

Appendices



IN THE LEGISLATURE
of the
STATE OF WASHINGTON



CERTIFICATION OF ENROLLED ENACTMENT

SUBSTITUTE SENATE BILL NO. 3006

Chapter 117, Laws of 1983

48th Legislature
Regular Session

EFFECTIVE DATE: April 23, 1983
Except: Section 3 which becomes
effective on October 20, 1983.

Passed the Senate March 24, 1983

Yeas 42 Nays 6

Passed the House April 18, 1983

Yeas 85 Nays 13

CERTIFICATE

I, Sidney R. Snyder, Secretary of the Senate of the State of Washington do hereby certify that the attached is enrolled Substitute Senate Bill No. 3006 as passed by the Senate and the House of Representatives on the dates hereon set forth.


Secretary of the Senate



ENGROSSED SUBSTITUTE SENATE BILL NO. 3006

State of Washington 48th Legislature 1983 Regular Session
by Committee on Parks and Ecology (Originally sponsored by Senators
Bluechel, Williams, Fuller and Hurley)

Filed by Committee February 23, 1983, and ordered printed.

1 AN ACT Relating to environmental policy; amending section 1,
2 chapter 290, Laws of 1981 and RCW 43.21C.037; amending section 6,
3 chapter 109, Laws of 1971 ex. sess. as amended by section 2, chapter
4 278, Laws of 1977 ex. sess. and RCW 43.21C.060; amending section 4,
5 chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.100; amending
6 section 6, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.110;
7 amending section 8, chapter 179, Laws of 1974 ex. sess. and RCW
8 43.21C.120; adding new sections to chapter 43.21C RCW; creating new
9 sections; recodifying RCW 43.21C.100; recodifying RCW 43.21C.105;
10 decodifying RCW 43.21C.070; decodifying RCW 43.21C.200; decodifying
11 RCW 43.21C.202; decodifying RCW 43.21C.204; repealing section 2,
12 chapter 84, Laws of 1979 ex. sess., section 2, chapter 2, Laws of
13 1980 and RCW 43.21C.032; repealing section 3, chapter 179, Laws of
14 1974 ex. sess. and RCW 43.21C.085; repealing section 11, chapter 179,
15 Laws of 1974 ex. sess., section 107, chapter 151, Laws of 1979 and
16 RCW 43.21C.140; providing an effective date; and declaring an
17 emergency.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

19 NEW SECTION. Sec. 1. There is added to chapter 43.21C RCW a new
20 section to be codified as RCW 43.21C.031 with the section heading of
21 "SIGNIFICANT IMPACTS" to read as follows:

22 An environmental impact statement (the detailed statement
23 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
24 legislation and other major actions having a probable significant,
25 adverse environmental impact. Actions categorically exempt under RCW
26 43.21C.110(1)(a) do not require environmental review or the
27 preparation of an environmental impact statement under this chapter.

28 An environmental impact statement is required to analyze only
29 those probable adverse environmental impacts which are significant.

Sec. 1

1 Beneficial environmental impacts may be discussed. The responsible
2 official shall consult with agencies and the public to identify such
3 impacts and limit the scope of an environmental impact statement.
4 The subjects listed in RCW 43.21C.030(2)(c) need not be treated as
5 separate sections of an environmental impact statement. Discussions
6 of significant short-term and long-term environmental impacts,
7 significant irrevocable commitments of natural resources, significant
8 alternatives including mitigation measures, and significant
9 environmental impacts which cannot be mitigated should be
10 consolidated or included, as applicable, in those sections of an
11 environmental impact statement where the responsible official decides
12 they logically belong.

13 Sec. 2. Section 1, chapter 290, Laws of 1981 and RCW 43.21C.037
14 are each amended to read as follows:

15 (1) Decisions pertaining to applications for Class I, II, and III
16 forest practices, as defined by rule of the forest practices board
17 under RCW 76.09.050, are not subject to the requirements of RCW
18 43.21C.030(2)(c) as now or hereafter amended.

19 (2) When the applicable county, city, or town requires a license
20 in connection with any proposal involving forest practices (a) on
21 lands platted after January 1, 1960, (b) on lands being converted to
22 another use, or (c) on lands which, pursuant to RCW 76.09.070 as now
23 or hereafter amended, are not to be reforested because of the
24 likelihood of future conversion to urban development, then the local
25 government, rather than the department of natural resources, is
26 responsible for any detailed statement required under RCW
27 43.21C.030(2)(c).

28 (3) Those forest practices determined by rule of the forest
29 practices board to have a potential for a substantial impact on the
30 environment, and thus to be Class IV practices, require an evaluation
31 by the department of natural resources as to whether or not a
32 detailed statement must be prepared pursuant to this chapter. The
33 evaluation shall be made within ten days from the date the department
34 receives the application. A Class IV forest practice application
35 must be approved or disapproved by the department within thirty
36 calendar days from the date the department receives the application,

1 unless the department determines that a detailed statement must be
 2 made, in which case the application must be approved or disapproved
 3 by the department within sixty days from the date the department
 4 receives the application, unless the commissioner of public lands,
 5 through the promulgation of a formal order, determines that the
 6 process cannot be completed within such period. This section shall
 7 not be construed to prevent any local or regional governmental entity
 8 from determining that a detailed statement must be prepared for an
 9 action regarding a Class IV forest practice taken by that
 10 governmental entity concerning the land on which forest practices
 11 will be conducted.

12 ~~((This section shall cease to exist on June 30, 1983, unless
 13 extended by law for an additional period of time))~~

14 Sec. 3. Section 6, chapter 109, Laws of 1971 ex. sess. as
 15 amended by section 2, chapter 278, Laws of 1977 ex. sess. and RCW
 16 43.21C.060 are each amended to read as follows:

17 The policies and goals set forth in this chapter are
 18 supplementary to those set forth in existing authorizations of all
 19 branches of government of this state, including state agencies,
 20 municipal and public corporations, and counties ~~((PROVIDED,
 21 HOWEVER, THAT))~~. Any governmental action ~~((not requiring a
 22 legislative decision))~~ may be conditioned or denied pursuant to this
 23 chapter ~~((only on the basis of))~~: PROVIDED, That such conditions or
 24 denials shall be based upon policies identified by the appropriate
 25 governmental authority and incorporated into regulations, plans, or
 26 codes which are formally designated by the agency (or appropriate
 27 legislative body, in the case of local government) as possible bases
 28 for the exercise of authority pursuant to this chapter. Such
 29 designation shall occur at the time specified by RCW 43.21C.120.
 30 Such action may be conditioned only to mitigate specific adverse
 31 environmental impacts which are ((both)) identified in the
 32 environmental documents prepared ((pursuant to the)) under this
 33 chapter ((end)). These conditions shall be stated in writing by the
 34 ~~((responsible official of the acting governmental agency in the~~
 35 ~~case of counties with a population of more than seventy thousand~~
 36 ~~people and cities with a population of more than thirty seven~~

Sec. 3

1 thousand--people--such-conditions-or-denials-made-more-than-one-year
2 from-September-24-1977-shall-also-be-based-upon-policies-developed
3 by-the-appropriate-local-governmental-authority-and-incorporated-into
4 resolutions--regulations--ordinances--plans-or-codes--in-the-case
5 of-counties-with-a-population-of-less-than-seventy-thousand-people
6 and-cities-with-a-population-of-less-than-thirty-seven-thousand
7 people--such-conditions-or-denials-made-more-than-three-years--from
8 September-24-1977-shall-also-be-based-upon-policies-developed-by-the
9 appropriate--local--governmental--authority--and--incorporated--into
10 resolutions--regulations--ordinances--plans--or--codes--PROVIDED
11 FURTHER--that)) decisionmaker. Mitigation measures shall be
12 reasonable and capable of being accomplished. In order to deny a
13 proposal under this chapter, an agency must find that (1) The
14 proposal would result in significant adverse impacts identified in a
15 final or supplemental environmental impact statement prepared under
16 this chapter and (2) reasonable mitigation measures are insufficient
17 to mitigate the identified impact. Except for permits and variances
18 issued pursuant to chapter 90.58 RCW, when such a governmental
19 action, not requiring a legislative decision, is conditioned or
20 denied by a nonelected official of a local governmental agency, the
21 decision shall be appealable to the legislative authority of the
22 acting local governmental agency unless that legislative authority
23 formally eliminates such appeals. Such appeals shall be in
24 accordance with procedures established for such appeals by the
25 legislative authority of the acting local governmental agency.

26 NEW SECTION. Sec. 4. There is added to chapter 43.21C RCW a new
27 section to be codified as RCW 43.21C.075 with a section heading of
28 "APPEALS" to read as follows:

29 (1) Because a major purpose of this chapter is to combine
30 environmental considerations with public decisions, any appeal
31 brought under this chapter shall be linked to a specific governmental
32 action. The State Environmental Policy Act provides a basis for
33 challenging whether governmental action is in compliance with the
34 substantive and procedural provisions of this chapter. The State
35 Environmental Policy Act is not intended to create a cause of action
36 unrelated to a specific governmental action.

1 (2) Unless otherwise provided by this section:

2 (a) Appeals under this chapter shall be of the governmental
3 action together with its accompanying environmental determinations.

4 (b) Appeals of environmental determinations made (or lacking)
5 under this chapter shall be commenced within the time required to
6 appeal the governmental action, which is subject to environmental
7 review.

8 (3) If an agency has a procedure for appeals of agency
9 environmental determinations made under this chapter, such procedure:

10 (a) Shall not allow more than one agency appeal proceeding on a
11 procedural determination (the adequacy of a determination of
12 significance/nonsignificance or of a final environmental impact
13 statement), consistent with any state statutory requirements for
14 appeals to local legislative bodies. The appeal proceeding on a
15 determination of significance/nonsignificance may occur before the
16 agency's final decision on a proposed action. Such an appeal shall
17 also be allowed for a determination of significance/nonsignificance
18 which may be issued by the agency after supplemental review;

19 (b) Shall consolidate appeal of procedural issues and of
20 substantive determinations made under this chapter (such as a
21 decision to require particular mitigation measures or to deny a
22 proposal) by providing for simultaneous appeal of an agency decision
23 on a proposal and any environmental determinations made under this
24 chapter, with the exception of the threshold determination appeal as
25 provided in (a) of this subsection or an appeal to the local
26 legislative authority under RCW 43.21C.060 or other applicable state
27 statutes;

28 (c) Shall provide for the preparation of a record for use in any
29 subsequent appeal proceedings, and shall provide for any subsequent
30 appeal proceedings to be conducted on the record, consistent with
31 other applicable law. An adequate record consists of findings and
32 conclusions, testimony under oath, and taped or written transcript.
33 An electronically recorded transcript will suffice for purposes of
34 review under this paragraph; and

35 (d) Shall provide that procedural determinations made by the
36 responsible official shall be entitled to substantial weight.

Sec. 4

1 (4) If a person aggrieved by an agency action has the right to
2 judicial appeal and if an agency has an appeal procedure, such person
3 shall, prior to seeking any judicial review, use such procedure if
4 any such procedure is available, unless expressly provided otherwise
5 by state statute.

6 (5) RCW 43.21C.080 establishes an optional "notice of action"
7 procedure which, if used, imposes a time period for appealing
8 decisions under this chapter. Some statutes and ordinances contain
9 time periods for challenging governmental actions which are subject
10 to review under this chapter, such as various local land use
11 approvals (the "underlying governmental action"). This section does
12 not modify any such time periods. This section governs when a
13 judicial appeal must be brought under this chapter where a "notice of
14 action" is used, and/or where there is another time period which is
15 required by statute or ordinance for challenging the underlying
16 governmental action. In this subsection, the term "appeal" refers to
17 a judicial appeal only.

18 (a) If there is a time period for appealing the underlying
19 governmental action, appeals under this chapter shall be commenced
20 within thirty days. The agency shall give official notice stating
21 the date and place for commencing an appeal. If there is an agency
22 proceeding under subsection (3) of this section, the appellant shall,
23 prior to commencing a judicial appeal, submit to the responsible
24 official a notice of intent to commence a judicial appeal. This
25 notice of intent shall be given within the time period for commencing
26 a judicial appeal on the underlying governmental action.

27 (b) A notice of action under RCW 43.21C.080 may be used. If a
28 notice of action is used, judicial appeals shall be commenced within
29 the time period specified by RCW 43.21C.080, unless there is a time
30 period for appealing the underlying governmental action in which case
31 (a) of this subsection shall apply.

32 (c) Notwithstanding RCW 43.21C.080(1), if there is a time period
33 for appealing the underlying governmental action, a notice of action
34 may be published within such time period.

35 (6)(a) Judicial review of an appeal decision made by an agency
36 under RCW 43.21C.075(5) shall be on the record, consistent with other

1 applicable law.

2 (b) A taped or written transcript may be used. If a taped
3 transcript is to be reviewed, a record shall identify the location on
4 the taped transcript of testimony and evidence to be reviewed.
5 Parties are encouraged to designate only those portions of the
6 testimony necessary to present the issues raised on review, but if a
7 party alleges that a finding of fact is not supported by evidence,
8 the party should include in the record all evidence relevant to the
9 disputed finding. Any other party may designate additional portions
10 of the taped transcript relating to issues raised on review. A party
11 may provide a written transcript of portions of the testimony at the
12 party's own expense or apply to that court for an order requiring the
13 party seeking review to pay for additional portions of the written
14 transcript.

15 (c) Judicial review under this chapter shall without exception be
16 of the governmental action together with its accompanying
17 environmental determinations.

18 (7) Jurisdiction over the review of determinations under this
19 chapter in an appeal before an agency or superior court shall upon
20 consent of the parties be transferred in whole or part to the
21 shorelines hearings board. The shorelines hearings board shall hear
22 the matter and sign the final order expeditiously. The superior
23 court shall certify the final order of the shorelines hearings board
24 and said certified final order may only be appealed to an appellate
25 court.

26 (8) For purposes of this section and RCW 43.21C.080, the words
27 "action", "decision", and "determination" mean substantive agency
28 action including any accompanying procedural determinations under
29 this chapter (except where the word "action" means "appeal" in RCW
30 43.21C.080(2) and (3)). The word "action" in this section and RCW
31 43.21C.080 does not mean a procedural determination by itself made
32 under this chapter. The word "determination" includes any
33 environmental document required by this chapter and state or local
34 implementing rules. The word "agency" refers to any state or local
35 unit of government. The word "appeal" refers to administrative,
36 legislative, or judicial appeals.

Sec. 4

1 (9) The court in its discretion may award reasonable attorney's
2 fees of up to one thousand dollars in the aggregate to the prevailing
3 party, including a governmental agency, on issues arising out of this
4 chapter if the court makes specific findings that the legal position
5 of a party is frivolous and without reasonable basis.

6 NEW SECTION. Sec. 5. There is added to chapter 43.21C RCW a new
7 section to be codified as RCW 43.21C.095 with a section heading of
8 "STATE ENVIRONMENTAL POLICY ACT RULES TO BE ACCORDED SUBSTANTIAL
9 DEFERENCE" to read as follows:

10 .The rules promulgated under RCW 43.21C.110 shall be accorded
11 substantial deference in the interpretation of this chapter.

12 Sec. 6. Section 4, chapter 179, Laws of 1974 ex. sess. and RCW
13 43.21C.100 are each amended to read as follows:

14 ~~((There is hereby established the))~~ The legislature may establish
15 a council on environmental policy ~~((which shall be composed of the~~
16 ~~members of the pollution control hearings board~~

17 ~~The council shall be abolished and shall cease to exist at~~
18 ~~midnight, June 30, 1976. The guidelines established by the council~~
19 ~~prior to midnight, June 30, 1976, shall continue to be valid and of~~
20 ~~force and effect, except as they are thereafter amended by further~~
21 ~~guidelines promulgated by the department of ecology, in accord with~~
22 ~~chapter 34.04 RCW.~~

23 ~~Upon the abolishment of the council on June 30, 1976, all powers~~
24 ~~and functions of the council are transferred to the department~~
25 ~~of ecology)) to review and assist in the implementation of this~~
26 chapter.

27 Sec. 7. Section 6, chapter 179, Laws of 1974 ex. sess. and RCW
28 43.21C.110 are each amended to read as follows and shall be given the
29 section heading "CONTENT OF STATE ENVIRONMENTAL POLICY ACT RULES":

30 It shall be the duty and function of the ~~((council))~~ department
31 of ecology, which may utilize proposed rules developed by the
32 environmental policy commission:

33 (1) To adopt ~~((intert))~~ and amend thereafter rules of
34 interpretation and implementation of this chapter (the state
35 environmental policy act of 1971), subject to the requirements of

1 chapter 34.04 RCW, for the purpose of providing uniform rules and
2 guidelines to all branches of government including state agencies,
3 political subdivisions, public and municipal corporations, and
4 counties. ~~The proposed rules shall be subject to full public~~
5 hearings requirements associated with rule promulgation. Suggestions
6 for modifications of the proposed rules shall be considered on their
7 merits, and the department shall have the authority and
8 responsibility for full and appropriate independent promulgation and
9 adoption of rules, assuring consistency with this chapter as amended
10 and with the preservation of protections afforded by this chapter.
11 The rule making powers authorized in this section shall include, but
12 shall not be limited to, the following phases of interpretation and
13 implementation of this chapter (the state environmental policy act of
14 1971):

15 (a) Categories of governmental actions which ~~((normally))~~ are not
16 to be considered as potential major actions significantly affecting
17 the quality of the environment ~~((as well as categories of actions~~
18 exempt from such classification)), including categories pertaining to
19 applications for water right permits pursuant to chapters 90.03 and
20 90.44 RCW. The types of actions included as categorical exemptions
21 in the rules shall be limited to those types which are not major
22 actions significantly affecting the quality of the environment. The
23 rules shall provide for certain circumstances where actions which
24 potentially are categorically exempt require environmental review.

25 (b) Rules for criteria and procedures applicable to the
26 determination of when an act of a branch of government is a major
27 action significantly affecting the quality of the environment for
28 which a detailed statement is required to be prepared pursuant to RCW
29 43.21C.030.

30 (c) Rules and procedures applicable to the preparation of
31 detailed statements and other environmental documents, including but
32 not limited to rules for timing of environmental review, obtaining
33 comments, data and other information, and providing for and
34 determining areas of public participation which shall include the
35 scope and review of draft environmental impact statements.

36 (d) Scope of coverage and contents of detailed statements

Sec. 7

1 assuring that such statements are simple, uniform, and as short as
2 practicable; statements are required to analyze only reasonable
3 alternatives and probable adverse environmental impacts which are
4 significant, and may analyze beneficial impacts.

5 (e) Rules and procedures for public notification of actions taken
6 and documents prepared.

7 (f) Definition of terms relevant to the implementation of this
8 chapter including the establishment of a list of elements of the
9 environment. Analysis of environmental considerations under RCW
10 43.21C.030(2) may be required only for those subjects listed as
11 elements of the environment (or portions thereof). The list of
12 elements of the environment shall consist of the "natural" and
13 "built" environment. The elements of the built environment shall
14 consist of public services and utilities (such as water, sewer,
15 schools, fire and police protection), transportation, environmental
16 health (such as explosive materials and toxic waste), and land and
17 shoreline use (including housing, and a description of the
18 relationships with land use and shoreline plans and designations,
19 including population).

20 (g) ((Guidelines)) Rules for determining the obligations and
21 powers under this chapter of two or more branches of government
22 involved in the same project significantly affecting the quality of
23 the environment.

24 (h) Methods to assure adequate public awareness of the
25 preparation and issuance of detailed statements required by RCW
26 43.21C.030(2)(c).

27 (i) To prepare ((guidelines)) rules for projects setting forth
28 the time limits within which the governmental entity responsible for
29 the action shall comply with the provisions of this chapter.

30 (j) ((Guidelines)) Rules for utilization of a detailed statement
31 for more than one action and rules improving environmental analysis
32 of nonproject proposals and encouraging better interagency
33 coordination and integration between this chapter and other
34 environmental laws.

35 (k) ((Guidelines)) Rules relating to actions which shall be
36 exempt from the provisions of this chapter in situations of

1 emergency.

2 (1) Rules relating to the use of environmental documents in
 3 planning and decisionmaking and the implementation of the substantive
 4 policies and requirements of this chapter, including procedures for
 5 appeals under this chapter.

6 (2) In exercising its powers, functions, and duties under this
 7 section, the ~~((council))~~ department may:

8 (a) Consult with the state agencies and with representatives of
 9 science, industry, agriculture, labor, conservation organizations,
 10 state and local governments and other groups, as it deems advisable;
 11 and

12 (b) Utilize, to the fullest extent possible, the services,
 13 facilities, and information (including statistical information) of
 14 public and private agencies, organizations, and individuals, in order
 15 to avoid duplication of effort and expense, overlap, or conflict with
 16 similar activities authorized by law and performed by established
 17 agencies.

18 (3) Rules adopted pursuant to this section shall be subject to
 19 the review procedures of RCW 34.04.070 and 34.04.080.

20 Sec. 8. Section 8, chapter 179, Laws of 1974 ex. sess. and RCW
 21 43.21C.120 are each amended to read as follows:

22 (1) All agencies of government of this state are directed,
 23 consistent with rules and guidelines adopted under RCW 43.21C.110,
 24 including any revisions, to adopt rules pertaining to the integration
 25 of the policies and procedures of this chapter (the state
 26 environmental policy act of 1971), into the various programs under
 27 their jurisdiction for implementation. Designation of polices under
 28 RCW 43.21C.060 and adoption of ~~((the-intert))~~ rules required under
 29 this section shall take place not later than one hundred ~~((twenty))~~
 30 eighty days after the effective date of rules and guidelines adopted
 31 pursuant to RCW 43.21C.110, or after the establishment of an agency,
 32 whichever shall occur later.

33 (2) Rules adopted by state agencies under subsection (1) of this
 34 section shall be adopted in accordance with the provisions of chapter
 35 34.04 RCW and shall be subject to the review procedures of RCW
 36 34.04.070 and 34.04.080.

Sec. 8

1 (3) All public and municipal corporations, political
2 subdivisions, and counties of this state are directed, consistent
3 with rules and guidelines adopted under RCW 43.21C.110, including any
4 revisions, to adopt rules, ordinances, or resolutions pertaining to
5 the integration of the policies and procedures of this chapter (the
6 state environmental policy act of 1971), into the various programs
7 under their jurisdiction for implementation. Designation of policies
8 under RCW 43.21C.060 and adoption of the ((+tetet)) rules required
9 under this section shall take place not later than one hundred eighty
10 days after the effective date of rules and guidelines adopted
11 pursuant to RCW 43.21C.110, or after the establishment of the
12 governmental entity, whichever shall occur later.

13 (4) ~~Ordinances or regulations adopted prior to the effective date~~
14 ~~of rules and guidelines adopted pursuant to RCW 43.21C.110 shall~~
15 ~~continue to be effective until the adoption of any new or revised~~
16 ~~ordinances or regulations which may be required: PROVIDED, That~~
17 ~~revisions required by this section as a result of rule changes under~~
18 ~~RCW 43.21C.110 are made within the time limits specified by this~~
19 ~~section.~~

20 NEW SECTION. Sec. 9. There is added to chapter 43.21C RCW a new
21 section to read as follows:

22 The department of ecology shall conduct annual state-wide
23 workshops and publish an annual state environmental policy act
24 handbook or supplement to assist persons in complying with the
25 provisions of this chapter and the implementing rules. The workshops
26 and handbook shall include, but not be limited to, measures to assist
27 in preparation, processing, and review of environmental documents,
28 relevant court decisions affecting this chapter or rules adopted
29 under this chapter, legislative changes to this chapter,
30 administrative changes to the rules, and any other information which
31 will assist in orderly implementation of this chapter and rules.

32 The department shall develop the handbook and conduct the
33 workshops in cooperation with, but not limited to, state agencies,
34 the association of Washington cities, the Washington association of
35 counties, educational institutions, and other groups or associations
36 interested in the state environmental policy act.

1 NEW SECTION. Sec. 10. The following acts or parts of acts are
2 each repealed:

3 (1) Section 2, chapter 84, Laws of 1979 ex. sess., section 2,
4 chapter 2, Laws of 1980 and RCW 43.21C.032;

5 (2) Section 3, chapter 179, Laws of 1974 ex. sess. and RCW
6 43.21C.085; and

7 (3) Section 11, chapter 179, Laws of 1974 ex. sess., section 107,
8 chapter 151, Laws of 1979 and RCW 43.21C.140.

9 NEW SECTION. Sec. 11. RCW 43.21C.070, 43.21C.200, 43.21C.202,
10 and 43.21C.204 are each decodified.

11 NEW SECTION. Sec. 12. RCW 43.21C.100 is recodified as RCW
12 43.21C.170.

13 NEW SECTION. Sec. 13. RCW 43.21C.105 is recodified as RCW
14 43.21C.175.

15 NEW SECTION. Sec. 14. Section headings as used in this act do
16 not constitute any part of the law.

17 NEW SECTION. Sec. 15. Sections 3 and 4 of this act apply to
18 agency decisions and to appeal proceedings prospectively only and not
19 retrospectively. Sections 1, 5, 6, 7, and 8 of this act may be
20 applied by agencies retrospectively.

21 NEW SECTION. Sec. 16. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. Sec. 17. (1) Sections 1, 2, and 4 through 16 of
26 this act are necessary for the immediate preservation of the public
27 peace, health, and safety, the support of the state government and
28 its existing public institutions, and shall take effect immediately.

29 (2) Section 3 of this act shall take effect one hundred eighty
30 days after the remainder of this act goes into effect under
31 subsection (1) of this section.

Passed the Senate March 24, 1983.

John A. Cherberg
President of the Senate.

Passed the House April 18, 1983.

Wayne Olson
Speaker of the House.

Approved April 23, 1983

John Spillman
Governor of the State of Washington

FILED

APR 23 1983

SECRETARY OF STATE
STATE OF WASHINGTON

10:35 am

Chapter 197-11 WAC

PROPOSED SEPA RULES

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[Note to readers: The section numbers of the final three Parts will be different when the rules are printed in the Washington State Register, but the content and order of the Parts and sections will be the same as in this report (the state computer apparently cannot use section numbers in the 1000 series).]

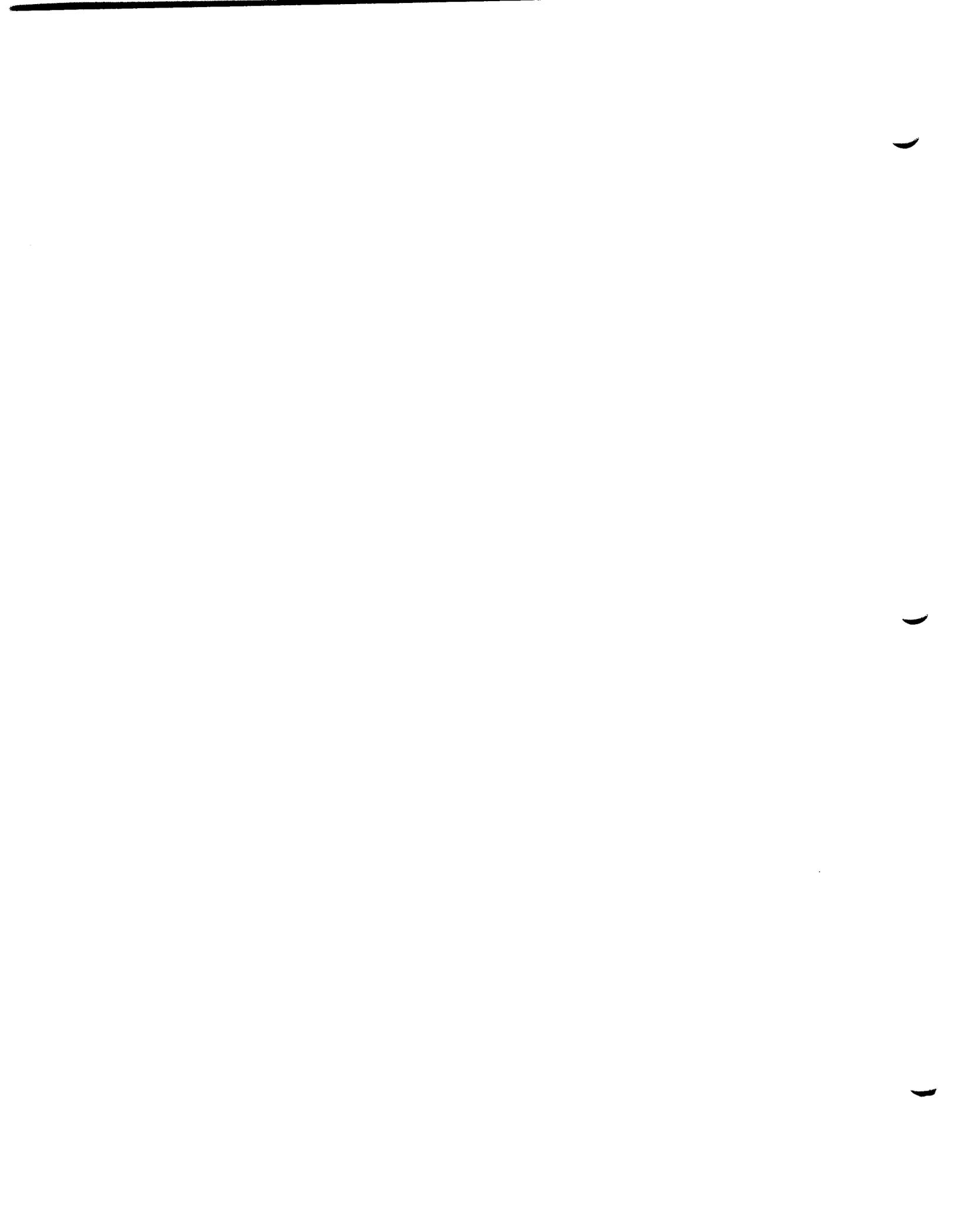


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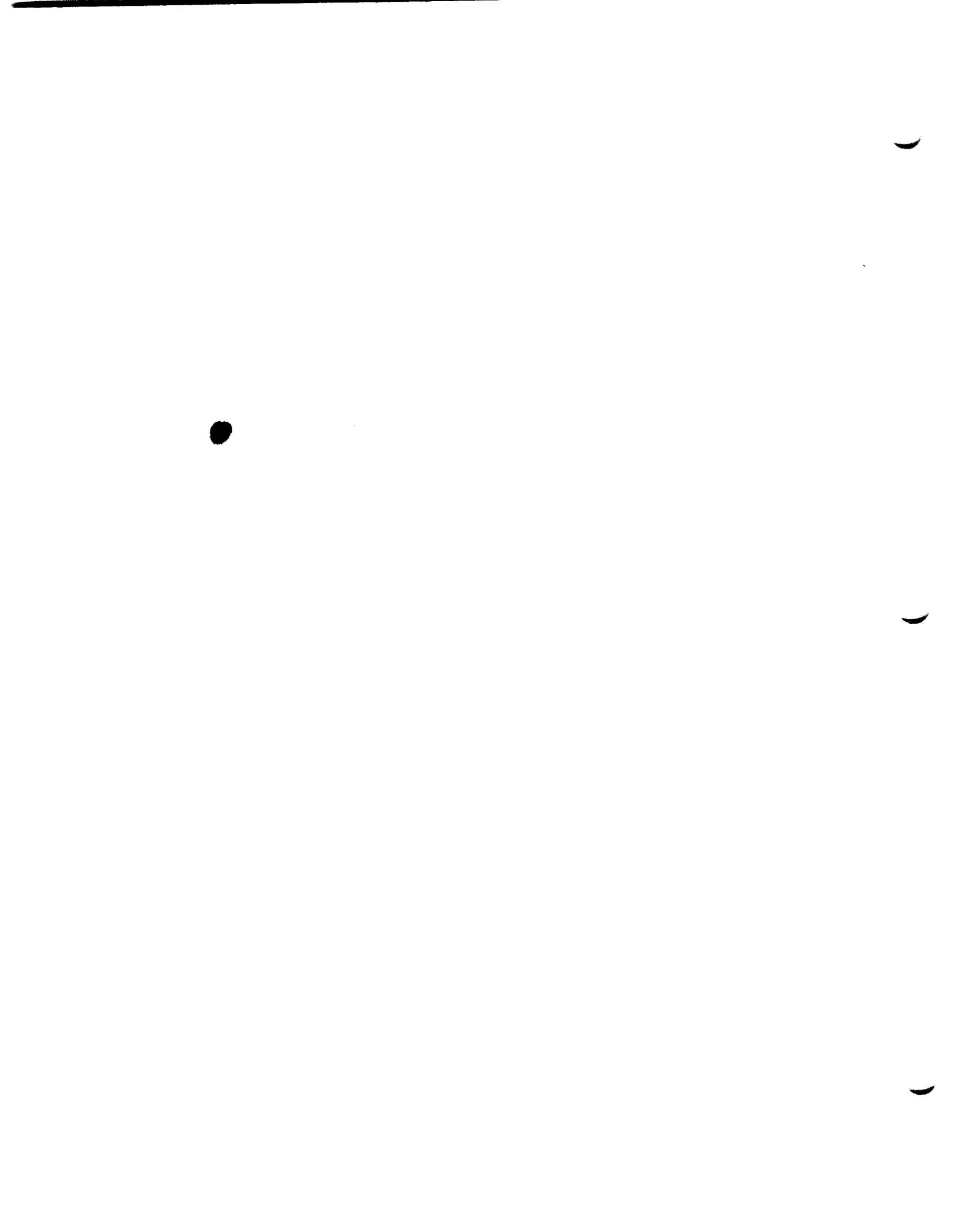
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PART ONE

PREAMBLE

WAC 197-11-010
WAC 197-11-020

Purpose of these Rules
Overview of the SEPA Process

WAC 197-11-010 Purpose of these Rules.

(1) The State Environmental Policy Act (SEPA) establishes a state environmental policy and provides means for carrying out the policy.

(2) SEPA makes environmental protection part of the authority of every unit of government (agency) in the state. SEPA is intended to help public officials make decisions that are based on an understanding of environmental consequences and take appropriate actions to protect, restore, and enhance the environment. The purpose of these rules is to tell agencies what they must do to comply with SEPA's policies and procedures.

WAC 197-11-020 Overview of the SEPA Process.

(1) Information. This section is intended to help the reader and the general public understand how SEPA works and what is in these rules. This section broadly describes the SEPA process and is included for information purposes only. This section is not regulatory and shall not be used to impose legal requirements or responsibilities. Some cross-references are given in this section to assist the reader. The regulatory requirements of these rules begin in Part 2 below.

(2) Substantive Policy Mandate. SEPA is intended to help everyone make better environmental decisions. SEPA contains broad, yet specific substantive policies and goals which apply to all actions of the entire state government. (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.)

(3) Procedural Mandate. The act requires all agencies (including local governments but not the judiciary or state legislature) that take certain actions to follow certain procedures to assure that appropriate consideration is given to environmental factors and that the act's substantive policies are carried out. (RCW 43.21C.030(2).)

(4) Environmental Significance. The act's procedural provisions distinguish between actions that are likely to have "significant" environmental effects, 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 impacts are analyzed in an environmental impact statement (EIS).

(5) Threshold Determination. The environmental review process under SEPA generally begins with a proposal by, or to, an agency (197-11-945.) A "lead

agency" has principal responsibility for implementing SEPA procedures. (197-11-050.) The agency decides whether a proposal is likely to have a significant adverse environmental impact, even if the proposal is designed to improve the environment. (197-11-305 and 315.) The agency's decision is called a threshold determination, because the agency must decide whether the proposal's impacts would cross the threshold of environmental significance. (See Part 3 of these rules.)

(6) 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 environmental impacts. Rather than requiring agencies to review the potential impacts of every proposal, SEPA requires, and these rules contain a list of, "categorical exemptions". (197-11-320 and Part 9 of these rules.) If a proposal falls within the scope of a categorical exemption, the agency is not required to prepare any environmental documents on the proposal or on the agency's decision that the proposal is exempt (RCW 43.21C.031; 197-11-310). Categorical exemptions in the rules do not apply, however, in certain circumstances (RCW 43.21C.110-1)(a); namely, to certain proposals in environmentally sensitive areas (197-11-1125) or to certain proposals that include a series of categorically exempt actions (197-11-060(4)(g)).

(7) Environmental Checklist. If a proposal is not exempt, and if it is uncertain whether an EIS is required, agencies use an "environmental checklist" to identify environmental impacts and decide if the impacts are significant. (197-11-325 and 1325.) Use of the checklist process also provides the means to carry out the act's procedural requirements for proposals that are not exempt and do not have significant environmental impacts.

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

(9) Scoping, Draft and Final EIS. If an EIS will be prepared, the agency must decide what to put in it. The scope of an EIS means the range of actions, alternatives, and impacts discussed in the statement (197-11-408 and 960). EISs must discuss a proposal's probable significant adverse environmental impacts (RCW 43.21C.031; 197-11-440). The agency will announce that an EIS is being prepared and invite agency and public comment on its scope. The scoping process leads to a draft EIS, which is circulated for a 30-day review and comment period. (See Parts 4 and 5 of these rules.) After considering the comments and revising the draft EIS accordingly, the agency issues a final EIS and waits 7 days before acting on the proposal (197-11-460).

(10) Agency Decision. After considering the appropriate environmental concerns and documents, along with other relevant factors, the agency may act upon a proposal. SEPA does not require an EIS or other environmental document to be an agency's only decisionmaking document. An agency may condition or deny proposals of applicants under certain rules (RCW 43.21C.060; 197-11-720). An agency may rely on the environmental documents of other agencies to avoid duplication and delay. (197-11-640.) An agency must supplement its environmental review under certain conditions (Part 6 of these rules). 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. (See, for example, 197-11-055, 060, 670, 740.) Challenges or appeals to agency SEPA compliance must be linked to a government action and be brought in a timely manner. (RCW 43.21C.075; 197-11-750).

PART TWO

GENERAL REQUIREMENTS

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| WAC 197-11-035 | Definitions |
| WAC 197-11-040 | Policy and Mandate |
| WAC 197-11-050 | Lead Agency |
| WAC 197-11-055 | Timing of the SEPA Process |
| WAC 197-11-060 | Content of Environmental Review |
| WAC 197-11-070 | Limitations on Actions During SEPA Process |
| WAC 197-11-080 | Incomplete or Unavailable Information |
| WAC 197-11-090 | Supporting Documents |
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WAC 197-11-030 Authority.

(1) These rules are issued under SEPA, which is chapter 43.21C of the Revised Code of Washington. RCW 43.21C.110 specifies the content of these rules. These rules are promulgated under the authority granted in RCW 43.21C.110 and are intended to administratively implement that statute. RCW 43.21C.095 requires that these rules be given substantial deference in the interpretation of SEPA.

(2) These rules impose uniform requirements on all agencies. Each agency must have its own SEPA procedures which apply to the agency's activities. Agency SEPA procedures must be consistent with these statewide rules. The effective date of these rules is stated in 197-11-1290.

(3) These rules replace the previous guidelines in WAC 197-10. Unlike the previous guidelines, these rules apply to more than just the environmental impact statement and related procedures.

(4) 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 197-11-035 Definitions.

The terms used in these rules are explained in Part 8, Definitions, 197-11-800 to 197-11-1000. This terminology shall be uniform throughout the state as applied to SEPA, RCW 43.21C. References in these rules to 197-11 refer to WAC 197-11.

WAC 197-11-040 Policy and Mandate.

- (1) Each agency and each person in Washington State has a responsibility to work toward achieving productive harmony between people and nature.
- (2) Each agency shall use all practicable means, consistent with other essential considerations of state policy, to preserve and enhance environmental quality. Each person has a responsibility to contribute to the preservation and enhancement of the environment.
- (3) The policies and goals set forth in SEPA supplement, or "overlay", agencies' existing authority.
- (4) 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 implement, where required by the act and these rules, reasonable alternatives that would mitigate adverse effects of proposed actions on the environment.

WAC 197-11-050 Lead Agency.

- (1) A lead agency shall be designated when an agency is developing or is presented with a proposal.
- (2) The lead agency shall be the agency with main responsibility for complying with SEPA's procedural requirements.
- (3) The lead agency shall be the only agency responsible for:

- (a) the threshold determination (Part 3 of these rules); and
- (b) preparation and content of environmental impact statements (Parts 4-6 of these rules).

(4) The specific rules for deciding upon a lead agency can be found in Part 10 of these rules beginning at 197-11-1200.

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 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 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. 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. Preliminary steps or decisions are sometimes needed before an action is sufficiently definite to allow meaningful environmental analysis. 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(7). Appropriate consideration of environmental information shall be completed before an agency commits to a particular course of action. Any required environmental documents shall be completed before implementing proposals, as specified in 197-11-070.

(3) Applications and Rulemaking. The timing of environmental review for certain common types of proposals shall be as follows:

- (a) For applications, agencies shall commence environmental review, if required, when an application is complete. Agencies 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 (197-11-1122).
- (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 proposals by applicants at the conceptual stage as compared with the final detailed design stage.

- (a) If an agency's only SEPA 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 330, 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.

(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) ~~For purposes of agency compliance with RCW 43.21C.030(2),~~ environmental review consists of the range of proposed actions, alternatives, and impacts to be analyzed in an environmental document, in light of SEPA's goals and policies.

(2) The content of environmental review 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.

(3) The content of environmental review for the purpose of deciding whether an EIS is required is specified in the environmental checklist and in 197-11-315. The content of environmental review for an environmental impact statement consists of its "scope" (197-11-960 and Part 4 of these rules). The content of any supplemental environmental review is specified in 197-11-660. This section specifies the content of environmental review common to all environmental documents required under SEPA.

(4) Proposals.

- (a) Agencies shall make certain that the proposal which is the subject of environmental review is properly defined.
- (b) Proposals include public projects or proposals by agencies. Proposals also include proposals by applicants, if any, and proposed actions and regulatory decisions of agencies in response to proposals by applicants.

- (c) 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.
- (d) Proposals should be described in ways which 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: (i) building a new dam; (ii) maintenance dredging; (iii) use of shoreline and land use controls; (iv) purchase of floodprone areas; or (v) relocation assistance."
- (e) Proposals or parts of proposals which 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 (7).) 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.
- (f) (OPTIONAL) Agencies may wish to analyze "similar actions" in a single environmental document. Proposals are similar if, when viewed with other reasonably foreseeable actions, they have common aspects which 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.
 - (i) 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.
- (g) A proposal shall not be categorically exempt under these rules if it:
 - (i) includes 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) includes a series of exempt actions that are physically or functionally related to each other, and that together may have a significant adverse environmental impact in the judgment of the lead agency.

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.

(5) Impacts.

- (a) SEPA's procedural provisions require the consideration of "environmental" impacts. (See definition of "environment" in 197-11-865 and of "impacts" in 197-11-880.)
- (b) SEPA requires attention to impacts which are likely, not merely speculative. (See definition of "probable" in 197-11-942 and 197-11-080 on incomplete or unavailable information.)
- (c) In assessing the significance of an impact, the severity of an impact should be weighed along with its likelihood of occurrence. (See definition of "significant" in 197-11-970.)
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, 197-11-960) may be wider than the impacts for which mitigation measures are required of applicants (197-11-720). 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.

(6) Alternatives.

- (a) Reasonable alternatives shall include any actions which could feasibly attain the objectives of a proposal but at a lower environmental cost or decreased level of environmental degradation. (See 197-11-440(5)(b) and 947.)
- (b) Agencies and applicants are encouraged to include mitigation measures that will be implemented in the description of the proposal rather than as alternatives.
- (c) The environmental impacts of mitigation measures shall not require detailed environmental analysis in an EIS, except as provided in 197-11-440(6) and 720(2).
- (d) Environmental analysis of reasonable alternatives should be developed in sufficient detail to allow comparison of the alternatives including the proposed action and to be used with economic and technical analyses. Analysis of alternatives need not be discussed in the same length or detail as discussion of a proposed action or preferred alternative, if any (see 197-11-440(5)).

(7) 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. Phased review shall assist agencies and the public to focus on issues which are ripe for decision and exclude from consideration issues already decided or not yet ready. Broader environmental documents may be followed by narrower documents, for example, which 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);
 - (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); or
 - (iii) the optional coordinated permit procedures are used (197-11-740).
 - (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 which are required to be evaluated in a single environmental document under 197-11-060(4)(e) or (g); however, the level of detail and type of environmental review may vary with the nature and timing of proposals and their component parts.
 - (e) Lead agencies using phased review should so state in their environmental documents.
 - (f) Agencies shall use the environmental checklist, scoping process, nonproject EISs, incorporation by reference, adoption, and supplemental review, as appropriate, to define the scope of phased review and 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 Limitation on Actions During SEPA Process.

- (1) Until the responsible official issues a final threshold determination 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 15-day period prior to agency action (197-11-350(3)), and FEISs require a 7-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 197-11-1000(18), the activity may nonetheless proceed if a checklist is prepared and appropriate mitigation measures taken.

(4) This section does not preclude the development of plans or designs, issuing of requests for proposals (RFPs), securing of options, or performance of 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
- (c) 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.

(1) Agencies should use existing studies and incorporate material by reference whenever appropriate (see, for example, 197-11-425, 443, 640). Material incorporated by reference (197-11-885) shall be cited and its relevant content briefly described. Material may not be incorporated by reference unless its location is identified, and it is reasonably available for inspection by potentially interested persons within any time period allowed for comments.

(2) 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.

(1) There are three areas of these rules where an agency is allowed to require information from an applicant. These are:

- (a) Environmental checklist;
- (b) Threshold determination; and
- (c) Environmental impact statement.

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 which may be required under these rules.

(2) Environmental checklist. An applicant may be required to complete the environmental checklist in 197-11-1325 in connection with filing an application. Additional information may be required at an applicant's expense, but not until after initial agency review of the checklist (197-11-325 and 330).

(3) 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 (197-11-330). 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 197-11-350 or 360.

(4) Environmental impact statements. An EIS may be prepared by an applicant under the direction of the responsible official if allowed by the lead agency's SEPA procedures (197-11-420 and 1122). Alternatively, the responsible official may require an applicant to provide relevant information which is not in the possession of the lead agency. Although an agency may at its option include additional analysis not required under SEPA in an EIS (197-11-440(8), 448(4) and 670), an applicant shall not be required to furnish such information. An applicant shall not be required to provide information requested of a consulted agency until the agency has responded or the time allowed for its response has elapsed, whichever is earlier.

PART THREE

THRESHOLD DETERMINATION

| | |
|----------------|--|
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| WAC 197-11-310 | Threshold Determination Required |
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WAC 197-11-300 Purpose of this Part.

The purpose of this Part is to provide rules for:

- (1) Administering categorical exemptions for proposals which would not have probable significant adverse impacts;
- (2) Deciding whether a proposal has a significant adverse impact and thus requires an EIS;
- (3) Providing a way to review and mitigate nonexempt proposals; 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 Whether EIS Required.

As required by RCW 43.21C.030(2)(c), environmental impact statements are to be included in recommendations or reports:

- (1) On proposals, as defined by 197-11-945;
- (2) For legislation, as defined by 197-11-900 and ;
- (3) Other major actions, as defined by 197-11-815 and 915;
- (4) Significantly, as defined by 197-11-970;
- (5) Affecting, as defined by 197-11-820, 880, and 942;
- (6) The quality of the environment, as defined by 197-11-865.

WAC 197-11-310 Threshold Determination Required.

- (1) A threshold determination shall be made as close as possible to the time an agency is developing or is presented with a proposal (197-11-945).
- (2) The lead agency's responsible official shall make the threshold determination.
- (3) In most cases, the time to complete a threshold determination should not exceed 15 days. 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) An agency is not required to document its threshold determination when the agency decides that a proposal is categorically exempt (197-11-320(2)).
- (5) All other threshold determinations shall be documented in:
 - (a) a determination of nonsignificance (DNS), when the responsible official decides a significant adverse impact is not likely (197-11-350); or
 - (b) a determination of significance (DS), when the responsible official decides a significant adverse impact is likely (197-11-360);

WAC 197-11-315 Threshold Determination Process.

- (1) In making a threshold determination, the responsible official shall:
 - (a) Follow the rules in 197-11-325 if a checklist is used;
 - (b) Determine if the proposal is likely to have a significant adverse environmental impact by applying the criteria in 197-11-305 and in this section to the facts, to the checklist (197-11-1325), and to any additional information furnished under 197-11-330 and 340; and
 - (c) Consider mitigation measures which an agency or applicant will implement.
- (2) In making a threshold determination, the responsible official may:
 - (a) Determine that a proposal is categorically exempt (197-11-320);
 - (b) Determine that all or part of the proposal, alternatives, or impacts have been analyzed in a previously prepared environmental document and adopt such document under the rules in 197-11-640; or
 - (c) Determine that environmental analysis would be more useful or appropriate in the future and commit to timely, subsequent environmental review, consistent with 197-11-055 through 070 and 660.
- (3) In determining an impact's significance (197-11-970), the nature of the existing environment is an important factor. The same proposal may have a significant adverse impact in one location but not in another location. 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. The responsible official shall also be alert to the possibility that several marginal impacts when taken together will result in a significant adverse impact. 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. If after following 197-11-080 and 330 the lead agency reasonably believes that a proposal would be likely to have a significant adverse impact, an EIS is required.
- (4) 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 197-11-320 Categorical Exemptions.

(1) If a proposal fits within any of the provisions in Part 9 of these rules, the proposal shall be categorically exempt (197-11-835) except as provided in this section.

(2) Although documentation is not required (197-11-310(4)), agencies may note on an application that a proposal is categorically exempt or simply place such a determination in agency files.

(3) In the following circumstances, a proposal which would potentially be categorically exempt under these rules shall not be determined to be exempt:

- (a) The proposal is a segment of a proposal under 197-11-060(4)(g); or
- (b) The proposal is not exempt under 197-11-1125 for environmentally sensitive areas.

(4) Agencies may petition the department of ecology to add or delete exemptions under 197-11-1090.

WAC 197-11-325 Environmental Checklist.

(1) Agencies:

- (a) Shall use the environmental checklist substantially in the form found in 197-11-1325 to assist in making threshold determinations for proposals, except for: categorically exempt proposals, 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.
- (c) Shall not require an applicant to prepare a checklist under SEPA if a checklist is not required by (1)(a) of this section.

(2) The lead agency shall:

- (a) Prepare the checklist, or require an applicant to prepare the checklist and follow the instructions in the introduction to the checklist in 197-11-1325;
- (b) Independently evaluate the checklist responses of any applicant and indicate the result of its evaluation in the DS, in the DNS, or on the checklist;
- (c) Conduct its initial review of the checklist and any supporting documents without requiring additional information from an applicant.

(3) The items in the checklist are not weighted. The mention of one or many adverse environmental impacts does not necessarily mean that the impacts are significant.

WAC 197-11-330 Additional Information.

(1) 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 060(4)). 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:

- (a) Require an applicant to submit more information on subjects in the checklist;
- (b) Make its own further study, including physical investigations on a proposed site;
- (c) 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
- (d) Decide that all or part of the action or its impacts is not sufficiently definite to allow meaningful environmental analysis and commit to timely, subsequent environmental analysis, consistent with 197-11-055 through 070.

WAC 197-11-340 Mitigated DNS.

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

(2) Prior to the lead agency's threshold determination on a proposal, an applicant may request the lead agency to indicate whether a DS appears likely. If the lead agency indicates a DS is likely, the applicant may clarify or change features of the proposal to respond to the agency's reasons for such an indication. Applicants clarifying or changing features of a proposal 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 clarifications or changes. 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 that would allow it to issue a DNS, and the proposal is clarified, revised, 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 incorporated by reference into, the documents previously submitted. An addendum may be used (197-11-660).

(5) The procedures of this section may be used by agencies for their own proposals in order to clarify or change features of a proposal as a result of comments by other agencies or the public or as a result of additional agency planning.

(6) An agency's preliminary indication under this section that a DS appears likely shall not be construed as a determination that a proposal has a probable

significant adverse environmental impact. The purpose of this section is to allow clarifications or changes prior to making a final threshold determination.

(7) The procedures for issuing a DNS are in 197-11-350.

WAC 197-11-350 Determination of Nonsignificance (DNS).

(1) The responsible official shall prepare and issue its determination of non-significance (DNS), if required, substantially in the form provided in 197-11-1350. If an agency adopts another agency's environmental document for a threshold determination (197-11-640), the notice of adoption (197-11-1340) and the DNS shall be combined or attached to each other.

(2) The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction.

- (3) (a) An agency shall not act upon a proposal for 15 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 197-11-1000(2)(f) or 1080;
 - (iii) issuance of clearing or grading permits not exempted in Part 9 of these rules; or
 - (iv) a DNS under WAC 197-11-340(2) or 360(4).
- (b) Notice of a DNS under (3)(a) of this section shall be given under 197-11-510 and additional methods to inform the public may be used, such as those indicated in 197-11-520.
- (c) Any person or agency may submit comments to the lead agency within 15 days of the date of issuance of a DNS on the proposals listed in (3)(a) of this section.
- (d) The responsible official shall reconsider the DNS based on timely comments. The responsible official may retain, modify, or withdraw the DNS or supporting documents if the responsible official determines that significant adverse impacts are likely.
- (e) An agency with jurisdiction may assume lead agency status only within this 15-day period (197-11-1270).

- (4) (a) The lead agency shall withdraw a DNS if:
- (i) There are substantial changes to a proposal which are likely to have significant 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 4(a)(ii) shall not apply when a nonexempt 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 197-11-360 Determination of Significance (DS).

(1) The responsible official shall prepare and issue its determination of significance (DS), if required, substantially in the form provided in 197-11-1360, unless the agency uses a similar notice which meets the requirements of this section. References in these rules to the DS refer to the DS or such similar notice.

(2) If an agency adopts another agency's environmental document for a threshold determination (197-11-640), the notice of adoption (197-11-1340) 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 an applicant and agencies with jurisdiction and expertise, if any, and to the public. Notice shall be given under 197-11-510 and additional methods to inform the public may be used, such as those indicated in 197-11-520.

(4) If at any time after the issuance of a DS a proposal is changed so that, in the judgment of the lead agency, all probable significant adverse environmental impacts which might exist are eliminated, the DS shall be withdrawn and a DNS issued instead. A proposal shall not be considered changed until all license applications for the proposal are revised to reflect the changes or other binding commitments are made by lead agencies or by applicants.

WAC 197-11-390 Effect of Threshold Determination; Assumption of Lead Agency Status.

(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 197-11-660.

(2) The responsible official's threshold determination:

- (a) Shall not be final until 15 days after issuance for proposals listed in 197-11-350(3).
- (b) Shall not apply if another agency with jurisdiction assumes lead agency status under 197-11-1270.
- (c) Shall not apply when withdrawn by the responsible official under 197-11-350 or 360.
- (d) Shall not apply when reversed on appeal.

(3) Regardless of any appeals, a DS or DNS issued by the responsible official shall be considered final for purposes of all agencies' planning and decision-making until subsequently changed, reversed, or withdrawn.

PART FOURENVIRONMENTAL IMPACT STATEMENT (EIS)

| | |
|----------------|---|
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WAC 197-11-400 Purpose of EIS.

The primary purpose of an environmental impact statement is to ensure that SEPA's policies are part and parcel of the ongoing programs and actions of state and local government.

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.

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.

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 Implementation.

To achieve the purposes set forth in 197-11-400 and as further specified in this Part, agencies shall prepare environmental impact statements as follows:

- (1) EISs are required to analyze only the reasonable alternatives and probable adverse environmental impacts that are significant. Beneficial environmental impacts or other impacts may be discussed.
- (2) The inclusion and level of detail shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply 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 capable of being 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 in EISs and shall adopt or incorporate 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, where such timing and preparation are 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 Types of EISs.

- (1) Environmental impact statements (EISs) shall be prepared in draft and final and may be supplemented.
- (2) EISs shall follow the scope, content, format, and style specified by Parts 4-6, unless expressly provided otherwise in these rules.
- (3) A draft EIS (DEIS) allows the lead agency to consult with members of the public and agencies with jurisdiction and expertise. The lead agency shall issue a DEIS (197-11-455) and shall initiate and consider comments as stated in 197-11-500 through 600. A DEIS shall be prepared according to the scope decided upon by the lead agency in its scoping process.

(4) 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.

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

- (a) there are substantial changes to a proposal which are 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.

(6) Preparation of an SEIS or addendum shall be carried out as stated in 197-11-660.

(7) Agencies may use federal EISs, as stated in 197-11-640 through 660.

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 that 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(7) and 740).

WAC 197-11-408 Scoping.

(1) The lead agency shall narrow the scope of every EIS to the significant issue or issues. If there are only two or three significant issues or alternatives, for example, 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 and public comment on the DS, or, if there is no DS, equivalent notification (197-11-360).
- (b) Identify reasonable alternatives and probable significant adverse environmental impacts.
- (c) Eliminate from detailed study those issues which 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 and the public should comment promptly and as specifically as possible, to the extent 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 which bear on the proposal and its significant impacts.

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 scoping questionnaires or information packets.
- (b) Using scoping meetings or workshops, which may be combined with any other early planning meetings of the agency.
- (c) Using a scoping 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 of predraft consultation 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, in order 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) As part of an expanded scoping process, an applicant may request, and 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 normally occur less than 30 days after the DS is issued, unless the lead agency and applicant agree upon a later date.

WAC 197-11-420 EIS Preparation.

(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 responsible official 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) An EIS may be prepared by an applicant or its agent, or by an outside consultant retained by either an applicant or the lead agency. The responsible official within 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 responsible official will coordinate any scoping procedures so that the individual preparing the EIS immediately receives all substantive information submitted by any agency or person. The responsible official shall also assist in obtaining any information needed by the person preparing the EIS which is on file with another agency or federal agency. The responsible official shall allow any party preparing an EIS access to all public records of the lead agency which 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 fee of an applicant which the agency is otherwise allowed to charge (197-11-1170).

(5) The provisions of this section apply to draft, final, and supplemental EISs.

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 include a glossary to explain plainly the meaning of technical terms not generally understood by the general public. EISs may include an index for ease in using the statement.

(3) The text of an environmental impact statement should normally range from 30-50 pages and may be shorter. The text of an EIS consists of the two main sections (see 197-11-430(2)(d) and (e); 440(5) and (6)). 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. The description of the proposal, including alternatives, and the description of the existing environment, including the summary of existing plans and policies, should not exceed roughly one-third of the EIS text. More detailed descriptions may be included in appendices or supporting documents.

(4) In all cases, the EIS text shall not exceed 75 pages in length, except for proposals of unusual scope or complexity, in which case the EIS text shall not exceed 150 pages.

(5) If the lead agency decides that descriptive material or supporting documentation may be helpful for readers, this background information shall be clipped or bound separately from the EIS (unless it is less than ten pages). This information may be placed in appendices or separate documents, and shall be readily available to agencies and the public during the comment period and at approximately the same time as the EIS.

(6) Agencies shall incorporate material into an environmental impact statement by reference in order to cut down on bulk, if an agency can do so without impeding agency and public review of the action. The incorporated material shall be cited in the EIS and its relevant content briefly described. Material may not be incorporated by reference unless its location is identified (197-11-440(2)(1)), and it is reasonably available to inspection by potentially interested persons within the time allowed for comments.

WAC 197-11-430 Format.

(1) A letter from the lead agency may precede and be included in the EIS. Every EIS shall be preceded by a cover memo (197-11-435). The cover memo shall be not be considered part of the EIS for adequacy purposes (197-11-435-(1)). A fact sheet (197-11-440(2)) shall be the first section of every EIS, and shall follow the cover memo.

(2) The following standard 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 (including 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.
- (g) Appendices, if any (including, for an FEIS, comment letters and any separate responses).

* The page limits in 197-11-425 apply only to this material.

(3) This simplified standard format puts the EIS text 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 and RCW 43.21C.030(2)(c) in a separate section. (See also RCW 43.21C.031, 197-11-440(6)(e), 444(3).)

(4) Additional Format Considerations.

- (a) The contents of the EIS are specified in 197-11-440 and shall be included, where relevant to the alternatives and impacts, regardless of the format of a particular statement.
- (b) The format of an FEIS may be different, as specified by 197-11-560.
- (c) Additional flexibility is provided in 197-11-442 and 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 450.
- (f) EISs may be combined with other documents (197-11-670).

WAC 197-11-435 Cover Memo.

(1) Every EIS shall be preceded by a cover memo. The cover memo shall not exceed two pages. The cover memo shall not be considered part of the EIS for adequacy purposes.

(2) The cover memo provides a way for the responsible official or agency staff to highlight environmental factors which, in their judgment, are especially noteworthy at the time the document is issued. It shall be a selective, comparative overview highlighting the options and environmental issues facing the lead agency's decisionmakers. It should be written in the style of a concise "decision/options" briefing memorandum. It is intended to focus on key environmental tradeoffs among alternatives, and may include environmentally beneficial as well as adverse impacts. It may mention other relevant considerations for decisionmakers.

WAC 197-10-440 EIS Contents.

(1) An EIS shall contain the following contents, in the style and format prescribed in the preceding sections. The EIS contents shall conform to the rules stated in 197-11-402.

(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 responsible official's preferred alternative if any.
- (d) The name and address of the lead agency, responsible official, and contact person for questions, comments, and information.
- (e) 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.

- (f) Authors and principal contributors to the EIS and the nature or subject area of their contributions.
 - (g) The date of issue of the EIS.
 - (h) The date comments are due (for DEISs).
 - (i) The time and place of public hearings or meetings, if any and if known.
 - (j) The date final agency action is planned or scheduled, 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.
 - (k) The type and timing of any subsequent environmental review to which the lead agency or other agencies have made commitments.
 - (l) The location of EIS technical reports, background data, adopted documents, and materials incorporated by reference for this EIS, if any.
 - (m) The cost to the public for a copy of the EIS.
- (3) Table of Contents (including the list of elements of the environment).
- (a) In addition to the EIS itself, 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 shall include the list of elements of the environment (197-11-444). The list shall indicate those elements or portions of elements which do not involve significant impacts.
- (4) Summary. Each EIS shall contain a section which summarizes the statement. The summary should 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 summary shall stress the major conclusions, significant areas of controversy and uncertainty, if any (including issues raised by the public), 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. The summary should state when the EIS is part of a phased review or the lead agency is relying on prior or future environmental review (which should be generally identified). The lead agency should make the summary sufficiently broad to be useful to the other agencies with jurisdiction. Although an EIS might not be an agency's only decision document, the summary may generally indicate if known those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision and weighed along with environmental factors. The summary is normally 5-15 pages, but may be shorter or longer depending on the EIS.
- (5) Alternatives Including the Proposed Action.
- (a) This section should describe and present the environmental impacts of the proposal and alternative courses of action in comparative form, focusing on the relative importance of the likely environmental consequences and helping to provide a basis for choice among options by decisionmakers and the public.

- (b) Reasonable alternatives shall include any action which could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives are those which are capable of being effected by the lead agency or another agency with jurisdiction. The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.
- (c) This section shall:
 - (i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives including the proposed action, except that the description of mitigation measures is normally included in the next section (see subsection 6).
 - (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.
 - (iv) Tailor the level of detail of description to the significance of environmental impacts. Any detailed engineering drawings and technical data which have been submitted should be retained in agency files and be available on request.
 - (v) Objectively compare 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.
 - (vi) 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 impacts among alternatives. The EIS may briefly indicate the main reasons for eliminating alternatives from detailed study.
 - (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.
 - (viii) Identify the preferred alternative(s) of the responsible official or agency, if one or more exist.
- (d) When a proposal is for a private project on a specific site, the lead agency shall not be required to evaluate alternatives other than the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. The limitations in this subsection shall not apply when the proposal includes a rezone, unless the rezone is for a use allowed in an existing comprehensive plan which was adopted after review under SEPA.

(6) Affected Environment, Significant Impacts, and Other Mitigation Measures.

- (a) This section shall describe the affected environment, analyze significant impacts of alternatives including the proposal 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) This section 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.
 - (ii) Be written in a way that is as nontechnical and easily understandable to lay persons as possible, with the discussion commensurate with the importance of the impacts. Only significant impacts are required to be discussed; other impacts may be discussed.
 - (iii) Give special attention to 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 disposal of toxic or hazardous material.
 - (iv) Clearly indicate those mitigation measures (not described in the previous section as part of the proposal or alternatives), if any, that an agency or applicant will implement or that the lead agency proposes to require as a condition of a license, if known.
 - (v) Indicate the intended environmental benefits of mitigation measures for significant impacts, and their technical feasibility and economic practicability. The EIS need not analyze mitigation measures in detail unless they involve substantial changes with significant adverse impacts, or new information regarding significant impacts, and those measures will not be subsequently analyzed under SEPA (see 197-11-720(2)). An EIS may briefly mention nonsignificant impacts or mitigation measures to satisfy other environmental review laws or requirements in the same document (197-11-402(8) and 670).
 - (vi) Summarize significant adverse impacts that cannot or will not be mitigated.
- (c) This section shall incorporate discussions of:
 - (i) A summary of existing 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.

- (d) Significant impacts on the both the natural environment and on the built environment must be analyzed, if relevant (197-11-444). This includes 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 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.
- (e) Although the lead agency should discuss the affected environment, environmental consequences, 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)).
- (f) This subsection is not intended to duplicate the analysis in subsection (5) and shall avoid doing so to the fullest extent possible. Although some information on impacts may be repeated, subsection (6) is intended to present the significant impacts, while subsection (5) is intended to compare the salient differences among the significant environmental impacts of the reasonable alternatives.

(7) Appendices. Any comment letters and responses to be attached to an FEIS under 197-11-560 shall be attached and bound separately from the FEIS, unless the appended material is less than 10 pages (197-11-425(5)). Comment letters and reponses 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(5) and 440(2)(1)).

(8) (OPTIONAL) The lead agency may at its option 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 (197-11-670). The EIS shall comply with the page limits and format requirements of this Part. The decision whether to include such information and the adequacy of any such additional analysis should not be used in determining whether an EIS meets the requirements of SEPA.

WAC 197-10-442 Contents of EIS on Nonproject Proposals.

(1) The lead agency shall have more flexibility in preparing EISs on non-project proposals because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals, and 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 its timing in the agency decisionmaking process. 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(4)). Alter-

natives 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 identified by the lead agency. Subsequent actions by other agencies which may result from the nonproject proposal, such as transportation and utility systems, should be identified.

(4) The lead agency's consideration of alternatives for a comprehensive or community plan or for other areawide zoning, shoreline, or land use plans or requirements 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. 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(7)) and supplemental review (197-11-660) apply to EISs on nonproject proposals. This section provides additional guidance and examples especially common to local land use decisions.

(2) A nonproject proposal may be approved based on an EIS assessing its broad impacts. A project may then be proposed which is consistent with the approved nonproject action. An EIS on such a project need not readdress those impacts analyzed in the previous nonproject EIS. These will often include elements of the built environment (197-11-444(2)). The subsequent project EIS need only briefly summarize the issues discussed in the broader statement and incorporate the discussion by reference. The subsequent project EIS shall focus on the impacts and alternatives specific to the subsequent project and shall limit the scope accordingly.

(3) When preparing a project EIS under the preceding subsection, the lead agency shall review the nonproject EIS to ensure that the analysis is still valid. If analysis relevant to the project EIS is inadequate as a result of changed circumstances, the analysis shall be reanalyzed in the project EIS.

WAC 197-10-444 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

- (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) Wildlife (Plants and Animals)
 - (i) Habitat and numbers or diversity of species of plants, fish, or other wildlife
 - (ii) Unique species
 - (iii) Agricultural crops
 - (iv) Fish or wildlife migration routes

 - (e) Energy and Natural Resources
 - (i) Amount required/rate of use
 - (ii) Source/availability
 - (iii) Nonrenewable resources
 - (iv) Conservation and renewable resources
- (2) Built Environment
- (a) Environmental Health
 - (i) Risk of explosion
 - (ii) Toxic emissions and hazardous waste disposal

 - (b) Land and Shoreline Use
 - (i) Description of relationship to plans and designations, and projected population
 - (ii) Housing
 - (iii) Noise
 - (iv) Aesthetics/light and glare
 - (v) Recreation
 - (vi) Historic and cultural preservation

 - (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) In order 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 197-10-444(1) may be combined and discussed as the natural environment, and the elements in (2) may be treated as the built environment.

WAC 197-10-448 Relationship of EIS to Other Considerations.

(1) Although 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, 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 which must ultimately be made by the decisionmakers. Rather, an environmental impact statement analyzes environmental consequences and must be used by agency decisionmakers, along with other relevant considerations or documents, in making final decisions. 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 an EIS to 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 (197-11-1325) and 197-11-440 and 444.

(3) The method 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), are examples of information not required to be analyzed in environmental impact statements.

(4) Agencies have the option to combine EISs with other documents or to include additional analysis in EISs which will assist in making decisions (197-11-440(8) and 670). 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- 842) 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 shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To comply with RCW 43.21C.030(2)(b), when a cost-benefit analysis is being considered by the agency, the EIS shall dis-

cuss the relationship between that analysis and unquantified environmental impacts, values, and amenities. 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 persons and agencies specified in 197-11-530.
- (2) The date of issue is the date the DEIS is publicly available and sent to the department of ecology and other agencies with jurisdiction.
- (3) Notice of a DEIS shall be given under 197-11-510. Additional methods may be used to inform the public, such as those indicated in 197-11-520.
- (4) Any person or agency shall have 30 days from the date of issue in which to review and comment upon the DEIS.
- (5) If the lead agency receives a request before the comment period has ended for an extension of time to comment, the lead agency:
 - (a) May grant a 15-day extension to an agency with jurisdiction or expertise.
 - (b) Shall consider and may grant requests for extensions up to 15 days by other agencies and members of the public. The lead agency shall give due consideration to any request from a public interest organization, consistent with the obligation to encourage public participation.
- (5) The rules for notice, costs, commenting, and response to comments on EISs are stated in Part 5 of these rules.

WAC 197-11-460 Issuance of FEIS.

- (1) A final EIS shall be issued by the responsible official and sent to the department of ecology, to all persons or agencies on the DEIS distribution list who commented on the DEIS, and to anyone requesting a copy of the FEIS.
- (2) In addition to subsection (1), 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.
- (3) The date of issue is the date the FEIS, or notice of availability, is sent to the persons and agencies as specified in the preceding subsections, and the FEIS is publicly available. Sending an EIS to the department of ecology shall satisfy the statutory requirement of availability to the governor and to the ecological commission.
- (4) No agency shall act on a proposal for which an EIS has been required prior to seven days from issuing the FEIS.

PART FIVE

COMMENTING

| | |
|----------------|--|
| WAC 197-11-500 | Purpose |
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WAC 197-11-500 Purpose.

The purpose of this Part is to provide 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 environmental document.

(2) Consulted Agency. An agency with jurisdiction or expertise that is requested by the lead agency during the environmental review process to consult or comment is a consulted agency (197-11-840). Consulted agencies have a particular responsibility to respond in a timely and specific manner (197-11-545 and 550).

(3) Threshold Determinations.

- (a) Agencies shall send DNSs to other agencies with jurisdiction, as required by 197-11-350(2).
- (b) Agencies shall provide public notice under 197-11-510 and receive comments for 15 days on DNSs issued under 197-11-350(3).

(4) Scoping.

- (a) Agencies shall circulate the DS and invite comments on the scope of an EIS, as required by 197-11-360, 408 and 510.
- (b) Agencies may use other reasonable methods to inform agencies and the public, such as those indicated in 197-11-410 and 520.
- (c) The lead agency determines the method and time period for commenting (197-11-408 and 410).

(5) DEIS.

- (a) Agencies shall invite comments on and circulate DEISs as required by 197-11-510 and 530.
- (b) The commenting period shall be 30 days unless extended by the lead agency (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.

- (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 on nonproject proposals shall be published no later than five days before the hearing, in a newspaper of general circulation in the general area where the lead agency has its principal offices. In addition to 197-11-510, for nonproject proposals having a regional or statewide 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 and circulation of draft and final SEISs shall be in the same manner as other draft and final EISs.
- (b) Agencies shall give notice under 197-11-510 and receive comments for 15 days on a DNS issued after a DS has been withdrawn (197-11-350(3)).
- (c) An addendum need not be circulated unless required under 197-11-660(6).

(9) Appeals. Notice provisions for appeals are in 197-11-750.

(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, such as those indicated in 197-11-520, 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. The SEPA aspect should be identifiable in a combined notice.

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 RCW 42.17.

(2) The lead agency shall provide a copy of any environmental document, 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 statewide public interest organization. If an agency requires an applicant to pay for printing environmental documents circulated under SEPA, the applicant shall be entitled to be reimbursed for applicant's printing costs for documents furnished by the agency beyond the initial distribution list and beyond those agencies or special organizations for which charges are reduced or waived under this subsection.

WAC 197-11-508 SEPA REGISTER

(1) A "SEPA REGISTER" shall be published and mailed each week which shall give notice of all environmental documents required to be sent to the department of ecology under these rules, including:

- (a) DNSs under 197-11-350(3);
- (b) DSs (scoping notices) under 197-11-408;
- (c) EISs under 197-11-455, 460, and 660;
- (d) Notices of public hearings held under 197-11-535; and
- (e) Notices of Action under RCW 43.21C.080 and .087.

(2) In conjunction with the other requirements of 197-11-510, publication in the SEPA REGISTER shall constitute adequate notice under SEPA.

(3) All agencies shall:

- (a) Submit the environmental documents listed in subsection (1) to the department promptly and in accordance with procedures established by the department; and
- (b) Subscribe to the SEPA REGISTER and maintain a copy for public inspection (for the current and, if available, for the prior year).

(4) The department:

- (a) Need not publish the notices verbatim but may establish a reasonable format for publishing the required notices in the SEPA REGISTER;
- (b) May charge a reasonable fee as allowed by law, in at least the amount allowed by RCW 42.17, for the SEPA REGISTER from agencies and members of the public and interested organizations.

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

WAC 197-11-510 Required Form of Notice.

When these rules require notice under this section, agencies shall give notice by:

- (1) Sending a notice to the department of ecology, which shall publish notice in the SEPA REGISTER;
- (2) Publishing notice in a newspaper of general circulation in the geographic area where the proposal is located (statewide proposals do not require newspaper publication except under 197-11-502(6)(b)); and
- (3) Posting on the site, if the proposal is located on a specific property.

WAC 197-11-520 Additional Notice. (OPTIONAL)

The lead agency is encouraged, but not required, to use any reasonable method to inform the public that an environmental document is available and of the time and place of a public hearing if any. Examples of such methods are: publishing a notice in agency newsletters or sending to agency mailing lists for specific proposals or subject areas; publishing notice in a newspaper of general circulation in the county, city or general geographic area where the proposal is located (if not otherwise required); notifying public or private groups that are known to be interested in a certain proposal or in the type of proposal being considered; contacting news media personnel and encouraging news coverage; and, placing notices in appropriate regional, neighborhood, ethnic, or trade periodicals.

WAC 197-11-530 Circulation of DEISs.

- (1) DEISs shall be sent to all of the following:
 - (a) The department of ecology.
 - (b) Each federal agency with jurisdiction over the proposal.
 - (c) Each state agency with jurisdiction or environmental expertise on the proposal.
 - (d) Each city/county in which adverse environmental impacts identified in the EIS may occur if the proposal is implemented.
 - (e) Each local agency or political subdivision whose public services will be changed as a result of implementation of the proposal.
 - (f) The applicable local, areawide, 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 from the lead agency.
- (2) The lead agency is encouraged to send a copy 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).

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 which is available.

(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 30 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 30 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 15 days from the date an EIS is issued, nor later than 45 days from its issuance. Notice shall be given under 197-11-502(6) and 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 draft EIS shall be at the public hearing.

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

(6) Agencies and their designees may have informal public meetings or workshops, and 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, including commenting within 30 days of the date of the DEIS or within any extension granted by the lead agency, the lead agency may properly assume that the consulted agency has no information relating to the potential impact of the proposal upon the subject area of 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 4 of these rules.

(2) Other agencies and the public. Because each person has a responsibility to contribute to the preservation of the environment, it is the intention of these rules that lack of comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, be construed as lack of objection to the environmental analysis. This assumes that other agencies and members of the public have had reasonable notice to comment on the documents, proposals, and impacts in question.

WAC 197-11-550 Specificity of Comments.

(1) Comments on an EIS 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 and indicate the material's relevance.

(3) Methodology. When an agency criticizes a lead agency's predictive methodology, the commenting agency should describe 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. In particular, it shall specify any additional information it needs to comment adequately on the DEIS's analysis of significant site specific impacts associated with that consulted agency's action on the proposal or its area of expertise.

(5) Mitigation measures. When an agency with jurisdiction objects to, or expresses concerns about, a proposal on grounds of environmental impacts, the agency expressing the concerns shall specify the mitigation measures it considers necessary to allow an agency to grant or approve applicable licenses, to the extent permitted by the details available on the proposal.

(6) Comments by Other Agencies. Agencies which 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. It is expected that citizen comments may be more general or personal than agency 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, 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, except that the requirements for responding in an FEIS are specified in the next section.

WAC 197-11-560

FEIS Response to Comments.

(1) An agency preparing a final environmental impact statement shall consider comments on the proposal and shall respond by one or more of the means listed below, stating 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 serious 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 which support the agency's response and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(2) All substantive comments received on the draft statement (or summaries where the comments are repetitive or voluminous) should be appended to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement. If a summary of the comments is used, the name of each commenter shall be appended (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 addendum, which shall consist of an updated fact sheet (197-11-440(2)). The addendum shall be circulated under 197-11-460. The FEIS shall consist of the DEIS and addendum.

(5) If changes in response to comments are minor and are largely confined to the responses described in paragraphs (1)(d) and (e) of this section, agencies may prepare and attach an addendum. In such cases only the comments, the responses, the changes, and an updated fact sheet, and not the rest of the EIS, need be issued under 197-11-460. The FEIS shall consist of the DEIS and the addendum.

(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 RCW 42.17 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 for providing environmental information to each other.

PART SIX

USING EXISTING ENVIRONMENTAL DOCUMENTS

| | |
|----------------|---|
| WAC 197-11-640 | Use of Existing Environmental Documents |
| WAC 197-11-650 | Use of NEPA Documents |
| WAC 197-11-660 | Supplemental Environmental Review |
| WAC 197-11-670 | Combining Documents |

WAC 197-11-640 Use of Existing Environmental Documents.

(1) An agency may use environmental documents which 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.

(2) Existing documents may be used by adoption or by incorporation by reference.

- (a) In "adoption", an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA.
- (b) "Incorporation by reference" refers to the inclusion of all or part of any existing document in an agency's environmental documentation (see 197-11-090, 425, 443).
- (c) Existing documents may include documents which are in the process of being prepared on another proposal or by another agency.

(3) The adopting agency must:

- (a) clearly identify the document (or portions) being adopted;
- (b) independently review the content of the document and determine that it meets the adopting agency's environmental review standards and needs for its current proposal;
- (c) make sure that the document is readily available to the public and other agencies during applicable comment periods, if any, along with a brief description of the current proposal; and
- (d) have the document accompany the current proposal to the decisionmaker.

(4) Subject to the requirements in subsection (3), an adopted document is not required to meet the adopting agency's own rules or requirements for the preparation of environmental documents (including circulation, commenting, or hearing requirements) to be "adopted." A document is not required to be final or declared adequate prior to adoption. For example, an adopted document might not be adequate or final for the proposal on which it was written, but it may adequately analyze impacts related to the current proposal. The adopting agency shall disclose when:

- (a) The agency is adopting a document which is not final for the agency that prepared it.
- (b) The document or proposal it addresses is the subject of a pending appeal.
- (c) All or part of the document has been found inadequate by the preparing agency or on appeal.

- (5) (a) An agency shall adopt an environmental document by identifying the document and stating why it is being adopted. The statement of adoption may be included in agency planning and decisionmaking documents. An optional adoption notice form is in 197-11-1340, although an agency may develop its own form.
 - (b) If an existing EIS is adopted for the purpose of fully satisfying an agency's compliance with RCW 43.21C.030(2)(c), and a supplemental environmental document is not being prepared, the agency shall circulate its statement of adoption in the same manner as an FEIS under 197-11-460 (also see 197-11-650 on NEPA EISs).
- (6) Adoption of environmental documents by other agencies acting on the same proposal is not required when a lead agency or its responsible official issues a DNS or FEIS. For a DNS, an agency with jurisdiction may assume lead agency status if the agency is dissatisfied with the DNS (197-11-350(3)(e) and 1270). For an EIS, an agency with jurisdiction shall use a lead agency's FEIS unchanged unless:
- (a) supplemental review is required under 197-11-660; or
 - (b) 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 conduct supplemental review at its own expense under 197-11-660).

WAC 197-11-650 Use of NEPA Documents.

- (1) An agency may adopt any environmental analysis prepared under the National Environmental Policy Act (NEPA) by following 197-10-640.
- (2) A NEPA environmental assessment may be adopted to satisfy SEPA's threshold determination or EIS requirements if the requirements of 197-11-640 are met.
- (3) An agency may adopt a NEPA EIS as a substitute for preparing a SEPA EIS if:
 - (a) The requirements of 197-11-640(3) through (6) are met (in which case the procedures in Parts 3-5 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 U.S. 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), for the same (or substantially the same) proposal does not require adoption, unless the agency conducts supplemental review under 197-11-640(6).
- (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 30 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 197-11-660 Supplemental Environmental Review.

(1) "Supplemental review" refers to:

- (a) a new threshold determination made under 197-11-350(4) or 360(4);
- (b) an SEIS; or
- (c) an addendum (any other supplemental environmental document).

(2) Preparation of a new threshold determination or SEIS is required only if:

- (a) There are substantial changes to a proposal which are likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or
- (b) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts. "Significant new information" includes discovering of misrepresentation or lack of material disclosure.

(3) Supplemental review is not required if probable significant adverse impacts are covered by the range of alternatives and impacts analyzed in existing environmental documents.

(4) SEIS.

- (a) When the criteria in subsection (2) are met, a supplemental EIS shall be prepared (197-11-405), except as provided in (4)(b) below. An SEIS shall be prepared in the same way as a draft and final EIS (197-11-400 to 600), except that scoping is optional. The scope of an SEIS need not include actions, alternatives, or impacts which have been analyzed in the previously prepared EIS. 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.
- (b) An agency may use an addendum rather than an SEIS to add analysis which does not significantly change the analysis of significant impacts and alternatives in the EIS (for example, to discuss an additional impact or alternative). If so, an addendum shall be prepared and circulated to those who received the EIS (see subsection 5(e) and 6 below). The entire EIS need not be recirculated.

(5) Addendum. An agency may use an addendum to:

- (a) update information in an environmental document;
- (b) conduct an additional or subsequent environmental assessment or analysis on one or more environmental impacts;
- (c) monitor impacts or analyze additional mitigation measures (see, for example, 197-11-340(4) and 720);
- (d) satisfy the optional coordinated permit procedures under 197-11-740;

- (e) modify or add to a lead agency's environmental document, including doing so for purposes of adoption (see, for example, 197-11-640-6)(b)); or
- (f) assist the agency in carrying out the act.

(6) An agency is not required to prepare a draft addendum. An addendum for a DEIS shall be circulated to recipients of the initial DEIS under 197-11-455 (see 4(b) above). If an addendum is prepared for a final EIS prior to agency action on a proposal, the addendum shall be circulated to the recipients of the final EIS, and the seven day waiting period in 197-11-460(4) shall apply to the addendum. 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 197-11-670 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 197-11-700 | Purpose of this Part |
| WAC 197-11-710 | Implementation |
| WAC 197-11-720 | Substantive Authority and Mitigation |
| WAC 197-11-740 | Optional Coordinated Permit Procedures |
| WAC 197-11-750 | Appeals |

WAC 197-11-700 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 which 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 197-11-710 Implementation.

- (1) Agencies should be alert to the requirements of RCW 43.21C.020, .030(1), .060, .075, and .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 EIS.
 - (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 197-11-720 Substantive Authority and Mitigation.

- (1) Any governmental action on public or private proposals, that is 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 which are or have been 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 which are in effect at the time that a 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 stated in writing by the decisionmaker. The decisionmaker shall cite the agency SEPA policy which is the basis of any condition or denial under this chapter. After its decision, each agency shall make available to the public a document which states the decision. The document shall state the mitigation measures, if any, which 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 (to the extent allowed by the detail of the proposal and environmental documents, including comments by agencies with jurisdiction).
- (f) In order 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 carefully 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 (see 197-11-060(6) and 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 which are 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 which contains agency SEPA policies (197-11-1110), 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 197-11-740 Optional Coordinated Permit Procedures.

(1) Purpose. As an optional procedure, lead agencies may use phased review (197-11-060(7) and 935) to allow agencies with jurisdiction to conduct detailed analysis of impacts and identify mitigation measures, under the rules in this section. This procedure is designed to provide appropriate consideration of environmental factors while reducing duplication of licensing requirements and paperwork, encouraging the proper level of detail in environmental documents, integrating the timing of development planning and the SEPA process, improving interagency coordination, and eliminating unnecessary detailed design costs in the early planning of proposals with significant impacts.

(2) Identifying Mitigation Through Phased Review. Under the optional procedures in this section, the lead agency may issue an FEIS and complete its decisionmaking process, subject to subsequent examination of detailed design

elements by other agencies with jurisdiction and by the lead agency at a later date.

(3) EIS Procedures. Upon request by a lead agency or applicant, an agency with jurisdiction shall inform the lead agency whether the agency with jurisdiction may be making a decision to condition or deny a proposal on specific environmental elements or known significant impacts identified in the lead agency's EIS. If so, the lead agency is not required to analyze those impacts in detail or to develop or consider mitigation measures for those impacts in its EIS if all of the following occurs:

- (a) The lead agency's EIS identifies the specific impacts, agencies, and permits or other requirements which are the basis of the phased EIS (197-11-440(2)(k), 4, and 5(c)(iii)).
- (b) Another agency with jurisdiction will require more detailed information on the proposal to make its decision and will issue an SEIS or addendum to the lead agency's EIS on the impact in question. An addendum shall be used unless the criteria for an SEIS apply (197-11-660). Such supplemental review shall have the effect of completing the EIS process. (In addition, 197-11-720(2)(b) shall not apply to the supplemental review by an agency with jurisdiction under this section.)
- (c) The lead agency's EIS has analyzed the impacts in question in sufficient detail for the lead agency to develop and describe reasonable alternative courses of action and to make a decision to approve or reject the proposal, subject to possible additional mitigation measures. An agency may allow an appeal under SEPA at this stage of the process, as long as the impacts and mitigation measures which are the subject of the phased review under this section are not eliminated from being appealed subsequently.

(4) Mitigation Decisions.

- (a) If requested by the lead agency, the agency with jurisdiction shall allow the lead agency to participate in the review and development of mitigation measures.
- (b) The lead agency may require additional mitigation measures on the proposal if it determines that the conditions placed by the agency with jurisdiction are insufficient to mitigate impacts of concern to the lead agency. The lead agency shall inform the agency with jurisdiction and any applicant of the lead agency's determination that additional mitigation is needed as soon as possible in this phased review process.

WAC 197-11-750

Appeals.

(1) Statutory Requirements. Appeals provisions in the act are found in RCW 43.21C.060, .075, and .080.

(2) RCW 43.21C.060 allows an appeal to a local legislative body, such as a county council, from a decision to condition or deny a proposal by a nonelec-

ted official, such as a planning director or hearing examiner. Appeals under RCW 43.21C.060 shall occur in accordance with local agency procedures. The local legislative body may eliminate this kind of agency SEPA appeal.

(3) RCW 43.21C.075 is the principal section governing appeals and consists of:

- (a) The right to challenge compliance with SEPA - subsection 1.
- (b) Two general rules for appeal - subsection 2.
- (c) Appeals to agencies - subsection 3.
- (d) Required use of agency appeals before going to court - subsection 4.
- (e) Appeals to court - subsections 5 and 6.
- (f) Optional appeal to shorelines hearings board instead of appealing to agencies or court - subsection 7.
- (g) Definitions for appeals - subsection 8.
- (h) Limited attorneys fees provisions - subsection 9.

(4) RCW 43.21C.080 allows agencies or applicants to publish a "notice of action" which, if used, requires SEPA appeals to be filed within certain time periods. RCW 43.21C.080 must be read along with RCW 43.21C.075 to understand when and how a notice of action is used.

(5) General Rule for All SEPA Appeals and Major Exceptions.

- (a) When challenging SEPA compliance, the underlying government action (such as a permit decision) and any environmental determination (such as the adequacy or lack of an EIS) shall be appealed together. In other words, appeal on the underlying government action and any SEPA determination shall be filed at the same time, and both shall be the subject of the appeal.
- (b) The exceptions to the general rule stated in 5(a) of this section are:
 - (i) Agency procedures may allow a threshold determination to be appealed to the agency separately from and before a decision is made on the underlying government action.
 - (ii) Appeals to agencies of procedural and substantive determinations may be separated in certain circumstances (see subsection 6 below).
 - (iii) The SEPA portion of a judicial appeal shall be filed no later than 30 days after the agency gives official notice of its decision on the underlying government action, if there is a time period in statute or ordinance for challenging the underlying action (see subsection 7 below).

(6) Agency Appeals.

- (a) Agencies are not required to have any agency appeals (except for any appeals under RCW 43.21C.060 which have not been eliminated by a local legislative body).
- (b) Agencies may have appeals to administrative or legislative officials. Any such appeals shall follow the requirements of RCW 43.21C.075 and this section. Agency SEPA procedures (197-11-1120) shall include those items specified in RCW 43.21C.075(3) and any procedures for appeal under this subsection.

- (c) Agencies may decide which SEPA determinations are subject to agency appeals, and who will hear such appeals. Agencies may provide for appeals on substantive or procedural determinations or both.
- (d) Agencies are not required to have an agency appeal for every aspect of procedural or substantive determinations. For example, agencies may have agency appeals for certain aspects of SEPA determinations, such as DNSs, but not others, such as categorical exemptions or DSs.
- (e) Although opportunity for comment is required and encouraged, agencies shall not provide for an appeal proceeding for scoping determinations, DEIS adequacy, or similar procedural requirements in the midst of the environmental review process prior to the issuance of an FEIS.
- (f) Agencies shall have only one appeal proceeding on a procedural determination. Such a determination shall consist of the adequacy of a final threshold determination or final environmental impact statement (and may include a final supplemental threshold determination or final SEIS). An appeal is allowed for successive procedural determinations, for example, the existence of a threshold determination and, later, the adequacy of a final EIS. Because this single appeal requirement must be administered consistent with other state statutes, an additional level of appeal on a procedural determination may occur only if another statute requires that an appeal be allowed to a local legislative body.
- (g) Agencies shall consolidate appeals of SEPA procedural issues and substantive determinations, except that a separate appeal may occur for a threshold determination ((b)(i) of this section), or for an appeal to a local legislative body under RCW 43.21C.060 or other applicable state statute (such as an appeal to a county council from a hearing examiner's decision on a proposal). A consolidated appeal (197-11-837) cannot occur, and therefore is not required, when an agency does not have an appeal proceeding for both substantive and procedural decisions.
- (h) Agency "determination" under RCW 43.21C.075 refers to final agency action and not to recommendations to decisionmakers.

(7) Judicial Appeals.

- (a) Neither the act nor these rules create a mandatory statute of limitations on SEPA appeals. Rather, they provide for:
 - (i) An optional notice of action which, if used, triggers a mandatory time period for filing an appeal; and
 - (ii) The filing of a SEPA portion of a lawsuit no later than 30 days after official notice of agency action if another statute or ordinance contains a time period for filing a lawsuit on the underlying government action. Thus, the SEPA portion of a lawsuit may be filed later than the time required to file an appeal on the underlying government action. For example, if a statute requires an agency action to be appealed to court within 15 days, and that appeal is duly filed, a challenge to the agency's SEPA compliance on the underlying government action need not be filed in court for another 15 days. This additional time is provided in part to allow review of final environmental

- documents and to maintain general consistency with the basic 30 day period under the notice of action.
- (b) Filing of the SEPA portion of a lawsuit within 30 days shall not be considered as a challenge to the underlying government action if a timely appeal under statute or ordinance was not filed on such underlying action.
 - (c) Agencies or applicants may continue to use the notice of action in RCW 43.21C.080. If so:
 - (i) The newspaper publication may be accomplished in the same manner as, and within the period for, appealing the underlying government action, which may be shorter than the period otherwise needed to meet RCW 43.21C.080.
 - (ii) The time period for appeal will continue to be 30 days for private proposals and 90 days for public proposals, unless 7(a)(ii) of this section applies, in which case the time period for filing a lawsuit shall be 30 days.
 - (iii) The term "action" cannot simply refer to a SEPA procedural determination.
 - (d) An appellant shall file a "notice of intent" to file a SEPA lawsuit with the responsible official (RCW 43.21C.075(5)(a)) only if:
 - (i) there is a period required by statute or ordinance to appeal the underlying government action; and
 - (ii) there has been an agency SEPA appeal under this section, and the agency has given the required notice to the parties of record of the result of such appeal.
 - (e) If there is more than one underlying government action that has an appeal period, any required notice of intent shall be filed no later than the latest of such other appeal periods.
 - (f) If deadlines for appealing the underlying government action are not contained in statute or ordinance (for example, if they are contained in rules), the time period for challenging SEPA compliance shall be governed by the notice of action, if any, or by the common law doctrine of laches.
 - (g) Neither SEPA nor these rules prohibits judicial review of the implementation of mitigation measures (which may occur later in time than final decisions on proposals) or of categorical exemptions.
- (8) Official Notice for Appeals.
- (a) Official notice of the time to commence an appeal shall not be given prior to final agency action.
 - (b) For a notice of action, the time period to file an appeal runs from the date of second newspaper publication (RCW 43.21C.080) or of concurrent publication with notice for the underlying government action (RCW 43.21C.075(5)(c)).
 - (c) For judicial appeals following agency appeals under RCW 43.21C.-075(3), the time period to file a judicial appeal shall run from five days after an agency has mailed or otherwise given notice under its procedures to the parties of record.
 - (d) For all other appeals, the time period to file an appeal shall run from five days after an agency has given notice under its procedures, or from the date of publication in a newspaper of general circulation in the geographic area in which the proposal is located, whichever is sooner.

- (e) "Official notice" refers to publication in a newspaper of general circulation in the geographic area in which the proposal is located or any other reasonable method under agency procedures for giving formal notice of its actions. Official notice under this section shall substantially include the information in 197-11-1380 and may be combined with other agency notice as long as the SEPA aspect is identifiable.

PART EIGHTDEFINITIONS

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|----------------|--|
| WAC 197-11-800 | Definitions |
| WAC 197-11-810 | Act |
| WAC 197-11-815 | Action |
| WAC 197-11-818 | Addendum |
| WAC 197-11-819 | Adoption |
| WAC 197-11-820 | Affecting |
| WAC 197-11-825 | Agency |
| WAC 197-11-830 | Applicant |
| WAC 197-11-832 | Built Environment |
| WAC 197-11-835 | Categorical Exemption |
| WAC 197-11-837 | Consolidated Appeal |
| WAC 197-11-840 | Consulted Agency |
| WAC 197-11-842 | Cost-Benefit Analysis |
| WAC 197-11-845 | County/city |
| WAC 197-11-847 | Decisionmaker |
| WAC 197-11-849 | Department |
| WAC 197-11-850 | Determination of Nonsignificance (DNS) |
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| WAC 197-11-860 | EIS |
| WAC 197-11-865 | Environment |
| WAC 197-11-870 | Environmental Checklist |
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| WAC 197-11-940 | Private Project |
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WAC 197-11-800 Definitions.

- (1) The terms used in these rules shall be uniform throughout the state as applied to SEPA (197-11-035). 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 (197-11-1122).
- (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" (197-11-905).
 - (e) "Commenting" includes but is not synonymous with "consultation" (Part 5).
 - (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 860).
 - (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".
- (3) The following terms are synonymous:
 - (a) Effect and impact (197-11-880).
 - (b) Environment and environmental quality (197-11-865).
 - (c) Major and significant (197-11-915 and 970).
 - (d) Proposal and proposed action (197-11-945).
 - (e) Probable and likely (197-11-942).

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(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.

WAC 197-11-830 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 197-11-832 Built Environment.

"Built environment" means the 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 197-11-835 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 9 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 specifically provide for those extraordinary circumstances when an action with normally nonsignificant effects shall not be considered categorically exempt (197-11-320).

WAC 197-11-837 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 (see 197-11-750). 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 (197-11-750(6)).

WAC 197-11-840 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 197-11-842 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 197-11-845 County/city.

"County/city" means a county, city, or town. In this chapter, duties and

left to the legislative or charter authority of the individual counties, cities, or towns.

WAC 197-11-847 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 (197-11-1122 and 1130).

WAC 197-11-849 Department.

"Department" means the Washington State Department of Ecology.

WAC 197-11-850 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 350). The DNS form is in 197-11-1350.

WAC 197-11-855 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 360). The DS form is in 197-11-1360. Agencies may use a similar notice instead of a DS to commence scoping, as allowed in 197-11-360 and 408.

WAC 197-11-860 EIS.

"EIS" means environmental impact statement, which is the detailed statement required by RCW 43.21C.030(2)(c). Although the term "detailed statement" in the statute literally refers to a final EIS, the term "EIS" in these rules shall refer to draft, final, or supplemental EISs (197-11-405).

WAC 197-11-865 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 197-11-870 Environmental Checklist.

"Environmental checklist" means the form in 197-11-1325. Rules for its use are in 197-11-325.

WAC 197-11-875 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 documents or processes (unlike various other state or federal environmental impact procedures). Rather, these

terms refer generally to efforts to understand and consider environmental factors, and are often used interchangeably.

WAC 197-11-876 Environmental Review.

"Environmental review" means the consideration of environmental factors under 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 197-11-877 Environmentally Sensitive Area.

"Environmentally sensitive area" means an area designated and mapped by a county/city under 197-11-1125. Certain categorical exemptions do not apply within environmentally sensitive areas (197-11-320(3), 1125, and Part 9 of these rules).

WAC 197-11-879 Expanded Scoping.

"Expanding scoping" is an optional process which may be used by agencies to go beyond minimum scoping requirements. In order to promote the purposes of scoping and efforts by agencies, applicants, and the public to work together early in the environmental review process, great latitude is given to agencies in how they wish to conduct any expanded scoping process under 197-11-410, so that agencies will not be penalized for using the process creatively.

WAC 197-11-880 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 197-11-885 Incorporation by Reference.

"Incorporation by reference" means the inclusion of all or part of any existing document in an agency's environmental documentation (197-11-090).

WAC 197-11-890 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 9.

WAC 197-11-895 Lead Agency.

"Lead Agency" means the agency with the main responsibility for complying with SEPA's procedural requirements (197-11-050 and 1200). The procedures for determining lead agencies are in Part 10 of these rules. "Lead agency" may be read as "responsible official" (197-11-950 and 1130) unless the context clearly requires otherwise. Depending on the agency and 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 197-11-315, 455, 460) and its decisionmaker, who is at a minimum responsible for substantive determinations (such as 197-11-448, 710, and 720).

WAC 197-11-900 Legislation.

"Legislation" means agency adoption or amendment of legislation or ordinances which contain standards controlling use or modification of the environment. Proposals for legislation means legislation proposed by agencies.

WAC 197-11-905 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 197-11-910 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 197-11-915 Major Action.

"Major action" means an action which is likely to have significant adverse environmental impacts. "Major" reinforces but does not have a meaning independent of "significantly" (197-11-970). Action is defined in 197-11-815.

WAC 197-11-918 Mitigated DNS.

"Mitigated DNS" means a DNS which includes mitigation measures and is issued as a result of the process specified in 197-11-340.

WAC 197-11-920 Mitigation.

"Mitigation" means:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- (f) Monitoring the impact and taking appropriate corrective measures.

WAC 197-11-922 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 197-11-925 NEPA.

"NEPA" means the National Environmental Policy Act of 1969 (42 USCA 4321 et seq.; P.L. 91-190), which is like SEPA at the federal level. The federal NEPA regulations are located at 40 CFR 1500 et seq.

WAC 197-11-930 Nonproject.

"Nonproject" means actions which are different or broader than a single site specific project, such as plans, policies, and programs (197-11-815).

WAC 197-11-935 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(7)). Phased review may be used for a single proposal or EIS (197-11-060 and 740).

WAC 197-11-937 Preferred Alternative.

"Preferred alternative" means a preference for a particular alternative course of action, at the time the preference is expressed. A preferred alternative is not a decision, and may be no more than an expression that a responsible official or decisionmaker is tentatively inclined toward a certain direction.

WAC 197-11-939 Preparation.

"Preparation" of an environmental document means preparing or supervising the preparation of documents, including issuing, filing, printing, circulating, and related requirements (see 197-11-800(2)).

WAC 197-11-940 Private Project.

"Private project" means any proposal primarily initiated or sponsored by an individual or entity other than an agency.

WAC 197-11-942 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 197-11-970). Probable is used to distinguish likely impacts from those which merely have a possibility of occurring, but are remote or speculative.

WAC 197-11-945 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 prepar-

ing 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 060(4).) 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 197-11-947 Reasonable Alternative.

"Reasonable alternative" means an action which: (1) could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation, and (2) is capable of being effected by the lead agency or another agency with jurisdiction (in other words, such agencies have the authority to control impacts directly or through mitigation requirements). (See 197-11-060(6), 440(5), and 720). Also see the definition of "scope" for the three types of alternatives to be analyzed in EISs (197-11-960).

WAC 197-11-950 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 (197-11-1130).

WAC 197-11-955 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 197-11-960 Scope.

(1) "Scope" means the range of proposed actions, alternatives, and impacts to be analyzed in an environmental document (197-11-060(3)). "Scoping" means determining the scope of an EIS and identifying and narrowing the scope to significant impacts (197-11-965).

(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(4)(e) or (g)); or
 - (iii) similar (proposals that have common aspects and may be analyzed together under 197-11-060(4)(f)).
- (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 4 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 197-11-965 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 197-11-970 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 (197-11-315(3)) 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 following should be considered in evaluating intensity, as is appropriate for specific proposals:

- (a) Impacts may be both beneficial and adverse. A significant impact may exist even if the agency believes that on balance the effect of the proposal will be beneficial.
- (b) The degree to which a proposal may 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.
- (c) The degree to which a proposal may adversely affect endangered or threatened species or their habitat.
- (d) The degree to which a proposal threatens a violation of local, state, or federal laws or requirements for the protection of the environment.
- (e) The degree to which the action may establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or affects public health or safety.
- (f) 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) Environmental effects are not normally significant if they meet existing environmental standards governing such impacts; however, an agency may

determine that such impacts are significant, based upon the particular environmental setting and analysis in environmental documents or information (or lack of information) on a proposal or its impacts. An agency may require mitigation in accordance with SEPA and these rules even if an impact is not significant.

(4) 197-11-315 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

WAC 197-11-975 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 197-11-815, except the judiciary and state legislature.

WAC 197-11-980 Supplemental Review.

"Supplemental review" means an environmental document that is done in addition to existing environmental analysis and refers to: (1) a new threshold determination made under 197-11-350(4) or 360(4); (2) a supplemental environmental impact statement; or (3) an addendum. (197-11-660.)

WAC 197-11-985 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 (197-11-310).

WAC 197-11-990 Underlying Government 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 197-11-1000 | Categorical Exemptions |
| WAC 197-11-1010 | Exemptions and Nonexemptions Applicable to Specific State Agencies |
| WAC 197-11-1020 | Department of Licensing |
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| WAC 197-11-1130 | Department of Natural Resources |
| WAC 197-11-1135 | Department of Fisheries |
| WAC 197-11-1140 | Department of Game |
| WAC 197-11-1045 | Department of Social and Health Services |
| WAC 197-11-1050 | Department of Agriculture |
| WAC 197-11-1055 | Department of Ecology |
| WAC 197-11-1060 | Department of Transportation |
| WAC 197-11-1065 | Utilities and Transportation Commission |
| WAC 197-11-1070 | Department of Commerce and Economic Development |
| WAC 197-11-1075 | Other Agencies |

WAC 197-11-1080
WAC 197-11-1090

Emergencies
Petitioning DOE to Change Exemptions

WAC 197-11-1000 Categorical Exemptions.

The proposed actions contained in Part 9 are categorically exempt (197-11-835), subject to the rules and limitations on categorical exemptions contained in 197-11-320. If a proposal fits within any of the provisions of this Part, the proposal shall be categorically exempt, except as provided in 197-11-320.

(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 water is required. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. If an agency does not establish an exempt level under (c) of this subsection, the level in (b) of this subsection shall control. If there is more than one agency with jurisdiction, 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 20 automobiles.
 - (iv) The construction of a parking lot designed for 20 automobiles.
 - (v) Any land fill 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, III forest practice under RCW 76.09.050 or regulations thereunder.
- (c) Agencies may raise the exempt levels to the maximum specified below by implementing ordinance or resolution, or, for state agencies, by rulemaking. Such levels shall be specified in the agency's SEPA or procedures (197-11-1120). 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 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 this subsection, 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 this subsection when such addition, modification or replacement will not change the character of the building or facility in a way which would remove it from an exempt class.
- (f) The demolition of any structure or facility, the construction of which would be exempted by this subsection, 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: 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.

(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 pumphouse 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 ten cubic feet per second 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, slope, topography, location or surroundings and not resulting in any change in land use or density.
- (c) Classifications of land for current use taxation under RCW 84.34, and classification and grading of forest land under RCW 84.33.

(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) Variiances 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 (197-11-900).

(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, pawnbrokers, 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 be not 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 197-11-1000(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 which 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 197-11-1000 and 1080.

(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 for strictly information-gathering purposes, or as part of a study leading to a proposal which has not yet been approved, adopted or funded; this exemption does not include any agency action which 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 (RCW 19.27).

(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 RCW 70.107. 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; however, installation or construction on or alteration of lands covered by water shall not be exempt for actions listed below. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration which does not change the action from an exempt class.

- (a) All communications lines, including cable TV, but not including microwave 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 which 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 which 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 which 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 public roads in nonresidential areas.

WAC 197-11-1010

Exemptions and Nonexemptions Applicable to
Specific State Agencies.

(1) The exemptions in 197-11-1020 through 1075 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 197-11-320. The categorical exemptions in 197-11-1000 apply to all agencies, including those named in 197-11-1020 through 1075 unless the

general exemptions are specifically made inapplicable by one of the following exemptions.

WAC 197-11-1020 Department of Licensing.

- (1) All licenses required under programs administered by the department of licensing as of December 12, 1975 are exempted, except the following:
- (a) Camping club promotional permits under RCW 19.105.
 - (b) Motor vehicle wrecker licenses under RCW 46.80. 197-11-1000(14)(i) shall apply to allow possible exemption of renewals of camping club promotional permits and motor vehicle wrecker licenses.

WAC 197-11-1025 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 RCW 70.74. The adoption of any industrial health or safety regulations containing noise standards shall be considered a major action under this chapter.

WAC 197-11-1030 Department of Natural Resources.

- (1) The following actions and licenses of the department of natural resources are exempted.
- (a) Forest closures, shutdowns and permit suspensions due to extreme unusual fire hazards.
 - (b) Operating permits to use power equipment on forest land.
 - (c) Permits to use fuse on forest land.
 - (d) Log patrol licenses.
 - (e) Permits for drilling for which no public hearing required under RCW 79.76.070 (geothermal test drilling).
 - (f) Permits for the dumping of forest debris and wood waste in forested areas.
 - (g) All timber sales.
 - (h) Leases for mineral prospecting under RCW 79.01.616 or RCW 79.-01.652, but not including issuance of subsequent contracts for mining.

WAC 197-11-1035 Department of Fisheries.

- (1) The following activities of the department of fisheries are exempted.
- (a) The establishment of seasons, catch limits or geographical areas for fishing or shellfish removal.
 - (b) 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.
 - (c) 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 (50) 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.
- (d) 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.
 - (e) All other licenses (other than those excepted in (b) and (c) above) authorized to be issued by the department as of December 12, 1975 except the following:
 - (i) fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;
 - (ii) licenses for the mechanical and/or hydraulic removal of clams, including geoducks; and,
 - (iii) any license authorizing the discharge of explosives in water.
 WAC 197-11-1000(14)(i) shall apply to allow possible exemption of renewals of the above licenses.
 - (f) 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 197-11-1040 Department of Game.

- (1) The following activities of the department of game are exempted:
 - (a) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.
 - (b) The issuance of falconry permits.
 - (c) The issuance of all hunting or fishing licenses, permits or tags.
 - (d) Artificial game feeding.
 - (e) The issuance of scientific collector permits.
 - (f) 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.
 - (g) 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 (50) or more cubic yards of streambed materials 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.
 - (h) The routine release of hatchery fish or the reintroduction of endemic or native species into their historical habitat, where only minor documented affects on other species will occur.

WAC 197-11-1045 Department of Social and Health Services.

- (1) All actions under programs administered by the department of social and health services as of December 12, 1975, are exempted, except the following:
 - (a) 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.
- (b) The approval of a comprehensive plan for public water supply systems servicing one thousand or more units under WAC 248-54-580.
 - (c) The approval of engineering reports or plans and specifications under WAC 248-54-590 and 248-54-600, 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.
 - (d) 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.
 - (e) The approval of an application for any system of sewerage and/or water general plan or amendments under RCW 36.94.100.
 - (f) 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.
 - (g) The construction of any building, facility or other installation not exempt by 197-11-1000 for the purpose of housing department personnel, or fulfilling statutorily directed or authorized functions (e.g., prisons).
 - (h) 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 197-11-1050

Department of Agriculture.

- (1) All actions under programs administered by the department of agriculture as of December 12, 1975 are exempted, except for the following:
- (a) The approval of any application for a commercial registered feedlot under RCW 16.58.040 or WAC 16-28 and 16-30.
 - (b) The issuance or amendment of any regulation respecting restricted-use pesticides under RCW 15.58, that would have the effect of allowing the use of a previously prohibited use pesticide.
 - (c) 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.
 - (d) 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.
 - (e) 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.
 - (f) The approval of any use of the pesticide DDT or DDD.
 - (g) The issuance of a license to operate a public livestock market under RCW 16.65.030.
 - (h) The provisions of WAC 197-11-1000(14)(i) shall apply to allow possible exemption of renewals of the licenses in (a) through (g) above.

WAC 197-11-1055 Department of Ecology.

- (1) The following activities of the department of ecology shall be exempt:
- (a) The issuance, reissuance or modification of any waste discharge permit which 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.
 - (b) Review of comprehensive solid waste management plans under RCW 70.95.100 and 70.95.110.

WAC 197-11-1060 Department of Transportation.

- (1) The following activities of the department of transportation shall be exempt:
- (a) Approval of the Annual Highway Safety Work Program involving the highway-related safety standards pursuant to 23 USC 402.
 - (b) Issuance of road approach permits and right-of-way rental agreements.
 - (c) Establishment and changing of speed limits of 55 miles per hour or less;
 - (d) Revisions of existing access control involving a single property owner;
 - (e) 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;
 - (f) Issuance of permits for special units relative to state highways;
 - (g) Issuance of permits for the movement of over-legal size and weight vehicles on state highways;
 - (h) Issuance of encroachment permits for road approaches, fences and landfills on highway right of way; and
 - (i) Issuance of permits for utility occupancy of highway rights-of-way for use for distribution (as opposed to transmission).

WAC 197-11-1065 Utilities and Transportation Commission.

- (1) All actions of the utilities and transportation commission under programs administered as of December 12, 1975, are exempted, except the following:
- (a) Issuance of common carrier motor freight authority under RCW 81.80, which would authorize a new service, or extend an existing transportation service in the fields of general freight (other than local cartage), petroleum and petroleum products in bulk in tank type vehicles, radioactive substances, explosives or corrosives;
 - (b) 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;
 - (c) Regulation of oil and gas pipelines under RCW 81.88; and
 - (d) 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 197-11-1000, 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 197-11-1070

Department of Commerce and Economic Development.

(1) The following activities of the department of commerce and economic development shall be exempt:

- (a) The provisions of business consulting and advisory services which shall include tourist promotion under RCW 43.31.050.
- (b) The promotion and development of foreign trade under RCW 43.-31.370.
- (c) The furnishing of technical and information services under RCW 43.31.060.
- (d) The provision of technical assistance to applicants for grants and aid and/or loans and for tax deferrals by the Economic Assistance Authority under RCW 43.31A.
- (e) 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 197-11-1075

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 marshall.
- (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.

WAC 197-11-1080

Emergencies.

Actions which 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 197-11-1090. 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 30 days of receipt. If the determination is favorable, the department shall begin rulemaking under RCW 34.04. Any resulting amendments will apply either generally or to specified classes of agencies. Affected agencies shall amend their procedures accordingly.

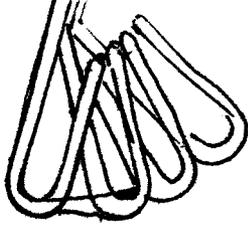
(3) An agency may also petition the department for an immediate ruling upon any request to add, delete, or change an exemption. If such a petition is granted, the department will notify the petitioning agency, which may immediately include the change approved by the department in its own procedures. 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, RCW 34.04. 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

| | |
|-----------------|--|
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- WAC 197-11-1210 Lead Agency for Public and Private Proposals
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- WAC 197-11-1280 Severability
- WAC 197-11-1290 Effective Date

WAC 197-11-1100 Purpose of this Part.

The purpose of this Part is to:

- (a) 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.
- (b) Require agencies to include certain items in their rules.
- (c) Ensure the documents prepared under the act are available to the public.
- (d) Identify agencies with environmental expertise.
- (e) Provide rules for determining the lead agency.

WAC 197-11-1110 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; 197-11-720.) State and local policies so designated are called "agency SEPA policies" in these rules.

(2) Agencies are required to designate their SEPA policies within 180 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 197-11-720. 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 (197-11-1122(2)), agency SEPA policies are encouraged to identify specific mitigation measures or techniques.

(3) Agencies are required by these rules to prepare a document which includes or references by citation their agency SEPA policies (197-11-720(3)). This document may be included in agency SEPA procedures (197-11-1120). 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 197-11-1000(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 197-11-1120

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 (WAC 197-11) by reference, and shall meet the requirements of 197-11-1122 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 180 days of the effective date of this chapter or subsequent revisions, or within 180 days of the establishment of an agency, whichever shall occur later. State agencies shall adopt their procedures by rulemaking under the state administrative procedure act, RCW 34.04. If a state agency does not have rulemaking authority under RCW 34.04, 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 RCW 28B.19 in adopting procedures.

(3) Local agencies shall adopt or amend their procedures within 180 days of the effective date of this chapter or subsequent revisions, or within 180 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 9 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 (197-11-1000(20)).

WAC 197-11-1122

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 197-11-815), 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 055(3)(a), 055(4), 420(1), 420(4), 950, and 1130.
 - (e) Agency procedures may include procedures under 055(2), 055(7), 100(4), 750(6), 750(8), 825(2), 1000(1), and 1125. 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 definition of terms referred to in 197-11-305;
 - (b) The definitions of "categorical exemption", "agencies with jurisdiction", "lands covered by water", "built environment", "natural environment", "license", "licensing", "mitigation", and "scope";
 - (c) The criteria for lead agency determination (Part 10 of these rules);
 - (d) The categorical exemptions in Part 9 of these rules, unless expressly allowed under Part 9;
 - (e) The information allowed to be required of applicants under 197-11-080, 100, 320, 330, and 420;
 - (f) The requirements for the style and size of an EIS (197-11-425);
 - (g) The list of elements of the environment (197-11-444); and
 - (h) The provision on substantive authority and mitigation in 197-11-720.
- (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 (1)(c) of this section:
 - (a) All other definitions in Part 8 of these rules;
 - (b) The provisions in Parts 4 and 5 of these rules, except as necessary to be grammatically incorporated into agency procedures;
 - (c) The contents of agency SEPA procedures (197-11-1122); and
 - (d) The list of agencies with environmental expertise (197-11-1190);
- (4) The forms in Part 11 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 197-11-1125 Environmentally Sensitive Areas.

(1) Each county/city may at its option designate areas within its jurisdiction which are environmentally sensitive areas, and shall adopt such designation in its agency SEPA procedures (197-11-1122). 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, or areas which lie within floodplains. The location and extent of all environmentally sensitive areas shall be clearly indicated on a map which shall be adopted by reference as part of the SEPA procedures of the county/city.

(2) Each county/city which designates and maps an environmentally sensitive area may select certain categorical exemptions which do not apply within the area. The selection of exemptions that will not apply may be made from the following subsections of 197-11-1000: (1); (2)(a)-(h); (3); (5); (6)(a); (14)(c); (24)(a)-(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 which do not apply within the various environmentally sensitive areas shall be listed within the SEPA procedures of any county/city adopting such areas.

(3) Proposals which 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 197-11-1130 Designation of Responsible Official.

Agency SEPA procedures shall designate or provide a method of designating the responsible official with speed and certainty (197-11-1122(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 197-11-1140 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 4 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 197-11-1150 SEPA Fees and Costs.

Except for the costs allowed by this chapter (see, for example, sections 197-11-080, 100, 350(4)(a), 420(4), 440(2)(m), 504, 508, 570, 640(6)(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 197-11-1160 Application to Ongoing Actions.

(1) Agency SEPA procedures shall apply to any proposal made after the effective date of the agency SEPA procedures of the lead agency or the agency proposing the action. Agencies are required to adopt SEPA procedures no later than 180 days after the effective date of these rules or subsequent revisions (197-11-1120), and these rules apply if agencies fail to do so (197-11-1170).

(2) For proposals made before the effective date of revised agency SEPA procedures, agency SEPA procedures shall apply to those elements of SEPA compliance to be 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 197-11-1170 Lack of Agency Procedures.

If an agency fails to adopt rules, ordinances, resolutions, or regulations implementing SEPA within the time periods required by RCW 43.21C.120, the rules in this chapter shall be applied as practicable to the actions of such agency.

WAC 197-11-1190 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, 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).
- (4) Solid and hazardous waste.
- (a) Department of ecology.
 - (b) Department of fisheries (dredge spoils).
 - (c) Department of social and health services.
- (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 commerce and economic development (office of nuclear energy development--nuclear).
 - (b) Department of ecology.
 - (c) Department of natural resources (geothermal, coal, uranium).
 - (d) State energy office.
 - (e) Energy facility site evaluation council (thermal power plants).
 - (f) 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 or state-owned or managed lands).
 - (e) Planning and community affairs agency.
- (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 197-11-1200 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 197-11-1203. Lead agency rules for different types of proposals as well as for specific proposals are in 197-11-1205 through 1235. Rules for interagency agreements are in 197-11-1240 through 1245. Rules for asking the department of ecology to resolve lead agency disputes are in 197-11-1260. Rules for the assumption of lead agency status by another agency with jurisdiction are in 197-11-1270.

WAC 197-11-1203 Determining the Lead Agency.

- (1) The first agency receiving 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 197-11-1205 through 197-11-1245.
- (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 197-11-1260.
- (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 15 days of receiving the determination.
- (4) An applicant may also petition the department to resolve the lead agency dispute under 197-11-1260.
- (5) To make the lead agency determination, an acting agency must determine to the best of its ability the scope of the proposal and 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 197-11-1205 Lead Agency for Governmental Proposals.

(1) The lead agency for all proposals initiated by an agency shall be the agency making that proposal. In the event that 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 197-11-1210 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 197-11-1205.

WAC 197-11-1215 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 197-11-1220 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 which 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 197-11-1222 Lead Agency for Private Projects Requiring Licenses from a Local Special District (not a City/County) and One or More State Agency. ⁴³

When a proposed private project requires nonexempt licenses only from a local special district and one or more state agencies, the lead agency shall be the local special district.

WAC 197-11-1225 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 which 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 197-11-1230

Lead Agencies for Specific Proposals.

Notwithstanding the lead agency designation criteria contained in 197-11-1205 through 197-11-1125, 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 RCW 80.50, 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 RCW 79.76, 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 RCW 78.52, 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, RCW 76.09, the lead agency shall be the department of natural resources; however, for any proposal which 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), RCW 90.62, 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 USC 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 197-11-1235

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 197-11-1210 through 197-11-1230, 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 197-11-1225. 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 197-11-1240 Agreements on Lead Agency Status.

Any agency may assume lead agency status if all agencies with jurisdiction agree.

WAC 197-11-1245 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 197-11-1260 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 15 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 10 days of the date of the initial filing.

(2) Within 15 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 197-11-1270 Assumption of Lead Agency Status.

(1) An agency with jurisdiction over a proposal, upon review of a DNS (197-11-350) may transmit to the initial lead agency a completed "Notice of Assumption of Lead Agency Status." This notice shall be substantially similar to the form in 197-11-1370. Assumption of lead agency status shall occur only within 15 days of issuance of a DNS.

(2) The DS by the new lead agency shall be based only upon information contained in the environmental checklist attached to the DNS transmitted by the first lead agency and any other information the new lead agency has on the matters contained in the environmental checklist.

(3) Upon transmitting the DS and notice of assumption of lead agency status, the consulted agency with jurisdiction shall become the "new" lead agency and shall expeditiously prepare an EIS. In addition, all other responsibilities and

authority of a lead agency under this chapter shall be transferred to the new lead agency.

WAC 197-11-1280 Severability.

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

WAC 197-11-1290 Effective Date.

(1) These rules shall become effective 30 days after the date of adoption by the department.

(2) These rules shall not apply to agency decisionmaking under SEPA, however, on their effective date. Rather, agencies are allowed six months after the effective date of these rules to conform their policies, procedures, and practices to this chapter (197-11-1110 and 1120). This chapter and agency policies and procedures adopted under it shall govern agency compliance with SEPA, as specified in 197-11-1160 and 1170, no later than 180 days after the effective date of these rules.

(3) Nothing in these rules shall delay agency compliance with any requirement in RCW 43.21C, as amended, such as RCW 43.21C.031 and .075 (as noted in 197-11-1160(3)).

PART ELEVEN

FORMS

| | |
|-----------------|--|
| WAC 197-11-1325 | Environmental Checklist |
| WAC 197-11-1340 | Adoption Notice |
| WAC 197-11-1350 | Determination of Nonsignificance (DNS) |
| WAC 197-11-1360 | Determination of Significance (DS) |
| WAC 197-11-1370 | Notice of Assumption of Lead Agency Status |
| WAC 197-11-1380 | Notice of Action |
| WAC 197-11-444 | List of Elements of the Environment |

ENVIRONMENTAL CHECKLIST

Instructions for Private Applicants. This "environmental checklist" asks you to describe some basic information about what you intend to do ("your proposal"). Government agencies use the checklist to learn about the effects your proposal might have on our environment.

The checklist is looking for general answers and descriptions in plain English. Whenever questions ask about the amount or type of something, please give the precise information if you know it. If you don't, you should give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. This checklist is designed so that you can answer the questions from your own observations or project plans, without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, please write "do not know" or "does not apply".

Some questions ask about permits or governmental matters, such as zoning, shoreline, and landmark designations. Please answer these questions if you can. Although it will be appreciated if you can answer these questions, the government agencies should know the answers to these questions and will assist you, if requested.

The questions on the checklist apply to all of the various parts of your proposal, even if you plan to do them over a period of time or on different parcels of property. Please feel free to attach additional information which will help to describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you, within reason, to explain your answers or provide additional information.

Instructions for Public Officials. Agencies should follow the instructions above when requesting information from private applicants. As noted, private applicants are not required to supply information on governmental matters. Requests to private applicants should be limited to those areas for which the agency has reason to believe that there may be a significant adverse environmental effect. These requests should be limited to the appropriate level of detail for a threshold determination.

The instructions for private applicants apply to public proposals as well. When government agencies fill out the checklist for their own proposals, however, the answers should normally be precise regarding the type and magnitude of impact, unless the information is not available, is very costly to obtain, or will be obtained in a subsequent SEPA environmental document on the proposal. Agencies should evaluate checklist answers and should decide whether a proposal is likely to have significant environmental effects (space is provided to the right of the checklist questions for agency use).

Nonproject Actions. Please refer to the supplemental sheet at the conclusion of the checklist for "nonproject" proposals (proposals on general policies and plans, for example, rather than projects on specific sites).

Background and Purpose of the Checklist. The State Environmental Policy Act (SEPA) requires all government agencies and citizens to do their share in protecting our environment for present and future generations. One purpose of this checklist is to help you think about some of the environmental aspects of the proposal.

This checklist will also help the government agencies consider your proposal's environmental "impact" -- to help them work with you to avoid or reduce any environmental damage, if this can be done. If your proposal might significantly affect the environment, a more detailed environmental analysis may be required.

For further information, please see the State SEPA Guidelines (WAC 197-10) and the Act (RCW 43.21C), or contact the agency listed below in question A.5, or your local planning department or the state Department of Ecology.

A. BACKGROUND

1. Name of proposed project, if applicable:
2. Name of applicant:
3. Address and phone number of applicant and contact person:
4. Date checklist prepared:
5. Agency requesting checklist:
6. Proposed timing or schedule (including phasing, if applicable):
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
9. Do you know of pending applications for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
10. List any government approvals or permits that will be needed for your proposal, if known.
11. Give complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist which ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description, consistent with the instructions at the beginning of this checklist.)
12. Location of the proposal. Please give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any. If a proposal would occur over a range of area, please provide the range or boundaries of the site(s). Please provide, if you have them, a legal description, site plan, vicinity map, and topographic map if possible. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

B. ENVIRONMENTAL ELEMENTS

1. Earth

- a. General description of the site (circle one): flat, rolling, hilly, steep slopes, mountainous, other _____
- b. What is the steepest slope on the site (approximate % slope)? _____
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, please specify and note any prime farmland.
- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe _____
- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed _____
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe _____
- g. Proposed measures to reduce or control erosion, or other impacts, if any: _____

2. Air

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction, and when the project is completed? If any, generally describe and give approximate quantities if known.

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

- b. Are there any off-site sources of emissions or odor which may affect your proposal? If so, generally describe _____
- c. Proposed measures to reduce or control emissions or other impacts, if any: _____

3. Watera. Surface:

- 1) Is there any surface water on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, associated wetlands)? If yes, describe type, provide names, and, if known, state what stream or river it flows into.
- 2) Will the project require any work over or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.
- 3) Estimate the amount of fill and dredge that would be placed in or removed from surface water.
- 4) Will surface water withdrawals or diversions be required by the proposal? Give general description, purpose, and approximate quantities if known.
- 5) Does the proposal lie within a 100-year floodplain? Note location on the site plan, if any.

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

- b. Ground:
 - 1) Will ground water be withdrawn or recharged? Give general description, purpose, and approximate quantities if known.

- 2) If waste material will be placed into the ground (from septic tanks or other sources), generally describe.

- c. Storm and Runoff:
 - 1) Describe the source of runoff and storm water and method of collection and disposal, if any (include quantities, if known). Will this waste flow into other waters? If so, please describe.

- 2) Could waste materials leak into ground or surface waters? If so, generally describe.

- d. Proposed measures to reduce or control surface, ground, storm and runoff water impacts, if any:

4. Plants

- a. Check or circle types of vegetation found on the site:
 - deciduous tree: alder, maple, aspen, other
 - evergreen tree: fir, cedar, pine, other
 - shrubs
 - grass
 - pasture
 - crop or grain
 - wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
 - water plants: water lily, eelgrass, milfoil, other
 - other types of vegetation

- b. What kind and amount of vegetation will be removed or altered?

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

- c. List threatened or endangered species known to be on or near the site.
- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

5. Animals

- a. Circle any birds and animals which have been observed on or known to be on or near the site:

birds: hawk, heron, eagle, songbirds, other
 mammals: deer, bear, elk, beaver, other
 fish: bass, salmon, trout, shellfish, other

- b. List any threatened or endangered species known to be on or near the site.

- c. Proposed measures to preserve or enhance wildlife, if any:

6. Energy and Natural Resources

- a. Circle applicable on-site energy use for completed project: electricity for heating, electricity for manufacturing, natural gas heating, oil heating, wood stove heating, solar heating, other.

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

- c. What kinds of energy conservation features are included in the plans of this proposal?

- d. Proposed measures to reduce or control energy impacts, if any:

EVALUATION
FOR AGENCY USE ONLY

EVALUATION
FOR AGENCY USE ONLY

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

7. Environmental Health

- a. Are there any environmental health hazards, including risk of fire and explosion, spill, or hazardous waste, that occur as a result of this proposal? If so, describe.
- b. Describe special emergency services that might be required.
- c. Proposed measures to reduce or control environmental health hazards, if any:

8. Land and Shoreline Use

- a. What is the current use of the site and adjacent properties?
- b. Has the site been used for agricultural purposes? If so, describe

c. Describe any structures on the site

d. Will any structures be demolished? If so, what?

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

- e. What is the current zoning classification of the site?
- f. What is the current comprehensive plan designation of the site?
- g. If applicable, what is the current shoreline master program environment designation of the site?
- h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
- i. Approximately how many people would reside or work in the completed project?
- j. Approximately how many people would the completed project displace?
- k. Proposed measures to avoid or reduce displacement impacts, if any:
- l. Proposed measures so that the proposal is compatible with existing and projected land uses and plans, if any:

9. Housing

- a. Approximately how many units would be provided?
- b. Approximately how many units would be eliminated?
- c. Proposed measures to reduce or control housing impacts, if any:

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

10. Noise

- a. What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?
- b. What types of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)?
- c. Proposed measures to reduce or control noise impacts, if any:

11. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
- b. What views in the immediate vicinity would be altered or obstructed?
- c. Proposed measures to reduce or control aesthetic impacts, if any:

12. Light and Glare

- a. What type of light or glare will the proposal produce?
- b. Could light or glare from the finished project be a safety hazard or interfere with views?
- c. What existing off-site sources of light or glare may affect your proposal?
- d. Proposed measures to reduce or control light and glare impacts, if any:

EVALUATION FOR AGENCY USE ONLY

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

13. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?
- b. Would the proposed project displace any existing recreational uses? If so, describe.
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

14. Historic Preservation

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on the site? If so, generally describe.
- b. Generally describe any landmarks or evidence of historic, archeological, scientific, or cultural importance known to be on the site.
- c. Proposed measures to reduce or control impacts, if any:

EVALUATION FOR AGENCY USE ONLY

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

15. Transportation

a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

c. How many parking spaces would the completed project have?

d. Will any new road or street, not including drive-ways, be required? If so, generally describe (indicate whether public or private).

e. Will the project use or occur in the immediate vicinity of water rail, or air transportation? If so, generally describe.

f. How many vehicular trips per day would be generated by the completed project?

g. Proposed measures to reduce or control transportation impacts, if any:

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

16. Public Services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any.

18. Utilities

a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

b. Describe the utilities which are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

C. SIGNATURE

The above answers are true to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____

Date Submitted: _____

INSTRUCTIONS

Nonproject actions. Nonproject actions involve decisions on policies, plans, or programs; they may occur in a specific geographic area and may involve project actions as well (197-11-815(4)).

Use of the main checklist. Many questions on the main checklist may apply to a nonproject proposal. The checklist must be filled out along with this supplemental sheet, even though questions may be answered "does not apply." For nonproject actions, the references to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively. The signature on the main checklist (Part C) covers this supplemental sheet.

Site impacts. The fact that a nonproject proposal applies to a given jurisdiction does not necessarily mean that the proposal would affect a given geographic area. Questions about site conditions should be answered "does not apply" if specific site impacts or types of impacts cannot be reasonably identified (for example, the description of the existing environment of an entire county is not required for an amendment to a comprehensive plan).

Filling out Part A of the main checklist. In filling out Part A, particular attention should be given to the way a proposal is defined and described, making sure to consider if this is a connected action or series of actions (197-11-060(4)). If phased review is involved, the answer to question 6 should identify and commit to the type and timing of subsequent review (197-11-055(2)).

Filling out Part B of the main checklist and this supplemental sheet. The following considerations should be kept in mind:

- The proposal may serve as a precedent for future actions. For example, the proposal may encourage or tend to cause particular types of projects. Although future proposals may not be known, you should consider whether such future activities are likely to cause significant pollution or natural resource use (197-11-055(2), 060(5), 315(3), and 970(2)). The specific questions below provide a way to make this evaluation for nonproposal proposals.

- The elements of the environment may be consolidated into two categories: the natural and the built environment. This will help to write concise answers. If a single element of the environment stands out, of course, it should be identified. If answers overlap, such as impacts on wildlife (in question 2 below) and on endangered species habitat (in question 4 below), they may be answered under one question to avoid repetition.

- Agencies shall use 197-11-305 through 340 to determine whether the impacts identified are "significant" and require an EIS.

- The use of "or" in this supplemental sheet includes "and" and means that each item mentioned must be considered if relevant.

D. ADDITIONAL QUESTIONS

The following questions should be answered to the extent the proposal, or the types of activities likely to result from the proposal, would do the following at a greater intensity or at a faster rate than if the proposal were not implemented.

Summarize in general terms how the proposal, and the types of activities likely to result from the proposal, would be likely to:

1. Increase pollution (air, water, toxic or hazardous substances, noise):

Proposed measures to avoid or reduce such pollution:

2. Affect wildlife (plants, animals, fish, marine life):

Proposed measures to protect or conserve wildlife:

3. Deplete energy or natural resources:

Proposed measures to protect or conserve energy and natural resources:

4. Use or affect environmentally sensitive areas or areas designated, eligible, or under study for protection (parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, prime farmlands):

Proposed measures to protect such resources or avoid or reduce impacts:

5. Affect land and shoreline use, or allow or encourage land or shoreline uses incompatible with existing plans (the second part of this item need not be answered for proposals to modify existing plans):

Proposed measures to avoid or reduce shoreline and land use impacts:

6. Increase demands on transportation or public services and utilities:

Proposed measures to reduce or respond to such demand:

7. Would the proposal be likely to violate local, state, or federal laws or requirements for the protection of the environment? If so, explain.

ADOPTION NOTICE

Name of agency adopting the document _____

Name of document being adopted _____

Agency that prepared document being adopted _____

Date adopted document was prepared _____

Description of document (or portion) being adopted _____

Description and location of current proposal _____

If the document being adopted is not a final document or has been challenged (WAC 197-11-640(4)), please describe:

The document is available to be read at (place/time) _____

[If there is a commenting period, add:] Any comments are due by _____

This document has been clearly identified and adopted after independent review by this agency. The document meets the agency's environmental review needs for its current proposal. The adopted document will accompany the proposal to the decisionmaker. The document is readily available to the public and other agencies during applicable comment periods, if any, along with a brief description of the current proposal for which it is being used.

Responsible official _____

Position/title _____

Address/telephone _____

Date _____ Signature _____

DETERMINATION OF NONSIGNIFICANCE

Description of proposal _____

Proponent _____

Location of proposal _____

Lead agency _____

This proposal has been determined not to have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.020(c). This decision was made after review by the lead agency of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

[For DNSs under WAC 197-11-350(3), the following paragraph shall be added:

The lead agency will not act on this proposal for 15 days from the date below. Anyone may comment on this DNS, but comments must be received within these 15 days.]

Responsible official _____

Position/title _____

Address and phone _____

Date _____ Signature _____

[If there is an agency appeal for DNSs, the DNS shall state or attached a notice stating the time and place for such appeal, for example:

You may appeal this determination to (name) _____
at (location) _____
no later than (date) _____
by (method) _____

You should be prepared to make specific factual objections and should read or ask about an agency's procedures for SEPA appeals first.]

DETERMINATION OF SIGNIFICANCE
AND SCOPING NOTICE

Description of proposal _____

Proponent _____

Location of proposal _____

Lead agency _____

EIS Required. This proposal has been determined to be likely to have a significant adverse impact on the environment. An environmental impact statement (EIS) is required under RCW 43.21C.020(c) and is now being prepared. An environmental checklist or other materials indicating likely environmental impacts can be reviewed at our offices.

Scoping. Agencies and members of the public are invited to comment on the scope of the EIS. The method and deadline for giving us your comments is:

Responsible official _____

Position/title _____

Address and phone _____

Date _____ Signature _____

[If there is an agency appeal for DSs, the DS shall state or attach a notice stating the time and place for appealing the agency's decision that an EIS is required; see DNS form in 197-11-1350.]

NOTICE OF ASSUMPTION OF LEAD AGENCY STATUS

Description of proposal _____

Proponent _____

Location of proposal _____

Initial lead agency _____

New lead agency _____

The initial lead agency concluded that this proposal was not likely to have a significant adverse impact on the environment, according to its determination of nonsignificance dated _____.

We have reviewed the environmental checklist and related information. In our opinion, an environmental impact statement (EIS) is required on the proposal.

You are being notified that we assume the responsibility of lead agency under SEPA, including the duty to prepare an EIS on the proposal.

Responsible official _____

Position/title _____

Address/telephone _____

Date _____ Signature _____

NOTICE OF ACTION AND DEADLINE FOR APPEAL

Notice is given under SEPA, RCW 42.21C.080, that (name of agency or entity)

_____ took the following action on (date) _____

1. An appeal must be filed with (name person or entity hearing the appeal)

_____ on or before (date) _____

2. Description of agency action: _____

3. Description of proposal (if not covered by (2)):

4. Location of proposal (a sufficient description should be given to locate the site, if any, but a complete legal description is not required):

5. Type of environmental review under SEPA (include name and date of any environmental documents):

6. Documents may be examined during regular business hours at (location, including room number, if any):

7. Name of agency, proponent, or applicant giving notice:

8. This notice is filed by (signature of individual and capacity in which the person is signing):

_____ Date _____

[Note: This form may be used for any SEPA notice of appeal under RCW 43.21C.075, WAC 197-11-750, or agency procedures, by changing the title and the cite in the first line.]

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
- (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) Wildlife (Plants and Animals)
 - (i) Habitat and numbers or diversity of species of plants, fish, or other wildlife
 - (ii) Unique species
 - (iii) Agricultural crops
 - (iv) Fish or wildlife migration routes
- (e) Energy and Natural Resources
 - (i) Amount required/rate of use
 - (ii) Source/availability
 - (iii) Nonrenewable resources
 - (iv) Conservation and renewable resources

(2) Built Environment

(a) Environmental Health

- (i) Risk of explosion
- (ii) Toxic emissions and hazardous waste disposal

(b) Land and Shoreline Use

- (i) Description of relationship to plans and designations, and projected population
- (ii) Housing
- (iii) Noise
- (iv) Aesthetics/light and glare
- (v) Recreation
- (vi) Historic and cultural preservation

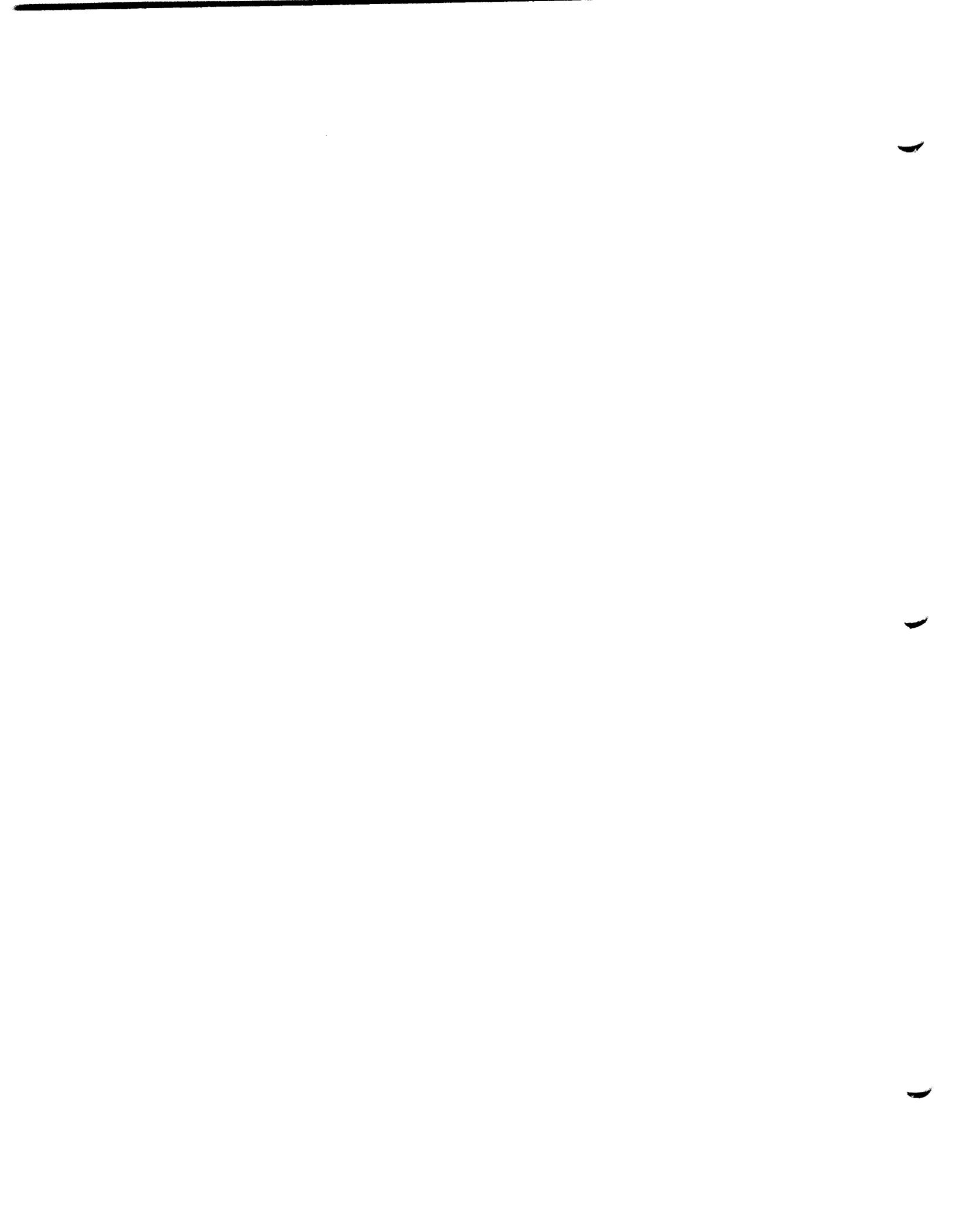
(c) Transportation

- (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) In order 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 197-10-444(1) may be combined and discussed as the natural environment, and the elements in (2) may be treated as the built environment.



INDEX TO PROPOSED RULES

Please note: This index is provided to assist you in locating common topics in the SEPA process. It is not a complete list of all subjects, nor does it list every section in which the topic appears. It is intended to highlight the sections containing the most direct or extensive discussion of the term or topic. Words such as action, alternatives, impacts, and proposal are in virtually every major section of the rules, for example. In order to be useful, only the main sections on such topics are included in the index.

The numbers refer to sections in WAC 197-11. The emphasized numbers refer to a section which defines or is the basic section in the rules for that topic. You should be aware that other sections or cross-references may deal with the topics below. Part 8 (Definitions) explains many of these terms. The section headings and Table of Contents to the rules are also designed to be a handy reference to SEPA usage.

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