

**3.1.00 Development Services Interaction with Local Agencies**

In order to effectively carry out the WSDOT development review program, it is very important to have a good understanding of the State Environmental Policy Act (SEPA). It is also necessary to have a general understanding of the Growth Management Act (GMA), the local Comprehensive Plans required by GMA, and the different types of local land use reviews. While most land-use procedures are common among local agencies, no two local governments operate exactly the same way. It is very helpful to familiarize yourself with the various local zoning codes and development regulations in your region.

Making contact and getting to know on a first name basis some of the personnel within the applicable local agencies is a very effective way to learn the local zoning codes, development regulations, and environmental regulations. Searching the local agency internet sites can also provide an effective source of information about that local agency. The Department of Ecology's homepage is a valuable resource for information on SEPA. And of course, your regional environmental staff and web pages (including the various Region Development Services Homepages), can be very useful and beneficial to the statewide Development Services staff.

**PART 1 SEPA****3.1.01 Role of SEPA in the Development Review Process**

The State Environmental Policy Act (SEPA) Chapter 43.21C RCW provides the statutory basis for protecting the environment of the state. Among other things, this law requires all state and local governments within Washington to:

“Utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment...” and, Ensure that “...environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations...”

The policies and goals in SEPA supplement the other environmental statutes of all branches of government of this state, including state agencies, counties, cities, districts, and public corporations.

**3.1.02 History of SEPA and the SEPA Rules**

First adopted in 1971, the State Environmental Policy Act (SEPA) RCW 43.21C is Washington State's basic environmental protection mandate. Prior to its adoption, the public had voiced concern that governmental decisions did not reflect environmental considerations. State and local agencies had responded that there was no regulatory framework enabling them to address environmental issues. SEPA, modeled after the 1969 National Environmental Policy Act (NEPA), was created to fill this need. It permits and requires agencies the tools to allow them to both consider and mitigate for environmental impacts of proposals. Provisions were also included to involve the public, tribes, and interested agencies in most review processes prior to a final decision being made.

SEPA contains a number of broad policy statements, but little specific direction. In 1974, the Council on Environmental Policy was created by the Legislature and instructed to write rules to interpret and implement SEPA. The Council was directed to write consistent procedures, to reduce duplication and wasteful practices, to encourage public involvement, and to promote certainty. These regulations were adopted in 1976 as the SEPA Guidelines, Chapter 197-10 WAC (repealed in 1984 and recodified under Ch. 197-11 WAC). The SEPA Guidelines included specific procedural requirements and introduced the concepts of categorical exemptions, lead agency responsibilities, and the threshold determination process.

In 1981, the Legislature created a second committee, the Commission on Environmental Policy, to evaluate and suggest possible amendments to SEPA and the SEPA Guidelines. The Commission's goals were to reduce unnecessary paperwork, duplication, and delay; simplify the guidelines; make the process more predictable; and improve the quality of environmental decision-making.

The Commission's evaluation resulted in several suggested changes to the SEPA process, including:

- A Mitigated Determination of Non-Significance (MDNS),
- Requirements for shorter, more concise environmental impact statements (EIS),
- A new environmental checklist format, and
- Clarification of SEPA's substantive authority and of appeals procedures.

The work of the Commission formed the basis for the adoption of the current SEPA Rules, Chapter 197-11 WAC, replacing the previous SEPA Guidelines. These rules became effective on April 4, 1984.

The first amendments to the SEPA Rules occurred in 1995 when the Department of Ecology added procedures for the integration of SEPA with the Model Toxics Control Act and provisions for integration of SEPA into the Growth Management Act (GMA). The designation of environmentally sensitive areas was also changed to allow the use of critical area ordinances, adopted under GMA, as the basis for eliminating some categorical exemptions.

In November 1997, the second set of SEPA Rule amendments became effective, implementing the requirements of the 1995 legislation, Chapter 347, Laws of 1995. The goal of Ch. 347 was to establish new approaches to make government regulation more effective, and to make it easier and less costly for citizens and businesses to understand and comply with requirements. With these goals in mind, Ch. 347 amended a number of laws, including the SEPA, Growth Management Act and Shoreline Management Act.

State or local agency decisions are the hub of SEPA. SEPA gives agencies the tools to both consider and mitigate for the environmental impacts of proposals. If there is no agency action, then SEPA is not required. If an agency action is required that involves SEPA, then the SEPA process should be initiated early and done in conjunction with other agency procedures.

### 3.1.03 Purpose and Intent of SEPA

The purpose of SEPA is to ensure that environmental values are considered during decision-making process by state and local agencies. SEPA Rules direct agencies to:

- Consider environmental information (impacts, alternatives, and mitigation) before committing to a particular course of action;
- Identify and evaluate probable impacts, alternatives, and mitigation measures related to land-use actions (including cumulative, short-term, long-term, direct and indirect impacts);
- Encourage public involvement in decisions;
- Prepare environmental documents that are concise, clear, and to the point;
- Integrate SEPA with existing agency planning and licensing procedures, so that the procedures run concurrently rather than consecutively; and
- Integrate SEPA with agency activities at the earliest possible time to:
  1. Ensure that planning and land-use decisions reflect environmental values,
  2. Avoid delays later in the process, and
  3. Seek to resolve potential problems.

The environmental review process under SEPA is designed to work with other regulations to provide a comprehensive review of a proposal. Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable impacts for all elements of the environment. Combining the review processes of SEPA with other laws reduces duplication and delay by combining study needs, combining comment periods and public notices, and allowing agencies, applicants, and the public to consider all aspects of a proposal at the same time.

### 3.1.04 What is a SEPA Proposal?

SEPA authorizes agencies to condition or deny a proposal based on an agency's adopted SEPA policies and environmental impacts identified in a SEPA document. Under SEPA a proposal means a proposed action. A proposal includes both actions and regulatory decisions of agencies as well as any actions proposed by applicants.

Proposals can be either project proposals, such as:

- New construction
- Demolition
- Landfills
- Exchange of natural resources

Or

Proposals can be non-project proposals, such as:

- Comprehensive plans
- Zoning
- Development regulations

Not all proposals are required to have a thorough SEPA review. Some project proposals will be categorically exempted from SEPA review if their size or type of activity is unlikely to cause a significant adverse impact.

### **3.1.05 Who Can be a SEPA Lead Agency?**

For most proposals, one agency is designated as the lead agency under SEPA. The lead agency is the only agency that is:

- Responsible for compliance with SEPA procedural requirements;
- Responsible for compiling and assessing information on all the environmental aspects of the proposal for all agencies with jurisdiction; and,
- Responsible for the threshold determination and for the preparation and content of an environmental impact statement when required.

A “responsible official” represents the lead agency and is responsible for ensuring that an adequate environmental analysis is done and that the SEPA procedural requirements are met. The responsible official should be identified within the agency’s SEPA procedures: she or he may be a specific person (such as the planning director or mayor), a designated person within an agency depending on the proposal, or an identified group of people (such as an environmental review committee or the city council).

Most of the SEPA lead agency land-use proposals will be from a county or city, although some proposals will be from a school district or other state agency with lead agency status.

WSDOT will normally be the SEPA lead agency for state highway projects, with the applicable Region Environmental Manager designated as the responsible official. It is the Region’s Development Services staff that will review and comment on all non-WSDOT SEPA proposals forwarded to the WSDOT for review and comment.

Under SEPA, federal agencies and tribes have no authority and cannot be a SEPA lead agency. If a federal agency or tribe proposes a project that requires a state or local permit, the federal agency or tribe would then be considered a private applicant under SEPA and would be responsible for only those steps that are normally required of such an applicant.

### **3.1.06 What is SEPA Substantive Authority?**

SEPA Substantive Authority is the regulatory authority granted to all state and local agencies under SEPA to condition or deny a proposal to mitigate environmental impacts identified in a SEPA document. To use SEPA substantive authority, the agency must have adopted agency SEPA policies.

### **3.1.07 Which Environmental Impacts Should WSDOT Normally Review?**

SEPA requires all state and local governmental agencies to consider the environmental impacts of a proposal before making decisions. WSDOT would like to review all proposed projects that may possibly have a significant adverse impact on the state highway system.

The three areas of primary interest to WSDOT, depending on the size and location of the proposal, are:

- Traffic impacts,
- Storm water impacts, and
- Access needs and permitting.

In addition to the three types of impacts listed above, other impacts to the state highway system may occur, such as noise impacts or off-premise outdoor advertising impacts. However, it is the three impacts listed above that will constitute the vast majority of project proposals that the Development Services staff will receive and review.

### 3.1.08 What is a SEPA Environmental Checklist?

A SEPA Environmental Checklist is a standard form used by all agencies to obtain information about a proposal. It includes questions about the proposal, its location, possible future activities, and questions about potential impacts of the proposal on each element of the environment.

The environmental checklist was designed to be as generic as possible to ensure that it was applicable to every kind of development. The items on the checklist are not weighted. The mention of one or more adverse impacts does not necessarily mean they are significant. In most cases, if the questions are answered accurately and completely, the impacts of a proposal can be ascertained. If necessary, the lead agency may request additional information from the applicant after conducting the initial review of the checklist.

The SEPA Environmental Checklist is comprised of 16 areas of the environment that must be addressed. They are:

1. Earth
2. Air
3. Water
4. Plants
5. Animals
6. Energy and Natural Resources
7. Environmental Health
8. Land and Shoreline Use
9. Housing
10. Aesthetics
11. Light and Glare
12. Recreation
13. Historic and Cultural Preservation
14. Transportation
15. Public Services
16. Utilities

Of the sixteen areas of the environment list above, Water and Transportation are typically the two most important areas Development Services staff must review in detail. Other areas may also be reviewed such as Light and Glare and Utilities, but by far, the two most important areas are Water and Transportation. The Water section will have details about the proposal's surface water runoff while the Transportation section will have details about the proposal's traffic impacts and possible mitigation measures, if any.

While some SEPA lead agencies will forward the environmental checklist to the WSDOT before making their threshold determinations (e.g. DS, DNS, or MDNS), other lead agencies will send the checklist to WSDOT only after making their threshold determinations. In those cases, WSDOT will still have the opportunity to comment on the proposal, but if the delayed checklist submission occurs on a frequent basis, the WSDOT should be proactive to request the checklists be sent before the threshold determinations are made.

If the information provided is incomplete or insufficient for the WSDOT to make an adequate review of the proposal, a request for additional information may be justified. Usually, Development Services staff will request that the SEPA Lead Agency provide a copy of the Traffic Impact Analysis (TIA) that was prepared for the proposal, or staff will ask for a TIA to be prepared if one was not drafted in the first place. Development Services staff may also request that the TIA be modified or updated to include issues of importance to WSDOT. It is not uncommon for WSDOT to request additional information of the proposal.

**3.1.09 SEPA Categorical Exemptions—Flexible Thresholds**

Categorical Exemptions are types of projects or actions that are typically not subject to SEPA review. Proposals may be categorically exempt if their size or type of activity is unlikely to cause significant adverse impacts. Exemptions apply to minor construction activities and to some specific types of permits. Some WSDOT projects, such as simple paving projects, will most likely be categorically exempt.

Most categorical exemptions use size to determine if a proposal is exempt. The SEPA Rules allow cities and counties to raise the minimum exemption limit for minor new construction to better accommodate the needs in their jurisdictions. For example, the residential development threshold may be raised from the minimum 4 dwelling units to 20 dwelling units, or anywhere in between. These “flexible thresholds” must be designated through ordinance or resolution by the city or county. If this has not been done, then the minimum level stands.

It is important to note that WSDOT will not get the opportunity to SEPA review some proposals because they will be categorically exempted by their size. While the SEPA Rules do allow a lead agency to require a thorough SEPA review for a proposal that would otherwise be categorically exempt, the likelihood of that happening is not very good. A fast food restaurant is a good example of a proposal that may be categorically exempt because the size of the building and parking lot are under the SEPA threshold, especially if the threshold has been raised by the lead SEPA agency as allowed by the SEPA Rules. In those cases, WSDOT may only be able to review the proposal for impacts relating to access management or storm water runoff.

The following are some of the minimum thresholds that may be raised up to the maximum level shown or anywhere in between:

<b>Proposal Threshold</b>	<b>Minimum Exempt Threshold</b>	<b>Maximum Exempt Threshold</b>
Residential development	4 dwelling units	20 dwelling units
Office, school, or commercial structure	4,000 square feet and associated parking for 20 vehicles	12,000 square feet and associated parking for 40 vehicles
Barn or agricultural structure	10,000 square feet	30,000 square feet
Parking lots	20 vehicles	40 vehicles
Landfills or excavations	100 cubic yards	500 cubic yards

If the proposal lies within two jurisdictions, then the lower level threshold controls the total proposal, no matter which agency is lead.

The above “flexible thresholds” do not apply if any portion of the proposal involves work on lands covered by water, or if a license is needed for a discharge to air or water, or if a rezone is required.

### **3.1.10 How is WSDOT Notified of Project Proposals?**

The SEPA review process begins when the Region is made aware of a project proposal. Usually this occurs when the SEPA lead permitting agency sends the project proposal to the WSDOT for review. However, on some occasions the proponent for the proposed project will contact the WSDOT first before formally submitting the project to the lead SEPA agency. The WSDOT may also learn of proposed projects by checking environmental publications, such as the Department of Ecology (DOE) SEPA Register, which may be accessed via its homepage at [www.ecy.wa.gov](http://www.ecy.wa.gov).

While some proposals are brought to the attention of the WSDOT by the proponent or by Development Services Staff reviewing the DOE SEPA Register, the majority of project proposals are first submitted to the WSDOT by the applicable SEPA lead agency. The following are some of the typical submittals the WSDOT will receive:

1. Pre-submission,
2. Notice of application,
3. SEPA environmental checklist,
4. DNS or MDNS,
5. DS and/or scoping notice,
6. DEIS/FEIS/SEIS,
7. Platting and subdivision notices,
8. Zoning notices,
9. Non-SEPA project next to a state highway.

Some SEPA lead agencies do a good job of notifying the WSDOT of proposed projects, while other SEPA lead agencies may not consider submitting the proposal to the WSDOT for review. This may be due in part to the SEPA statutes that only require the SEPA lead agency to solicit comments from those other governmental agencies that it believes may be impacted by the proposed project.

Therefore, it is very important that the Development Services staff proactively make contact with and work with the various SEPA lead agencies within their applicable regions. Opportunities to request mitigations from proposed projects have been missed because a SEPA lead agency did not believe that the WSDOT would have wanted to review a particular project, when in fact WSDOT requested mitigations would have been warranted and justified.

### **3.1.11 What Are Some of the SEPA Notification Timelines?**

SEPA, by statute, has specific timelines that the SEPA lead agency must follow when allowing other applicable agencies to review proposed projects. In most cases the SEPA lead agency will give those other applicable agencies, such as WSDOT, 14 calendar days to review a project. However, this 14-day timeline usually begins the day the lead agency sends the proposed project out for review. As a result, the actual workdays the Development Services staff has to review a proposal will be considerably less than 14 calendar days due to time in mailing, weekends, and the backlog on other projects already in review. It is very important that all incoming SEPA documents are promptly reviewed and the due dates noted.

If there is insufficient time to appropriately review a proposal, or more technical analysis is necessary, WSDOT may request an extension of time from the SEPA lead agency. If an extension is granted, it is very important that the extension be documented in writing (including e-mail) from the lead agency to preserve WSDOT’s opportunity to continue to review and comment on the project. Some lead agencies have rejected WSDOT’s comments because they were received past the published due date and no extensions of time were requested.

The following lists some of the minimum SEPA timelines and public involvement requirements:

<b>Document</b>	<b>Comment Period</b>	<b>Public Notice Required?</b>	<b>Distribution Required?</b>
Environmental Checklist	Optional	Optional	Optional
Determination of Non-significance (DNS)	14-day comment period may be required	If comment period required	If comment period required
Mitigated DNS (MDNS)	14 days	Yes	Yes
Addendum to a DNS	No	No	Encouraged
Determination of Significance (DS)	21 to 30 days	Yes	Yes
Draft EIS (DEIS)	30 to 45 days	Yes	Yes
Final EIS (FEIS)	No, but 7-day wait period is required before agency action	No	Yes
Draft Supplemental EIS (DSEIS)	30 to 45 days	Yes	Yes
Final Supplemental EIS (FSEIS)	No, 7-day wait period is required before agency action	No	Yes
Addendum to EIS	No	No	Encouraged

**3.1.12 What is A SEPA Threshold Determination?**

The SEPA Threshold Determination is the formal decision as to whether or not a proposal will result in a probable significant adverse environmental impact for which mitigation cannot be easily identified. A SEPA threshold determination is required for any proposal that is not categorically exempt, but is not required for a planned action.

The issuance of a Determination of Significance (DS), a Determination of Nonsignificance (DNS), or a Mitigated Determination of Nonsignificance (MDNS) is referred to as a Threshold Determination.

### 3.1.13 **SEPA Threshold Determination—Assessing Significance**

The SEPA Rules state that significant means a reasonable likelihood of more than a moderate adverse impact on environmental quality. It is often non-quantifiable. It involves the physical setting, and both the magnitude and duration of the impact.

**Significant:** What is considered significant will 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 judgment of the responsible official.

In evaluating a proposal, the SEPA lead agency reviews the environmental checklist and other information about the proposal, and should consider any comments received from public or other agencies (through consultations, a notice of application, pre-threshold meetings, etc.). Likely adverse environmental impacts are identified and potential mitigation is taken into account, particularly that already required under development and permit regulations. The responsible official must then decide whether there are any probable significant adverse environmental impacts that have not been adequately addressed.

**Probable:** Probable as defined under SEPA means likely or reasonably likely to occur, as in “a reasonable probability of more than a moderate effect on the quality of the environment.” Probable is used to distinguish likely impacts from those impacts that merely have a possibility of occurring, or are remote and/or speculative.

The severity of the impact must be considered as well as the likelihood of occurrence. An impact may be significant if its magnitude would be severe, even if its likelihood were not great.

SEPA Rules also state that the beneficial aspects of a proposal shall not be used to balance the adverse impacts in determining significance.

In determining if a proposal will have a significant impact, the responsible official may consider that a number of marginal impacts may together result in a significant impact. For example, a large development may have marginal impacts to a series of intersections along a state highway, but taken together the overall result could trigger SEPA mitigation requirements for one of the impacted intersections.

Even one significant impact is sufficient to require an environmental impact statement. If significant impacts are likely, a Determination of Significance (DS) is issued and the environmental impact statement process is started.

If there will be no probable significant adverse environmental impacts, a Determination of Nonsignificance (DNS) is issued. If there are probable significant adverse environmental impacts and changes to the proposal or mitigation measures are identified that will reduce the probable significant adverse environmental impacts down to a nonsignificant level, a Mitigated Determination of Nonsignificance (MDNS) is issued.

### 3.1.14 **Mitigation Must Be Reasonably Related And Proportional To The Development's Impacts**

On June 24, 1994, the United States Supreme Court ruled on the land use case of *Dolan v. City of Tigard* (Oregon). This closely watched land use case resulted in further limiting the ability of local governments to impose conditions on development permits.

This case dealt with an expansion of an existing plumbing store. The City's mitigation proposal called for the dedication to the City of all the property lying within the 100-year flood plain (about 10 percent of the property), as well as an additional 15-foot strip for a bike path.

The United States Supreme Court ruled that imposition of conditions on the issuance of a development permit may be unconstitutional if the conditions are not directly related and proportional to the project's impacts. In that case, the Court ruled that the City failed to show a reasonable relationship between the conditions of the permit and the impacts of the development.

The ruling in this case emphasizes the necessity for Development Services staff to adequately document a proposal's impacts, tying them directly to any WSDOT requested mitigation and showing that the requested mitigation is roughly proportional and directly related to the development's impacts. In other words, the proposal is only doing "fair share" mitigation.

### **3.1.15 SEPA Determination of Nonsignificance (DNS)**

A Determination of Non-significance (DNS) is issued when the responsible official has determined that the proposal is unlikely to have significant adverse environmental impacts, or that the mitigation has been identified that will reduce impacts to a non-significant level. The DNS may or may not require a public comment period and circulation to other agencies.

### **3.1.16 SEPA Mitigated Determination of Nonsignificance (MDNS)**

If probable significant impacts are identified that would require the preparation of an EIS, those impacts can be reduced either by the applicant(s) making changes to the proposal or by the lead agency requiring mitigation measures as a condition of approving the project. When changes to the proposal or mitigation measures are identified that will reduce probable significant adverse environmental impacts down to a non-significant level, a Mitigated Determination of Nonsignificance (MDNS) is issued. The mitigating measures are typically shown on the face of the DNS or as an attachment. A 14-day comment period, distribution, and public notice is required by SEPA for any MDNS.

### **3.1.17 SEPA Determination of Significance/Scoping Notice (DS/Scoping)**

A Determination of Significance/Scoping Notice (DS/Scoping) is issued when the responsible official has determined that the proposal will have a probable significant adverse environmental impact on the environment. If a DS is issued, an Environmental Impact Statement (EIS) must be prepared.

### **3.1.18 SEPA Environmental Impact Statement (EIS)**

The primary purpose of an Environmental Impact Statement (EIS) is to provide an impartial discussion of significant environmental impacts, reasonable alternatives and/or mitigation measures that avoid or minimize adverse environmental impacts. This environmental information is used by agency officials—in conjunction with applicable regulations and other relevant information—to make decisions to approve, condition, or deny a proposal.

An EIS is not meant to be a huge, unwieldy document. The text of a typical EIS is intended to be only 30 to 50 pages. It is not to exceed 75 pages unless the proposal is of unusual scope or complexity; in which case, it may not exceed 150 pages. An EIS should provide information that is readable and useful for the agencies, the applicant, and interested citizens.

A Draft Environmental Impact Statement (DEIS) will normally be the first opportunity the general public and affected governmental agencies have to fully review an EIS. Once all the comments have been received and reviewed by the lead agency, a Final Environmental Impact Statement (FEIS) will be published.

Should a proposal be amended such that additional review beyond the FEIS is required, either an Addendum or a Supplemental Environmental Impact Statement (SEIS) must be prepared. The Addendum or SEIS will only be applicable to those areas of the environmental document that need the additional review. No other areas of the EIS are subject to a second review.

An Addendum is usually prepared if just additional analyses or information about a proposal is needed. A SEIS is prepared if there are substantial changes or new information about the proposal that indicate probable significant adverse environmental impacts, including the discovery of misrepresented information, facts, conclusions and/or lack of material disclosure. The Addendum does not require a comment period or public notice while a SEIS will require another round of general public and affected governmental agency review, but only for the specific area of the environment list requiring the additional review. Once the new comments have been received, a Final Supplemental Environmental Impact Statement (FSEIS) will be published.

See the **Section 3.1.11**, “What are some of the SEPA Notification Timelines” for information on the length of comment periods, whether a public notice is required, as well as distribution requirements.

### **3.1.19 What is a Nonexempt License?**

A nonexempt license is any form of written permission given to any person, organization, or agency to engage in any activity, which is 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.

### **3.1.20 Can a SEPA Lead Agency Withdraw a DNS, MDNS or a FEIS?**

A SEPA lead agency can withdraw a DNS, MDNS, or a FEIS based upon any one of the following three reasons:

- There is a substantial change to a proposal such that the proposal is likely to have a probable significant adverse environmental impact;
- There is significant new information that indicate probable significant adverse environmental impact; or
- The DNS, MDNS, or FEIS was prepared with misrepresented information, facts, conclusions and/or lack of material disclosure.

What is important to note here is that a SEPA lead agency may not withdraw a DNS, MDNS, or EIS on a private proposal if a nonexempt license has already been issued, even though significant new information may be forthcoming indicating the proposal may have a probable significant adverse environmental impact.

### **3.1.21 Does a SEPA DNS, MDNS, or FEIS Have a Time Limit?**

A SEPA determination such as a DNS or a MDNS has no time limit. However, if the SEPA determination is tied to a nonexempt license that has a time limit, such as a plat or a commercial building permit, and the proposal does not meet the nonexempt time limit, then the SEPA determination may be withdrawn. For example, a SEPA lead agency may have conditioned that a Final Plat Approval be recorded within three years. Should it be determined that the preliminary plat has expired because the plat was not recorded within three years (and no extensions were granted), the SEPA determination may be withdrawn. The determination to withdraw a SEPA determination is made at the time a new application was filed on the proposal.

### 3.1.22 SEPA Appeals

SEPA provides a process the public and other groups and agencies, such as the WSDOT, to challenge both procedural and substantive decisions made under SEPA. Procedural appeals include the appeal of a threshold determination – both the determination of significance (DS) and non-significance (DNS) – and the adequacy of a final environmental impact statement (FEIS). Substantive appeals are challenges of an agency’s use, or failure to use, SEPA substantive authority to condition or deny a proposal.

For more detailed information on SEPA appeals see Chapter 7.

## PART 2 GMA

### 3.2.01 Growth Management Act (GMA)

The Washington State Growth Management Act was enacted in 1990 in response to the problems associated with an increase in population in this state, particularly in the Puget Sound region, in the 1980’s. These problems included increased traffic congestion, school overcrowding, urban sprawl, and loss of rural lands.

“The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public’s interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state...”  
RCW 36.70A.010

GMA requires all cities and counties in this state to do some planning. It calls for the fastest growing counties, and the cities within them, to plan extensively in keeping with the following state goals:

- Conservation of important timber, agricultural and mineral resource lands,
- Protection of critical areas,
- Planning coordination among neighboring jurisdictions,
- Consistency of capital and transportation plans with land use plans,
- Early and continuous public participation in the land planning process.

The basic objective of the legislation is to guide and encourage local governments in assessing their goals, evaluating their community assets, writing comprehensive plans, and implementing those plans through regulations and innovative techniques that encompass their future vision.

### 3.2.02 Which Counties and Cities are Subject to the Growth Management Act?

The GMA requires all counties, and the cities within those counties, to fully plan under the GMA if the counties meet the following criteria:

- Population of 50,000 or more, and whose rate of population increase was more than 10 percent in the 10 years preceding May 16, 1995, or after that date are growing by more than 17 percent in the last 10 years and cities located within such county and;
- Any county whose rate of population increase has grown more than 20 percent in the last 10 years.

Counties not meeting these criteria may “opt in” under GMA; however, once a county does “opt in” it may not subsequently “opt-out.”

Counties and cities that do not fully plan under GMA must still adopt development regulations that designate and protect critical areas. All cities and counties must adopt development regulations that *designate* natural resource lands, but only counties fully planning under GMA must adopt regulations to *conserve* natural resource lands.

As of September 2005, 29 of the state's 39 counties are required to plan fully under GMA and 10 counties are only subject to the Critical Area and Natural Resource Lands requirements.

### **3.2.03 Growth Management Act Goals**

Planning goals must be adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under GMA.

The GMA, as a legislative policy, is expressed by the following 14 goals, which are not listed in any order of priority:

- Urban Growth—encourage urban growth where facilities are adequate to meet service needs.
- Reduce Sprawl—eliminate sprawling, low-density development that is expensive to deliver services to and is destructive to critical areas, rural areas, and resource values.
- Transportation—encourage efficient, multi-modal transportation.
- Housing—encourage a variety of affordable housing for all economic segments of the population.
- Economic Development—encourage economic development consistent with resources and facilities throughout the state.
- Property Rights—protect property from arbitrary decisions or discrimination.
- Permits—issue permits in a timely manner and administer them fairly.
- Natural Resources Industries—maintain and enhance resource-based industries.
- Open Space and Recreation—encourage retention of open space and recreation areas.
- Environment—protect the environment and enhance the quality of life.
- Citizen Participation—encourage citizen involvement in the planning process.
- Public Facilities and Service—ensure that adequate public facilities and services are provided in a timely and affordable manner.
- Historic Preservation—identify and encourage preservation of historic sites.
- Shoreline Management—the goals and policies of the Shoreline Management Act.

### **3.2.04 Growth Management Act Substantive Mandates**

As noted above, the GMA goals are not listed in any order of priority. However, “five substantive mandates” of the GMA are revealed when the goals are read together with the specific requirements in subsequent sections of the GMA. They are:

- New growth must be concentrated in urban growth areas (UGAs) that are contiguous with existing urbanized areas and meet other specified standards,
- New development may not be allowed unless adequate transportation facilities and certain other public facilities will be available concurrently with the development,

## **SEPA and GMA**

- Counties and cities may not exclude regionally essential public facilities and must accommodate affordable housing,
- Environmentally critical areas must be designated and protected, and
- Natural resource lands of long-term commercial significance for agricultural, forest product, and mining industries must be designated and protected.

### **3.2.05 Growth Management Act Comprehensive Plans**

Fully planning counties, and the cities within those counties, must each develop comprehensive plans (or comp plans). City comp plans address areas inside incorporated city limits while county comp plans focus only on unincorporated areas.

GMA requires comp plans to be consistent with Countywide Planning Policies (CPPs), consistent with the comp plans of neighboring jurisdictions, and internally consistent. In addition, zoning, development and subdivision regulations must be updated to be consistent with comp plans.

The GMA only mandates that certain elements be included in local and county comp plans. The respective planning offices determine how these are addressed. Specific measures are left up to local jurisdictions, allowing local determination of different implementation strategies and priorities.

### **3.2.06 Growth Management Act Comprehensive Plan Elements**

Comprehensive plans must contain the following elements:

- Land Use,
- Housing,
- Utilities,
- Capital Facilities plan,
- Shorelines (if applicable),
- Transportation,
- Rural (for counties only)
- Urban Growth Area.

Other comp plan requirements include a public participation plan and a designation of open space corridors and lands for public purposes.

### **3.2.07 GMA Comprehensive Plan Transportation Element**

For jurisdictions fully planning under the GMA, transportation is the most important element of the comp plan. Comp plans are required to address a host of sub-elements, designed to directly implement connections between land use and transportation. Unlike most of the other comp plan elements, which are assumed to be in compliance unless appealed, Regional Transportation Planning Organizations (RTPOs) must certify that the transportation element is both consistent with the RTPO Regional Transportation Plan and conforms to the requirements of the GMA.

## Concurrency<sup>1</sup>

Like all public facilities, transportation facilities must meet concurrency requirements under the GMA. GMA requires that development not be approved if it will cause existing transportation facilities to fall below level of service standards established in the comp plans. Transportation improvements or strategies for mitigation must be in place at the time of development, or a financial commitment must be in place to complete those strategies/improvements within 6 years. *Concurrency requirements of the GMA do not include highways of statewide significance (HSS) with the exception of counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting consistency requirements. RCW 36.070A.070(6)(a)(iii)(c).*

### GMA Comp Plan Transportation Element Subelements

The transportation element must be consistent with and implement the land use element. It must include six sub-elements, which are:

1. **Land-Use Assumptions** used in establishing level of service standards and estimating travel times.
2. **Estimating Traffic Impacts** to state-owned transportation facilities resulting from land use assumptions.
3. **Facilities and Service Needs**, including the following:
  - An inventory of transportation facilities and services, including state owned facilities.
  - Level of Service (LOS) standards for facilities in the inventory. The agency setting LOS standards for the various facilities varies. In the case of local transportation systems, LOS standards are established by local jurisdictions and coordinated by the RTPOs. For transportation facilities and services designated to be of statewide significance, LOS standards are set by the state (WSDOT) in consultation with the RTPOs. For regional state owned transportation systems that are not designated to be of statewide significance, the RTPOs establish the LOS.
  - Corrective actions must be outlined for any transportation facilities currently below LOS standards.
  - A ten-year traffic forecast based on the adopted land use plan.
  - Identification of system needs based on the traffic forecast and current deficiencies. Needs that are identified in the local plans must be consistent with the statewide transportation plan.
4. **A Multiyear Analysis of Financial Resources**, including the following:
  - Identifying funding sources and comparing them with system needs.
  - Developing a multiyear financing plan.
  - Addressing any funding shortfalls, such that if no funding is currently available, and no other sources of additional funding are identified, the land-use assumptions on which the analysis is based will need to be reassessed.

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<sup>1</sup> Also see “concurrency” under section 1.1.06 in Chapter 1

5. **Intergovernmental Coordination Efforts**, including an assessment of the impacts of transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions.
6. **Strategies for Demand Management** such as economic incentives to ride transit or carpools, enhancement of non-SOV alternatives, and land use strategies that reduce the need for auto trips by altering development patterns.

### **3.2.08 GMA and Regional Transportation**

Passed in conjunction with the GMA, the Regional Transportation Planning Program authorizes Regional Transportation Planning Organizations (RTPOs). RTPOs are formed through the voluntary association of local governments within a county or within geographically contiguous counties established to coordinate transportation planning throughout a region. Currently, every Washington's county, with the exception of San Juan County, is a part of an RTPO. In cases where the federal government requires Metropolitan Planning Organizations (MPOs), the RTPO and MPO must be the same organization. Washington State currently in 2005 has ten MPOs.

All transportation projects within the boundaries of an RTPO must be consistent with the regional transportation plan, as well as comp plans of the participating cities and counties. Local jurisdictions comp plans must be consistent with the regional transportation plan and countywide planning policies.

### **3.2.09 Regional Transportation Planning Duties**

Under the Regional Transportation Planning Program, RTPOs designate a lead-planning agency to coordinate preparation of the regional transportation plan and carry out other responsibilities of the RTPO. This agency may be a county, regional council, city, town or WSDOT region office.

The duties of a RTPO are:

- Develop regional transportation strategies.
- Develop a Regional Transportation Plan (RTP).
- Certify CPPs (Countywide Planning Policies) and the transportation elements of comp plans for consistency with the RTP.
- Develop a six-year Regional Transportation Improvement Program (TIP).
- Review Level of Service (LOS) Standards.

### **3.2.10 Requirements for Regional Transportation Plans (RTPs)**

Regional Transportation Plans are required to be based on a least cost planning methodology that identifies the most cost-effective facilities, services, and programs. All transportation projects (including TDM programs) within the region that have an impact upon regional facilities or services must be consistent with the plan and with the adopted regional growth and transportation strategies.

Regional Transportation Plans must include the following:

- Identify existing or planned transportation facilities.
- Establish level of service standards for state highways and ferry routes.
- A financial plan.
- Assess regional development patterns.

- Develop a proposed regional transportation approach.
- Coordinate services and facilities among transit providers.

### **3.2.11 How Does Development Services Use GMA?**

WSDOT has few specific obligations under the GMA. However, WSDOT has an influential role in transportation planning statewide.

WSDOT's formal GMA duties are limited to assisting RTPO's set levels of services for those state-owned facilities and services that are not of statewide significance, setting the levels of services for those facilities and services deemed to be of statewide significance, coordinating transportation planning among the RTPOs, and developing Transportation Improvement programs with local jurisdictions and RTPOs. WSDOT regional offices also may serve as the lead-planning agency for the RTPOs.

While SEPA is the main tool and law governing WSDOT's right to ask for or require proposed land-use project mitigation, the Development Services staff must be aware of the GMA role in transportation planning. Especially important is knowing what Level of Service (LOS) standards have been set for the various state facilities when requesting mitigation measures.

