STATE ENVIRONMENTAL POLICY ACT (SEPA)
FAQ'S

GENERAL QUESTIONS

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

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

Q: How can a permit applicant start the SEPA process?
A: The environmental review process is conducted by the designated lead agency –which is usually the local permitting agency for private projects. Often the SEPA review starts when the applicant completes and submits an Environmental Checklist with the required permit application.

Q: How long does a SEPA review last?
A: The environmental information in a specific SEPA review is used to inform upcoming agency decisions but if those decisions are delayed then there is no set expiration of the SEPA documents. However, there are often changes in the proposal, existing environment or scope of impacts that require additional studies and new SEPA notice and comment opportunities.

CATEGORICAL EXEMPTIONS

Q: What types of proposals are categorically exempt?
A: Certain types of proposals are automatically exempt from the threshold determination and EIS preparation because they are a size or type unlikely to cause a significant adverse environmental impact. Examples include minor new construction of residential, commercial or storage structures and minor road and street improvements. Other exemptions include maintenance activities, enforcement and inspection activities, issuing business licenses, storm/water/sewer lines eight inches or less, etc.

Q: When do categorical exemptions not apply?
A: Some exemptions contain exceptions in which the exemption does not apply. These include proposals involving lands covered by water; projects requiring a license to discharge to the air or water; or projects requiring a rezone. A city or county may also eliminate some exemptions if the project is located within a designated critical area.

Q. If a proposed construction project is exempt from SEPA but the clearing and grading associated with the construction exceeds the maximum of the threshold in the "landfill and excavation" exception, is SEPA required?
A: The list of SEPA exemptions for "minor new construction" cover the "activity" of constructing a residence, office, shed, parking lot, a landfill or excavation type of proposal. Ecology views the list as

mutually exclusive, in part due to the preface to the list: A proposal to build or locate a house is considered a "residential" type of "construction in question."

Q. What is the definition of "recognized historical significance" as used in the exception to minor new construction exemptions?
A. A property that is eligible for official listing on a local, state or national historic register can be considered "significant" for the purpose of this exception. Applicants and lead agencies should consult the Department of Archaeological and Historic Preservation (DAHP) prior to making an assumption about the applicability of this exemption.

Q. If a project spans two or more jurisdictions with different exemption thresholds, which exemption levels apply?
A. If a proposal lies within two jurisdictions, the lower level threshold controls the total proposal, regardless which agency is lead. For example, the major portion of a proposed 16-unit residential development lies within the city limits of Biggity, which has raised the residential threshold to 20 units. A small portion of the development, however, lies within the city-limits of Quiettown, which has not raised its residential threshold. Although Biggity is lead agency and all 16 units will be constructed within Biggity jurisdiction, Quiettown's lower threshold must be applied to the entire proposal and the project would not be exempt.

Q. Is "mixed use" defined?
A. "Mixed use" is not defined in SEPA. For purposes of developing, the term should be defined as a mix of residential and commercial/retail development. A city or county comprehensive plan should define the type and level of development allowed in the mixed use category.

Q. Under the infill exemption, are infrastructure improvements needed for an exempt residential or mixed use development also exempt?
A. No. If infrastructure improvements are needed, such as a sewer or water distribution line extension, the improvement will not be exempt from SEPA review unless it meets the exemption level specified in SEPA rules.

LEAD AGENCY

Q: What is the difference between lead agency and an agency with jurisdiction?
A: The lead agency is responsible for all procedural aspects of SEPA compliance. An agency with jurisdiction under SEPA has an "action" or decision regarding some aspect of the total proposal. All agencies with jurisdiction have a legal responsibility to consider the environmental information disclosed in the SEPA process.

Q: Can a special district, such as a school district or port district, be SEPA lead agency?
A: SEPA rules define a local agency as "any political subdivision, regional governmental unit, district, municipal or public corporation." If an agency is proposing a project or nonproject action, they are lead agency under SEPA. This means a school district would be lead agency for school construction, a port would be lead agency for a port comprehensive plan, while the Washington State Parks and Recreation Commission would be lead agency for developing or remodeling a state park.

Q: Which agency is SEPA lead when an agency is proposing a project located within the jurisdiction of another agency?
A: SEPA rules are clear: The agency proposing a project is the default lead SEPA agency. However, lead agency status may be transferred if all agencies with a jurisdiction agree.

Q: Can two or more agencies share lead agency status?
A: Yes, any number of agencies can agree to share lead agency status, with one agency designated as "nominal lead agency." The agencies should develop an agreement defining the duties and responsibilities of each agency, how to deal with differing opinions, etc.

THRESHOLD DETERMINATION PROCESS

Q: What is the "threshold determination" process?
A: The threshold determination process is used to evaluate the environmental consequences of a proposal and determine whether it is likely to have any "significant adverse environmental impact." This determination is made by the lead agency. It is documented in either a Determination of Nonsignificance (DNS) or a Determination of Significance (DS) and the subsequent preparation of an EIS.

Q: What is a "significant" adverse environmental impact?
A: State SEPA rules define "significant" as "a reasonable likelihood of more than a moderate adverse impact on environmental quality." The term “reasonable likelihood” means it is not remote or speculative. The phrase “more than moderate” is based on intensity and severity; intensity depends on the magnitude and duration of an impact while severity is 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.

DETERMINATION OF NONSIGNIFICANCE

Q: What is a "Determination of Nonsignificance?"
A: A "Determination of Nonsignificance," or DNS, documents the responsible official’s decision that a proposal is unlikely to have significant adverse environmental impacts.

Q: Does a DNS always have a public comment period?
A: No. There five criteria to determine whether a comment period is required:

1. Another agency with jurisdiction
2. Non-exempt demolition activities
3. Non-exempt grade and fill permits
4. A mitigated DNS or any DNS issued after a determination of significance has been is withdrawn
5. An action under the state Growth Management Act.

If a comment period is required, the lead agency must give public notice and circulate the DNS and checklist. If a comment period is not required, no public notice or distribution is required.

Q: What is the difference between a Determination of Nonsignificance and a mitigated Determination of Nonsigficance?
A: A mitigated Determination of Nonsignificance (DNS) has had more public process and greater scrutiny because the proposal has likely significant adverse impacts. The lead agency issues a mitigated DNS in lieu of preparing an EIS when there is assurance that specific enforceable mitigation will successfully reduce impacts to a nonsignificant level.

Q: What is the "optional DNS" process?
A: The optional DNS process allows a lead agency to combine the SEPA comment period with the notice of application (NOA) prior to actually issuing the DNS. The notice of application must state the optional DNS process is being used and the public's opportunity to comment will be limited. It also

means all mitigation conditions under consideration also must be identified. After the end of the comment period, the lead agency may issue the DNS without a second comment period.

ENVIRONMENTAL IMPACT STATEMENTS

Q: When is an environmental impact statement required?
A: An EIS is required for any proposal likely to have a significant adverse environmental impact in which actions to offset or mitigate the impacts would reduce them to a nonsignificant level. The applicant and lead agency may work together to revise the proposal's impacts or identify mitigation measures that would allow the lead agency to issue a determination of nonsignificance.

Q: What is "scoping"?
A: If the lead agency issues a determination of significance, the first process step is determining the "scope" of the EIS — or those issues and alternatives needing to be evaluated. The scoping process allows the public and other agencies to comment on the EIS scope and assist the lead agency in identifying issues and concerns. The lead agency can use a standard scoping notice with a written comment period, or they can use expanded scoping that might include public meetings, surveys, and other methods to involve the public in the process.

Q: What documentation is needed after the comment period for scoping is done?
A: After the public comment period closes, the project proponent can request that the lead agency make a determination regarding the scope of the EIS. While no other documentation is required under SEPA, agencies may choose to issue a public scoping document, respond to public comments, or announce which alternatives will be addressed in the EIS.

Q: Does the final EIS include all the information in the draft EIS?
A: Yes, in most cases. The draft EIS is exactly that — a draft. The final EIS can be significantly different from the draft because the lead agency revises the EIS based on comments and new information. The final EIS also includes all comments received on the draft EIS as well as the lead agency's responses. If no substantive comments are received, the lead agency may choose to issue a new fact sheet, including a possible addendum, to be attached to the draft document.

Q: Does the EIS need to include the addresses of commenters, agencies, and citizens on the distribution list?
A: SEPA rules require that a "distribution list" be included that lists all commenters' names but there's nothing about needing their addresses.

ADOPTING AND REVISING EXISTING DOCUMENTS

Q: Can an agency prepare an addendum to a DNS? If so, what is the format? Are public notice and distribution required?
A: If an agency intends to revise a DNS before completing the SEPA process, it is best if the lead agency issues a "Modified" or "Revised" DNS. An addendum may be added to the existing Environmental Checklist or a revised checklist may be used to detail new information. Unless the threshold determination involves a mitigated DNS, a new public notice and comment process is not usually required. However, we strongly advise the lead agency open a new comment period due to higher scrutiny involving significant impacts and loss of the EIS process.

Q: If a project has been reviewed under SEPA but new information indicates supplemental review is needed for a portion of the project; can construction of the unaffected portion proceed?

A: SEPA rules state no action that would foreclose options can be taken until the environmental review has been completed.

SUBSTANTIVE AUTHORITY

Q: What is SEPA substantive authority?
A: SEPA substantive authority is the regulatory authority granted to all state and local agencies to condition or deny a proposal to ensure identified environmental impacts can be sufficiently offset. To use SEPA substantive authority, an agency must have adopted SEPA policies.

Q: Are the mitigation measures identified in the SEPA document (DNS or EIS) mandatory?
A: Not necessarily. Mitigation conditions required under SEPA substantive authority must be included as conditions on a permit, license, or approval, before they become mandatory or enforceable. Mandatory mitigation required under other local, state, or federal laws may also be included on the DNS by the lead agency for the information of reviewers.

NONPROJECT REVIEW

Q: How much review is required at the planning stage for project impacts?
A: Lead agencies are responsible for considering the probable significant adverse impacts of planning actions such as adopting comprehensive plans and development regulations. If the proposed plans or regulations would allow activities to occur that are likely to have significant adverse impacts, those impacts must be addressed in the environmental review of the planning action. The more detailed the review at the planning phase; less review will be needed at the project stage.

Q: Does a nonproject EIS need to follow a specific format?
A: The only requirements are that the document begin with a fact sheet and contain an environmental summary. An agency may choose whatever format they feel would best present the alternatives and environmental analysis. Separate sections on affected environment, significant impacts, and mitigation measures are not required in integrated documents as long as this information is summarized and supported in the record. The rules for integrated documents stress that the format should be dictated by attention to the quality, scope, and level of detail of the information and analysis.

Q: What is an "alternative" when preparing an EIS for a comprehensive plan? How is the no action alternative defined?
A: A range of alternatives should be evaluated that explore the different land use options including different urban growth area boundaries, characteristics and densities of development, etc. The no-action alternative for a comprehensive plan is generally defined as no change in existing regulation — such zoning, development regulations, critical area ordinances, etc. The environmental impacts of predicted growth under this "no-action" scenario is then compared to other alternatives.

Q: When integrated with a comprehensive plan, what is the timing of a final EIS?
A: When the integrated document contains the final EIS and the plan, the final EIS and GMA document may be adopted occur together without needing a seven-day waiting period.

Q: Is additional environmental review required when the final action is different from the alternatives analyzed in an EIS?
A: If the final approved proposal falls within the range of alternatives analyzed in the EIS and all likely significant adverse impacts have been evaluated, additional review would not be required. For example, if one of the EIS alternatives evaluates the impacts of four urban centers and another alternative

evaluates the impacts of six urban centers, and the lead agency selects five urban centers as the preferred alternative, it is possible the impacts would have been covered by the range of EIS alternatives.

APPEALS

Q: Are there opportunities to appeal SEPA documents or the use of SEPA substantive authority?
A: The lead agency has the option of allowing an administrative appeal and may allow an appeal of either procedural issues, substantive decisions, or both. If the administrative appeal process has been exhausted or is unavailable, a judicial appeal can be filed in a timely manner.

Q: What is an "underlying governmental action"?
A: The underlying governmental action is the action that must be taken by an agency to authorize a proposal. Actions include issuing a permit or license, approving funding, or adopting a plan, ordinance, rule, or other actions.

Q: Can an applicant appeal an agency's decision to require mitigation measures?
A: Yes, if the agency does not offer an administrative appeal on the substantive use of SEPA, the applicant may file a judicial appeal of the mitigation with a challenge to the underlying action.

Q: What is the appeal process when a state agency is SEPA lead agency and the county or city has a permit to issue?
A: Procedural issues, including the process and content of the environmental review, could be appealed to the state agency if it offers a procedural administrative appeal. Appeals of a local agency's use or non-use of SEPA substantive authority to condition or deny a proposal may be filed with the local agency if they offer an appeal of substantive issues. When administrative appeals are exhausted or unavailable, judicial appeals may be filed.

Q: What is the "action" referred to in part 2 of the notice of action)?
A: It is the underlying government action for the proposal, such as adopting a comprehensive plan, ordinance, or rezone; or issuing a permit or approval. An action is not issuing a SEPA document.

Q: What is a "notice of action taken"?
A: A notice of action is the document used to limit the time a SEPA appeal can be filed when the underlying government action has no set appeal limitations. SEPA rules provide the form while the procedures for using a notice of action are found the State Environmental Policy Act itself.