Environmental Review

BP-49

SPOKANE COUNTY

Department of Building and Planning

SEPA is the abbreviation or acronym for the State Environmental Policy Act, Chapter 43.21C RCW. Enacted in 1971, this state law provides the framework for review and consideration of the environmental consequences of a proposal. It also gives agencies the ability to condition or deny a proposal due to identified probable significant adverse impacts. The Act is implemented through the SEPA Rules, Chapter 197-11 WAC and Chapter 11 of the Spokane County Code. This brochure is intended to provide an overview of SEPA Requirements.

When is SEPA environmental review required?

Environmental review is required for any proposal which involves a government *"action"* as defined in the SEPA Rules (WAC 197-11-704), which is not *categorically exempt* (WAC 197-11-800 through 890) from those rules. Project actions involve government agency decisions on a specific project, such as a construction project/permit, zone change or timber harvest. *Nonproject actions* involve decisions on policies, plans, or programs, such as the adoption of a comprehensive plan or development regulations, or a six-year road plan. Sometimes a series of exempt actions may prompt an environmental review under *SEPA*.

What is an "underlying governmental action"?

An underlying governmental action is the action that must be taken by an agency to authorize a proposal. Actions include the issuing of a permit or license, the approval of funding, the adoption of a plan, ordinance, or rule, or other actions defined in WAC 197-11-704. It is not the issuance of a SEPA document.

Who is responsible for doing SEPA environmental review?

One agency is identified as the *"lead agency"* under the SEPA Rules and is responsible for conducting the environmental review for a proposal and documenting that review in the appropriate SEPA documents (DNS, DS/EIS, adoption, addendum - see following questions/ discussions).

This review is based on a environmental checklist completed by the applicant and other supporting documents/studies.

What is the difference between lead agency, responsible official, and decision-maker?

The *lead agency is* the agency responsible for all procedural aspects of SEPA compliance. The *responsible official* represents the lead agency and is responsible for the documentation and the con-tent of the environmental analysis. Decision-makers may be either staff members or elected officials who are responsible for taking an agency action, such as issuing a license, or adopting a plan or ordinance.

When a license / permit is required by Spokane County, the County or one of its divisions or departments will usually be *lead agency* for the project. There are some exceptions for larger proposals where a state agency is designated as lead agency (see WAC 197-11-938 for criteria). If the county does not have a license to issue for the proposal, another agency with a permit to issue will be lead agency, such as a health district, school district, public utility, local air authority, or a state agency.

What is a "categorical exemption"?

A categorical exemption is an *action* that is exempt from *SEPA* compliance because it is unlikely to have a significant adverse environmental impact. The categorical exemptions are found in Part Nine of the SEPA Rules, and in RCW 43.21C.035, .037, and .0384.

Certain proposals, defined as *"minor new construction"*, are exempt because they are of the size or type to be unlikely to cause a significant adverse environmental impact. Examples include:

- Dwelling units, 20 or less;
- Agricultural structures up to 20,000 square feet;

- Commercial buildings up to 12,000 square feet; and up to 40 parking spaces;
- Parking lots with up to 40 parking spaces;
- Landfills and excavations up to 500 cubic yards;
- Underground tanks up to 10,000 gallons.

Other exemptions include enforcement and inspection activities, issuing business licenses, storm/water/sewer lines eight inches or less, etc. Some proposals are exempt by statute, regardless of environmental impact.

Some exemptions contain conditions under which they do not apply, such as projects undertaken wholly or partly on lands covered by water; projects requiring a license to discharge to the air or water; or projects requiring a rezone.

What is a Threshold Determination?

The *threshold determination* process is the process used to evaluate the environmental consequences of a proposal and determine whether it is likely to have *any "significant adverse environmental impact"* This determination is made by the lead agency and is documented in either a *determination of nonsignificance* (DNS), or a *determination of significance* (DS) and subsequent preparation of an *environmental impact statement* (EIS).

What is a "significant" adverse environmental impact?

WAC 197-11-794 defines *"significant* as "a reasonable likelihood of more than a moderate adverse impact on environmental quality." What is considered significant can vary from one site to another, and from one jurisdiction to another, both because of the conditions surrounding the proposal at a particular location and because of the judgement of the responsible official

Can information in existing environmental documents be used for a new or amended proposal?

Yes, there are several ways that information in existing documents can be used: 1) adoption, 2) incorporation by reference, 3) addendum, or 4) *supplemental EIS*. Using existing information reduces paperwork and delays caused by conducting duplicate studies and analysis.

Agencies may adopt all or part of existing documents to support a new *threshold determination,* or the information may be "incorporated by reference." A revised proposal generally does not require a new *threshold determination so* adoption of the original document would not be required for the revised proposal.

What is a "DNS"?

A DNS or *"determination of nonsignificance"* documents the responsible official's decision that a proposal is not likely to have significant adverse environmental impacts.

How and when are cumulative impacts evaluated?

SEPA requires agencies to address cumulative impacts. This can be difficult if each project is evaluated individually in isolation from other related proposals. With comprehensive planning under state GMA requirements, cities and counties are able to look at the "big picture," evaluate cumulative impacts of development, and determine appropriate mitigation measures to apply to individual, future proposals. Agencies also have a responsibility to look at cumulative impacts within project EIS's (Environmental Impact Statements). The EIS should look at how the impacts of the proposal will contribute towards the total impact of development in the region over time. (Proponents are only responsible for mitigation of the portion attributable to their own proposal, though voluntary mitigation beyond that level is allowed.)

What about a public comment period?

A comment period is required when:

- there is another agency with jurisdiction;
- non-exempt demolition activities are occurring;
- non-exempt grade and fill permits are taking place;
- a mitigated DNS has been issued under WAC 197-11-350(2) or 350(3), and / or
- an action under the Growth Management Act is taking place.

If a *comment period is* required, it is generally 14 days. A public notice and the DNS are circulated and notice is posted on the site. If a comment period is not required, no public notice or distribution is required.

What is the difference between a DNS and mitigated DNS?

A mitigated DNS is a DNS that contains mitigation or conditions that reduce likely significant adverse environmental impact(s) to a nonsignificant level. A mitigated DNS requires a comment period when there are other agencies with jurisdiction (unless the *"optional DNS'* process has been used).

What is the "optional DNS" process?

The *optional DNS process* allows the County, when they are the *SEPA lead agency,* to use the comment period on a *Notice of Application* (NOA) to obtain comments on environmental issues. A NOA is a notice that is required for certain project permits identified in Spokane County's "Application Review Procedures for Project Permits". The NOA must state that the *optional DNS* process is being used and that this may be the publics only opportunity to comment. All mitigation conditions being considered are identified. After the end of the NOA comment period, the county may issue the DNS without a second comment period. This provides for a single 14 day comment period. With the second comment period, the time frame for comments is extended an additional 14 days.

What is the issue date of a DNS?

The *issue date* is the day the DNS is sent to the Department of Ecology and is made publicly avail-able. The 14-day comment period starts from the date of issuance.

What is an Environmental Impact Statement (EIS)?

An *environmental impact statement* is a document prepared when the County determines a proposal is likely to have significant adverse environmental impacts. The *EIS* provides an impartial discussion of significant environmental impacts, reasonable alternatives, and mitigation measures that would avoid or minimize adverse impacts. The County will issue a draft EIS with a 30-day comment period to allow other agencies, tribes, and the public to comment on the environmental analysis and conclusions. These comments will be used to finalize the environmental analysis and issue a final *EIS*.

When is an Environmental Impact Statement required?

An EIS is required for any proposal that is likely to have a significant adverse environmental impact where mitigation that would reduce the impact to a nonsignificant level has not been provided. The indication that an *EIS* will be required is signified by the issuance of a *declaration of significance (DS)* rather than a *DNS*. The applicant and lead agency may work together after the issuance of a DS to revise the proposal's impacts or identify mitigation measures that would allow the lead agency to alter its decision and instead issue a *determination of nonsignificance or mitigated DNS (MDNS)*.

Are there any opportunities to appeal SEPA?

An administrative appeal of either procedural issues or substantive decisions, or both, are heard by the Spokane County Hearing Examiner. If the administrative appeal process has been exhausted or is not available, a judicial appeal that is heard by the court can be pursued.

What is a "Notice of Action"?

A Notice of Action is the document used to limit the time a SEPA appeal can be filed when the underlying government action has no set appeal limitations. The form is located in Spokane Environmental Ordinance section 11.10.230. Procedures for using a Notice of Action are found in RCW 43.21 C.080.

(The information in this handout, as modified, was taken from the Washington State Department of Ecology Handbook. For additional information see www.wa.gov)

Other Brochures that may be helpful

BP-1 *Commercial Permits*
BP-26 *Conference Information and Guidelines*
BP-31 *Rules, Regulations and Red Tape*
BP-33 *Site Plans and Construction Drawings*
BP-40 *Information Directory*
BP-51 *Application Submittal Requirements for Building Permits*
BP-52 *Permit Processing Time Savers*

For more information or an appointment contact:

Spokane County
Department of Building and Planning
1026 West Broadway Avenue
Spokane, WA 9926-0050
(509) 477-3675 bp@spokanecounty.org
http://www.spokanecounty.org/bp

Please note that while every effort is made to assure the accuracy of the information contained in this brochure it is not warranted for accuracy. This document is not intended to address all aspects or regulatory requirements for a project and should serve as a starting point for your investigation. For detailed information on a particular project, permit, or code requirement refer directly to applicable file and/or code/regulatory documents or contact the appropriate division or staff.