apply when withdrawn by the responsible official under 197-11-340 or 197-11-360.

(d) Shall not apply when reversed on appeal.

(3) Regardless of any appeals, a DS or DNS issued by the responsible official may be considered final for purposes of other agencies' planning and decisionmaking unless subsequently changed, reversed, or withdrawn.

## PART FOUR - ENVIRONMENTAL IMPACT STATEMENT (EIS)

**WAC 197-11-400 Purpose of EIS.** (1) The primary purpose of an environmental impact statement is to ensure that SEPA's policies are an integral part of the ongoing programs and actions of state and local government.

(2) An EIS shall provide impartial discussion of significant environmental impacts and shall inform decisionmakers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.

(3) Environmental impact statements shall be concise, clear, and to the point, and shall be supported by the necessary environmental analysis. The purpose of an EIS is best served by short documents containing summaries of, or reference to, technical data and by avoiding excessively detailed and overly technical information. The volume of an EIS does not bear on its adequacy. Larger documents may even hinder the decisionmaking process.

(4) The EIS process enables government agencies and interested citizens to review and comment on proposed government actions, including government approval of private projects and their environmental effects. This process is intended to assist the agencies and applicants to improve their plans and decisions, and to encourage



the resolution of potential concerns or problems prior to issuing a final statement. An environmental impact statement is more than a disclosure document. It shall be used by agency officials in conjunction with other relevant materials and considerations to plan actions and make decisions.

**WAC 197-11-402 General requirements.** Agencies shall prepare environmental impact statements as follows:

(1) EISs need analyze only the reasonable alternatives and probable adverse environmental impacts that are significant. Beneficial environmental impacts or other impacts may be discussed.

(2) The level of detail shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or referenced.

(3) Discussion of insignificant impacts is not required; if included, such discussion shall be brief and limited to summarizing impacts or noting why more study is not warranted.

(4) Description of the existing environment and the nature of environmental impacts shall be limited to the affected environment and shall be no longer than is necessary to understand the environmental consequences of the alternatives, including the proposal.

(5) EISs shall be no longer than necessary to comply with SEPA and these rules. Length should relate first to potential environmental problems and then to the size or complexity of the alternatives, including the proposal.

(6) The basic features and analysis of the proposal, alternatives, and impacts shall be discussed in the EIS and shall be generally understood without turning to other documents; however, an EIS is not required to include all information conceivably relevant to a proposal, and may be supplemented by appendices, reports, or other documents in the agency's record.

(7) Agencies shall reduce paperwork and the accumulation of background data by adopting or incorporating by reference, existing, publicly available environmental documents, wherever possible.

(8) Agencies shall prepare EISs concurrently with and coordinated with environmental studies and related surveys that may be required for the proposal under other laws, when feasible.

(9) The range of alternative courses of action discussed in EISs shall encompass those to be considered by the decisionmaker.

(10) EISs shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made.

**WAC 197-11-405 EIS types.** (1) Draft and final environmental impact statements (EISs) shall be prepared; draft and final supplemental EISs may be prepared.

(2) A draft EIS (DEIS) allows the lead agency to consult with members of the public, affected tribes, and agencies with jurisdiction and with expertise. The lead agency shall issue a DEIS and consider comments as stated in Part Five.

(3) A final EIS (FEIS) shall revise the DEIS as appropriate and respond to comments as required in 197-11-560. An FEIS shall respond to opposing views on significant adverse environmental impacts and reasonable alternatives which the lead agency determines were not adequately discussed in the DEIS. The lead agency shall issue an FEIS as specified by 197-11-460.

(4) A supplemental EIS (SEIS) shall be prepared as an addition to either a draft or final statement if:

(a) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts; or

(b) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts.

Preparation of a SEIS shall be carried out as stated in 197-11-620.

(5) Agencies may use federal EISs, as stated in Part Six.

**WAC 197-11-406 EIS timing.** The lead agency shall commence preparation of the environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal, so that preparation can be completed in time for the final statement to be included in appropriate recommendations or reports on the proposal (197-11-055). The statement shall be prepared early enough so it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made. EISs may be "phased" in appropriate situations (197-11-060(5)).

**WAC 197-11-408 Scoping.** (1) The lead agency shall narrow the scope of every EIS to the probable significant adverse impacts and reasonable alternatives, including mitigation measures. For example, if there are only two or three significant impacts or alternatives, the EIS shall be focused on those.

(2) To ensure that every EIS is concise and addresses the significant environmental issues, the lead agency shall:

(a) Invite agency, affected tribes, and public comment on the DS (197-11-360). If the agency requires written comments, agencies, affected tribes and the public shall be allowed twenty-one days from the date of issuance of the DS in which to comment, unless expanded scoping is used. The date of issuance for a DS is the date it is sent to the department of ecology and other agencies with jurisdiction, and is publicly available.

(b) Identify reasonable alternatives and probable significant adverse environmental impacts.

(c) Eliminate from detailed study those impacts that are not significant.

(d) Work with other agencies to identify and integrate environmental studies required for other government approvals with the EIS, where feasible.

(3) Agencies, affected tribes, and the public should comment promptly and as specifically as permitted by the details available on the proposal.

(4) Meetings or scoping documents, including notices that the scope has been revised, may be used but are *not* required. The lead agency shall integrate the scoping process with its existing planning and decisionmaking process in order to avoid duplication and delay.

(5) The lead agency shall revise the scope of an EIS if substantial changes are made later in the proposal, or if significant new circumstances or information arise that bear on the proposal and its significant impacts.

(6) DEISs shall be prepared according to the scope decided upon by the lead agency in its scoping process.

(7) EIS preparation may begin during scoping.

**WAC 197-11-410 Expanded scoping. (Optional)**

(1) At its option, the lead agency may expand the scoping process to include any or all of the following, which may be applied on a proposal-by-proposal basis:

(a) Using questionnaires or information packets.

(b) Using meetings or workshops, which may be combined with any other early planning meetings of the agency.

(c) Using a coordinator or team from inside or outside the agency.

(d) Developing cooperative consultation and exchange of information among agencies before the EIS is prepared, rather than awaiting submission of comments on a completed document.

(e) Coordinating and integrating other government reviews and approvals with the EIS process through memoranda or other methods.

(f) Inviting participation of agencies with jurisdiction or expertise from various levels of government, such as regional or federal agencies.

(g) Using other methods as the lead agency may find helpful.

(2) Use of expanded scoping is intended to promote interagency cooperation, public participation, and innovative ways to streamline the SEPA process. Steps shall be taken, as the lead agency determines appropriate, to encourage and assist public participation. There are no specified procedural requirements for the methods, techniques, or documents which may be used in an expanded scoping process, to provide maximum flexibility to meet these purposes.

(3) The lead agency shall consult with an applicant prior to deciding the method and schedule for an expanded scoping process.

(4) Under expanded scoping, an applicant may request, in which case the lead agency shall set, a date by which the lead agency shall determine the scope of the EIS, including the need for any field investigations (to the extent permitted by the details available on the proposal). The date shall occur thirty days or less after the DS is issued, unless the lead agency and applicant agree upon a later date.

**WAC 197-11-420 EIS preparation. For draft and final EISs and SEISs:**

(1) Preparation of the EIS is the responsibility of the lead agency, by or under the direction of its responsible official, as specified by the lead agency's procedures. No

matter who participates in the preparation of the EIS, it is the EIS of the lead agency. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with these rules and the procedures of the lead agency.

(2) The lead agency may have an EIS prepared by agency staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the lead agency. The lead agency shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(3) If a person other than the lead agency is preparing the EIS, the lead agency shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency or person;

(b) Assist in obtaining any information on file with another agency that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the lead agency that relate to the subject of the EIS, under chapter 42.17 RCW (Public Disclosure and Public Records Law).

(4) Every agency shall specifically provide in its own procedures those situations in which an applicant may be required or authorized to help prepare an EIS. Agency procedures may not require more information of an applicant than allowed by 197-11-100, but may authorize less participation. An applicant may volunteer to provide any information or effort desired, as long as the EIS is supervised and approved by the responsible official. These rules do not prevent an agency from charging any fees which the agency is otherwise allowed to charge (197-11-914).

**WAC 197-11-425 Style and size.** (1) Environmental impact statements shall be readable reports, which allow the reader to understand the most significant and vital information concerning the proposed action, alternatives, and impacts, without turning to other documents, as provided below and in 197-11-402.

(2) Environmental impact statements shall be concise and written in plain language. EISs shall not be excessively detailed or overly technical. EISs shall explain plainly the meaning of technical terms not generally understood by the general public. This may be done in a glossary or footnotes or by some other means. EISs may include an index for ease in using the statement.

(3) Most of the text of an environmental impact statement shall discuss and compare the environmental impacts and their significance, rather than describe the proposal and the environmental setting. Detailed descriptions may be included in appendices or supporting documents.

(4) The text of an EIS (197-11-430(3)) normally ranges from thirty to fifty pages and may be shorter. The EIS text shall not exceed seventy-five pages; except for proposals of unusual scope or complexity, where the

EIS shall not exceed one hundred fifty pages. Appendices and background material shall be bound separately from the EIS if they exceed twenty-five pages, except if the entire document does not exceed one hundred pages or a FEIS is issued under 197-11-560(5).

(5) If the lead agency decides that additional descriptive material or supporting documentation may be helpful for readers, this background information may be placed in appendices or in separate documents, and shall be readily available to agencies and the public during the comment period.

(6) Agencies shall incorporate material into an environmental impact statement by reference to cut down on bulk, if an agency can do so without impeding agency and public review of the action (197-11-600 and 197-11-635).

**WAC 197-11-430 Format.** (1) A cover letter or memo from the lead agency shall precede the EIS (197-11-435). A fact sheet (197-11-440(2)) shall be the first section of every EIS.

(2) The following format should be used unless the lead agency determines that a different format would improve clear presentation of alternatives and environmental analysis for a particular proposal (except that the fact sheet shall always be the first section of an EIS):

(a) Fact sheet.

(b) Table of contents (may include the list of elements of the environment).

(c) Summary.

(d) Alternatives, including the proposed action.

(e) Affected environment, significant impacts, and mitigation measures (other than those included in the proposed action).

(f) Distribution list (may be included in appendix).

(g) Appendices, if any (including, for FEIS, comment letters and any separate responses).

(3) The EIS text is divided into two sections: (d) and (e) above. Agencies have wide latitude to organize and present material as they see fit within these two basic sections. Agencies are not required to discuss each subject in 197-11-440 (5) and (6) and 197-11-444 in a separate section of the EIS.

(4) *Additional format considerations.*

(a) Where relevant to the alternatives and impacts of a proposal, the analysis specified in 197-11-440 shall be included regardless of the format of a particular statement.

(b) The format of a FEIS may differ, as specified by 197-11-560.

(c) Additional flexibility is provided in 197-11-442 and 197-11-443 for environmental impact statements related to nonproject proposals.

(d) The elements of the environment for purposes of analyzing environmental impacts are stated in 197-11-444.

(e) Additional guidance on the distinction between environmental and other considerations is given in 197-11-448 and 197-11-450.

(f) EISs may be combined with other documents (197-11-640).

**WAC 197-11-435 Cover letter or memo.** (1) A cover letter or memo shall precede every EIS, but shall not be considered part of the EIS for adequacy purposes.

(2) The cover letter or memo:

(a) Shall not exceed two pages;

(b) Shall highlight the key environmental issues and options facing agency decisionmakers as known at the time of issuance;

(c) May include beneficial, as well as adverse environmental impacts and may mention other relevant considerations for decisionmakers;

(d) Shall identify, for SEIS's, the EIS being supplemented.

**WAC 197-11-440 EIS contents.** (1) An EIS shall contain the following, in the style and format prescribed in the preceding sections.

(2) *Fact sheet.* The fact sheet shall include the following information in this order:

(a) A title and brief description (a few sentences) of the nature and location (by street address, if applicable) of the proposal, including principal alternatives.

(b) The name of the person or entity making the proposal(s) and the proposed or tentative date for implementation.

(c) The name and address of the lead agency, the responsible official, and the person to contact for questions, comments, and information.

(d) A list of all licenses which the proposal is known to require. The licenses shall be listed by name and agency; the list shall be as complete and specific as possible.

(e) Authors and principal contributors to the EIS and the nature or subject area of their contributions.

(f) The date of issue of the EIS.

(g) The date comments are due (for DEISs).

(h) The time and place of public hearings or meetings, if any and if known.

(i) The date final action is planned or scheduled by the lead agency, if known. Agencies may indicate that the date is subject to change. The nature or type of final agency action should be stated unless covered in subsection (a) above.

(j) The type and timing of any subsequent environmental review to which the lead agency or other agencies have made commitments, if any.

(k) The location of a prior EIS on the proposal, EIS technical reports, background data, adopted documents, and materials incorporated by reference for this EIS, if any.

(l) The cost to the public for a copy of the EIS.

(3) *Table of contents.*

(a) The table of contents should list, if possible, any documents which are appended, adopted, or serve as technical reports for this EIS (but need not list each comment letter).

(b) The table of contents may include the list of elements of the environment (197-11-444), indicating those elements or portions of elements which do not involve significant impacts.

(4) *Summary.* The EIS shall summarize the contents of the statement and shall not merely be an expanded table of contents. The summary shall briefly state the proposal's objectives, specifying the purpose and need to which the proposal is responding, the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved, including the environmental choices to be made among alternative courses of action and the effectiveness of mitigation measures. The summary need not mention every subject discussed in the EIS, but shall include a summary of the proposal, impacts, alternatives, mitigation measures, and significant adverse impacts that cannot be mitigated. The summary shall state when the EIS is part of a phased review, if known, or the lead agency is relying on prior or future environmental review (which should be generally identified). The lead agency shall make the summary sufficiently broad to be useful to the other agencies with jurisdiction.

(5) *Alternatives including the proposed action.*

(a) This section of the EIS describes and presents the proposal (or preferred alternative, if one or more exists) and alternative courses of action.

(b) Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

(i) The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.

(ii) The "no-action" alternative shall be evaluated and compared to other alternatives.

(iii) Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

(c) This section of the EIS shall:

(i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives. Include the proposed action, including mitigation measures that are part of the proposal.

(ii) Describe the location of the alternatives including the proposed action, so that a lay person can understand it. Include a map, street address, if any, and legal description (unless long or in metes and bounds).

(iii) Identify any phases of the proposal, their timing, and previous or future environmental analysis on this or related proposals, if known.

(iv) Tailor the level of detail of descriptions to the significance of environmental impacts. The lead agency should retain any detailed engineering drawings and technical data, that have been submitted, in agency files and make them available on request.

(v) Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action. The amount of space devoted to each alternative may vary. One alternative (including the proposed action) may be used as a benchmark for comparing alternatives. The EIS may indicate the main reasons for eliminating alternatives from detailed study.

(vi) Present a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.

(vii) Discuss the benefits and disadvantages of reserving for some future time the implementation of the proposal, as compared with possible approval at this time. The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations. Particular attention should be given to the possibility of foreclosing future options by implementing the proposal.

(d) When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. This subsection shall not apply when the proposal includes a rezone, unless the rezone is for a use allowed in an existing comprehensive plan that was adopted after review under SEPA. Further, alternative sites may be evaluated if other locations for the type of proposed use have not been included or considered in existing planning or zoning documents.

(6) *Affected environment, significant impacts, and mitigation measures.*

(a) This section of the EIS shall describe the existing environment that will be affected by the proposal, analyze significant impacts of alternatives including the proposed action, and discuss reasonable mitigation measures that would significantly mitigate these impacts. Elements of the environment that are not significantly affected need not be discussed. Separate sections are not required for each subject (see 197-11-430(3)).

(b) General requirements for this section of the EIS.

(i) This section shall be written in a nontechnical manner which is easily understandable to lay persons whenever possible, with the discussion commensurate with the importance of the impacts. Only significant impacts must be discussed; other impacts may be discussed.

(ii) Although the lead agency should discuss the affected environment, environmental impacts, and other mitigation measures together for each element of the environment where there is a significant impact, the responsible official shall have the flexibility to organize this section in any manner useful to decisionmakers and the public (see 197-11-430(3)).

(iii) This subsection is not intended to duplicate the analysis in subsection (5) and shall avoid doing so to the fullest extent possible.

(c) This section of the EIS shall:

(i) Succinctly describe the principal features of the environment that would be affected, or created, by the alternatives including the proposal under consideration. Inventories of species should be avoided, although rare, threatened, or endangered species should be indicated.

(ii) Describe and discuss significant impacts that will narrow the range or degree of beneficial uses of the environment or pose long term risks to human health or

the environment, such as storage, handling, or disposal of toxic or hazardous material.

(iii) Clearly indicate those mitigation measures (not described in the previous section as part of the proposal or alternatives), if any, that could be implemented or might be required, as well as those, if any, that agencies or applicants are committed to implement.

(iv) Indicate what the intended environmental benefits of mitigation measures are for significant impacts, and may discuss their technical feasibility and economic practicability, if there is concern about whether a mitigation measure is capable of being accomplished. The EIS need not analyze mitigation measures in detail unless they involve substantial changes to the proposal causing significant adverse impacts, or new information regarding significant impacts, and those measures will not be subsequently analyzed under SEPA (see 197-11-660(2)). An EIS may briefly mention nonsignificant impacts or mitigation measures to satisfy other environmental review laws or requirements covered in the same document (197-11-402(8) and 197-11-640).

(v) Summarize significant adverse impacts that cannot or will not be mitigated.

(d) This section shall incorporate, when appropriate:

(i) A summary of existing plans (for example: land use and shoreline plans) and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them.

(ii) Energy requirements and conservation potential of various alternatives and mitigation measures, including more efficient use of energy, such as insulating, as well as the use of alternate and renewable energy resources.

(iii) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(iv) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(e) Significant impacts on both the natural environment and the built environment must be analyzed, if relevant (197-11-444). This involves impacts upon and the quality of the physical surroundings, whether they are in wild, rural, or urban areas. Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal. EISs shall also discuss significant environmental impacts upon land and shoreline use, which includes housing, physical blight, and significant impacts of projected population on environmental resources, as specified by RCW 43-21C.110 (1) (d) and (f), as listed in 197-11-444.

(7) Appendices. Comment letters and responses shall be circulated with the FEIS as specified by 197-11-560. Technical reports and supporting documents need not be circulated with an EIS (197-11-425(4) and 197-11-440(2)(k)), but shall be readily available to agencies and the public during the comment period.

(8) (Optional) The lead agency may include, in an EIS or appendix, the analysis of any impact relevant to

the agency's decision, whether or not environmental. The inclusion of such analysis may be based upon comments received during the scoping process. The provision for combining documents may be used (197-11-640). The EIS shall comply with the format requirements of this Part. The decision whether to include such information and the adequacy of any such additional analysis shall not be used in determining whether an EIS meets the requirements of SEPA.

**WAC 197-11-442 Contents of EIS on nonproject proposals.** (1) The lead agency shall have more flexibility in preparing EISs on nonproject proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents.

(2) The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see 197-11-060(3)). Alternatives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits (this does not require devoting the same number of pages in an EIS to each alternative).

(3) If the nonproject proposal concerns a specific geographic area, site specific analyses are not required, but may be included for areas of specific concern. The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the nonproject proposal, such as transportation and utility systems.

(4) The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

**WAC 197-11-443 EIS contents when prior nonproject EIS.** (1) The provisions for phased review (197-11-060(5)) and use of existing environmental documents, Part Six, apply to EISs on nonproject proposals.

(2) A nonproject proposal may be approved based on an EIS assessing its broad impacts. When a project is then proposed that is consistent with the approved nonproject action, the EIS on such a project shall focus on the impacts and alternatives including mitigation measures specific to the subsequent project and not analyzed in the nonproject EIS. The scope shall be limited accordingly. Procedures for use of existing documents shall be used as appropriate, see Part Six.

(3) When preparing a project EIS under the preceding subsection, the lead agency shall review the nonproject EIS to ensure that the analysis is valid when applied to the current proposal, knowledge, and technology. If it is not valid, the analysis shall be reanalyzed in the project EIS.

**WAC 197-11-444 Elements of the environment. (1)**

**Natural environment**

- (a) Earth
  - (i) Geology
  - (ii) Soils
  - (iii) Topography
  - (iv) Unique physical features
  - (v) Erosion/enlargement of land area (accretion)
- (b) Air
  - (i) Air quality
  - (ii) Odor
  - (iii) Climate
- (c) Water
  - (i) Surface water movement/quantity/quality
  - (ii) Runoff/absorption
  - (iii) Floods
  - (iv) Ground water movement/quantity/quality
  - (v) Public water supplies
- (d) Plants and animals
  - (i) Habitat for and numbers or diversity of species of plants, fish, or other wildlife
  - (ii) Unique species
  - (iii) Fish or wildlife migration routes
- (e) Energy and natural resources
  - (i) Amount required/rate of use/efficiency
  - (ii) Source/availability
  - (iii) Nonrenewable resources
  - (iv) Conservation and renewable resources
  - (v) Scenic resources
- (2) Built environment
  - (a) Environmental health
    - (i) Noise
    - (ii) Risk of explosion
    - (iii) Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
  - (b) Land and shoreline use
    - (i) Relationship to existing land use plans and to estimated population
    - (ii) Housing
    - (iii) Light and glare
    - (iv) Aesthetics
    - (v) Recreation
    - (vi) Historic and cultural preservation
    - (vii) Agricultural crops
  - (c) Transportation
    - (i) Transportation systems
    - (ii) Vehicular traffic
    - (iii) Waterborne, rail, and air traffic
    - (iv) Parking
    - (v) Movement/circulation of people or goods
    - (vi) Traffic hazards
  - (d) Public services and utilities
    - (i) Fire

- (ii) Police
- (iii) Schools
- (iv) Parks or other recreational facilities
- (v) Maintenance
- (vi) Communications
- (vii) Water/storm water
- (viii) Sewer/solid waste
- (ix) Other governmental services or utilities

(3) To simplify the EIS format, reduce paperwork and duplication, improve readability, and focus on the significant issues, some or all of the elements of the environment in 197-11-444 may be combined.

**WAC 197-11-448 Relationship of EIS to other considerations. (1)** SEPA contemplates that the general welfare, social, economic, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions. However, the environmental impact statement is not required to evaluate and document all of the possible effects and considerations of a decision or to contain the balancing judgments that must ultimately be made by the decisionmakers. Rather, an environmental impact statement analyzes *environmental* impacts and must be used by agency decisionmakers, along with other relevant considerations or documents, in making final decisions on a proposal. The EIS provides a basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA, because it provides information on the environmental costs and impacts. SEPA does not require that an EIS be an agency's only decisionmaking document.

(2) The term "socioeconomic" is not used in the statute or in these rules because the term does not have a uniform meaning and has caused a great deal of uncertainty. Areas of urban environmental concern which must be considered are specified in RCW 43.21C.110(1)(f), the environmental checklist (197-11-960) and 197-11-440 and 197-11-444.

(3) Examples of information that are not required to be discussed in an EIS are: Methods of financing proposals, economic competition, profits and personal income and wages, and social policy analysis (such as fiscal and welfare policies and nonconstruction aspects of education and communications). EISs may include whether housing is low, middle, or high income.

(4) Agencies have the option to combine EISs with other documents or to include additional analyses in EISs, that will assist in making decisions (197-11-440(8) and 197-11-640). Agencies may use the scoping process to help identify issues of concern to citizens.

**WAC 197-11-450 Cost-benefit analysis.** A cost-benefit analysis (197-11-726) is not required by SEPA. If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered by an agency for the proposal, it may be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. For purposes of complying with SEPA, the weighing of the merits and drawbacks of the various alternatives need

not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations.

**WAC 197-11-455 Issuance of DEIS.** (1) A draft EIS shall be issued by the responsible official and sent to the following:

(a) The department of ecology (2 copies).

(b) Each federal agency with jurisdiction over the proposal.

(c) Each agency with jurisdiction over or environmental expertise on the proposal.

(d) Each city/county in which adverse environmental impacts identified in the EIS may occur, if the proposal were implemented.

(e) Each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal.

(f) The applicable local, area-wide, or regional agency, if any, that has been designated under federal law to conduct intergovernmental review and coordinate federal activities with state or local planning.

(g) Any person requesting a copy of the EIS from the lead agency (fee may be charged for DEIS, see 197-11-504).

(h) Any affected tribe.

(2) The lead agency is encouraged to send a notice of availability or a copy of the DEIS to any person, organization or governmental agency that has expressed an interest in the proposal, is known by the lead agency to have an interest in the type of proposal being considered, or receives governmental documents (for example, local and regional libraries). This is not meant to duplicate subsection (1)(g) of this section.

(3) The lead agency should make additional copies available at its offices to be reviewed or obtained.

(4) The date of issue is the date the DEIS is publicly available and sent to the department of ecology and other agencies with jurisdiction.

(5) Notice that a DEIS is available shall be given under 197-11-510.

(6) Any person or agency shall have thirty days from the date of issue in which to review and comment upon the DEIS.

(7) Upon request, the lead agency may grant an extension of up to fifteen days to the comment period. Agencies and the public must request any extension before the end of the comment period.

(8) The rules for notice, costs, commenting, and response to comments on EISs are stated in Part Five of these rules.

**WAC 197-11-460 Issuance of FEIS.** (1) A final EIS (FEIS) shall be issued by the responsible official and sent to the department of ecology (2 copies), to all agencies with jurisdiction, to all agencies who commented on the DEIS, and to anyone requesting a copy of the FEIS. (Fees may be charged for the FEIS, see 197-11-504.)

(2) The responsible official shall send the FEIS, or a notice that the FEIS is available, to anyone who commented on the DEIS and to those who received but did not comment on the DEIS. If the agency receives petitions from a specific group or organization, a notice or EIS may be sent to the group and not to each petitioner. Failure to notify any individual under this subsection shall not affect the legal validity of an agency's SEPA compliance.

(3) The lead agency should make additional copies available in its offices for review.

(4) The date of issue is the date the FEIS, or notice of availability, is sent to the persons and agencies specified in the preceding subsections and the FEIS is publicly available. Copies sent to the department of ecology shall satisfy the statutory requirement of availability to the governor and to the ecological commission.

(5) Agencies shall not act on a proposal for which an EIS has been required prior to seven days after issuance of the FEIS.

(6) The lead agency shall issue the FEIS within sixty days of the end of the comment period for the DEIS, unless the proposal is unusually large in scope, the environmental impact associated with the proposal is unusually complex, or extensive modifications are required to respond to public comments.

(7) The form and content of the FEIS is specified in 197-11-560.

## PART FIVE - COMMENTING

**WAC 197-11-500 Purpose of this Part.** This Part provides rules for:

(1) Notice and public availability of environmental documents, especially environmental impact statements;

(2) Consultation and comment by agencies and members of the public on environmental documents;

(3) Public hearings and meetings; and

(4) Lead agency response to comments and preparation of final environmental impact statements. Review, comment, and responsiveness to comments on a draft EIS are the focal point of the act's commenting process because the DEIS is developed as a result of scoping and serves as the basis for the final statement.

**WAC 197-11-502 Inviting comment.** (1) Agency efforts to involve other agencies and the public in the SEPA process should be commensurate with the type and scope of the environmental document.

(2) Consulted agencies have a responsibility to respond in a timely and specific manner to requests for comments (197-11-545, 197-11-550, and 197-11-724).

(3) *Threshold determinations.*

(a) Agencies shall send DNSs to other agencies with jurisdiction, if any, as required by 197-11-340(2).

(b) For DNSs issued under 197-11-340(2), agencies shall provide public notice under 197-11-510 and receive comments on the DNS for fifteen days.

(4) *Scoping.*

(a) Agencies shall circulate the DS and invite comments on the scope of an EIS, as required by 197-11-360, 197-11-408, and 197-11-510.

(b) Agencies may use other reasonable methods to inform agencies and the public, such as those indicated in 197-11-410.

(c) The lead agency determines the method for commenting (197-11-408 and 197-11-410).

(5) *DEIS.*

(a) Agencies shall invite comments on and circulate DEISs as required by 197-11-455.

(b) The commenting period shall be thirty days unless extended by the lead agency under 197-11-455.

(c) Agencies shall comment and respond as stated in this Part. This meets the act's formal consultation and comment requirement in RCW 43.21C.030(2)(d).

(6) *Public hearings and meetings.*

(a) Public hearings or meetings may be held (197-11-535). Notice of such public hearings shall be given under 197-11-510 and may be combined with other agency notice.

(b) In conjunction with the requirements of 197-11-510, notice of public hearings shall be published no later than ten days before the hearing. For nonproject proposals, notice of the public hearing shall be published in a newspaper of general circulation in the general area where the lead agency has its principal offices. For nonproject proposals having a regional or state-wide applicability, copies of the notice shall be given to the Olympia bureaus of the associated press and united press international.

(7) *FEIS.* Agencies shall circulate FEISs as required by 197-11-460.

(8) *Supplements.*

(a) Notice for and circulation of draft and final SEISs shall be done in the same manner as other draft and final EISs.

(b) When a DNS is issued after a DS has been withdrawn (197-11-360(4)), agencies shall give notice under 197-11-510 and receive comments for fifteen days.

(c) An addendum need not be circulated unless required under 197-11-625.

(9) *Appeals.* Notice provisions for appeals are in 197-11-680.

(10) Agencies may circulate any other environmental documents for the purpose of providing information or seeking comment, as an agency deems appropriate.

(11) In addition to any required notice or circulation, agencies may use any other reasonable methods, to inform agencies and the public that environmental documents are available or that hearings will occur.

(12) Agencies may combine SEPA notices with other agency notices. However, the SEPA information must be identifiable.

**WAC 197-11-504 Availability and cost of environmental documents.** (1) SEPA documents required by these rules shall be retained by the lead agency and made available in accordance with chapter 42.17 RCW.

(2) The lead agency shall make copies of any environmental document available in accordance with chapter 42.17 RCW, charging only those costs allowed plus mailing costs. However, no charge shall be levied for circulation of documents to other agencies as required by these rules. Agencies are encouraged, if requested, to waive the charge for an environmental document (not including the SEPA REGISTER) provided to a public interest organization.

**WAC 197-11-508 SEPA REGISTER.** (1) The department of ecology shall publish and mail each week a SEPA REGISTER, giving notice of all environmental documents required to be sent to the department of ecology under these rules, specifically:

(a) DNSs under 197-11-340(2);

(b) DSs (scoping notices) under 197-11-408;

(c) EISs under 197-11-455, 197-11-460, 197-11-620, and 197-11-630; and

(d) Notices of Action under RCW 43.21C.080 and 43.21C.087.

(2) All agencies shall submit the environmental documents listed in subsection (1) to the department promptly and in accordance with procedures established by the department.

(3) Agencies are encouraged to subscribe to the SEPA REGISTER.

(4) The department:

(a) May establish a reasonable format for publishing the required notices in the SEPA REGISTER;

(b) May charge a reasonable fee for the SEPA REGISTER as allowed by law, in at least the amount allowed by chapter 42.17 RCW, from agencies, members of the public, and interested organizations.

(5) Members of the public, citizen and community groups, and educational institutions are encouraged to subscribe and refer to the SEPA REGISTER for notice of SEPA actions which may affect them.

**WAC 197-11-510 Public notice.** (1) When these rules require notice to be given under this section, the lead agency must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held. The agency may use its existing notice procedures.

Examples of reasonable methods to inform the public are:

(a) Posting the property, for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or

(f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas).



(2) Each agency shall specify its method of public notice in its SEPA procedures, 197-11-904 and 197-11-906. If an agency does not specify its method of public notice or does not adopt SEPA procedures, the agency shall use methods (a) and (b) in subsection (1).

(3) Documents which are required to be sent to the department of ecology under these rules will be published in the SEPA REGISTER, which will also constitute a form of public notice. However, publication in the SEPA REGISTER shall not, in itself, meet compliance with this section.

**WAC 197-11-535 Public hearings and meetings.** (1) If a public hearing on the proposal is held under some other requirement of law, such hearing shall be open to consideration of the environmental impact of the proposal, together with any environmental document that is available. This does not require extension of the comment periods for environmental documents.

(2) In all other cases a public hearing on the environmental impact of a proposal shall be held whenever one or more of the following situations occur:

(a) The lead agency determines, in its sole discretion, that a public hearing would assist it in meeting its responsibility to implement the purposes and policies of SEPA and these rules; or

(b) When fifty or more persons residing within the jurisdiction of the lead agency, or who would be adversely affected by the environmental impact of the proposal, make written request to the lead agency within thirty days of issuance of the draft EIS; or

(c) When two or more agencies with jurisdiction over a proposal make written request to the lead agency within thirty days of the issuance of the draft EIS.

(3) Whenever a public hearing is held under subsection (2) of this section, it shall occur no earlier than fifteen days from the date the draft EIS is issued, nor later than fifty days from its issuance. Notice shall be given under 197-11-502(6) and 197-11-510 and may be combined with other agency notice.

(4) If a public hearing is required under this chapter, it shall be open to discussion of all environmental documents and any written comments that have been received by the lead agency prior to the hearing. A copy of the environmental document shall be available at the public hearing.

(5) Comments at public hearings should be as specific as possible (see 197-11-550).

(6) Agencies and their designees may hold informal public meetings or workshops. Such gatherings may be more flexible than public hearings and are not subject to the above notice and similar requirements for public hearings.

**WAC 197-11-545 Effect of no comment.** (1) *Consulted agencies.* If a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special

expertise. Any consulted agency that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with Part Four of these rules.

(2) *Other agencies and the public.* Lack of comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, shall be construed as lack of objection to the environmental analysis, if the requirements of 197-11-510 are met.

**WAC 197-11-550 Specificity of comments.** (1) Comments on an EIS, DNS, scoping notice or proposal shall be as specific as possible and may address either the adequacy of the environmental document or the merits of the alternatives discussed or both.

(2) Commenters shall briefly describe the nature of any documents referenced in their comments, indicating the material's relevance, and should indicate where the material can be reviewed or obtained.

(3) *Methodology.* When an agency criticizes a lead agency's predictive methodology, the commenting agency should describe, when possible, the alternative methodology which it prefers and why.

(4) *Additional information.* A consulted agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs, to the extent permitted by the details available on the proposal.

(5) *Mitigation measures.* When an agency with jurisdiction objects to or expresses concerns about a proposal, it shall specify the mitigation measures, if any are possible, it considers necessary to allow an agency to grant or approve applicable licenses.

(6) *Comments by other agencies.* Commenting agencies that are not consulted agencies shall specify any additional information or mitigation measures the commenting agency believes are necessary or desirable to satisfy its concerns.

(7) *Citizen comments.* Recognizing their generally more limited resources, members of the public shall make their comments as specific as possible and are encouraged to comment on methodology needed, additional information, and mitigation measures in the manner indicated in this section.

(8) An agency shall consider and may respond to comments as the agency deems appropriate; the requirements for responding in a FEIS shall be met (197-11-560).

**WAC 197-11-560 FEIS response to comments.** (1) The lead agency shall prepare a final environmental impact statement whenever a DEIS has been prepared, unless the proposal is withdrawn or indefinitely postponed. The lead agency shall consider comments on the proposal and shall respond by one or more of the means listed below, including its response in the final statement. Possible responses are to:

(a) Modify alternatives including the proposed action.

(b) Develop and evaluate alternatives not previously given detailed consideration by the agency.

(c) Supplement, improve, or modify the analysis.

(d) Make factual corrections.

(e) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons that support the agency's response and, if appropriate, indicate those circumstances that would trigger agency reappraisal or further response.

(2) All substantive comments received on the draft statement shall be appended to the final statement or summarized, where comments are repetitive or voluminous, and the summary appended. If a summary of the comments is used, the names of the commenters shall be included (except for petitions).

(3) In carrying out subsection (1), the lead agency may respond to each comment individually, respond to a group of comments, cross-reference comments and corresponding changes in the EIS, or use other reasonable means to indicate an appropriate response to comments.

(4) If the lead agency does not receive any comments critical of the scope or content of the DEIS, the lead agency may so state in an updated fact sheet (197-11-440(2)), which shall be circulated under 197-11-460. The FEIS shall consist of the DEIS and updated fact sheet.

(5) If changes in response to comments are minor and are largely confined to the responses described in subsections (1)(d) and (e) of this section, agencies may prepare and attach an addendum, which shall consist of the comments, the responses, the changes, and an updated fact sheet. The FEIS, consisting of the DEIS and the addendum, shall be issued under 197-11-460, except that only the addendum need be sent to anyone who received the DEIS.

(6) An FEIS shall be issued and circulated under 197-11-460.

**WAC 197-11-570 Consulted agency costs to assist lead agency.** A consulted agency shall not charge the lead agency for any costs incurred in complying with 197-11-550, including providing relevant data to the lead agency and copying documents for the lead agency. This section shall not prohibit a consulted agency from charging those costs allowed by chapter 42.17 RCW for copying any environmental document requested by an agency other than the lead agency or by an individual or private organization. This section does not prohibit agencies from making interagency agreements on cost or personnel sharing to provide environmental information to each other.

## PART SIX - USING EXISTING ENVIRONMENTAL DOCUMENTS

**WAC 197-11-600 When to use existing environmental documents.** (1) This section contains criteria for determining whether an environmental document must

be used unchanged and describes when existing documents may be used to meet all or part of an agency's responsibilities under SEPA.

(2) An agency may use environmental documents that have previously been prepared in order to evaluate proposed actions, alternatives, or environmental impacts. The proposals may be the same as, or different than, those analyzed in the existing documents.

(3) Other agencies acting on the same proposal shall use an environmental document unchanged, except in the following cases:

(a) For DNSs, an agency with jurisdiction is dissatisfied with the DNS, in which case it may assume lead agency status (197-11-340(2)(e) and 197-11-948).

(b) For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

(i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or

(ii) New information indicating a proposal's probable significant adverse environmental impacts. (This includes discovery of misrepresentation or lack of material disclosure.) A new threshold determination or SEIS is not required if probable significant adverse environmental impacts are covered by the range of alternatives and impacts analyzed in the existing environmental documents.

(c) For EISs, the agency concludes that its written comments on the DEIS warrant additional discussion for purposes of its action than that found in the lead agency's FEIS (in which case the agency may prepare a supplemental EIS at its own expense).

(4) Existing documents may be used for a proposal by employing one or more of the following methods:

(a) "Adoption", where an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA. Agencies acting on the same proposal for which an environmental document was prepared are not required to adopt the document; or

(b) "Incorporation by reference", where an agency preparing an environmental document includes all or part of an existing document by reference.

(c) An addendum, that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document.

(d) Preparation of a SEIS if there are:

(i) Substantial changes so that the proposal is likely to have significant adverse environmental impacts; or

(ii) New information indicating a proposal's probable significant adverse environmental impacts.

(e) If a proposal is substantially similar to one covered in an existing EIS, that EIS may be adopted; additional information may be provided in an addendum or SEIS (see (c) and (d) of this subsection).

**WAC 197-11-610 Use of NEPA documents.** (1) An agency may adopt any environmental analysis prepared

under the National Environmental Policy Act (NEPA) by following 197-11-600 and 197-11-630.

(2) A NEPA environmental assessment may be adopted to satisfy requirements for a determination of nonsignificance or EIS, if the requirements of 197-11-600 and 197-11-630 are met.

(3) An agency may adopt a NEPA EIS as a substitute for preparing a SEPA EIS if:

(a) The requirements of 197-11-600 and 197-11-630 are met (in which case the procedures in Parts Three through Five of these rules for preparing an EIS shall not apply); and

(b) The federal EIS is not found inadequate: (i) By a court; (ii) by the Council on Environmental Quality (CEQ) (or is at issue in a predecision referral to CEQ) under the NEPA regulations; or (iii) by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C 1857.

(4) Subsequent use by another agency of a federal EIS, adopted under subsection (3) of this section, for the same (or substantially the same) proposal does not require adoption, unless the criteria in 197-11-600(3) are met.

(5) If the lead agency has not held a public hearing within its jurisdiction to obtain comments on the adequacy of adopting a federal environmental document as a substitute for preparing a SEPA EIS, a public hearing for such comments shall be held if, within thirty days of circulating its statement of adoption, a written request is received from at least fifty persons who reside within the agency's jurisdiction or are adversely affected by the environmental impact of the proposal. The agency shall reconsider its adoption of the federal document in light of public hearing comments.

**WAC 197-11-620 Supplemental environmental impact statement—Procedures.** (1) An SEIS shall be prepared in the same way as a draft and final EIS (197-11-400 to 197-11-600), except that scoping is optional. The SEIS should not include analysis of actions, alternatives, or impacts that is in the previously prepared EIS.

(2) The fact sheet and cover letter or memo for the SEIS shall indicate the EIS that is being supplemented.

(3) Unless the SEPA lead agency wants to prepare the SEIS, an agency with jurisdiction which needs the SEIS for its action shall be responsible for SEIS preparation.

**WAC 197-11-625 Addenda—Procedures.** (1) An addendum shall clearly identify the proposal for which it is written and the environmental document it adds to or modifies.

(2) An agency is not required to prepare a draft addendum.

(3) An addendum for a DEIS shall be circulated to recipients of the initial DEIS under 197-11-455.

(4) If an addendum to a final EIS is prepared prior to any agency decision on a proposal, the addendum shall be circulated to the recipients of the final EIS.

(5) Agencies are encouraged to circulate addenda to interested persons. Unless otherwise provided in these rules, however, agencies are not required to circulate an addendum.

**WAC 197-11-630 Adoption—Procedures.** (1) The agency adopting an existing environmental document must independently review the content of the document and determine that it meets the adopting agency's environmental review standards and needs for the proposal. However a document is not required to meet the adopting agency's own procedures for the preparation of environmental documents (such as circulation, commenting, and hearing requirements) to be adopted.

(2) An agency shall adopt an environmental document by identifying the document and stating why it is being adopted, using the adoption form substantially as in 197-11-965. The adopting agency shall ensure that the adopted document is readily available to agencies and the public by:

(a) Sending a copy to agencies with jurisdiction that have not received the document, as shown by the distribution list for the adopted document; and

(b) Placing copies in libraries and other public offices, or by distributing copies to those who request one.

(3) When an existing EIS is adopted and:

(a) A supplemental environmental impact statement or addendum is not being prepared, the agency shall circulate its statement of adoption as follows:

(i) The agency shall send copies of the adoption notice to the department of ecology, to agencies with jurisdiction, to cities/counties in which the proposal will be implemented, and to local agencies or political subdivisions whose public services would be changed as a result of implementation of the proposal.

(ii) The agency is encouraged to send the adoption notice to persons or organizations that have expressed an interest in the proposal or are known by the agency to have an interest in the type of proposal being considered, or the lead agency should announce the adoption in agency newsletters or through other means.

(iii) No action shall be taken on the proposal until seven days after the statement of adoption has been issued. The date of issuance shall be the date the statement of adoption has been sent to the department of ecology and other agencies and is publicly available.

(b) A SEIS is being prepared, the agency shall include the statement of adoption in the SEIS; or

(c) An addendum is being prepared, the agency shall include the statement of adoption with the addendum and circulate both as in subsection (3)(a) of this section.

(4) A copy of the adopted document must accompany the current proposal to the decisionmaker; the statement of adoption may be included.

(5) If known, the adopting agency shall disclose in its adoption notice when the adopted document or proposal it addresses is the subject of a pending appeal or has been found inadequate on appeal.

**WAC 197-11-635 Incorporation by reference—Procedures.** (1) Agencies should use existing studies and incorporate material by reference whenever appropriate.

(2) Material incorporated by reference (a) shall be cited, its location identified, and its relevant content briefly described; and (b) shall be made available for public review during applicable comment periods.

**WAC 197-11-640 Combining documents.** The SEPA process shall be combined with the existing planning, review, and project approval processes being used by each agency with jurisdiction. When environmental documents are required, they shall accompany a proposal through the existing agency review processes. Any environmental document in compliance with SEPA may be combined with any other agency documents to reduce duplication and paperwork and improve decisionmaking. The page limits in these rules shall be met, or the combined document shall contain, at or near the beginning of the document, a separate summary of environmental considerations, as specified by 197-11-440(4). SEPA page limits need not be met for joint state-federal EISs prepared under both SEPA and NEPA, in which case the NEPA page restrictions (40 CFR 1502.7) shall apply.

## PART SEVEN - SEPA AND AGENCY DECISIONS

**WAC 197-11-650 Purpose of this Part.** The purpose of this Part is to:

(1) Ensure the use of concise, high quality environmental documents and information in making decisions.

(2) Integrate the SEPA process with other laws and decisions.

(3) Encourage actions that preserve and enhance environmental quality, consistent with other essential considerations of state policy.

(4) Provide basic, uniform principles for the exercise of substantive authority and appeals under SEPA.

**WAC 197-11-655 Implementation.** (1) See RCW 43.21C.020, 43.21C.030(1), 43.21C.060, 43.21C.075, and 43.21C.080.

(2) Relevant environmental documents, comments, and responses shall accompany proposals through existing agency review processes, as determined by agency practice and procedure, so that agency officials use them in making decisions.

(3) When a decisionmaker considers a final decision on a proposal:

(a) The alternatives in the relevant environmental documents shall be considered.

(b) The range of alternative courses of action considered by decisionmakers shall be within the range of alternatives discussed in the relevant environmental documents. However, mitigation measures adopted need not be identical to those discussed in the environmental document.

(c) If information about alternatives is contained in another decision document which accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make that information available to the public before the decision is made.

**WAC 197-11-660 Substantive authority and mitigation.** (1) Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:

(a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.

(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decisionmaker. The decisionmaker shall cite the agency SEPA policy that is the basis of any condition or denial under this chapter (for proposals of applicants). After its decision, each agency shall make available to the public a document that states the decision. The document shall state the mitigation measures, if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.

(c) Mitigation measures shall be reasonable and capable of being accomplished.

(d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

(e) Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

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

(i) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and

(ii) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(2) Decisionmakers should judge whether possible mitigation measures are likely to protect or enhance environmental quality. EISs should briefly indicate the intended environmental benefits of mitigation measures for significant impacts (197-11-440(6)). EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

(a) Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and

(b) Will not be analyzed in a subsequent environmental document prior to their implementation.

(3) Agencies shall prepare a document that contains agency SEPA policies (197-11-902), so that applicants and members of the public know what these policies are. This document shall include, or reference by citation, the regulations, plans, or codes formally designated under this section and RCW 43.21C.060 as possible bases for conditioning or denying proposals. If only a portion of a regulation, plan, or code is designated, the document shall identify that portion. This document (and any documents referenced in it) shall be readily available to the public and shall be available to applicants prior to preparing a draft EIS.

**WAC 197-11-680 Appeals.** (1) *Introduction.* Appeals provisions in SEPA are found in RCW 43.21C-.060, 43.21C.075 and 43.21C.080. These rules attempt to construe and interpret the statutory provisions. In the event a court determines that these rules are inconsistent with statutory provisions, or with the framework and policy of SEPA, the statute will control. Persons considering either administrative or judicial appeal of any decision which involves SEPA at all are advised to read the statutory sections cited above.

(2) *Appeal to local legislative body.* RCW 43.21C.060 allows an appeal to a local legislative body of any decision by a local nonelected official conditioning or denying a proposal under authority of SEPA. Agencies may establish procedures for such an appeal, or may eliminate such appeals altogether, by rule, ordinance or resolution.

(3) *Agency administrative appeal procedures.*

(a) Agencies may provide for an administrative appeal of determinations relating to SEPA in their agency SEPA procedures. If so, the procedures must comply with the following:

(i) The agency must specify by rule, ordinance, or resolution that the appeals procedure is available.

(ii) Appeal of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.

(iii) Appeals on SEPA procedures shall be limited to review of a final threshold determination and final EIS. The appeal of a final threshold determination may occur prior to an agency's final decision on a proposed action.

(iv) An agency shall provide for only one administrative appeal of a threshold determination or of the adequacy of an EIS; successive administrative appeals on these issues within the same agency are not allowed. This limitation does not apply to appeals to a local legislative body under RCW 43.21C.060 (or another state statute) or to administrative appeals before another agency.

(v) If the agency has made a decision on a proposed action, the appeal shall consolidate any allowed appeals of procedural and substantive determinations under SEPA. For example, an appeal of the adequacy of an EIS must be consolidated with an appeal of the agency's decision on the proposed action, if both appeals are allowed in agency procedures.

(vi) Agencies shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(b) Agencies providing for administrative appeals shall provide for a record as required by RCW 43.21C.075(3)(c).

(c) If an agency provides an administrative appeal procedure, that procedure must be used before anyone may initiate judicial review of any SEPA issue that could have been reviewed under the agency procedures.

(4) *Judicial appeals.*

(a) SEPA authorizes judicial appeals of both procedural and substantive compliance with SEPA.

(b) When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA (SEPA issues) and those which do not (non-SEPA issues). RCW 43.21C.075 establishes time limits for raising SEPA issues, but says that existing statutes of limitations control the appeal of non-SEPA issues. The statute contemplates a single lawsuit, but allows for the SEPA and non-SEPA portions of that lawsuit to be filed at different times.

(c) If there is a time limit established by statute or ordinance for appealing the underlying governmental action, then appeals (or portions thereof) raising SEPA issues must be filed within thirty days after the agency gives official notice (see subsection (5) of this section for content of official notice).

(d) In any instance where subsection (c) of this subsection allows the SEPA portion of an appeal to be filed after the time limit established by statute or ordinance for appealing the underlying governmental action, some judicial action must be filed within the time set by statute or ordinance. That action may be later amended to raise SEPA issues within thirty days after the agency gives official notice (see subsection (5) of this section). In addition, where SEPA issues were first raised during an administrative appeal, any person desiring to raise SEPA issues by judicial appeal must submit a notice of intent to do so with the responsible official of the acting agency within the time limit set by statute or ordinance for appealing the underlying governmental action.

(e) The notice of action procedures of RCW 43.21C-.080 may still be used. If this procedure is used, then the time limits for judicial appeal specified in RCW 43.21C.080 shall apply, unless there is a time limit established by statute or ordinance for appealing the underlying governmental action. If so, the time limit for appeal of SEPA issues shall be within thirty days after the agency gives official notice (see subsection (5) of this section). If the proposal requires more than one governmental decision that will be supported by the same SEPA documents, then RCW 43.21C.080 still only allows one judicial appeal of procedural compliance with SEPA, which must be commenced within the applicable time to appeal the first governmental decision.

(f) If the time limit established by statute or ordinance for appealing the underlying governmental action is less than fifteen days, then the notice of action in RCW 43.21C.080(1) may be given by publishing once

within that shorter time period, in a newspaper of general circulation in the area where the property that is the subject of the action is located, and meeting the other requirements of RCW 43.21C.080.

(g) If there is no time limit established by statute or ordinance for appeal, and the notice of action provisions are not used, then SEPA provides no time limit for judicial appeals. Appeal times may still be limited, however, by general statutes of limitation or the common law.

(h) For the purposes of this subsection, "a time limit established by statute or ordinance" does not include time limits established by the general statutes of limitation in chapter 4.16 RCW.

(i) This subsection does not apply to petitions for judicial review of agency decisions in contested cases, or to petitions for a declaratory judgment on the validity of a rule, both of which are governed exclusively by the Administrative Procedure Act, chapter 34.04 RCW.

(5) *Official notice of the date and place for commencing an appeal.*

(a) Official notice of the date and place for commencing an appeal must be given if there is a time limit established by statute or ordinance for commencing an appeal of the underlying governmental action. The notice shall include:

(i) The time limit for commencing appeal of the underlying governmental action and the statute or ordinance establishing the time limit; and

(ii) The time for appealing SEPA issues (thirty days after notice); and

(iii) A statement that a notice of intent is required, if a notice is required under subsection (4)(d) of this section, and instructions on where to send the notice and by what date; and

(iv) Where an appeal may be filed.

(b) Notice is given by:

(i) Delivery of written notice to the applicant, all parties to any administrative appeal, and all persons who have requested notice of decisions with respect to the particular proposal in question; and

(ii) Following the agency's normal methods of notice for the type of governmental action taken.

(c) Written notice containing the information required by subsection (5)(a) of this section may be appended to the permit, decision documents, or SEPA compliance documents or may be printed separately.

(d) Official notices required by this subparagraph shall not be given prior to final agency action.

## PART EIGHT - DEFINITIONS

**WAC 197-11-700 Definitions.** (1) The terms used in these rules shall be uniform throughout the state as applied to SEPA (197-11-040). Agencies may add to certain of these definitions in their procedures, to help explain how they carry out SEPA, but shall not change these definitions (197-11-906).

(2) Unless the context clearly requires otherwise:

(a) Use of the singular shall include the plural and conversely.

(b) "Preparation" of environmental documents refers to preparing or supervising the preparation of documents, including issuing, filing, printing, circulating, and related requirements.

(c) "Impact" refers to environmental impact.

(d) "Permit" means "license" (197-11-760).

(e) "Commenting" includes but is not synonymous with "consultation" (Part Five).

(f) "Environmental cost" refers to adverse environmental impact and may or may not be quantified.

(g) "EIS" refers to draft, final, and supplemental EISs (197-11-405 and 197-11-738).

(h) "Under" includes pursuant to, subject to, required by, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction.

(3) In these rules:

(a) "Shall" is mandatory.

(b) "May" is optional and permissive and does *not* impose a requirement.

(c) "Include" means "include but not limited to."

(4) The following terms are synonymous:

(a) Effect and impact (197-11-752).

(b) Environment and environmental quality (197-11-740).

(c) Major and significant (197-11-764 and 197-11-794).

(d) Proposal and proposed action (197-11-784).

(e) Probable and likely (197-11-782).

**WAC 197-11-702 Act.** "Act" means the State Environmental Policy Act of 1971, chapter 43.21C RCW, as amended, which is also referred to as "SEPA".

**WAC 197-11-704 Action.** (1) "Actions" include, as further specified below:

(a) New and continuing activities (including projects and programs) entirely or partly financed, assisted, conducted, regulated, licensed, or approved by agencies;

(b) New or revised agency rules, regulations, plans, policies, or procedures; and

(c) Legislative proposals.

(2) Actions fall within one of two categories:

(a) *Project actions.* A project action involves a decision on a specific project, such as a construction or management activity located in a defined geographic area. Projects include and are limited to agency decisions to:

(i) License, fund, or undertake any activity that will directly modify the environment, whether the activity will be conducted by the agency, an applicant, or under contract.

(ii) Purchase, sell, lease, transfer, or exchange natural resources, including publicly owned land, whether or not the environment is directly modified.

(b) *Nonproject actions.* Nonproject actions involve decisions on policies, plans, or programs.

(i) The adoption or amendment of legislation, ordinances, rules, or regulations that contain standards controlling use or modification of the environment;

(ii) The adoption or amendment of comprehensive land use plans or zoning ordinances;

(iii) The adoption of any policy, plan, or program that will govern the development of a series of connected actions (197-11-060), but not including any policy, plan, or program for which approval must be obtained from any federal agency prior to implementation;

(iv) Creation of a district or annexations to any city, town or district;

(v) Capital budgets; and

(vi) Road, street, and highway plans.

(3) "Actions" do not include the activities listed above when an agency is not involved. Actions do not include bringing judicial or administrative civil or criminal enforcement actions (certain categorical exemptions in Part Nine identify in more detail governmental activities that would not have any environmental impacts and for which SEPA review is not required).

**WAC 197-11-706 Addendum.** "Addendum" means an environmental document used to provide additional information or analysis that does not substantially change the analysis of significant impacts and alternatives in the existing environmental document. The term does not include supplemental EISs. An addendum may be used at any time during the SEPA process.

**WAC 197-11-708 Adoption.** "Adoption" means an agency's use of all or part of an existing environmental document to meet all or part of the agency's responsibilities under SEPA to prepare an EIS or other environmental document.

**WAC 197-11-710 Affected tribe.** Affected tribe or "treaty tribe" means any Indian tribe, band, nation or community in the state of Washington, that is federally recognized by the United States Secretary of the Interior and that will or may be affected by the proposal.

**WAC 197-11-712 Affecting.** "Affecting" means having, or may be having, an effect on (see 197-11-752 on impacts). For purposes of deciding whether an EIS is required and what the EIS must cover, "affecting" refers to having probable, significant adverse environmental impacts (RCW 43.21C.031 and 43.21C.110(1)(c)).

**WAC 197-11-714 Agency.** (1) "Agency" means any state or local governmental body, board, commission, department, or officer authorized to make law, hear contested cases, or otherwise take the actions stated in 197-11-704, except the judiciary and state legislature. An agency is any state agency (197-11-796) or local agency (197-11-762).

(2) "Agency with environmental expertise" means an agency with special expertise on the environmental impacts involved in a proposal or alternative significantly affecting the environment. These agencies are listed in

197-11-920; the list may be expanded in agency procedures (197-11-906). The appropriate agencies must be consulted in the environmental impact statement process, as required by 197-11-502.

(3) "Agency with jurisdiction" means an agency with authority to approve, veto, or finance all or part of a nonexempt proposal (or part of a proposal). The term does not include an agency authorized to adopt rules or standards of general applicability that could apply to a proposal, when no license or approval is required from the agency for the specific proposal. The term also does not include a local, state, or federal agency involved in approving a grant or loan, that serves only as a conduit between the primary administering agency and the recipient of the grant or loan. Federal agencies with jurisdiction are those from which a license or funding is sought or required.

(4) If a specific agency has been named in these rules, and the functions of that agency have changed or been transferred to another agency, the term shall mean any successor agency.

(5) For those proposals requiring a hydraulic project approval under RCW 75.20.100, both the department of game and the department of fisheries shall be considered agencies with jurisdiction.

**WAC 197-11-716 Applicant.** "Applicant" means any person or entity, including an agency, applying for a license from an agency. Application means a request for a license.

**WAC 197-11-718 Built environment.** "Built environment" means the elements of the environment as specified by RCW 43.21C.110(1)(f) and 197-11-444(2), which are generally built or made by people as contrasted with natural processes.

**WAC 197-11-720 Categorical exemption.** "Categorical exemption" means a type of action, specified in these rules, which does not significantly affect the environment (RCW 43.21C.110(1)(a)); categorical exemptions are found in Part Nine of these rules. Neither a threshold determination nor any environmental document, including an environmental checklist or environmental impact statement, is required for any categorically exempt action (RCW 43.21C.031). These rules provide for those circumstances in which a specific action that would fit within a categorical exemption shall not be considered categorically exempt (197-11-305).

**WAC 197-11-722 Consolidated appeal.** "Consolidated appeal" means the procedure requiring a person to file an agency appeal challenging both procedural and substantive compliance with SEPA at the same time, as provided under RCW 43.21C.075(3)(b) and the exceptions therein. If an agency does not have an appeal procedure for challenging either the agency's procedural or its substantive SEPA determinations, the appeal cannot be consolidated prior to any judicial review. The requirement for a consolidated appeal does not preclude

agencies from bifurcating appeal proceedings and allowing different agency officials to hear different aspects of the appeal. (197-11-680).

**WAC 197-11-724 Consulted agency.** "Consulted agency" means any agency with jurisdiction or expertise that is requested by the lead agency to provide information during the SEPA process.

**WAC 197-11-726 Cost-benefit analysis.** "Cost-benefit analysis" means a quantified comparison of costs and benefits generally expressed in monetary or numerical terms. It is not synonymous with the weighing or balancing of environmental and other impacts or benefits of a proposal.

**WAC 197-11-728 County/city.** "County/city" means a county, city, or town. In this chapter, duties and powers are assigned to a county, city, or town as a unit. The delegation of responsibilities among the various departments of a county, city, or town is left to the legislative or charter authority of the individual counties, cities, or towns.

**WAC 197-11-730 Decisionmaker.** "Decisionmaker" means the agency official or officials who make the agency's decision on a proposal. The decisionmaker and responsible official are not necessarily synonymous, depending on the agency and its SEPA procedures (197-11-906 and 197-11-910).

**WAC 197-11-732 Department.** "Department" means the Washington state department of ecology.

**WAC 197-11-734 Determination of nonsignificance (DNS).** "Determination of nonsignificance" (DNS) means the written decision by the responsible official of the lead agency that a proposal is not likely to have a significant adverse environmental impact, and therefore an EIS is not required (197-11-310 and 197-11-340). The DNS form is in 197-11-970.

**WAC 197-11-736 Determination of significance (DS).** "Determination of significance" (DS) means the written decision by the responsible official of the lead agency that a proposal is likely to have a significant adverse environmental impact, and therefore an EIS is required (197-11-310 and 197-11-360). The DS form is in 197-11-980 and must be used substantially in that form.

**WAC 197-11-738 EIS.** "EIS" means environmental impact statement. The term "detailed statement" in RCW 43.21C.030(2)(c) refers to a final EIS. The term "EIS" as used in these rules refers to draft, final, or supplemental EISs (197-11-405).

**WAC 197-11-740 Environment.** "Environment" means, and is limited to, those elements listed in 197-11-444, as required by RCW 43.21C.110(1)(f). Environment and environmental quality refer to the state of the environment and are synonymous as used in these

rules and refer basically to physical environmental quality.

**WAC 197-11-742 Environmental checklist.** "Environmental checklist" means the form in 197-11-960. Rules for its use are in 197-11-315.

**WAC 197-11-744 Environmental document.** "Environmental document" means any written public document prepared under this chapter. Under SEPA, the terms environmental analysis, environmental study, environmental report, and environmental assessment do not have specialized meanings and do not refer to particular environmental documents (unlike various other state or federal environmental impact procedures).

**WAC 197-11-746 Environmental review.** "Environmental review" means the consideration of environmental factors as required by SEPA. The "environmental review process" is the procedure used by agencies and others under SEPA for giving appropriate consideration to the environment in agency decisionmaking.

**WAC 197-11-748 Environmentally sensitive area.** "Environmentally sensitive area" means an area designated and mapped by a county/city under 197-11-908. Certain categorical exemptions do not apply within environmentally sensitive areas (197-11-305, 197-11-908, and Part Nine of these rules).

**WAC 197-11-750 Expanded scoping.** "Expanded scoping" is an optional process that may be used by agencies to go beyond minimum scoping requirements.

**WAC 197-11-752 Impacts.** "Impacts" are the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in 197-11-444.

**WAC 197-11-754 Incorporation by reference.** "Incorporation by reference" means the inclusion of all or part of any existing document in an agency's environmental documentation by reference (197-11-600 and 197-11-635).

**WAC 197-11-756 Lands covered by water.** "Lands covered by water" means lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, marshes, and swamps. Certain categorical exemptions do not apply to lands covered by water, as specified in Part Nine.

**WAC 197-11-758 Lead agency.** "Lead agency" means the agency with the main responsibility for complying with SEPA's procedural requirements (197-11-050 and 197-11-922). The procedures for determining lead agencies are in Part Ten of these rules. "Lead agency" may be read as "responsible official" (197-11-788 and 197-11-910) unless the context clearly requires otherwise. Depending on the agency and the type of



proposal, for example, there may be a difference between the lead agency's responsible official, who is at a minimum responsible for procedural determinations (such as 197-11-330, 197-11-455, 197-11-460) and its decisionmaker, who is at a minimum responsible for substantive determinations (such as 197-11-448, 197-11-655, and 197-11-660).

**WAC 197-11-760 License.** "License" means any form of written permission given to any person, organization, or agency to engage in any activity, as required by law or agency rule. A license includes all or part of an agency permit, certificate, approval, registration, charter, or plat approvals or rezones to facilitate a particular proposal. The term does not include a license required solely for revenue purposes.

**WAC 197-11-762 Local agency.** "Local agency" or "local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties and their legislative bodies. The term encompasses but does not refer specifically to the departments within a city or county.

**WAC 197-11-764 Major action.** "Major action" means an action that is likely to have significant adverse environmental impacts. "Major" reinforces but does not have a meaning independent of "significantly" (197-11-794).

**WAC 197-11-766 Mitigated DNS.** "Mitigated DNS" means a DNS that includes mitigation measures and is issued as a result of the process specified in 197-11-350.

**WAC 197-11-768 Mitigation.** "Mitigation" means:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- (6) Monitoring the impact and taking appropriate corrective measures.

**WAC 197-11-770 Natural environment.** "Natural environment" means those aspects of the environment contained in 197-11-444(1), frequently referred to as natural elements, or resources, such as earth, air, water, wildlife, and energy.

**WAC 197-11-772 NEPA.** "NEPA" means the National Environmental Policy Act of 1969 (42 USCA

4321 *et seq.*; P.L. 91-190), that is like SEPA at the federal level. The federal NEPA regulations are located at 40 CFR 1500 *et seq.*

**WAC 197-11-774 Nonproject.** "Nonproject" means actions which are different or broader than a single site specific project, such as plans, policies, and programs (197-11-704).

**WAC 197-11-776 Phased review.** "Phased review" means the coverage of general matters in broader environmental documents, with subsequent narrower documents concentrating solely on the issues specific to the later analysis (197-11-060(5)). Phased review may be used for a single proposal or EIS (197-11-060).

**WAC 197-11-778 Preparation.** "Preparation" of an environmental document means preparing or supervising the preparation of documents, including issuing, filing, printing, circulating, and related requirements (see 197-11-700(2)).

**WAC 197-11-780 Private project.** "Private project" means any proposal primarily initiated or sponsored by an individual or entity other than an agency.

**WAC 197-11-782 Probable.** "Probable" means likely or reasonably likely to occur, as in "a reasonable probability of more than a moderate effect on the quality of the environment" (see 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.

**WAC 197-11-784 Proposal.** "Proposal" means a proposed action. A proposal includes both actions and regulatory decisions of agencies as well as any actions proposed by applicants. A proposal exists at that stage in the development of an action when an agency is presented with an application, or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects can be meaningfully evaluated. (See 197-11-055 and 197-11-060(3).) A proposal may therefore be a particular or preferred course of action or several alternatives. For this reason, these rules use the phrase "alternatives including the proposed action." The term "proposal" may therefore include "other reasonable courses of action," if there is no preferred alternative and if it is appropriate to do so in the particular context.

**WAC 197-11-786 Reasonable alternative.** "Reasonable alternative" means an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures. (See 197-11-440(5) and 197-11-660.) Also see the definition of

"scope" for the three types of alternatives to be analyzed in EISs (197-11-792).

**WAC 197-11-788 Responsible official.** "Responsible official" means that officer or officers, committee, department, or section of the lead agency designated by agency SEPA procedures to undertake its procedural responsibilities as lead agency (197-11-910).

**WAC 197-11-790 SEPA.** "SEPA" means the State Environmental Policy Act of 1971 (chapter 43.21C RCW), which is also referred to as the act. The "SEPA process" means all measures necessary for compliance with the act's requirements.

**WAC 197-11-792 Scope.** (1) "Scope" means the range of proposed actions, alternatives, and impacts to be analyzed in an environmental document (197-11-060(2)).

(2) To determine the scope of environmental impact statements, agencies consider three types of actions, three types of impacts, and three types of alternatives.

(a) *Actions* may be:

(i) Single (a specific action which is not related to other proposals or parts of proposals);

(ii) Connected (proposals or parts of proposals which are closely related under 197-11-060(3) or 197-11-305(1)); or

(iii) Similar (proposals that have common aspects and may be analyzed together under 197-11-060(3)).

(b) *Alternatives* may be:

(i) No action;

(ii) Other reasonable courses of action; or

(iii) Mitigation measures (not in the proposed action).

(c) *Impacts* may be:

(i) Direct;

(ii) Indirect; or

(iii) Cumulative.

(3) 197-11-060 provides general rules for the content of any environmental review under SEPA; Part Four and 197-11-440 provide specific rules for the content of EISs. The scope of an individual statement may depend on its relationship with other EISs or on phased review.

**WAC 197-11-793 Scoping.** "Scoping" means determining the range of proposed actions, alternatives, and impacts to be discussed in an EIS. Because an EIS is required to analyze significant environmental impacts only, scoping is intended to identify and narrow the EIS to the significant issues. The required scoping process (197-11-408) provides interagency and public notice of a DS, or equivalent notification, and opportunity to comment. The lead agency has the option of expanding the scoping process (197-11-410), but shall not be required to do so. Scoping is used to encourage cooperation and early resolution of potential conflicts, to improve decisions, and to reduce paperwork and delay.

**WAC 197-11-794 Significant.** (1) "Significant" as used in SEPA means a reasonable likelihood of more

than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact.

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

(3) 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

**WAC 197-11-796 State agency.** "State agency" means any state board, commission, department, or officer, including state universities, colleges, and community colleges, that is authorized by law to make rules, hear contested cases, or otherwise take the actions stated in 197-11-704, except the judiciary and state legislature.

**WAC 197-11-797 Threshold determination.** "Threshold determination" means the decision by the responsible official of the lead agency whether or not an EIS is required for a proposal that is not categorically exempt (197-11-310 and 197-11-330(1)(b)).

**WAC 197-11-799 Underlying governmental action.** "Underlying government action" means the governmental action, such as zoning or permit approvals, that is the subject of SEPA compliance.

## PART NINE - CATEGORICAL EXEMPTIONS

**WAC 197-11-800 Categorical exemptions.** The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in 197-11-305.

(1) *Minor new construction—Flexible thresholds.*

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

(b) The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

(i) The construction or location of any residential structures of four dwelling units.

(ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

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

(iv) The construction of a parking lot designed for twenty automobiles.

(v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

(c) Cities, towns or counties may raise the exempt levels to the maximum specified below by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (197-11-904) and sent to the department of ecology. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:

(i) 20 dwelling units.

(ii) 30,000 square feet.

(iii) 12,000 square feet; 40 automobiles.

(iv) 40 automobiles.

(v) 500 cubic yards.

(2) *Other minor new construction.* The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:

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

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

(c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right-of-way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in

accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights-of-way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right-of-way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right-of-way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

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

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

(f) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance.

(g) The installation of impervious underground tanks, having a capacity of 10,000 gallons or less.

(h) The vacation of streets or roads.

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

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

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

(a) Dredging;

(b) Reconstruction/maintenance of groins and similar shoreline protection structures; or

(c) Replacement of utility cables that must be buried under the surface of the bedlands. Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) *Water rights.* The following appropriations of water shall be exempt, the exemption covering not only the

permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pump-house reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation:

(a) Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.

(b) Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of ground water, for any purpose.

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

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to an authorized public use.

(c) The lease of real property when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.

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

(a) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, but not including further short subdivisions or short platting within a plat or subdivision previously exempted under this subsection.

(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(c) Classifications of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(7) *School closures.* The adoption and implementation of a plan, program, or decision for the closure of a school or schools shall be exempt. Demolition, physical modification or change of a facility from a school use shall not be exempt under this subsection.

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

(9) *Variances under clean air act.* The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(10) *Water quality certifications.* The granting or denial of water quality certifications under the federal clean water act (Federal Water Pollution Control Act Amendments of 1972, 33 USC 1341) shall be exempt.

(11) *Activities of the state legislature.* All actions of the state legislature are exempted. This subsection does not exempt the proposing of legislation by an agency (197-11-704).

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

(a) All adjudicatory actions of the judicial branch.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) All licenses for vehicles for-hire and other vehicle related activities, including but not limited to taxicabs,

ambulances, and tow trucks: *Provided*, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

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

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

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

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

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

(b) The assessment and collection of taxes.

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

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

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

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

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

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

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

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection (see also 197-11-800(7)).

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

(17) *Local improvement districts.* The formation of local improvement districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under 197-11-800 and 197-11-880.

(18) *Information collection and research.* Basic data collection, research, resource evaluation, requests for

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

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

(20) *Procedural actions.* The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt. Agency SEPA procedures shall be exempt.

(21) *Building codes.* The adoption by ordinance of all codes as required by the state building code act (chapter 19.27 RCW).

(22) *Adoption of noise ordinances.* The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (and thus requires approval of the department of ecology under RCW 70.107.060(4)), SEPA compliance may be limited to those items which differ from state regulations.

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

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

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

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

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (more than 55,000 volts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.

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

(e) All developments within the confines of any existing electric substation, reservoir, pump station or well:

*Provided*, That additional appropriations of water are not exempted by this subsection.

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

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

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

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

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

(a) All class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder.

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

(c) Licenses or approvals to remove firewood.

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

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

(f) Issuance of leases for school sites.

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

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

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

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

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

**WAC 197-11-810 Exemptions and nonexemptions applicable to specific state agencies.** The exemptions in 197-11-820 through 197-11-875 relate only to the specific activities identified within the named agencies. These exemptions are in addition to the preceding sections of this part and are subject to the rules and limitations of 197-11-305. The categorical exemptions in 197-11-800 apply to all agencies, including those named in 197-11-820 through 197-11-875 unless the general

exemptions are specifically made inapplicable by one of the following exemptions.

**WAC 197-11-820 Department of licensing.** All licenses required under programs administered by the department of licensing as of December 12, 1975 are exempted, except the following:

(1) Camping club promotional permits under chapter 19.105 RCW.

(2) Motor vehicle wrecker licenses under chapter 46.80 RCW; 197-11-800(14)(i) shall apply to allow possible exemption of renewals of camping club promotional permits and motor vehicle wrecker licenses.

**WAC 197-11-825 Department of labor and industries.** All licenses required under programs administered by the department of labor and industries as of December 12, 1975 are exempted, except the issuance of any license for the manufacture of explosives or the adoption or amendment by the department of any regulations incorporating general standards respecting the issuance of licenses authorizing the storage of explosives under chapter 70.74 RCW. The adoption of any industrial health or safety regulations containing noise standards shall be considered a major action under this chapter.

**WAC 197-11-830 Department of natural resources.** The following actions and licenses of the department of natural resources are exempted:

(1) Forest closures, shutdowns and permit suspensions due to extreme unusual fire hazards.

(2) Operating permits to use power equipment on forest land.

(3) Permits to use fuse on forest land.

(4) Log patrol licenses.

(5) Permits for drilling for which no public hearing is required under RCW 79.76.070 (geothermal test drilling).

(6) Permits for the dumping of forest debris and wood waste in forested areas.

(7) Those sales of timber from public lands that the department of natural resources determines, by rules adopted pursuant to RCW 43.21C.120 do not have potential for a substantial impact on the environment.

(8) Except on aquatic lands under state control, leases for mineral prospecting under RCW 79.01.616 or 79.01.652, but not including issuance of subsequent contracts for mining.

**WAC 197-11-835 Department of fisheries.** The following activities of the department of fisheries are exempted:

(1) The establishment of seasons, catch limits or geographical areas for fishing or shellfish removal.

(2) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a class I, II, III forest practice as defined in RCW 76.09.050 or regulations thereunder.

(3) Hydraulic project approvals where there is no other agency with jurisdiction (besides the department

of game) requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels which have been naturally abandoned within the twelve months previous to the hydraulic permit application.

(4) All clam farm licenses and oyster farm licenses, except where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands.

(5) All other licenses (other than those excepted in (2) and (3) above) authorized to be issued by the department as of December 12, 1975 except the following:

(a) Fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;

(b) Licenses for the mechanical and/or hydraulic removal of clams, including geoducks; and,

(c) Any license authorizing the discharge of explosives in water. WAC 197-11-800(14)(i) shall apply to allow possible exemption of renewals of the above licenses.

(6) The routine release of hatchery fish or the reintroduction of endemic or native species into their historical habitat where only minor documented effects on other species will occur.

**WAC 197-11-840 Department of game.** The following activities of the department of game are exempted:

(1) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.

(2) The issuance of falconry permits.

(3) The issuance of all hunting or fishing licenses, permits or tags.

(4) Artificial game feeding.

(5) The issuance of scientific collector permits.

(6) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a class I, II, III forest practice as defined in RCW 76.09.050 and regulations thereunder.

(7) Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of fisheries) requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels that have been naturally abandoned within the twelve months previous to the hydraulic permit application.

(8) The routine release or transfer of hatchery fish, game birds, and animals or the reintroduction of endemic or native species into their historical habitat, where only minor documented effects on other species will occur.

(9) Minor repair work to be done by hand tools. Examples include:

(a) Maintenance of fish screen or intake structures; or

(b) Silt and debris removal from boat launches, docks, and piers.

(10) Collection of game fish and wildlife for research.

**WAC 197-11-845 Department of social and health services.** All actions under programs administered by the department of social and health services as of December 12, 1975, are exempted, except the following:

(1) The adoption or amendment by the department of any regulations incorporating general standards for issuance of licenses authorizing the possession, use and transfer of radioactive source material under RCW 70-98.080, except that the issuance, revocation or suspension of individual licenses thereto shall be exempt. However, licenses to operate low level burial facilities or licenses to operate or expand beyond design capacity, mineral processing facilities or their tailings areas whose products or byproducts have concentrations of naturally occurring radioactive materials in excess of exempt concentrations, as specified in WAC 402-20-250, shall not be exempt.

(2) The approval of a comprehensive plan for public water supply systems servicing one thousand or more units under WAC 248-54-065.

(3) The approval of engineering reports or plans and specifications under WAC 248-54-085 and 248-54-095, for all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet located in new rights of way and major extensions to existing water distribution systems.

(4) The approval of an application for a certificate of need under RCW 70.38.120 for construction of a new hospital or medical facility or for major additions to existing service capacity of such institutions.

(5) The approval of an application for any system of sewerage and/or water general plan or amendments under RCW 36.94.100.

(6) The approval of any plans and specifications for new sewage treatment works or major extensions to existing sewer treatment works submitted to the department under WAC 248-92-040.

(7) The construction of any building, facility or other installation not exempt by 197-11-800 for the purpose of housing department personnel, or fulfilling statutorily directed or authorized functions (e.g., prisons).

(8) The approval of any final plans for construction of a nursing home pursuant to WAC 248-14-100, construction of a private psychiatric hospital pursuant to WAC 248-22-005 or construction of an alcoholism treatment center pursuant to WAC 248-22-510.

**WAC 197-11-850 Department of agriculture.** All actions under programs administered by the department of agriculture as of December 12, 1975 are exempted, except for the following:

(1) The approval of any application for a commercial registered feedlot, quarantined registered feedlot under chapter 16.36 RCW, or chapters 16-28 and 16-30 WAC.

(2) The issuance or amendment of any regulation respecting restricted-use pesticides under chapter 15.58

RCW that would have the effect of allowing the use of a pesticide previously prohibited by Washington state.

(3) The removal of any pesticide from the list of restricted-use pesticides established in WAC 16-228-155 so as to permit sale of such pesticides to home and garden users, unless the pesticide is no longer manufactured and is not available.

(4) The removal of any pesticide from the list of highly toxic and restricted-use pesticides established under WAC 16-228-165 so as to authorize sale of such pesticides to persons not holding an annual user permit, an applicator certificate, or an applicator operator license, unless the pesticide is no longer manufactured and is not available.

(5) The removal of any pesticide from the category of highly toxic pesticide formulations established in WAC 16-228-165 so as to permit the sale of such pesticides by persons not possessing a pesticide dealer's license, unless the pesticide is no longer manufactured and is not available.

(6) The approval of any use of the pesticide DDT or DDD except for those uses approved by the centers for disease control of the United States department of health and human services (such as control of rabid bats).

(7) The issuance of a license to operate a public livestock market under RCW 16.65.030.

(8) The provisions of WAC 197-11-800(14)(i) shall apply to allow possible exemption of renewals of the licenses in (1) through (7) above.

**WAC 197-11-855 Department of ecology.** The following activities of the department of ecology shall be exempt:

(1) The issuance, reissuance or modification of any waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules and regulations. This exemption shall apply to existing discharges only and shall not apply to any new source discharges.

(2) Review of comprehensive solid waste management plans under RCW 70.95.100 and 70.95.110.

(3) Granting or denial of certification of consistency pursuant to the Federal Coastal Zone Management Act (16 U.S.C. 1451).

(4) Issuance of short-term water quality standards modification, pursuant to chapter 173-201 WAC, for minor projects when the water violations would:

- (a) Result in turbidity violations only;
- (b) Be less than fourteen days duration;
- (c) Be mitigated by a current hydraulic project approval conditioned to protect the fishery resource; and
- (d) Not significantly impair beneficial uses of the affected water body.

(5) Approval of engineering reports when such approval allows preparation of plans and specifications, but not when it would commit the department to approving the final proposal.

**WAC 197-11-860 Department of transportation.** The following activities of the department of transportation shall be exempt:

(1) Approval of the Annual Highway Safety Work Program involving the highway-related safety standards pursuant to 23 U.S.C. 402;

(2) Issuance of road approach permits and right of way rental agreements;

(3) Establishment and changing of speed limits of 55 miles per hour or less;

(4) Revisions of existing access control involving a single property owner;

(5) Issuance of a "Motorist Information Signing Permit," granting a private business person the privilege of having a sign on highway right of way which informs the public of the availability of his or her services;

(6) Issuance of permits for special units relative to state highways;

(7) Issuance of permits for the movement of over-legal size and weight vehicles on state highways;

(8) Issuance of encroachment permits for road approaches, fences and landfills on highway right of way; and

(9) Issuance of permits for utility occupancy of highway rights of way for use for distribution (as opposed to transmission).

**WAC 197-11-865 Utilities and transportation commission.** All actions of the utilities and transportation commission under statutes administered as of December 12, 1975, are exempted, except the following:

(1) Issuance of common carrier motor freight authority under chapter 81.80 RCW that would authorize a new service, or extend an existing transportation service in the fields of petroleum and petroleum products in bulk in tank type vehicles, radioactive substances, explosives, or corrosives;

(2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;

(3) Regulation of oil and gas pipelines under chapter 81.88 RCW; and

(4) The approval of utility and transportation rates where the funds realized as a result of such approved rates will or are intended to finance construction of a project, approval of which would not be otherwise exempt under 197-11-800, and where at the time of such rate approval no responsible official of any state or federal agency has conducted the environmental analysis prescribed by this chapter or the appropriate provisions of NEPA, whichever is applicable.

**WAC 197-11-870 Department of commerce and economic development.** The following activities of the department of commerce and economic development shall be exempt:

(1) The provisions of business consulting and advisory services that include tourist promotion under RCW 43.31.050.



(2) The promotion and development of foreign trade under RCW 43.31.370.

(3) The furnishing of technical and information services under RCW 43.31.060.

(4) The provision of technical assistance to applicants for loans and aid and/or grants by the community of economic revitalization board under chapter 43.160 RCW.

(5) The conduct of research and economic analysis under RCW 43.31.070, including the provision of consulting and advisory services and recommendations to state and local officials, agencies and governmental bodies as authorized under RCW 43.31.160, 43.31.200 and 43.31.210.

**WAC 197-11-875 Other agencies.** Except for building construction (the majority of which is undertaken through the department of general administration), all activities of the following state agencies under programs they administer as of December 12, 1975, are exempted:

- (1) Office of the attorney general.
- (2) Office of the auditor.
- (3) Department of employment security.
- (4) Office of the insurance commissioner and state fire marshal.
- (5) Department of personnel.
- (6) Department of printing.
- (7) Department of revenue.
- (8) Office of the secretary of state.
- (9) Office of the treasurer.
- (10) Arts commission.
- (11) Washington state patrol.
- (12) Interagency committee for outdoor recreation.
- (13) Department of emergency services.
- (14) Department of general administration, division of banking and division of savings and loan associations.
- (15) Forest practices appeals board.
- (16) Public employees' retirement system.
- (17) Law enforcement officers' and fire fighters' retirement board.
- (18) Volunteer fireman's retirement system board.
- (19) State department of retirement systems.
- (20) Teachers' retirement system board.
- (21) Higher education personnel board.
- (22) Commission for vocational education.
- (23) State energy office.

**WAC 197-11-880 Emergencies.** Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt. Agencies may specify these emergency actions in their procedures.

**WAC 197-11-890 Petitioning DOE to change exemptions.** (1) Except for the preceding section, agencies may create additional exemptions in their procedures only after receiving approval from the department of ecology under this section.

(2) An agency may petition the department to adopt additional exemptions or to delete existing exemptions by amending these rules. The petition shall be made under RCW 34.04.060. The petition shall state the language of the requested amendment, the petitioning agency's views on the environmental impacts of the activities covered by the proposed amendment, and the approximate number of actions of this type which have come before the petitioning agency over a particular period of time. The department shall consider and decide upon a petition within thirty days of receipt. If the determination is favorable, the department shall begin rulemaking under chapter 34.04 RCW. Any resulting amendments will apply either generally or to specified classes of agencies. Affected agencies shall amend their procedures accordingly.

(3) An agency may also petition the department for an immediate ruling upon any request to add, delete, or change an exemption. If such a petition is granted, the department will notify the petitioning agency, which may immediately include the change approved by the department in its own procedures. The department may thereafter begin rulemaking proceedings to amend these rules. Until these rules are amended, any change granted under this subsection shall apply only to the petitioning agency or agencies.

(4) The department will provide public notice of any proposed amendments to these rules in the manner required by the administrative procedure act, chapter 34.04 RCW. A copy of all approvals by the department under the preceding subsection shall be given to any person requesting the department for advance notice of rulemaking.

## PART TEN - AGENCY COMPLIANCE

**WAC 197-11-900 Purpose of this Part.** The purpose of this Part is to:

(1) Require each agency to adopt its own rules and procedures to carry out SEPA and ensure that agency rules and procedures shall have the force and effect of law and shall be consistent with these uniform statewide rules.

(2) Require agencies to include certain items in their rules.

(3) Ensure the documents prepared under the act are available to the public.

(4) Identify agencies with environmental expertise.

(5) Provide rules for determining the lead agency.

**WAC 197-11-902 Agency SEPA policies.** (1) The act and these rules allow agencies to condition or deny proposals if such action is based upon policies identified by the appropriate governmental authority. These policies must be incorporated into regulations, plans, or codes formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of substantive authority under SEPA. (RCW 43.21C.060; 197-11-660.) State and

local policies so designated are called "agency SEPA policies" in these rules.

(2) Agencies are required to designate their SEPA policies not later than one hundred eighty days after the effective date of these rules (or the creation of the agency). In order to condition or deny a proposal, an agency must comply with the provisions of RCW 43.21C.060 and 197-11-660. If an agency has already formally designated agency SEPA policies that meet the requirements of the act and these rules, the agency is not required to adopt them again. Agencies may revise or add to their SEPA policies at any time. Although agency SEPA procedures cannot change the provisions of these rules concerning substantive authority and mitigation (197-11-906(2)), agency SEPA policies are encouraged to identify specific mitigation measures or techniques.

(3) An agency's document that includes or references by citation their agency SEPA policies (197-11-660(3)) may be included in agency SEPA procedures (197-11-904). Public notice and opportunity for public comment shall be provided as part of the agency process for formally designating its SEPA policies.

(4) Depending on their content, the formal designation of agency SEPA policies will not necessarily require any environmental review and will normally be categorically exempt as a procedural action under 197-11-800(20). For example, the policies may merely compile, reorganize, or reference laws or policies currently on the books, or may otherwise be procedural in nature, such as requiring decisionmakers to consider certain factors.

**WAC 197-11-904 Agency SEPA procedures.** (1) Each agency is required by the act and this section to adopt its own rules and procedures for implementing SEPA. (RCW 43.21C.120.) Agencies may revise or add to their SEPA procedures at any time. Agencies may adopt these rules (chapter 197-11 WAC) by reference, and shall meet the requirements of 197-11-906 concerning the content of their procedures. State and local rules for carrying out SEPA procedures are called "agency SEPA procedures."

(2) State agencies shall adopt or amend their procedures within one hundred eighty days of the effective date of this chapter or subsequent revisions, or within one hundred eighty days of the establishment of an agency, whichever shall occur later. State agencies shall adopt their procedures by rule-making under the state administrative procedure act, chapter 34.04 RCW. If a state agency does not have rule-making authority under chapter 34.04 RCW, the agency shall adopt procedures under whatever authority it has, and public notice and opportunity for public comment shall be provided. Adoption shall be deemed to have taken place at the time the transmittal of adopted rules is filed with the code reviser. Universities, colleges, and community colleges shall use the procedures of chapter 28B.19 RCW in adopting procedures.

(3) Local agencies shall adopt or amend their procedures within one hundred eighty days of the effective date of this chapter or subsequent revisions, or within

one hundred eighty days of the establishment of the local governmental entity, whichever shall occur later. Local agencies shall adopt their procedures by rule, ordinance, or resolution, whichever is appropriate, to ensure that the procedures have the full force and effect of law. Public notice and opportunity for public comment shall be provided as part of the agency's process for adopting its SEPA procedures.

(4) Any agency determining that all actions it is authorized to take are exempt under Part Nine of these rules may adopt a statement to the effect that it has reviewed its authorized activities and found them all to be exempt under this chapter. Adoption of such a statement under the procedures in subsections (2) and (3) shall be deemed to be in compliance with the requirement that the agency adopt procedures under this chapter.

(5) The adoption of agency procedures is procedural and shall be categorically exempt under this chapter (197-11-800(20)).

**WAC 197-11-906 Content and consistency of agency procedures.** (1)(a) Agency SEPA policies and procedures shall implement and be consistent with the rules in this chapter. Unless optional or permissive (see 197-11-704), all of the provisions of this chapter are mandatory, and agency procedures shall incorporate these rules and criteria.

(b) Permissive and optional rules shall *not* be construed as mandatory requirements. Rules giving encouragement or guidance shall also not be construed as mandatory. The decision on whether to apply an optional provision rests with the responsible official.

(c) Except as stated in the next subsection, the rules in this chapter are not exclusive, and agencies may add procedures and criteria. However, any additional material shall not be inconsistent with, contradict, or make compliance with any provision of these rules a practical impossibility. Any additional material shall be consistent with SEPA.

(d) Agency procedures shall also include the procedures required by sections 197-11-055 (3)(a) and (4), 197-11-420 (1) and (4), and 197-11-910.

(e) Agency procedures may include procedures under 197-11-055 (2) and (7), 197-11-100(3), 197-11-680, 197-11-714(2), 197-11-800(1), and 197-11-908. Any such procedures shall include the content required by those rules.

(2) The following provisions of this chapter are exclusive and may not be added to or changed in agency procedures:

(a) The definitions of "proposal," "major," "action," "significant," "affecting," "environment," "categorical exemption," "agencies with jurisdiction," "lands covered by water," "built environment," "natural environment," "license," "licensing," "mitigation," and "scope;"

(b) The criteria for lead agency determination (Part Ten of these rules);

(c) The categorical exemptions in Part Nine of these rules, unless expressly allowed under Part Nine;

(d) The information allowed to be required of applicants under 197-11-080, 197-11-100, 197-11-335, and 197-11-420;

(e) The requirements for the style and size of an EIS (197-11-425);

(f) The list of elements of the environment (197-11-444); and

(g) The provisions on substantive authority and mitigation in 197-11-660.

(3) The following provisions of this chapter may not be changed, but may be added to; any additions shall meet the criteria for additional material stated in subsection (1)(c) of this section:

(a) All other definitions in Part Eight of these rules;

(b) The provisions in Parts Four and Five of these rules, except as necessary to be grammatically incorporated into agency procedures;

(c) The contents of agency SEPA procedures (197-11-906); and

(d) The list of agencies with environmental expertise (197-11-920).

(4) The forms in Part Eleven shall be used substantially as set forth. Minor changes are allowed to make the forms more useful to agencies, applicants, and the public, as long as the changes do not eliminate requested information or impose burdens on applicants. The questions in part two of the environmental checklist shall not be altered.

#### **WAC 197-11-908 Environmentally sensitive areas.**

(1) Each county/city may at its option designate areas within its jurisdiction that are environmentally sensitive areas, and shall adopt such designation in its agency SEPA procedures (197-11-906). Environmentally sensitive areas shall be those within which the exemptions listed in the next subsection could have a significant adverse environmental impact, including but not limited to areas with unstable soils, steep slopes, unusual or unique plants or animals, wetlands, or areas which lie within floodplains. The location and extent of all environmentally sensitive areas shall be clearly indicated on a map that shall be adopted by reference as part of the SEPA procedures of the county/city; a copy shall be sent to the department of ecology.

(2) Each county/city that designates and maps an environmentally sensitive area may select certain categorical exemptions that do not apply within the area. The selection of exemptions that will not apply may be made from the following subsections of 197-11-800: (1), (2) (a) through (h), (3), (5), (6)(a), (14)(c), (24) (a) through (g), and (25)(d), (f), (h), (i). All other categorical exemptions apply whether or not the proposal will be located within an environmentally sensitive area. Exemptions selected by an agency that do not apply within the various environmentally sensitive areas shall be listed within the SEPA procedures of any county/city adopting such areas; a copy shall be sent to the department of ecology.

(3) Proposals that will be located within environmentally sensitive areas are to be treated no differently than other proposals under this chapter, except as stated in

the prior subsection. A threshold determination shall be made for all such actions, and an EIS shall not be automatically required for a proposal merely because it is proposed for location in an environmentally sensitive area.

(4) Certain categorical exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

**WAC 197-11-910 Designation of responsible official.** Agency SEPA procedures shall designate or provide a method of designating the responsible official with speed and certainty (197-11-906 (1)(d)). This designation may vary depending upon the nature of the proposal. The responsible official shall carry out the duties and functions of the agency when it is acting as the lead agency under these guidelines. Since it is possible under these rules for an agency to be acting as a lead agency prior to actually receiving an application for a license to undertake a private project, designation of the first department within the agency to receive an application as the responsible official will not be sufficient.

**WAC 197-11-912 Procedures on consulted agencies.** Each agency shall develop internal procedures, manuals, or guidance for providing responses to consultation requests from other agencies pertaining to threshold investigations, the scoping process, or EISs. Such procedures shall ensure that the agency will comply with the requirements of Part Four of these rules. It is recommended that these procedures be integrated within existing procedures of investigating license applications when the consulted agency is also an acting agency.

**WAC 197-11-914 SEPA fees and costs.** Except for the costs allowed by this chapter (see, for example, sections 197-11-080, 197-11-100, 197-11-340(3)(a), 197-11-420(4), 197-11-440(2)(m), 197-11-504, 197-11-508, 197-11-570, 197-11-600(3)(b) pertaining to the cost of preparing environmental documents), these rules neither authorize nor prohibit the imposition of fees to cover the costs of SEPA compliance.

#### **WAC 197-11-916 Application to ongoing actions.**

(1) Agency SEPA procedures shall apply to any proposal initiated after the effective date of the lead agency's SEPA procedures or those of the agency proposing the action.

(2) For proposals made before the effective date of revised lead agency SEPA procedures, the revised procedures shall apply to those elements of SEPA compliance initiated after the procedures went into effect. Agency procedures adopted under RCW 43.21C.120 and these rules shall not be applied to invalidate or require modification of any threshold determination, EIS or other element of SEPA compliance undertaken or completed before the effective date of the procedures of the lead agency or of the agency proposing the action.

(3) Agencies are responsible for compliance with any statutory requirements that went into effect before the

adoption of these rules and agency SEPA procedures (for example, the statutory requirements for appeals).

**WAC 197-11-917 Relationship to chapter 197-10 WAC.** Chapter 197-10 WAC, the original SEPA guidelines, has not been repealed because the existing guidelines of many agencies adopt portions of chapter 197-10 WAC by reference. Chapter 197-10 WAC also continues to apply for the next one hundred eighty days if an agency has not adopted procedures implementing SEPA (197-10-900(2) and 197-11-904). The department of ecology intends to repeal chapter 197-10 WAC one hundred eighty days after the effective date of chapter 197-11 WAC.

**WAC 197-11-918 Lack of agency procedures.** If an agency fails to adopt rules, ordinances, resolutions, or regulations implementing SEPA within the one hundred eighty-day time period required by RCW 43.21C.120, the rules in this chapter shall be applied as practicable to the actions of such agency.

**WAC 197-11-920 Agencies with environmental expertise.** The following agencies shall be regarded as possessing special expertise relating to those categories of the environment under which they are listed:

- (1) Air quality.
  - (a) Department of ecology.
  - (b) Department of natural resources (only for burning in forest areas).
  - (c) Department of social and health services.
  - (d) Regional air pollution control authority or agency.
- (2) Water resources and water quality.
  - (a) Department of game.
  - (b) Department of ecology.
  - (c) Department of natural resources (state-owned tidelands, shorelands, harbor areas or beds of navigable waters).
  - (d) Department of social and health services (public water supplies, sewer systems, shellfish habitats).
  - (e) Department of fisheries.
- (3) Hazardous and toxic substances (including radiation).
  - (a) Department of ecology.
  - (b) Department of social and health services.
  - (c) Department of agriculture (foods or pesticides).
  - (d) Department of fisheries (introduction into waters).
  - (e) Department of game (introduction into waters).
- (4) Solid and hazardous waste.
  - (a) Department of ecology.
  - (b) Department of fisheries (dredge spoils).
  - (c) Department of social and health services.
  - (d) Department of game (dredge spoils).
- (5) Fish and wildlife.
  - (a) Department of game.
  - (b) Department of fisheries.
- (6) Natural resources development.
  - (a) Department of commerce and economic development.
  - (b) Department of ecology.
  - (c) Department of natural resources.

- (d) Department of fisheries.
- (e) Department of game.
- (7) Energy production, transmission and consumption.
  - (a) Department of ecology.
  - (b) Department of natural resources (geothermal, coal, uranium).
  - (c) State energy office.
  - (d) Energy facility site evaluation council.
  - (e) Utilities and transportation commission.
  - (8) Land use and management.
    - (a) Department of commerce and economic development.
    - (b) Department of ecology.
    - (c) Department of fisheries (affecting surface or marine waters).
    - (d) Department of natural resources (tidelands, shorelands, or state-owned or managed lands).
    - (e) Planning and community affairs agency.
    - (f) Department of game.
    - (9) Noise.
      - (a) Department of ecology.
      - (b) Department of social and health services.
    - (10) Recreation.
      - (a) Department of commerce and economic development.
      - (b) Department of game.
      - (c) Department of fisheries.
      - (d) Parks and recreation commission.
      - (e) Department of natural resources.
    - (11) Archaeological/historical.
      - (a) Office of archaeology and historic preservation.
      - (b) Washington state university at Pullman (Washington archaeological research center).
    - (12) Transportation.
      - (a) Department of transportation.
      - (b) Utilities and transportation commission.

**WAC 197-11-922 Lead agency rules.** The rules for deciding when and how an agency is the lead agency (197-11-050) are contained in this part. The method and criteria for lead agency selection are in 197-11-924. Lead agency rules for different types of proposals as well as for specific proposals are in 197-11-926 through 197-11-940. Rules for interagency agreements are in 197-11-942 through 197-11-944. Rules for asking the department of ecology to resolve lead agency disputes are in 197-11-946. Rules for the assumption of lead agency status by another agency with jurisdiction are in 197-11-948.

**WAC 197-11-924 Determining the lead agency.** (1) The first agency receiving an application for or initiating a nonexempt proposal shall determine the lead agency for that proposal, unless the lead agency has been previously determined, or the agency receiving the proposal is aware that another agency is determining the lead agency. The lead agency shall be determined by using the criteria in 197-11-926 through 197-11-944.

(2) If an agency determines that another agency is the lead agency, it shall mail to such lead agency a copy of

the application it received, together with its determination of lead agency and an explanation. If the agency receiving this determination agrees that it is the lead agency, it shall notify the other agencies with jurisdiction. If it does not agree, and the dispute cannot be resolved by agreement, the agencies shall immediately petition the department of ecology for a lead agency determination under 197-11-946.

(3) Any agency receiving a lead agency determination to which it objects shall either resolve the dispute, withdraw its objection, or petition the department for a lead agency determination within fifteen days of receiving the determination.

(4) An applicant may also petition the department to resolve the lead agency dispute under 197-11-946.

(5) To make the lead agency determination, an agency must determine to the best of its ability the range of proposed actions for the proposal (197-11-060) and the other agencies with jurisdiction over some or all of the proposal. This can be done by:

- (a) Describing or requiring an applicant to describe the main features of the proposal;
- (b) Reviewing the list of agencies with expertise;
- (c) Contacting potential agencies with jurisdiction either orally or in writing.

**WAC 197-11-926 Lead agency for governmental proposals.** (1) When an agency initiates a proposal, it is the lead agency for that proposal. If two or more agencies share in the implementation of a proposal, the agencies shall by agreement determine which agency will be the lead agency. For the purposes of this section, a proposal by an agency does not include proposals to license private activity.

(2) Whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal.

**WAC 197-11-928 Lead agency for public and private proposals.** When the proposal involves both private and public activities, it shall be characterized as either a private or a public project for the purposes of lead agency designation, depending upon whether the primary sponsor or initiator of the project is an agency or from the private sector. Any project in which agency and private interests are too intertwined to make this characterization shall be considered a public project. The lead agency for all public projects shall be determined under 197-11-926.

**WAC 197-11-930 Lead agency for private projects with one agency with jurisdiction.** For proposed private projects for which there is only one agency with jurisdiction, the lead agency shall be the agency with jurisdiction.

**WAC 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.** For proposals for private projects that require nonexempt licenses from more than one agency, when at least one of the agencies requiring

such a license is a county/city, the lead agency shall be that county/city within whose jurisdiction is located the greatest portion of the proposed project area, as measured in square feet. For the purposes of this section, the jurisdiction of a county shall not include the areas within the limits of cities or towns within such county.

**WAC 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.** When a proposed private project requires nonexempt licenses only from a local agency other than a county/city and one or more state agencies, the lead agency shall be the local agency.

**WAC 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.** (1) For private projects which require licenses from more than one state agency, but require no license from a county/city, the lead agency shall be one of the state agencies requiring a license, based upon the following order of priority:

- (a) Department of ecology.
- (b) Department of social and health services.
- (c) Department of natural resources.
- (d) Department of fisheries.
- (e) Department of game.
- (f) Utilities and transportation commission.
- (g) Department of motor vehicles.
- (h) Department of labor and industries.

(2) When none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency that has the largest biennial appropriation.

(3) When, under subsection (1), an agency would be the lead agency solely because of its involvement in a program jointly administered with another agency, the other agency shall be designated the lead agency for proposals for which it is primarily responsible under agreements previously made between the two agencies for joint operation of the program.

**WAC 197-11-938 Lead agencies for specific proposals.** Notwithstanding the lead agency designation criteria contained in 197-11-926 through 197-11-936, the lead agency for proposals within the areas listed below shall be as follows:

(1) For all governmental actions relating to energy facilities for which certification is required under chapter 80.50 RCW, the lead agency shall be the energy facility site evaluation council (EFSEC); however, for any public project requiring such certification and for which the study under RCW 80.50.175 will not be made, the lead agency shall be the agency initiating the project.

(2) For all private projects relating to the use of geothermal resources under chapter 79.76 RCW, the lead agency shall be the department of natural resources.

(3) For all private projects requiring a license or other approval from the oil and gas conservation committee under chapter 78.52 RCW, the lead agency shall be the department of natural resources; however, for projects

under RCW 78.52.125, the EIS shall be prepared in accordance with that section.

(4) For all private activity requiring a license or approval under the Forest Practices Act of 1974, chapter 76.09 RCW, the lead agency shall be the department of natural resources; however, for any proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the lead agency shall be the county/city requiring the license.

(5) For all private projects requiring a license or lease to use or affect state lands, the lead agency shall be the state agency managing the lands in question; however, this subsection shall not apply to the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is required.

(6) For all proposals which are being processed under the Environmental Coordination Procedures Act of 1973 (ECPA), chapter 90.62 RCW, the lead agency shall be determined under the standards of these rules.

(7) For a pulp or paper mill or oil refinery not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology, when a National Pollutant Discharge Elimination System (NPDES) permit is required under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342).

(8) For proposals to construct a pipeline greater than six inches in diameter and fifty miles in length, used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, or for the transportation of synthetic or natural gas under pressure not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(9) For proposals that will result in an impoundment of water with a water surface in excess of forty acres, the lead agency shall be the department of ecology.

(10) For proposals to construct facilities on a single site designed for, or capable of, storing a total of one million or more gallons of any liquid fuel not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(11) For proposals to construct any new oil refinery, or an expansion of an existing refinery that shall increase capacity by ten thousand barrels per day or more not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(12) For proposals to construct any new metallic mineral processing plant, or to expand any such existing plant by ten percent or more of design capacity, the lead agency shall be the department of ecology.

(13) For proposals to construct, operate, or expand any uranium or thorium mill, any tailings areas generated by uranium or thorium milling or any low-level radioactive waste burial facilities, the lead agency shall be the department of social and health services.

**WAC 197-11-940 Transfer of lead agency status to a state agency.** For any proposal for a private project where a city or town with a population of under five thousand or a county of fifth through ninth class would

be the lead agency under 197-11-928 through 197-11-938, and when one or more state agencies are agencies with jurisdiction over the proposal, such local agency may at its option transfer the lead agency duties to that state agency with jurisdiction appearing first on the priority listing in 197-11-936. In such event, the state agency so determined shall be the lead agency and the agency making the transfer shall be an agency with jurisdiction. Transfer is accomplished by the county, city or town transmitting a notice of the transfer together with any relevant information it may have on the proposal to the appropriate state agency with jurisdiction. The local agency making the transfer shall also give notice of the transfer to any private applicant and other agencies with jurisdiction involved in the proposal.

**WAC 197-11-942 Agreements on lead agency status.** Any agency may assume lead agency status if all agencies with jurisdiction agree.

**WAC 197-11-944 Agreements on division of lead agency duties.** Two or more agencies may by agreement share or divide the responsibilities of lead agency through any arrangement agreed upon. In such event, however, the agencies involved shall designate one of them as the nominal lead agency, which shall be responsible for complying with the duties of the lead agency under these rules. Other agencies with jurisdiction shall be notified of the agreement and determination of the nominal lead agency.

**WAC 197-11-946 DOE resolution of lead agency disputes.** (1) If the agencies with jurisdiction are unable to determine which agency is the lead agency under the rules, any agency with jurisdiction may petition the department for a determination. The petition shall clearly describe the proposal in question, and include a list of all licenses and approvals required for the proposal. The petition shall be filed with the department within fifteen days after receipt by the petitioning agency of the determination to which it objects. Copies of the petition shall be mailed to any applicant involved, as well as to all other agencies with jurisdiction over the proposal. The applicant and agencies with jurisdiction may file with the department a written response to the petition within ten days of the date of the initial filing.

(2) Within fifteen days of receipt of a petition, the department shall make a written determination of the lead agency, which shall be mailed to the applicant and all agencies with jurisdiction. The department shall make its determination in accordance with these rules and considering the following factors (which are listed in order of descending importance):

- (a) Magnitude of an agency's involvement.
- (b) Approval/disapproval authority over the proposal.
- (c) Expertise concerning the proposal's impacts.
- (d) Duration of an agency's involvement.
- (e) Sequence of an agency's involvement.

**WAC 197-11-948 Assumption of lead agency status.** (1) An agency with jurisdiction over a proposal,