

Environmental Checklist Update - for Sept 11 Meeting of Advisory Committee

Bill directive to update checklist

In section 301(2): By December 31, 2012, the department of ecology shall update the environmental checklist found in WAC 197-11-960. In updating the environmental checklist found in WAC 197-11-960, the department of ecology shall:

- (i) Improve efficiency of the environmental checklist; and
- (ii) Not include any new subjects into the scope of the checklist, including climate change and greenhouse gases.

Bill changes to use of checklist

Summary of bill language: Section 308 provides new flexibility for pre-answering questions on the SEPA checklist. The lead agency “may identify within the checklist provided to applicants instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.” This is intended to reduce redundancy and improve clarity regarding existing development regulations (ex. reference adopted school impact fees as addressing this Checklist issue.) The bill has several specific conditions regarding implementation of this new flexibility:

- Lead agency must still “consider whether the action has an impact on the particular element or elements of the environment in question” and “explain how the proposed project satisfies the underlying local legal authority.”
- An applicant may still provide answers to any questions on the checklist.
- Lead agency cannot “ignore or delete a question on the checklist.”
- This provision does not alter the standard for when an environmental impact statement is required, change appeal provisions or modify rules on determining lead agency.

Separate bill directive to incorporate agricultural lands questions

From SB 6082: By December 31, 2013, the department of ecology shall conduct rule making to review and consider whether the current environmental checklist form in WAC 197-11-960 ensures consideration of potential impacts to agricultural lands of long-term commercial significance, as that term is used in chapter 36.70A RCW. The review and update shall ensure that the checklist is adequate to allow for consideration of impacts on adjacent agricultural properties, drainage patterns, agricultural soils, and normal agricultural operations.

Existing language on Checklist in SEPA Rules, WAC 197-11 (besides checklist itself).

197-11-315 Environmental checklist.

(1) Agencies shall use the environmental checklist substantially in the form found in WAC 197-11-960 to assist in making threshold determinations for proposals, except for:

- (a) Public proposals on which the lead agency has decided to prepare its own EIS; or
- (b) Proposals on which the lead agency and applicant agree an EIS will be prepared; or
- (c) Projects which are proposed as planned actions (see subsection (2) of this section).

(2) For projects submitted as planned actions under WAC 197-11-164, a GMA county/city shall use the existing environmental checklist or modify the environmental checklist form to fulfill the purposes outlined in WAC 197-11-172(1), notwithstanding the requirements of WAC 197-11-906(4).

If the GMA county/city chooses to modify the existing environmental checklist, the modified form shall be submitted to the department of ecology to allow at least a thirty-day review prior to use. The department shall notify the GMA county/city within thirty days of receipt if it has any objections to the modified form and the general nature of the objections. If the department objects, the modified form shall not be used until the GMA county/city and the department have reached agreement.

(3) Agencies may use an environmental checklist whenever it would assist in their planning and decision making, but shall only require an applicant to prepare a checklist under SEPA if a checklist is required by subsection (1) of this section.

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

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

197-11-906 Content and consistency of agency procedures.

(4) The forms in Part Eleven shall be used substantially as set forth. Minor changes are allowed to make the forms more useful to agencies, applicants, and the public, as long as the changes do not eliminate requested information or impose burdens on applicants. The questions in Part Two of the environmental checklist shall not be altered.

Advisory Committee Input Needed

1. What is committee reaction to Ecology premise that there is not enough time to tackle substantive changes to checklist questions in phase 1 rulemaking?
2. Are there neutral modernization and efficiency ideas like allowing electronic submittal of checklist (need to overcome hardcopy signature issue. Also, how to address circulation after lead agency reviews and adds comments)?
3. What about requiring only circulation of parts of checklist questions with responses? No need to circulate response without information – similar concept to narrowing “scope” on larger projects.
4. For nonproject, how about no requiring use of project checklist or circulation of project checklist without answers.
5. Can agricultural lands issue wait until phase 2 rulemaking when we address more substantive changes to checklist questions?