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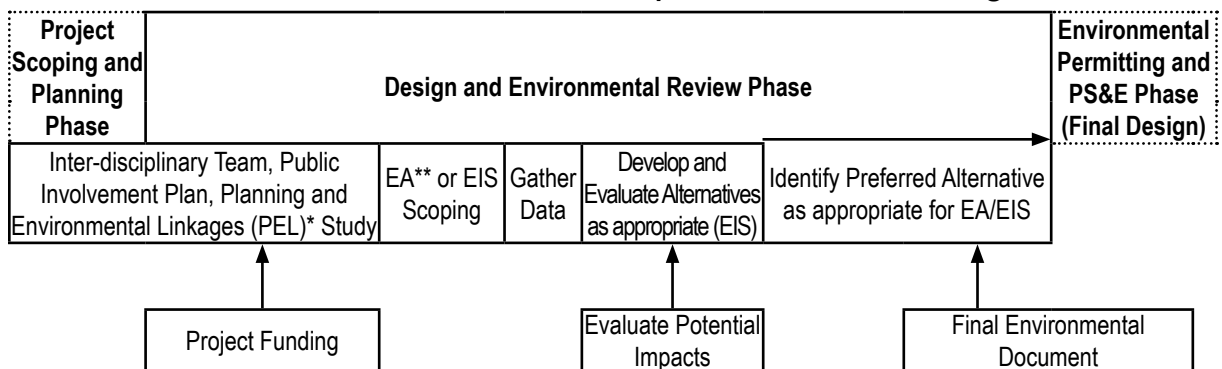
400.01 Environmental review in project development

WSDOT projects transition from transportation planning ([Chapter 200](#)) and project scoping and programming ([Chapter 300](#)) phases of the WSDOT transportation decision making process to the environmental review phase when the project receives federal or state funding (Exhibit 400-1). The environmental review phase includes:

- Building upon previous planning and outreach efforts to involve the public, tribes, and federal and state resource agencies in the decision-making process.
- Establishing the type of environmental documentation.
- Developing and analyzing alternatives.
- Analyzing and documenting environmental impacts.
- Selecting an alternative and making environmental commitments (work on permits begins in this phase).
- Finalizing and approving the project.

The environmental review phase is illustrated in Exhibit 400-1.

Exhibit 400-1 Environmental Review and Transportation Decision Making



***Note:** PEL studies consider environmental goals in planning and using work done in planning to inform the environmental process. See [\[link\]](#) for more information on PEL.

****Note:** Scoping for an EA is optional.

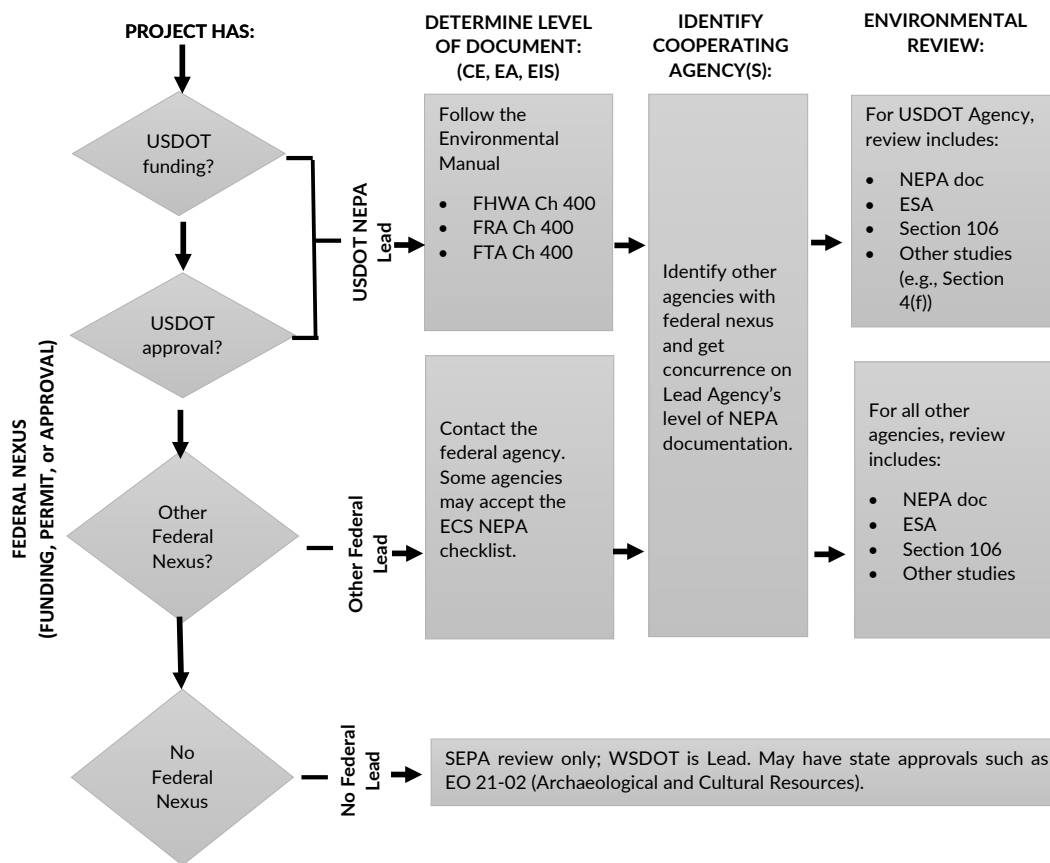
The environmental review phase ends with the federal lead agency issuing a decision document for the following environmental documents, as applicable, in addition to completion of the final environmental document:

- NEPA/SEPA (Chapter 400)
- Endangered Species Act (Chapter 436)
- Section 106 of the National Historic Preservation Act (Chapter 456)
- Section 4(f) of the United States Department of Transportation (USDOT) Act (Chapter 457)

For the traditional design-bid-build project delivery process, environmental documents are finalized, then environmental permits can be issued, and the plans, specifications, and estimates (PS&E) phase can begin. Also, if applicable, the federal Highway Administration (FHWA) can approve an Access Revision Report (formerly known as an Interchange Justification Report or IJR). Refer to *Design Manual Chapter 550* for a description of the required procedures, analysis, and coordination with the environmental documentation process. Contact WSDOT's [NEPA/SEPA Program](#) for questions about the environmental review process for design-build projects. Review Section 5-12 of WSDOT's *Design-Build Manual* for additional design-build information related to environmental processes.

WSDOT projects are required to comply with National Environmental Policy Act (NEPA) when those projects involve a federal action. That federal action could be an approval (land use, access break, etc.), funding, or a permit. When WSDOT initially scopes a project, it determines whether a project will require NEPA, and the likely documentation path (Exhibit 400-2). This decision is routinely made between the federal lead, Program Management, and the region/modal office.

Exhibit 400-2 Determining the lead agency and documentation needs



400.02 Roles and responsibilities

400.02(1) *The Council on Environmental Quality*

Congress created the [Council on Environmental Quality \(CEQ\)](#) when NEPA was signed by President Nixon in January 1970. CEQ is part of the Executive Office of the President, and it ensures that federal agencies meet their obligations under NEPA. CEQ oversees NEPA implementation, principally by issuing regulations and guidance ([40 CFR 1500-1508](#)). CEQ also reviews and approves federal agency NEPA procedures, approves alternative arrangements for compliance with NEPA for emergencies, and helps to resolve disputes between federal agencies and with other governmental entities and members of the public. Another of CEQ's major responsibilities is to develop and recommend national policies to the President that promote the improvement of environmental quality.

400.02(2) *Environmental Protection Agency*

The [Environmental Protection Agency \(EPA\)](#) has a responsibility under [Section 309](#) of the Clean Air Act to review Environmental Impact Statements (EISs) prepared by other federal agencies. EPA reviews Draft EISs to identify and recommend appropriate mitigation measures and to evaluate the adequacy of the information provided in the EIS. EPA also reviews Final EISs to ensure that the lead agency has taken EPA's comments into account.

[Section 309](#) of the Clean Air Act also requires that EPA makes their reviews public. EPA does this by posting EPA comment letters on EISs in the [EIS database](#). EPA also provides notices of availability of EISs in the [Federal Register](#).

400.02(3) *Lead agencies*

Federal and state laws require designation of an agency to lead the environmental review process. Factors to consider in determining federal lead agency are listed in [40 CFR 1501.7](#), as well as the process for resolving lead agency disputes. The primary role of the federal lead agency is decision making. They also provide guidance and independently evaluate the adequacy of the environmental document.

Federal lead agencies are determined by considering a project's federal nexus. A federal nexus involves a federal action including federal funding, permitting, or approval of the proposed action. Most WSDOT projects involve WSDOT serving as the joint lead agency with FHWA ([40 CFR 1501.7](#)). See Exhibit 400-2 above for additional process information. See the WSDOT's [NEPA and SEPA webpage](#) for more information on [Federal Nexus Requirements](#) and contact the [NEPA/SEPA Program](#) for assistance.

Agencies may co-lead the environmental review if the project is funded by more than one federal agency or if more than one federal agency has decision-making responsibilities.

Potential co-lead agencies include, but are not limited to:

- Federal Transit Administration (FTA)
- Federal Aviation Administration (FAA)
- Federal Railroad Administration (FRA)
- National Park Service (NPS)
- US Army Corps of Engineers (Corps)
- United States Coast Guard (USCG)
- United States Forest Service (USFS)

Each federal agency has its own unique regulations and processes to implement NEPA. The Code of Federal Regulations, or CFRs, are the federal agency regulations that implement the United States Code or U.S.C.. Section [42 U.S.C. 4321](#) is the NEPA code implemented by [40 CFR parts 1500-1508](#) (CEQ regulations) and supplemented by [23 CFR 771](#) for FHWA, FTA, and FRA.

If your project will require a US Coast Guard Bridge permit, refer to the Memorandum of Agreement between the US Coast Guard and FHWA for NEPA coordination requirements ([Appendix B](#)).

For local agency projects funded by FHWA, the local government agency, WSDOT, and FHWA, share co-lead agency status under NEPA. Together, the co-lead agencies approve and sign the NEPA environmental document. However, the local agency is generally the lead agency responsible for SEPA. Guidance for determining lead agency for State Environmental Policy Act (SEPA) is found in [WAC 197-11-922](#).

WSDOT is the SEPA lead agency for transportation projects it proposes on the state system ([WAC 197-11-926](#)). In accordance with state law, WSDOT has adopted its own rules and procedures for implementing SEPA in [Chapter 468-12 WAC](#). WSDOT's SEPA responsibilities are based on its authority to site, design, construct and operate state transportation facilities. WSDOT signs NEPA EAs and EISs as SEPA Lead and places the documents in the [SEPA Register](#).

Federal lead agencies are required to report projects in the [Federal Infrastructure Projects Permitting Dashboard](#) (permitting dashboard) within 90 calendar days of initiating a project (for example, via an EIS Notice of Intent (NOI) or Environmental Assessment (EA) Initiation Letter). See the current [Federal Permitting Dashboard Reporting Standard](#) for additional reporting requirements.

Within 21 calendar days of entering a project into the [permitting dashboard](#), the federal lead agency must invite other agencies with financial, environmental review, authorization, or other project responsibilities to become cooperating or participating agencies in NEPA ([42 U.S.C. 4370m-2](#)). The roles and responsibilities for cooperating and participating agencies are described in [Section 400.02\(4\)](#) and [Section 400.02\(5\)](#).

WSDOT staff is advised to contact the [NEPA/SEPA Program](#) to discuss federal lead or co-lead agency NEPA requirements and define the role of each co-lead before settling on a strategy to complete NEPA. The federal lead or co-lead will ultimately determine the process followed for NEPA documentation. More information on NEPA strategy is found on WSDOT's [NEPA and SEPA webpage](#).

400.02(4) Cooperating agencies

CEQ implementing regulations explain the federal agency purpose and responsibility to conduct "public and governmental engagement" in [40 CFR 1501.9](#). "The purpose of public engagement is to inform the public of an agency's proposed action, allow for meaningful engagement during the NEPA process, and ensure decision makers are informed by the views of the public. The purpose of governmental engagement is to identify the potentially affected Federal, State, Tribal, and local governments, invite them to serve as cooperating agencies, as appropriate, and ensure that participating agencies have opportunities to engage in the environmental review process, as appropriate."

Under NEPA, any federal agency with jurisdiction must be invited to become a cooperating agency ([Section 400.02\(3\)](#)). [40 CFR 1501.9](#) requires us to “invite the participation of any likely affected Federal, State, Tribal, and local agencies and governments, as early as practicable, including, as appropriate, as cooperating agencies”.

By serving as a cooperating agency, the agency can ensure that any NEPA document needed for the project will be prepared to also satisfy the NEPA requirements for its jurisdictional responsibility. WSDOT’s policy is to also invite non-federal agencies and tribes to be cooperating agencies when they have jurisdiction or special expertise, including indigenous knowledge ([40 CFR 1501.8](#)). See [Exhibit 400-3](#) for examples of potential cooperating agencies.

Cooperating agencies participate in EIS or EA scoping to identify potential environmental impacts, alternatives, mitigating measures, and required permits. They review and comment on EA/EIS level projects and may also prepare special studies or share in the cost of the environmental documentation. For EIS level projects, concurrence on key milestones (see [Section 400.07](#) for key milestones) is required from cooperating agencies whose authorization is required for the project. The terms and requirements of agency involvement under SEPA are like that of NEPA. For regulatory guidance, see [40 CFR 1501.8](#), [23 CFR 771.111](#), [WAC 197-11-408\(2\)\(d\)](#), [WAC 197-11-410\(1\)\(d\)](#), [WAC 197-11-724](#), and [WAC 197-11-920](#).

For NEPA EISs, the lead agency, in coordination with the project sponsor and the cooperating agencies, develop and update the project schedule, develop a permitting timetable, identify a project point of contact, and define and agree on roles and expectations at the beginning of the project. See [Section 400.07](#) for additional information on developing a project schedule. Project teams will define the roles and expectations in a coordination plan. More information on coordination may be found in [Section 400.08\(1\)](#) on WSDOT’s [NEPA and SEPA](#) webpage.

Note: EISs must follow [23 U.S.C. 139](#), but this is optional for EAs.

- 1. Requesting Cooperation** – According to CEQ regulations, federal agencies with jurisdiction must accept cooperating agency status. The federal lead can accept an agency’s decision to decline cooperating agency status if the agency’s written response to the request states that its NEPA regulations do not require an EIS in response to the proposed action ([40 CFR 1501.8\(c\)](#)).
- 2. WSDOT as a Cooperating Agency** – Other agencies may ask WSDOT to become a cooperating agency for actions where WSDOT is not the lead agency. This could occur on projects when a landholding agency, such as the USFS, Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), or a Tribal government, proposes a project that could impact WSDOT facilities. County and municipal transportation organizations could also involve WSDOT as a cooperating agency for SEPA compliance. Coordinate non-WSDOT NEPA or SEPA reviews through the [WSDOT Development Services Office](#).
- 3. Local Agencies** – Local jurisdictions that receive funds through WSDOT’s Local Programs Office can be cooperating agencies as well. More information regarding Local Agencies can be found in the Local Programs [NEPA Categorical Exclusions Guidebook](#). Contact [WSDOT Local Programs](#) for additional information and assistance with local agency projects.

Exhibit 400-3 Potential Cooperating Agencies

Agency	Jurisdiction
Bureau of Indian Affairs (BIA)	Tribal trust lands
Environmental Protection Agency (EPA)	Clean Air Act, Hazardous Waste Sites, Sole Source Aquifers, Water Supply
Federal Agency Land Manager: Bureau of Land Management (BLM) Department of Defense (DoD) General Services Administration (GSA) National Park Service (NPS) US Fish and Wildlife Service (USFWS) US Forest Service (USFS)	Land transfer from: Public Lands Military Facilities Federal Buildings National Park System National Wildlife Refuge National Forest System
Federal Aviation Administration (FAA)	Airspace, hazardous wildlife, airport facilities, and other air transportation activities
Federal Emergency Management Agency (FEMA)	Regulatory floodway
Federal Motor Carrier Safety Administration (FMCSA)	Regulates trucking industry, provides funding to State DOTs for modernizing motor carrier infrastructure such as weigh-in-motion scale equipment
Federal Transit Administration (FTA)	Projects with transit funding
National Oceanic and Atmospheric Administration (NOAA) Fisheries	Endangered Species Act (ESA), fish and wildlife natural habitat, wetlands, stream relocations, estuaries
National Park Service (NPS)	Impacts to properties funded thru the Land and Water Conservation Fund (LWCF) Act (Section 6(f)) and review of some Section 4(f) Evaluations
USDA Rural Utilities Service (RUS)	Provides funding to improve water, electric, and telecommunication infrastructure.
Tribal Governments	Tribes with expertise or jurisdiction

Exhibit 400-3 Potential Cooperating Agencies

Agency	Jurisdiction
US Army Corps of Engineers (USACE)	Section 10 and Section 404 Permits, including wetland fill activities
US Coast Guard (USCG)	Projects involving water crossings (bridges or culverts)
US Fish and Wildlife Service (USFWS)	Areas funded under various fish and wildlife related grant programs or projects affecting threatened and endangered species (ESA)
Washington State Agencies: Dept. of Archaeology and Historic Preservation (DAHP) Dept. of Ecology (Ecology) Dept. of Fish and Wildlife (WDFW) Dept. of Natural Resources (WDNR)	Agency with expertise or jurisdiction: Historic, cultural, and archaeological sites Wetlands, water quality, stream relocations, estuaries Fish and wildlife natural habitat, wetlands, water quality, stream relocations, estuaries Use of state-owned aquatic lands

400.02(5) Participating agencies

Federal transportation law also allows “participating agency” status ([23 U.S.C 139\(d\)](#)). This term is unique to United States Department of Transportation’s (USDOT’s) compliance with NEPA. The intent of the participating agency is to encourage governmental agencies with an interest in the proposed project to be active participants in the NEPA EIS evaluation. Designation as a participating agency does not indicate project support. However, it does give invited agencies opportunities to provide input at key decision points in the process and allows for involvement in a project’s environmental review, coordination plan, and concurrence on project schedule. **Note:** EISs must follow [23 U.S.C. 139](#), but this is optional for EAs.

Any federal, state, tribal, regional, and local governmental agencies that may have an interest in the project should be invited to serve as participating agencies ([Section 400.02\(3\)](#)). Non-governmental organizations and private entities cannot serve as participating agencies.

A participating agency differs from a cooperating agency in the level of involvement that agency has in a project. An agency with jurisdiction by law or special expertise regarding environmental impacts should be more involved, and therefore invited to be a cooperating agency. An agency with limited interest, or a small action associated with the larger project should be invited to be a participating agency. **Note:** a cooperating agency is also a participating agency, but a participating agency is not a cooperating agency (See [FHWA Environmental Review Toolkit FAQ](#)).

Care should be taken when evaluating your list of potential participating agencies. It is not necessary to invite agencies that have only a hypothetical or remote interest in the project. The same agencies listed in [Exhibit 400-3](#) may be asked to be participating agencies.

The roles and responsibilities of participating agencies include but are not limited to:

- Identifying potential environmental or socioeconomic impacts that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.
- Participating in the NEPA process, especially regarding the development of the Purpose and Need statement; range of alternatives; methodologies; and the level of detail for the analysis of alternatives.
- Providing meaningful and timely input on unresolved issues.

Expectations and commitments about agency participation should be addressed in a project coordination plan, which is optional for EAs (see the [NEPA and SEPA webpage](#) preliminary design tab for help on Preparing an EA and EIS). It is appropriate to tailor an agency’s participation to its area of interest or jurisdiction.

400.02(6) Tribal coordination

WSDOT recognizes the sovereign rights, interest, and expertise of tribes in the environmental review process. There are several state and federal laws regarding consultation and coordination with tribes during environmental review.

[Secretary's Executive Order 1025](#) directs WSDOT to enter Tribal Consultation with tribes who have ancestral homelands within the state boundaries, including those having reservations located outside of the state, on all decisions that may affect tribal rights and interests. The executive order is based on the Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington. The [Centennial Accord](#) is available on the Governor's [Office of Indian Affairs](#) website.

Tribes can be involved in four capacities under NEPA, as:

- Cooperating agencies (with expertise and/or jurisdiction).
- Participating agencies on EA/EIS projects.
- Consulted parties.
- Affected Communities.

See [Chapter 530](#) and the WSDOT [Model Comprehensive Tribal Consultation Process for NEPA](#) webpage for guidance on when and how to consult with tribes during the NEPA environmental review process on projects. Projects with a federal nexus should coordinate tribal engagement and government-to-government consultations through their federal lead agency. Federal lead agencies should also be informed of and involved with any potential agreements with tribes related to projects with a federal nexus with their agency.

400.02(7) Public involvement/community engagement

Public involvement is at the heart of NEPA, along with a systematic interdisciplinary approach.

NEPA requires federal agencies to: "encourage and facilitate public engagement in decisions that affect the quality of the human environment, including meaningful engagement with communities such as those with environmental justice concerns." ([40 CFR 1500.2\(d\)](#)). See [Chapter 460](#) for additional information about environmental justice.

WSDOT strives to engage affected communities before, during, and after projects. This includes under-represented and under-served communities. The goal is to ensure all voices are heard, with an emphasis on the fair and meaningful involvement of all people. FHWA, FRA, and FTA's regulations reinforce the idea that public involvement is essential to the project development process ([23 CFR 771.105\(d\)](#)).

Projects with a SEPA Checklist, EA, or EIS, require notification and circulation of environmental documents to allow consideration of public input before decisions are made. WSDOT's [NEPA and SEPA webpage](#) includes guidance on developing and circulating these documents, including the [NEPA/SEPA Documentation Distribution Matrix](#) to help develop distribution lists. Lack of public notice can justify an appeal of the procedural aspects of NEPA and SEPA processes and delay projects.

NEPA and SEPA public notices are not required for exempt projects (Categorical Exclusions (CEs)), but open houses, newsletters, and other virtual or in person public outreach are encouraged for any transportation projects. The project's complexity and/or level of controversy should be used to judge the right amount of public involvement.

WSDOT's agency guidance on public involvement is detailed in *Design Manual Exhibits 210-1 through 210-4* and in WSDOT's [Community Engagement Plan](#). Contact the [NEPA/SEPA Program](#) for more information about appropriate public involvement and community engagement.

400.02(8) WSDOT internal roles and responsibilities

See the [NEPA Roles Table](#) on WSDOT's [NEPA and SEPA webpage](#) for a summary of WSDOT and FHWA NEPA/SEPA agency and staff roles and responsibilities.

Projects with WSDOT as the Lead Agency

When WSDOT is the lead agency, the region and modal offices lead the project, manage the process, and conduct the analysis. The Environmental Services Office (ESO) supports the region and modal offices by developing policies, programs, and initiatives to implement the agency's environmental policy and to assist with project delivery. See WSDOT's [Environmental Policy Statement](#) for additional details.

The ESO Director is the Responsible Official for all NEPA EAs and EISs and SEPA EISs in draft, final, supplemental and adoption formats. This applies to all projects where WSDOT is the lead agency, including ferry and rail projects.

Projects with a Local Public Agency as the Lead Agency

WSDOT's [Local Programs Office](#) oversees the distribution of federal funds to cities and counties. WSDOT Local Programs office reviews NEPA environmental documents submitted by local governments for approval by FHWA. The [Local Agency Guidelines](#) M 36-63 provides more details on NEPA and SEPA procedures for local government projects. Consult the [Contact Support for Local Programs](#) webpage for help with local agency projects.

400.03 Identifying the type of environmental document

Projects are classified for environmental review during project scoping (See [Chapter 300](#)). This process is documented using WSDOT's Environmental Review Summary (ERS) form for WSDOT-led projects. Local agency scoping is handled differently, according to each local jurisdiction's process. [Chapter 300](#) contains a detailed description of the NEPA and SEPA classification systems. The NEPA or SEPA classification reflects the level of potential significant environmental impact or controversy and controls the type of environmental document as shown below.

- Class I projects are likely to have significant environmental impacts and require an EIS and result in a Record of Decision (ROD). See [Section 400.08](#) for more information on documenting EISs.
- Class II projects are referred to as Categorical Exclusions, or CEs. These are Categorically Excluded from the NEPA process or Categorically Exempt from the SEPA process because there are no anticipated significant impacts. For FHWA projects, NEPA CEs are documented with WSDOT's Environmental Classification Summary (ECS) form.

Over the years, WSDOT, the Washington State Department of Ecology (Ecology), and the legislature have worked to align transportation project CEs under SEPA with FHWA's NEPA CEs. However, some project development actions that are excluded from NEPA review may still require SEPA review. Likewise, some actions categorically exempt under SEPA may require additional documentation for the NEPA process. For more information on CEs, see [Section 400.10](#). FTA and FRA use CE worksheets to document their decisions – WSDOT staff complete these worksheets for FTA/FRA review. For local agency projects see the [Local Agency Guidelines](#) M 36-63. Contact the [NEPA/SEPA program](#) for access to the appropriate form to document a NEPA CE.

- Class III projects require a NEPA EA or a SEPA checklist to determine whether the project will have significant environmental impacts. Depending on level of impact indicated by these documents, an EA results in a Finding of No Significant Impact (FONSI) or an NOI to develop an EIS (if project impacts are found to be significant). Similarly, under SEPA, a SEPA checklist leads to a Determination of Non-significance (DNS), or a Determination of Significance (DS) and Scoping Notice to draft an EIS. ([WAC 197-11-315](#)). For additional information on documenting EAs and SEPA Checklists, see [Section 400.09](#).

400.03(1) Determining NEPA significance

Almost every transportation project that would be recognized as major federal action, no matter how limited in scope, has some effect on the environment. As seen above in [Section 400.03](#), identifying the type of environmental document required for NEPA is generally a matter of potential impact. Each project is assessed during the scoping phase of project delivery to determine the anticipated level of environmental impact and the corresponding path forward for NEPA.

The significance of a potential impact on the natural or built environment depends upon context and intensity. In considering whether an adverse effect of the proposed action is significant, agencies shall examine both the context of the action and the intensity of the effect.

In assessing context and intensity, agencies should also consider the duration of the effect and the extent to which an effect is adverse sometimes and beneficial at other times. For example, short-term harm during construction vs long-term benefits once a project is implemented. However, one beneficial effect cannot offset another action's adverse effects. For instance, a project may not offset adverse effects on one species with beneficial effects to another species.

Significance of an action should be analyzed in several contexts:

- The characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns. For more information about environmental justice, see [Chapter 460](#).
- Depending on the scope of the action, agencies should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects.

Agencies must analyze the intensity of effects considering the following factors, as applicable to the proposed action and in relationship to one another:

- The degree to which the action may adversely affect public health and safety.
- The degree to which the action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- Whether the action may violate relevant federal, state, tribal, or local laws or other requirements or be inconsistent with federal, state, tribal, or local policies designed for the protection of the environment.
- The degree to which the potential effects on the human environment are highly uncertain.
- The degree to which the action may adversely affect resources listed or eligible for listing in the National Register of Historic Places.
- The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973.
- The degree to which the action may adversely affect communities with environmental justice concerns.
- The degree to which the action may adversely affect rights of tribal nations that have been reserved through treaties, statutes, or executive orders.

Additional information and examples for determining significance is found in [40 CFR 1501.3\(d\)](#), and [40 CFR 1508.1](#).

400.03(2) NEPA Tiering and PEL

Some projects that will eventually become an EA or EIS, but do not have a defined Purpose and Need or range of alternatives, may choose to conduct a Planning and Environmental Linkages (PEL) study. PEL can help define the project, conduct public, agency, and tribal outreach, narrow the project focus, and increase the efficiency of the NEPA timeline and project delivery. See [Chapter 200](#) and the [PEL webpage](#) for more information.

PEL also takes the place of a Programmatic or Tier 1 EA/EIS for pre-NEPA corridor-level planning.

400.04 NEPA/SEPA procedures and recent changes

Project teams should follow the direction in this *Environmental Manual* and follow the online procedures that support these policies, found on the [NEPA and SEPA webpage](#). The webpage allows the reader to follow a step-by-step process for completing NEPA and SEPA documentation.

NEPA for transportation projects often changes with each reauthorization of federal surface transportation acts. In other words, it is important to keep in mind that USDOT funding or policy changes can modify or add new requirements to NEPA. Over the last 20 years, Congress has focused on streamlining environmental review to expedite transportation projects. USDOT agencies then update their implementing regulations, policies, and guidance. WSDOT's Environmental Services Office updates this manual and WSDOT environmental guidance websites to reflect changes in federal law.

In July 2020, CEQ comprehensively updated its NEPA regulations ([40 CFR 1500-1508](#)). The final rule became effective September 14, 2020, and applied to all new NEPA efforts starting after that date. The new rule did not apply to NEPA efforts that were already underway before September 14, 2020.

Major changes from the 2020 rulemaking to NEPA include creating a Coordinated Project Plan with all Participating Agencies, establishing a permitting timetable with a comprehensive schedule of completion dates, and tracking projects on the [permitting dashboard](#). This also included several limitations on judicial review, requiring challenges to be filed within two years of a ROD (compared to the default six-year limit), limiting litigants to only those that commented on the original NEPA document, and requiring the courts to consider impacts of the court decision on jobs and the economy when issuing a project stay during litigation.

In 2022, CEQ issued a Phase I Final Rule revising their 2020 [NEPA implementing regulations](#) to restore some of the basic elements of its 1978 NEPA regulations. One of these was restoring the requirement for federal agencies to evaluate all relevant environmental impacts of projects and decisions, including cumulative effects. **Note:** WSDOT did not change its policies regarding cumulative effects after the 2020 rule went into effect. Instead, WSDOT continued to consider cumulative effects in NEPA documents (EAs and EISs).

In early 2023, CEQ released the [National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#), as directed by the 2021 EO 13990 [Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#).

In 2023, CEQ began Phase 2 revisions to the 2020 regulations to include changes that further support commitments to environmental justice and climate change. These Phase 2 CEQ implementing regulation revisions were finalized in their *Bipartisan Permitting Reform Implementation Rule* in May 2024 which became effective July 1, 2024. These changes revised CEQ regulations for implementing the procedural provisions of NEPA, including the recent amendments to NEPA in the Fiscal Responsibility Act.

CEQ made these revisions to provide for an effective environmental review process; ensure full and fair public engagement; enhance efficiency and regulatory certainty; and promote sound federal agency decision making that is grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. These changes are grounded in NEPA's statutory text and purpose, including making decisions informed by science; CEQ's extensive experience implementing NEPA; CEQ's perspective on how NEPA can best inform agency decision making; longstanding Federal agency experience and practice; and case law interpreting NEPA's requirements.

See [Chapter 460](#) for information on environmental justice and [Chapter 415](#) for climate change.

400.05 Ensuring environmental document quality

NEPA requires agencies to disclose environmental impacts of their decisions in a way that is understandable to the public and to decision-makers. Your project's environmental document should be well written and technically accurate. Clear writing helps the public and agency reviewers understand the project and its impacts.

400.05(1) Document standards and Plain Talk

WSDOT's environmental documents follow the agency-wide standards set in the [Communications Manual M 3030](#). Documents prepared for external audiences, especially those that circulate to the public and agencies for review and comment, also must use the agency-wide standards.

EAs and EISs should be as concise as possible. The text of a NEPA EA shall be no more than 75 pages ([40 CFR 1501.5\(g\)](#)). The text of a final EIS shall be 150 pages or fewer ([40 CFR 1502.7](#)). EIS proposals of unusual scope and complexity shall be 300 pages or fewer. See [40 CFR 1502.10](#) for specific information on required standard format for EISs.

[40 CFR 1500.1\(b\)](#) states: "Most importantly, environmental documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail." [40 CFR 1500.2\(b\)](#) includes that to the extent possible, federal agencies should "implement procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize important environmental issues and alternatives. Environmental documents shall be concise, clear, and supported by evidence that agencies have conducted the necessary environmental analyses."

Note: These page limits apply only to text. Graphics, figures, tables, citations, and appendices do not count toward the page limit for EAs and EISs ([40 CFR 1501.5\(g\)](#), [40 CFR 1502.7](#)).

The [SEPA handbook](#) found on Ecology's [SEPA-guidance webpage](#) states that SEPA EISs should not exceed 75 pages unless the proposal is of unusual scope or complexity, in which case it may not exceed 150 pages. Page limits serve as useful reminders that the objective is to summarize the relevant information and not to include every detail.

The main body of the EA or EIS document (whether it is for NEPA or SEPA) should focus on what is relevant to the decision and include enough information to support the decision without having to refer to additional supporting materials.

Supporting materials for technical and legal reviewers, such as technical memos and discipline reports, correspondence, public and agency comments, etc., should be provided in the appendices, or incorporated by reference. Guidance for determining when, and procedures for how, to write discipline reports can be found on the [NEPA and SEPA webpage](#).

The American Association of State Highway and Transportation Officials' (AASHTO's) [Handbook on Preparing High-Quality NEPA Documents for Transportation Projects](#) provides additional resources for preparing environmental documents. The handbook focuses on the preparation of EAs and EISs, but many of the tips in the handbook also apply to CEs.

Discipline reports intended for specific technical audiences do not need to follow the standard reader friendly format. However, they should be clearly written following the plain language principles ([Washington State Plain Language policy page](#)). National examples of high-quality NEPA documents are posted on AASHTO's [Center for Environmental Excellence](#).

400.05(2) Publication standard messages

Several standard messages must be included in all environmental documents to meet federal requirements. Standard messages include:

- Availability of environmental document
- Title VI information and policy
- Americans with Disabilities Act (ADA) information and policy

Consultant logos are not allowed in WSDOT environmental documents because those documents are owned by the agency.

400.05(3) Document accessibility

Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)) requires state agencies that received federal funds to provide accessible websites and documents. See WSDOT's [Web accessibility](#) webpage and the [federal Section 508](#) webpage for guidance on making webpages and pdfs accessible.

400.05(4) Methods and data accuracy

WSDOT NEPA documentation must include high-quality information. [40 CFR 1500.1\(b\)](#) states: "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."

[40 CFR 1506.6\(a\)\(b\)](#) details the methodology and scientific accuracy required in NEPA documents. This includes professional and scientific integrity, reliable data and resources, models, and indigenous knowledge. Existing information may be used as well as new information collected from reliable data sources to inform the analysis.

The document must explain any relevant assumptions or limitations of the information, or the models or methods selected for use. Methodologies used must be identified in the NEPA document as well as any scientific or other sources that were relied upon for the NEPA conclusions. This methodology information may be included in an appendix ([40 CFR 1506.6\(c\)](#)).

Where appropriate, the NEPA document should include projections when evaluating reasonably foreseeable effects, including climate change effects ([40 CFR 1506.6\(d\)](#)). See [Chapter 415](#) for more information on documenting climate change effects, and [Chapter 412](#) for indirect and cumulative impact policy.

400.06 Using existing environmental documents

CEQ's NEPA regulations and SEPA rules allow the use of existing documents to reduce duplication and unnecessary paperwork ([RCW 43.21C.034](#) and [WAC 197-11-600](#)). If an analysis has already been done for the proposed project or a similar project, use it if it is still up to date. Existing documents can be used in any of the following ways:

- Adoption ([40 CFR 1506.3](#) and [WAC 197-11-630](#))
- Addendum ([40 CFR 1502.9](#) and [WAC 197-11-625](#))
- Incorporation by reference ([40 CFR 1501.12](#) and [WAC 197-11-635](#))
- Supplemental EIS ([40 CFR 1502.9](#) and [WAC 197-11-620](#))

400.06(1) Re-evaluations

1. NEPA – WSDOT conducts NEPA re-evaluations, in compliance with [23 CFR 771.129-130](#) and [2019 Joint NEPA Re-evaluation Guidance for FHWA, FRA and FTA](#), when it is necessary to determine whether existing documents adequately address environmental impacts of a project. It is important to have conversations early with the federal lead agencies to determine if a formal re-evaluation is required.

WSDOT or the federal lead can initiate a NEPA re-evaluation. FHWA will likely re-evaluate environmental documentation at key points of the project development: final design, right of way acquisition, and construction.

In practice, WSDOT and FHWA re-evaluate the NEPA documentation when:

- There is a substantial change in regulations, existing conditions, project scope (including project area and selected construction staging areas), or proposed action, and it is uncertain if a supplemental environmental document is required before proceeding with the project. These changes must be addressed regardless of the time since the last FHWA approval. Examples include added access likely to require a review of the traffic, air quality and noise impacts, or shifts in alignment. Likewise, changes in ESA-listed species that are impacted by the project may create the need to develop a supplemental environmental document (see [Section 400.06\(2\)](#)).
- New environmental laws or regulations have been enacted or substantively updated or there are changes in listed species and/or their critical habitats.
- WSDOT re-evaluates NEPA documents if major steps to advance the action have not occurred within three years of the most recent federal action. This applies only to projects with an identified path forward. No action is needed until projects are advancing through the project delivery process. Following approval of the FHWA decision document (CE, ROD, or FONSI), WSDOT must consult with FHWA prior to further FHWA approvals to determine if the NEPA document is still valid. An example of an FHWA approval is the authority to undertake final design, acquisition of a significant portion of right of way, or approval of the PS&E.
- Major steps to advance the project (such as right of way or construction funding authorizations) have not occurred within three years of a ROD, FONSI, or issuance of the environmental document. Factors that may contribute to the need for a re-evaluation include an outdated traffic analysis (affecting the noise and air analysis) or wetland delineation.

EAs may also be re-evaluated to determine that a supplemental EA and new FONSI or EIS is not required ([40 CFR 1501.5\(2\)\(i\)](#)).

Consult with the [NEPA/SEPA Program](#), as needed, to ensure your re-evaluation effectively considers the need for further environmental analysis.

There is no required format for a written re-evaluation. NEPA re-evaluations can be documented with a letter, memo, or for CEs, with a new categorical exclusion. In this case, document the re-evaluation in the ERS/ECS database within the Environmental Documentation tab (when printed, Part 2 of the ECS form will identify the document as a re-evaluation). When determining which method to use, consider how much explanation is needed, how extensive the changes are, and whether action has already been taken on the project (e.g., acquisition).

Answers to relevant questions in a NEPA re-evaluation should be brief and to the point. A two to three sentence explanation may be adequate. However, project teams should incorporate as much additional information as required to explain changes in environmental impacts and support conclusions. For example, a re-evaluation of a CE project may look very different from a re-evaluation of an EA or EIS project.

The re-evaluation needs to evaluate the environmental analysis conducted within the NEPA document and consider how the impacts have or have not changed. If there are changes, the supporting updated analysis is attached to the re-evaluation showing that the new impacts are not adverse (or significant). One of the purposes of the re-evaluation is to demonstrate for the administrative record, if appropriate, that there is no need for a supplemental document (such as a Supplemental CE, EA, or EIS) and to ask the federal lead agency if they concur.

WSDOT conducts and signs re-evaluations of programmatic CEs. See the 2024 [WSDOT/FHWA NEPA CE Programmatic Agreement](#) (PCE) in [Appendix B](#) of the *Environmental Manual* for additional information on CE re-evaluation.

FHWA or other federal lead agencies review, approve, and sign EA and EIS re-evaluations. WSDOT may be an optional signatory on EA and EIS re-evaluations, but this is not required.

Note: a re-evaluation is required to assess the impacts from a project scope change on the original environmental analysis and projected environmental effects, regardless of whether the scope change reduces project environmental effects. Contact the [NEPA/SEPA Program](#) for additional re-evaluation guidance.

2. **SEPA** – ([Chapter 197-11 WAC](#), [WAC 197-11-600\(4\)](#), [WAC 197-11-620](#)) SEPA requires a re-evaluation if changes occur to a project or its surroundings, or if potentially significant, new, or increased adverse environmental impacts are identified during other phases of project development. SEPA has no specific requirements for re-evaluation. The region or modal office determines if the approved environmental document or exemption designation is still valid:

- If the project changes and the analysis of new information does not change the significance of the project's impacts, the changes are noted in an addendum to the original environmental documentation or determination.
- If project changes result in significant adverse environmental impacts, changes are documented with supplemental environmental information (i.e., through an EIS, or Supplemental EIS). See [Section 400.14](#) for a comprehensive explanation of "significance."

The re-evaluation process is not used for SEPA CEs. Project changes are documented with a new categorical exemption or an addendum may be used if changes do not substantially change the analysis of significant impacts and alternatives and do not result in any new significant adverse impacts ([WAC 197-11-600\(4\)\(c\)](#) and [WAC 197-11-625](#)).

400.06(2) Supplemental documents

1. **NEPA** – supplemental documents include Supplemental Environmental Assessments (SEA), Supplemental Draft Environmental Impact Statement (SDEIS), or Supplemental Final Environmental Impact Statement (SFEIS). A new Draft Environmental Impact Statement (DEIS) may be warranted if, for example, there has been a fundamental change in the Purpose and Need. EAs can also be supplemented by following the same rules. The FHWA Area Engineer or other federal lead will determine when a NEPA supplemental document is required.

Supplemental documents are drafted when existing environmental documents do not cover the full breadth or scope of impacts of a project. Supplemental documents are generally required ([23 CFR 771.130](#) and [40 CFR 1502.9](#)):

- When there are substantial changes to the proposed action relevant to the environmental concerns.
- (For EAs) - When there is substantial new information about significance that may impact whether a FONSI or EIS are pursued.
- When changes are made to the proposed action that would result in substantial environmental impacts that were not evaluated in the original environmental document. For example, expansion of the original footprint that changes the scope of the analysis.
- When changes to resources within the project vicinity occur that may result in impacts not previously evaluated in the original environmental document. For example, newly listed endangered species or changes in development within the project vicinity.

There is no required format for a supplemental NEPA EIS. Because the process is like that of an EIS, there is a Draft and a Final SEIS. However, the FHWA Technical Advisory [T 6640.8A](#) directs that the supplemental NEPA document:

- Provides sufficient information to briefly describe the proposed action.
- Explains the reason why the SEIS is being prepared.
- Includes the status of a previous DEIS or FEIS.
- Only addresses changes that required the SEIS to be written and new information that was not previously available.
- References and summarizes previous EIS as appropriate.
- Updates status of compliance with NEPA and the results of any re-evaluations.

Supplemental environmental documents shall be reviewed and distributed in the same manner as the original document. See the WSDOT [NEPA and SEPA webpage](#) for additional guidance.

2. **SEPA** – supplemental documents include a Supplemental EIS (SEIS), or an addendum to a DEIS or FEIS ([WAC 197-11-620](#)). Scoping is not required for a SEPA SEIS or supplementing and adopting an EA, but it is required for a new DEIS.

400.06(3) Using NEPA documents for SEPA

All WSDOT projects with a federal nexus must consider NEPA and SEPA documentation requirements. WSDOT's procedures align NEPA and SEPA so that WSDOT's NEPA documentation meets the requirements of SEPA. If a project does not trigger NEPA, then WSDOT will still need to comply with SEPA requirements using the direction in this chapter.

If a NEPA EIS is prepared, then a SEPA EIS is not required ([RCW 43.21C.150](#) and [WAC 197-11-610\(3\)](#)). The NEPA EIS documentation satisfies all SEPA requirements and there is no need to formally adopt the NEPA EIS for SEPA. However, WSDOT is responsible for sharing the final NEPA EIS with Ecology so it can be posted on the SEPA Register for public review per SEPA rules ([Chapter 197-11 WAC](#)). SEPA-only EISs for state transportation projects are very rare. Significant impacts are likely to involve federal permits or approvals, thus triggering NEPA. See [Section 400.14](#) for a comprehensive explanation of "significance".

A NEPA EA is the functional equivalent of the SEPA checklist. For SEPA compliance, WSDOT projects should issue a DNS concurrent with the EA (using a DNS/Adoption form from Ecology's [SEPA document templates webpage](#)), but no separate SEPA checklist is necessary ([WAC 197-11-610\(2\)](#)). Please see note below. Any major changes that occur with the issuance of the NEPA decision document must be reflected in the project file; a memo will suffice as documentation.

WSDOT uses the ECS form to document NEPA CEs. SEPA allows the lead agency to use NEPA documents such as an ECS instead of preparing a SEPA checklist, per [WAC 197-11-610\(2\)](#). Project teams that choose to use a WSDOT ECS in place of a SEPA checklist should contact the NEPA/SEPA Program for guidance.

Note: all WSDOT NEPA documents used in place of a SEPA Checklist (i.e., EIS, EA, ECS) must ensure the elements of [WAC 197-11-444](#) are adequately addressed within the NEPA document and are posted on the SEPA Register for public review per SEPA rules ([Chapter 197-11 WAC](#)). Refer to the [Ecology SEPA Guidance webpage](#) for additional information on SEPA process and the [NEPA and SEPA webpage](#) for SEPA DNS procedural guidance.

See [Section 400.09\(2\)](#) for more information on SEPA checklists. Projects with no federal nexus (i.e., no NEPA requirement) should follow SEPA guidance in [Section 400.09\(2\)](#), [Section 400.10\(2\)](#), and on the [NEPA and SEPA](#) webpage.

400.07 Schedules, deadlines, and milestones

It is important to carefully develop documentation schedules. Missed documentation deadlines are reported to Congress. Review [40 CFR 1501.10\(d\)](#) for additional details on establishing the project schedule, which includes the following factors to consider:

1. Potential for environmental harm.
2. Size of the proposed action.
3. State of the art of analytic techniques.
4. Degree of public need for the proposed action, including the consequences of delay.
5. Number of persons and agencies affected.

6. Availability of relevant information.
7. The degree to which a substantial dispute exists as to the size, location, nature, or consequences of the proposed action and its effects.
8. Time limits imposed on the agency by law, regulation, Executive order, or court ordered deadlines.
9. Time necessary to conduct government-to-government Tribal Consultation.

Environmental Impact Statement deadlines and milestones

[40 CFR 1501.10\(b\)](#) states that agencies shall complete EISs within two years unless the lead agency extends the deadline in writing and establishes a new deadline. Two years is measured from the date of the issuance of the NOI to the publication of the final EIS or the date the federal agency makes the final EIS available.

[40 CFR 1501.10\(e\)](#) includes the following list of milestones to include in EIS schedules:

1. The publication of the notice of intent.
2. The issuance of the draft EIS.
3. The public comment period on the draft EIS, consistent with [40 CFR 1506.10](#).
4. The issuance of the final EIS.
5. The issuance of the ROD.

Environmental Assessment deadlines and milestones

WSDOT's EA initiation letter is used to establish the NEPA start date. [40 CFR 1501.10\(b\)](#) states that agencies shall complete EAs within one year unless the lead agency extends the deadline in writing and establishes a new deadline. One year is measured from the date of agency decision to prepare an EA (FHWA's response to the initiation letter) to the publication of the final EA document or issues an NOI to prepare an EIS.

[40 CFR 1501.10\(f\)](#) includes the following list of milestones to include in EA schedules:

1. Decision to prepare an EA.
2. Issuance of a draft EA, if applicable.
3. The public comment period on the draft EA consistent with [40 CFR 1501.5](#), if applicable.
4. Issuance of the final EA and decision on whether to issue a FONSI and an NOI to prepare an EIS.

400.08 Documenting an Environmental Impact Statement (EIS)

An EIS is prepared for projects that are likely to significantly affect the environment or when there is substantial controversy on environmental grounds. The EIS process is similar for both NEPA and SEPA. See [Section 400.14](#) for a comprehensive explanation of "significance". See the [NEPA and SEPA webpage](#) for step-by-step guidance.

400.08(1) Scoping process

To determine the scope of issues relating to a proposed action, a NEPA EIS must go through a scoping process ([40 CFR 1501.9](#), [23 CFR 771.123](#), [WAC 197-11-408](#)). Scoping is not required for a NEPA supplemental EIS; however, the co-lead agencies may decide to hold an open house early in the supplemental EIS process. Scoping may be helpful during the preparation of an EA, but it is not required.

CEQ implementing regulations explain the reason for scoping in [40 CFR 1501.9](#). “The purpose of public engagement is to inform the public of an agency’s proposed action, allow for meaningful engagement during the NEPA process, and ensure decision makers are informed by the views of the public.” In other words, a robust scoping process must be conducted for meaningful engagement to be possible.

The purposes of scoping may include:

- Presenting the project Purpose and Need and range of alternatives, including the agency’s environmentally preferable alternative(s) ([40 CFR 1502.14\(f\)](#)) to be considered in the environmental document and soliciting comments.
- Initiating the public involvement process, including inviting and soliciting comments from affected persons, businesses, organizations, agencies, and tribes.
- Identifying potential environmental impacts and benefits of the proposed action.
- Beginning to document the rationale for subsequent decisions.

[40 CFR 1501.9](#) specifies that agencies “shall use public and governmental engagement, as appropriate, to inform the level of review for and scope of analysis of a proposed action” consistent with [40 CFR 1501.3](#) (determining the appropriate level of NEPA review).

WSDOT’s federal projects must “invite the participation of any likely affected Federal, State, Tribal, and local agencies and governments, as early as practicable, including, as appropriate, as cooperating agencies” ([40 CFR 1501.9](#); see also [Section 400.02\(4\)](#)). [40 CFR 1501.9](#) requires projects to ‘consider whether outreach and notification methods are necessary and appropriate, based on:

- The likely affected entities and persons.
- The scope, scale, and complexity of the proposed action and alternatives.
- The degree of public interest.
- Other relevant factors.

When selecting appropriate methods for providing public notification, agencies shall consider the ability of affected persons and agencies to access electronic media and the primary languages of affected persons.” Access to media includes accessible access to media. For example, the agency should include as an option email notification lists or other similar methods for the public to easily request electronic notifications for a proposed action. Consideration for the way communities receive their information should be planned to be as inclusive as possible.

Inclusive and accessible planning for scoping activities should be used when determining formats for publications, outreach, public hearings and public meetings. For example, whether in-person or virtual meetings, formal hearings, or listening sessions are most appropriate should be discussed with the needs of affected communities in mind.

Essential elements of the EIS scoping process

1. **Notice of Intent (NOI)** – NEPA CEQ regulations require that an NOI to prepare an EIS be published in the Federal Register prior to initiating EIS scoping. Project teams may include the scoping notice in the NOI. Once complete, the federal lead sends the NOI to be published in the Federal Register. Include a notice statement in the DEIS that a combined FEIS/ROD might be prepared. Refer to [40 CFR 1502.4](#) for more information about the NOI.
2. **Coordination plan** – [23 U.S.C. 139\(g\)\(1\)\(A\)](#) requires the development of a coordination plan for public and agency participation in, and comment on, the environmental review process. The coordination plan is developed no more than 90 days after publication of the NOI. [23 U.S.C. 139\(g\)\(1\)\(B\)\(i\)](#) requires that a schedule for the completion of the environmental review process be included as part of the coordination plan.

Concurrence on the project schedule from each of the project's participating agencies is required. Refer to the [Preparing an EIS](#) document on WSDOT's [NEPA and SEPA webpage](#) preliminary design tab for more information. See [Section 400.07](#) for additional information on developing a project schedule. **Note:** EISs must follow 23 U.S.C. 139, but this is optional for EAs.

3. **Purpose and need statement** – The Purpose and Need Statement is a key component of NEPA scoping. It explains the importance of and reason for the project and demonstrates problems that exist or will exist if a project is not implemented. The Purpose and Need Statement drives the process for alternative development, analysis, and selection. It should clearly demonstrate that a “need” exists and should define the “need” in terms understandable to the public such as mobility, safety, economic development, etc. WSDOT considers multimodal and environmental context and assets in a project's need. The lead agency (or agencies) makes the final decision on the project's Purpose and Need. However, they must provide opportunities for participating agencies and the public to comment on the Purpose and Need, and they must consider the input provided by these groups. Opportunities for agency and public involvement occur throughout the NEPA process, including during formal scoping. FHWA guidance on developing a draft Purpose and Need statement is found on their [Environmental Review Toolkit](#) website. Also see [AASHTO Practitioner's Handbook 07](#) on defining the Purpose and Need. Refer to [Section 400.08\(2\)](#) and [400.09\(1\)](#) for document-specific Purpose and Need policy.
4. **Alternatives to the proposal** – “The alternatives section is the heart” of the EIS ([40 CFR 1502.14](#)). The NEPA process should “identify and assess the reasonable alternatives to the proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment” ([40 CFR 1500.2\(e\)](#)). For example, “alternatives that will reduce climate change-related effects or address adverse health and environmental effects that disproportionately affect communities with environmental justice concerns.” See [Chapter 415](#) for more information on climate change and [Chapter 460](#) for environmental justice.

More information on alternatives and their analysis is included in [Section 400.08\(2\)\(2\)](#) below.

Although the lead agencies make the final decision on the project's range of alternatives, they must provide opportunities for involvement by participating and cooperating agencies and the public. Opportunities for agency and public involvement occur throughout the NEPA process, including during formal EIS scoping. Comments and responses are documented during the scoping process.

The DEIS evaluates the alternatives to the action and discusses why other alternatives, that may have been initially considered, were eliminated from further study.

- a. **NEPA criteria for alternatives** – The no-build alternative must be included and serves as the baseline condition for comparison of all other alternatives. The no-build alternative may include improvements that have not been constructed but are already funded in a separate project. Normal maintenance activities (such as safety improvements) that are part of routine operation of an existing roadway also may be included. Alternatives must have logical termini, independent utility, and must not restrict consideration of alternatives for other reasonably foreseeable transportation improvements ([23 CFR 771.111\(f\)](#)). Typical alternatives may include:
 - Improvements to the existing facility.
 - Multimodal transportation alternatives.
 - Alternative routes and/or locations.
 - A combination of the above alternatives.
 - For guidance on alternative development, see FHWA Technical Advisory T 6640.8A.
- b. **SEPA criteria for alternatives** – If a NEPA EIS is prepared, then a SEPA EIS is not required ([RCW 43.21C.150](#) and [WAC 197-11-610\(3\)](#)). Still, it is useful to note that the SEPA Rules ([WAC 197-11-440\(5\)](#)) require an EIS to describe and present the proposal and other reasonable alternative courses of action. The use of the word reasonable is intended to limit the number and range of alternatives and the level of analysis required for each alternative. Reasonable alternatives include:
 - Actions that could easily attain or approximate a proposal's objectives at a lower environmental cost, or decreased level of environmental degradation.
 - The “no action” alternative, which shall be evaluated and compared to other alternatives.
 - Alternatives over which an agency has authority to control impacts, either directly or indirectly, through requirement of mitigation measures.
5. **Evaluate scoping comments** – All scoping comments received from the public and other agencies must be evaluated to determine the relevance of each comment. All relevant issues must be addressed in the environmental document.

[40 CFR 1501.9](#) requires comments to be accepted electronically, by regular mail, or by other appropriate methods.

Lead agencies are not required to send a written response to every individual comment received. However, to maintain credibility during the environmental process, all scoping comments – whether relevant or not – need to be evaluated and addressed.

Comments may be listed individually or grouped and summarized under general headings. Responses may be as simple as stating that the issue will be addressed in detail in the environmental document. If an issue raised during scoping will not be addressed in the environmental document, the response should explain the reason why it will not be included.

Comments received during scoping and responses to those comments may be documented in a scoping report for the project file. Discuss the scoping process and the comments received in the section of the environmental document that describes public and agency participation and comments received. Comments and responses may also be summarized in handouts at public meetings and in newsletters.

Scoping comments must be taken into consideration before developing the final Purpose and Need Statement and the range of alternatives that will be evaluated in the environmental document.

400.08(2) Draft Environmental Impact Statement (DEIS)

A DEIS identifies project alternatives, which are compared to each other to present an analysis of the alternatives' relative impacts on the environment. It may identify a recommended course of action if one alternative is clearly preferred by the lead agency, although a preferred alternative is not required. The DEIS should identify the environmentally preferable alternative(s) that will be considered in the environmental analysis ([40 CFR 1502.14\(f\)](#)). The DEIS summarizes the early coordination and EIS scoping process, defines the project's purpose and need, identifies the alternatives considered, including the agency's preferred alternative if one has been identified and the environmental preferable alternative, any analysis, and presents pertinent information obtained through these efforts.

1. **Purpose and Need** – NEPA implementing regulations require EISs to include a Purpose and Need for the proposed action ([40 CFR 1501.5](#)). The Purpose and Need generally appears as the first chapter of an EIS to provide a brief overview of information that must be considered in defining the purpose and need statement for the project. The statement must specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action ([40 CFR 1502.13](#)).

The Purpose and Need statement explains to the public, decision makers, and interested parties why the project should be implemented and is the foundation for determining which alternatives will be considered. Evaluation criteria for screening EIS alternatives must be developed based upon the Purpose and Need. See [Section 400.08\(1\)](#), the [NEPA and SEPA webpage](#), and contact the [NEPA/SEPA Program](#) for additional information on Purpose and Need.

2. **Proposed alternatives** – [Section 400.08\(1\)\(4\)](#) above provides detail on requirements for proposed alternatives and analysis.

The reasonable range of alternatives must meet the Purpose and Need for the proposed action. The draft EIS should define the issues and provide a clear basis for choice among the alternatives ([40 CFR 1502.14](#)). Agencies shall:

- Rigorously explore and objectively evaluate all reasonable alternatives to the proposed action.
- Briefly discuss alternatives that were eliminated from detailed study and explain why they were not considered for further analysis.

- Discuss each alternative considered in detail, including the proposed action, so reviewers may evaluate their comparative merits.
- Include a discussion of the no-build (or no action) alternative.
- Identify the agency's preferred alternative(s).
- Include appropriate mitigation measures not already included in the proposed action or alternatives.
- Identify the environmentally preferable alternative(s) within the range of alternatives considered in the EIS.

The alternatives section should identify the reasonably foreseeable environmental effects of the proposed action and compare the alternatives, including the no-build alternative, based on the information and analysis presented in the sections on affected environment and environmental consequences in the EIS (40 CFR 1502.14).

The comparative analysis between reasonable alternatives should "sharply define the issues for the decision maker and the public and provide a clear basis for choice among options."

40 CFR 1502.14(f) requires an EIS to identify the environmentally preferable alternative or alternatives within the range of alternatives to be analyzed. This regulation highlights that the environmentally preferable alternative will best promote the national environmental policy expressed in section 101 of NEPA by:

- maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities with environmental justice concerns;
- protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders;
- or causing the least damage to the biological and physical environment.

The environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative. **Note:** the agency is not required to choose the environmentally preferable alternative as the agency's *preferred alternative*.

3. **Affected environment – NEPA regulations (40 CFR 1502.15)** require environmental documents to succinctly describe the existing environment of the area(s) to be affected or created by the proposed action. Descriptions should be no longer than is necessary for the reader to understand the relative impacts of the alternatives. Data and analysis should correspond with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

Agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment, and when such information is incomplete or unavailable, provide relevant information. This description of the affected environment, including existing environmental conditions, reasonably foreseeable trends, and planned actions in the area should inform the agency's analysis of environmental consequences and mitigation measures.

It is recommended that the description of the affected environment and the discussion of impacts and mitigation measures be combined in the same chapter of the environmental document.

4. **Environmental consequences – Under CEQ regulations (40 CFR 1502.16)**, the discussion of impacts forms the scientific and analytical basis for a comparison of alternatives. The severity of environmental consequences and the type, size, and location of the action will dictate the scope of the impact analysis. Project teams may elect to complete discipline reports if additional information or technical detail are needed to support the analysis presented in the EIS or EA. These reports should be “right-sized” to adequately address the issues without over analysis. Guidance for completing a discipline report can be found on WSDOT’s [NEPA and SEPA webpage](#) and on individual discipline webpages.

FHWA allows flexibility in the level of design detail that can be added to a DEIS or FEIS. More detailed design may be necessary to evaluate impacts, mitigation, or issues raised by agencies or the public ([FHWA Technical Advisory T 6640.8A Section V, Part E-G](#)).

The environmental document must discuss impacts on both the natural (air, water, wildlife, etc.) and built (historic, cultural, social, etc.) environment for each alternative. Impacts may be temporary, such as the short-term impacts associated with the construction phase of a project, or permanent, such as the long-term impact of increasing runoff and contamination from a widened highway. A summary of adverse impacts remaining after mitigation should follow the discussion of all impacts.

NEPA and SEPA require analysis of reasonably foreseeable effects and the significance of those effects, focusing on the significant or important effects. This includes analysis and discussion of direct, indirect, and cumulative effects. The EIS should analyze the effects of the no-build alternative, including any adverse environmental effects.

See [Chapter 412](#) for guidance on analysis of indirect and cumulative effects, including climate change implications, as appropriate. See [Chapter 415](#) and the WSDOT [cumulative effects and climate resiliency webpage](#) for the most recent climate change guidance and contact information.

Where applicable, the alternatives analysis should incorporate relevant risk reduction, resiliency, or adaptation measures into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions ([40 CFR 1502.16](#)). Where applicable, disproportionate and adverse human health and environmental effects on communities with environmental justice concerns should be evaluated within the alternatives analysis.

It’s important to also document the project’s beneficial effects and efforts to minimize impacts. It is recommended that the project team keep a list of adverse effects that were avoided or minimized as part of project development. As the team develops the EIS, make sure to document benefits associated with the project and clearly present them in the EIS.

5. **Mitigation of impacts –** The environmental document must discuss the proposed means to mitigate the identified environmental impacts. Mitigation may include:
 - Avoiding the impact altogether.
 - Minimizing impacts by limiting the scale of the action.
 - Mitigating the impact by repairing, rehabilitating, or restoring the affected environment.
 - Avoiding and minimizing the impact over time through preservation and maintenance operations.
 - Compensating for the impact by replacing or providing substitute resources or environments.

6. **Publish and circulate the DEIS** – Circulation of a Draft EIS is required under federal and state regulations ([23 CFR 771.123](#), [WAC 197-11-455](#) and [WAC 468-12-455](#)). All copies sent out during the circulation of the DEIS are free of charge. After initial circulation, a fee may be charged, which is not more than the cost of printing.

The project office must distribute NEPA DEISs before the document is filed with the Environmental Protection Agency (EPA) for publication in the Federal Register. To ensure the document is distributed before filing, the documents should be distributed to the EPA at the same time it is distributed to the public and agencies. FHWA will post EIS projects to the permitting dashboard, as described in the Preparing an EIS procedure located on WSDOT's NEPA and SEPA webpage under the preliminary design tab.

The date of issuance/filing/publication of the DEIS, is the date that the EPA publishes its Notice of Availability (NOA). The date of the NOA is the date used to track the 45-day comment period.

7. **Public hearing** – Under NEPA, public hearings are required for all NEPA EIS projects ([40 CFR 1501.9](#)). Under SEPA, public hearings are held when ([WAC 197-11-502](#), [WAC 197-11-535](#), [WAC 468-12-510](#)):
 - The lead agency determines that a public hearing would assist in meeting its responsibility to implement the purposes and policies of SEPA.
 - When two or more agencies with jurisdiction over a proposal make written requests to the lead agency within 30 days of the issuance of the draft EIS.
 - When 50 or more persons residing within a jurisdiction of the lead agency, or who would be adversely affected by the environmental impacts of the proposal, make written requests to the lead agency within 30 days of issuance of the draft EIS.

Note: [40 CFR 1501.9](#) says that agencies “should make a draft environmental document available to the public at least 15 days in advance when it is the subject of a public hearing or meeting unless the purpose of such hearing or meeting is to provide information for the development of the document.”

Refer to *Design Manual Chapter 210* for hearing requirements and procedures.

400.08(3) Final EIS (FEIS)

The FEIS contains FHWA and WSDOT's final recommendation and preferred alternative(s), including analysis of alternatives, lists or summarizes (by group) the comments received on the DEIS and WSDOT's response to them, summarizes public involvement, and describes procedures required to ensure that mitigation measures are implemented. The FEIS needs to identify specific mitigation commitments, or it needs to describe the process that will be used to finalize the mitigation commitments, why those commitments can't currently be finalized, and the time frame in which they will be finalized. The FEIS also documents compliance with environmental laws and Executive Orders.

All NEPA/SEPA and permit commitments must be incorporated into subsequent project contracts. [Chapter 590](#) provides guidance on how to incorporate environmental commitments into project contracts.

CEQ implementing regulations ([40 CFR 1502.11](#)) requires NEPA environmental documents to have a unique identification number that follows the documentation throughout the process. This number is required to be included on the cover of the document and in any notifications like the NOI.

The FEIS is prepared after the close of the 45-day public comment period for the DEIS. Public and agency comments on the DEIS are evaluated to determine if:

- The document sufficiently identifies and analyzes the impacts and mitigation of a proposed action or if additional studies are required.
 - Impacts of the preferred alternative fall within an envelope of impacts for alternatives described in the DEIS (especially if a modified or hybrid alternative is selected as preferred).
1. **Review and publication of the FEIS** – The FEIS is reviewed for legal sufficiency ([23 CFR 771.125\(b\)](#)) prior to FHWA formal approval of the document. The review is conducted by FHWA legal staff. Legal counsel has 30 days to review the document, and additional time may be required to address their comments and determine if the revisions are acceptable. The document is reviewed for compliance with FHWA and CEQ NEPA laws and regulations to minimize opportunities for procedural challenges in court. Comments are incorporated into the text and the document is signed by WSDOT.
 2. **Notice of Availability (NOA) and distribution of the FEIS** – After approval, the region or modal office distributes copies of the FEIS or a notice that it is available ([40 CFR 1502.19\(d\)](#), [WAC 197-11-460](#)).
 - A NEPA FEIS must be distributed before the document is filed with EPA for publication of the FEIS NOA in the Federal Register.
 - A SEPA FEIS is issued within 60 days of the end of the comment period of the DEIS unless the proposal is unusually large in scope, the environmental impact associated with the proposal is unusually complex, or extensive modifications are required to respond to public comments.

400.08(4) Record of Decision (ROD)

Under NEPA, the lead federal agency issues a ROD following the FEIS. The ROD explains the reasons for the project decision, summarizes any mitigation measures that will be incorporated in the project, and documents any required [Section 4\(f\)](#) approval ([40 CFR 1505.2](#)). Where relevant and appropriate, the mitigation measures should “address significant human health and environmental effects of proposed federal actions that disproportionately and adversely affect communities with environmental justice concerns” ([40 CFR 1505.3\(b\)](#)). NEPA implementation may require a monitoring and compliance plan for mitigation. See [40 CFR 1505.3\(c\)](#) for additional information.

The ROD must be made available to the public with appropriate public notice provided as required by [40 CFR 1506.6\(b\)](#). However, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere. It is WSDOT’s practice to publish an NOA for the ROD in the same newspapers previously used for other project notices.

A draft ROD is generally created by WSDOT for FHWA and is written based on the FEIS. The draft ROD is submitted to FHWA along with the draft FEIS during the environmental review and approval process. See the [NEPA and SEPA webpage](#) for procedures.

After circulation of the DEIS and consideration of comments received, the ROD should be combined with the FEIS into a single document ([23 CFR 771.124](#)), eliminating the 30-day public review period between the final EIS and ROD, unless:

1. The FEIS makes substantial changes to the proposed action relevant to the environmental or safety concerns that were documented in the DEIS or
2. There are significant new circumstances or information relevant to environmental concerns that bear on the impact of the proposed action (as compared to the DEIS).

In April 2019, the USDOT issued [guidance on the use of a combined FEIS/ROD and errata sheets in NEPA review](#). This assists with implementation of the combined FEIS/ROD process and errata sheet provisions in [49 U.S.C. 304a](#) and [23 U.S.C. 139\(n\)\(1\)](#).

400.09 Documenting an Environmental Assessment (EA)

400.09(1) NEPA Environmental Assessments (EA)

1. **Prepare the EA** – The purpose of the EA is to determine the extent and severity of environmental impacts. As described for an EIS, the EA should be succinct, describe impacts to both the natural and built environment, and account for direct, indirect, and cumulative effects. If the analysis identifies significant environmental impacts, an EIS must be prepared. See [Section 400.14](#) for a comprehensive explanation of “significance”. Refer to the Preparing an EA document on WSDOT’s NEPA and SEPA webpage for additional information. **Note:** Coordination Plans are optional for EAs under 23 U.S.C. 139, whereas they are mandatory for EISs.
 - a. **Scoping** – Scoping is recommended, but not required for an EA ([40 CFR 1501.9](#), [23 CFR 771.119](#)). Because scoping is optional for an EA, an NOI is not required. However, projects that choose to include optional scoping in their EA process should publicly notify the public, agencies, tribes, and other interested parties of the scoping details. If a draft EA is published, this outreach should still apply and WSDOT should consider any comments collected during this optional process in preparing the final EA ([40 CFR 1501.5\(e\)](#)). Advertisement of the optional scoping meeting in a local newspaper or on the project website is sufficient. For more information on the project scoping process, see [Chapter 300](#).
 - b. **Purpose and Need** – NEPA implementing regulations require EAs to include a Purpose and Need for the proposed action ([40 CFR 1501.5](#)). The Purpose and Need generally appears as the first chapter of an EA to provide a brief overview of information that must be considered in defining the purpose and need statement for the project. The statement must specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

The Purpose and Need statement explains to the public, decision makers, and interested parties why the project should be implemented and is the foundation for determining which alternatives will be considered. Evaluation criteria for screening EA alternatives must be developed based upon the Purpose and Need. See [Section 400.08\(1\)](#), the [NEPA and SEPA webpage](#), and contact the [NEPA/SEPA Program](#) for additional information on Purpose and Need.

- c. **Alternatives to the proposal** – The environmental document includes a comparison of impacts for different alternatives to the proposal. An EA must discuss the no-build alternative but may include only one build alternative.

The EA must include high-quality information ([40 CFR 1506.6](#)). This includes reliable data and resources, models, and indigenous knowledge. Existing information may be used as well as new information collected from reliable data sources to inform the analysis.

2. **Issue Notice of Availability (NOA)** – (30 day public review period) After approval of an EA, the region or modal office distributes copies of the EA or a notice that an EA is available to interested parties ([23 CFR 771.119](#)). Project teams should also issue a SEPA DNS concurrent with the release of the EA (using a DNS/Adoption form from Ecology’s SEPA document templates webpage), since the EA functions as a SEPA checklist. **Note:** the SEPA DNS only has a 14-day comment period, but project teams may elect to extend that to 30 days to match the NEPA EA comment period. For procedures see the WSDOT [NEPA and SEPA webpage](#) or contact the [NEPA/SEPA Program](#) for assistance.
 - a. The lead agency determines if a formal public hearing is required for an EA. Factors for consideration:
 - There are identified environmental issues (e.g., heavy traffic volumes on local streets, visual quality), which should be discussed in a public forum.
 - WSDOT has a substantial interest in holding a hearing to further public comment and involvement.
 - An agency with jurisdiction over the proposal (permitting agency) requests a hearing.
3. **Finding of No Significant Impact (FONSI)** – The federal lead issues the FONSI. The FONSI describes why the action does not have a significant impact and that further environmental evaluation is not needed. It includes or references the EA and identifies any mitigation commitments on the project and the authority to enforce them ([40 CFR 1501.6](#)). For example, terms and conditions or other measures in a relevant permit, incidental take statement, or other agreement. A monitoring and compliance plan for the mitigation is also required, consistent with [40 CFR 1505.3\(c\)](#). The FONSI includes any decisions or agreements that led to the FONSI. See [Section 400.14](#) for a comprehensive explanation of “significance.”

The FONSI is issued by sending an NOA to affected resource agencies, tribes, and interested public. For procedures and timing considerations see the WSDOT [NEPA and SEPA webpage](#) or contact the [NEPA/SEPA Program](#) for assistance.

400.09(2) SEPA Checklist

If a project is subject to NEPA, then NEPA documentation may satisfy WSDOT’s SEPA obligations (see [Section 400.06\(3\)](#) Using NEPA documents for SEPA). If your project does not trigger NEPA, then you must determine the appropriate SEPA compliance path. Either WSDOT’s ECS form or a SEPA checklist may be used. Project teams that would like to use an ECS in place of a SEPA checklist should contact the [NEPA/SEPA Program](#) for guidance. If a project team decides to use the SEPA checklist, refer to Ecology’s [SEPA document templates webpage](#) and refer to the [NEPA and SEPA webpage for SEPA DNS procedural guidance](#).

At WSDOT, region and modal staff find much of the information needed to complete the SEPA checklist on the Geographic Information Systems (GIS) Environmental Workbench.

Note: GIS information can also be found on WSDOT's [Community Planning Portal](#).

Region and modal Environmental Managers review the SEPA checklist (or ECS) and determine the significance of project impacts. If the project's adverse impacts are minor, the region issues a DNS. If the project is likely to result in significant adverse environmental impacts, the agency issues a DS and begins scoping for an EIS (see [Section 400.08](#)). However, SEPA-only EISs are very rare. Projects with significant impacts are likely to involve federal permits or approvals, thus triggering NEPA. See [Section 400.06\(3\)](#) for additional information on using NEPA for SEPA.

Agency procedures for completing SEPA are listed in [Chapter 468-12 WAC](#). Those procedures, along with [Chapter 197-11 WAC](#), and [Chapter 43.21C RCW](#) define the SEPA process.

400.10 Categorical Exclusions/Exemptions (CEs)

NEPA Categorical Exclusions and SEPA Categorical Exemptions (both abbreviated as CEs) are defined as projects that do not individually or cumulatively have a significant environmental effect (see [Chapter 300](#) for descriptions and detailed explanation). Some projects are /n Categorically Excluded from the NEPA process and Categorically Exempt from the SEPA process, and some include a CE from one Act but not the other. NEPA and SEPA each identify conditions that might elevate an action from its exempt status.

FHWA NEPA environmental procedures in [23 CFR 771.117](#), describe conditions when otherwise excluded activities require further documentation to justify the CE. Likewise, Ecology conditions each category of SEPA exemption in [WAC 197-11-800](#) to describe when the exemption does not apply. SEPA rules also do not allow the use of certain exemptions in designated critical areas ([WAC 197-11-908](#)).

Within WSDOT, the authority to determine that a project meets the criteria/category of being a CE rests with the region or modal Environmental Manager, and the Local Program Environmental Engineer for Local Programs projects. A CE is documented in WSDOT's ERS/ECS database for highway projects. FTA and FRA use CE worksheets to document their decisions – WSDOT staff complete these worksheets for FTA/FRA review. Whereas FHWA has delegated some decisions regarding CEs to WSDOT, FTA and FRA have not and must sign the CE as a NEPA document.

400.10(1) NEPA CEs (Categorical Exclusions)

Categorical Exclusions are projects that, by definition ([23 CFR 771.117\(a\)](#)), do not have significant environmental impacts. The 2024 [FHWA/WSDOT NEPA CE Programmatic Agreement \(PCE\)](#) allows WSDOT to approve NEPA Categorical Exclusions ([23 CFR 771.117\(c\)](#)) or “c-list” projects and [23 CFR 771.117\(d\)](#) or “d-list” projects). Projects with unusual circumstances as described in [23 CFR 771.117\(b\)](#) require review and approval by FHWA. D-list projects require some additional documentation to verify that the CE designation is appropriate. Subject-specific analysis should be “right-sized” to reflect the level of environmental impact. This can usually be accomplished within WSDOT's ECS form, or with a letter to the file with a very short summary of analysis to support the CE status. This analysis should be included in the project file and attached to the NEPA documentation.

Environmental documentation for c-list and d-list CE-level projects is accomplished in the ERS/ECS. A signed copy of the ECS serves as the official NEPA documentation for the project file. Guidance for completion of the form and who can sign the document is provided in ERS/ECS “help” screens accessible within the database. Contact the [NEPA/SEPA Program](#) for assistance if you do not have access to the ERS/ECS database.

Projects that include utility installations along or across a transportation facility are typically considered c-list projects covered by [23 CFR 771.117\(c\)\(2\)](#), although FHWA requires verification of the CE for each installation. Within the interstate system these projects also require ESA Section 7 and NHPA Section 106 documentation that show no impacts to their respective resources will result from the project. Refer to WSDOT’s *Utilities Manual* [Section 120.12](#) (Environmental Considerations) for additional information about utilities.

400.10(2) SEPA CEs (Categorical Exemptions)

There is no requirement to document exemptions in SEPA, but it is WSDOT’s practice to document in the ECS form to ensure SEPA was considered. SEPA categorical exemptions are listed in SEPA law ([Chapter 43.21C RCW](#)) in the State SEPA Procedures ([WAC 197-11-800](#)), within the State SEPA Procedures under Agency Specific Procedures ([WAC 197-11-860](#)), and in WSDOT’s Agency SEPA Rules ([WAC 468-12-800](#)). The region or modal Environmental Manager determines if a project is exempt from SEPA.

Note: Fish passage projects typically qualify as Fish Habitat Enhancement Projects (FHEP), which follow a streamlined process under [RCW 77.55.181](#). For additional information, The FHEP Summary sheet found on the preliminary design tab of WSDOT’s [Environmental guidance - Fish](#) webpage provides more guidance on the FHEP process.

400.10(3) Emergencies

According to FHWA’s Environmental Review Toolkit, most emergency work can be documented under a CE. The Toolkit section entitled [How is the NEPA Process different in an Emergency?](#) provides information on documenting emergency projects and repairs, both as a CE and if the action requires a higher level of review.

Many emergency repairs involve simple solutions that don’t require permitting and won’t impact sensitive resources. These may not even need a completed ECS form because they likely fall under various normal maintenance and repair programmatic agreements.

Many emergency repairs involve simple solutions that don’t require permitting and won’t impact sensitive resources. These may not even need a completed ECS form because they likely fall under various normal maintenance and repair programmatic agreements.

If there is an immediate threat to public health or safety, emergency repairs should begin as soon as it is safe to do so. Emergency repairs involving water resources (e.g., wetlands, creeks, rivers, and jurisdictional ditches) may require after-the-fact consultation and permitting once the imminent threat has subsided (e.g., landslide or undermined/lost roadway section).

These activities can almost always be classified as CEs under [23 CFR 771.117\(c\)\(9\)](#) or other applicable c-listed categories. This documentation often occurs after the event and after the repair is made.

Most Emergency Relief projects and emergency repairs qualify as a categorical exclusion under [23 CFR 771.117\(c\)\(9\)](#), which includes the repair, reconstruction, restoration, retrofitting, or replacement of eligible facilities if the work:

- Occurs within the existing right of way.
- Conforms to the pre-existing design, function, and location as the original.
- Is commenced within two years of the date of disaster.

Emergencies may also prompt permanent repairs to restore the roadway to its pre-disaster condition (e.g., permanent restoration), which could involve other non-emergency actions like removing a fish barrier. This type of work may start after environmental documentation and permitting is complete.

In either of the scenarios above, the project team will consult with applicable local, state, federal, or tribal agencies to determine the appropriate path forward.

Although some repair actions qualify as NEPA CEs, the exclusion does not apply to other regulations such as the ESA, Section 106, the Clean Water Act, or Section 4(f). There are different criteria for each of these in emergency situations, where what constitutes an emergency varies based on the regulation. See the FHWA's Environmental Review Toolkit for more information.

400.11 Environmental document legal considerations

400.11(1) Statute of Limitations

1. **NEPA Statute of Limitations (SOL)** – [23 CFR 771.139](#) establishes a 150-day statute of limitations on claims against USDOT and other federal agencies for permits, licenses, or approval actions taken by a federal agency if:
 - The action relates to a highway project funded or approved by FHWA.
 - A statute of limitations notification was published in the Federal Register announcing the action.
 - The action is final under the federal law.

If no statute of limitations notice is published, the period for filing claims is determined by the applicable federal law. If no statute of limitations is specified, then a 6-year claims period applies.

It is WSDOT's policy to publish a Statute of Limitations (SOL) notice in the Federal Register to expedite the resolution of issues affecting transportation projects. Typically, an SOL will be issued for all EAs and EISs. An SOL should also be issued for CEs that have known controversy.

2. **SEPA Notice of Action Taken (NAT)** – This is an optional process for the purpose of **limiting potential court challenges** of an environmental document. Publishing a NAT limits the appeal period to 21 days after the last newspaper publication of the NAT.

WSDOT's practice is to publish a NAT any time there is reason to believe challenges to the environmental document will be filed. Substantial controversy or known threats of challenges by project opponents are indicators that judicial review is likely. By limiting appeals to a certain duration, project schedules are less likely to be disrupted. The decision to publish a NAT is made by the project office. Normally the Environmental Manager of a region or modal office will write and sign the NAT.

[RCW 43.21C.080](#) describes the process for publishing the NAT.

400.11(2) Administrative record

The administrative record is a formal catalogue documenting the agency's decision-making process for a project and is required when a project challenge will be resolved in the courts. It reflects the project history, environmental evaluation, and prior decisions. A good administrative record shows the public and the courts that project decisions were not made in an arbitrary and capricious manner. It is important to include electronic and paper records that support why project decisions were made, as well as agency and public comments and responses to comments to document how opposing views were considered.

Individuals (region, modal, and HQ environmental staff) who have participated in and supported decision-making should maintain electronic and paper files appropriately.

You must maintain the records that support your administrative decision before, or at the same time as, the decision. It is not appropriate to reconstruct a record after a decision is made. This section identifies the appropriate content and structure of an administrative record. More procedures and helpful guidance on maintaining an Administrative Record can be found on the [NEPA and SEPA webpage](#).

1. **When to prepare a formal administrative record** – All projects must be documented to support key decisions. A formal administrative record must be prepared for projects requiring an EIS where substantial controversy exists or in the likelihood of a legal challenge. Formal documentation is optional for other projects.

Project files on all projects should be kept in an orderly manner throughout the life of the project, whether an administrative record is prepared. As decisions are made on the project, they should be recorded and filed.

2. **Who prepares an administrative record** – Preparing an administrative record is a collaborative effort between the Attorney General's Office (AGO) and the WSDOT project team. In many cases the federal Lead agency may also be named in a legal challenge, in which case the State's AG will work with the federal agency's legal counsel to compile the administrative record. If the federal agency is named as a defendant, the case will usually be defended by the US Attorney in federal court. The AGO is ultimately responsible for defending our decisions in court. As such, project teams should give the AGO due deference in determining what should go into the record. Once documents are identified and organized by the project team, the AGO will determine the contents of the Administrative Record.
3. **Administrative record contents** – An administrative record should contain all federal, state, regional, or local actions. These include corridor approval, corridor adoption, design approval, and region-approved transportation master plans or programs. It may also contain other related material.

Project teams can support the administrative record by:

- Documenting the decisions on how it approached environmental review and the information that supported those decisions.
- Including the name of the project in the subject line of emails related to the project.
- Keeping track of your individual emails and files that show a change in direction for a project – you do not need to save every email about a project if it doesn't add substantive merit to the record (e.g., meeting logistics, side notes tacked onto an email string that aren't relevant to the subject matter of the communication). Although you must keep relevant information, it is okay to clean your email folders of items that are not substantive.

- Retaining Substantive emails that contain direction on a course of action. These emails are public records – DO NOT DELETE THEM.
- Realizing the project team is the focal point for retaining project records. (Keep in mind that public record requests are different from the administrative record.)
- The administrative record of an EIS should contain the following elements, as applicable, in chronological order:
 - Table of contents
 - Project prospectus
 - Environmental Classification Summary (ECS)
 - Regional transportation plans or studies
 - Route studies
 - Notice of Intent (NOI)
 - Minutes of EIS scoping meeting(s)
 - Discipline specific and Interdisciplinary Team meeting minutes and recommendations
 - Agency meeting minutes and phone call summaries
 - Comments from public open houses
 - Public hearing transcript
 - Correspondence from agencies or the public and responses to them (both letters and emails)
 - Interoffice communications relating to project development
 - Discipline reports
 - Draft and final EIS
 - Copy of all references cited in the DEIS and FEIS
 - Official notices
 - Record of Decision (ROD)
 - Corridor, design, and access plan approvals
 - Affidavit of publication of Notice of Action Taken (NAT)
 - Other relevant evidence such as local zoning or planning reports, government studies, questionnaires, or university studies

The administrative record need not include every item in the project file. Generally, items that do not relate to a major project decision should not be included. Project teams should consult with the Attorney General's Office to determine if the project will need an administrative record. If the AG's Office recommends that an administrative record be prepared, the project team should coordinate closely with an Assistant Attorney General when preparing the record.

400.11(3) Reporting Requirements

[23 U.S.C. 157](#) requires lead agencies to report the number of CEs (c-list and d-list, separately), EAs, and EISs issued each year, as well as the number of d-list CEs, EAs, and EISs that were pending at the time of reporting, and the length of time it took to complete each EA and EIS. For EAs and EISs that were pending at the time of reporting, the lead agency must also report the percentage of the proposed actions that have identified funding and all other required federal, state, and local activities that are completed (i.e., only remaining approval is the approval of NEPA itself).

400.12 Applicable statutes and regulations

400.12(1) National Environmental Policy Act (NEPA)

President Nixon signed NEPA in January 1970 as the “national charter for protection of the environment” (PL 91 190, as amended; [42 U.S.C. 4321](#)). The intent of NEPA ([40 CFR 1500 – 1508](#)) is to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. NEPA procedures also inform the public of the environmental information before federal actions or decisions are made.

NEPA implementing regulations applicable to all federally aided projects were developed by the CEQ and are codified as [40 CFR 1500 – 1508](#). FHWA regulations applicable to federally aided highway projects are codified in [23 CFR 771](#).

400.12(2) Other Federal Environmental Statutes

In addition to NEPA, there are several other federal statutes that govern federal-aid highway projects. FHWA and other federal leads require documentation of compliance with the following laws prior to completing NEPA (i.e., approval of the ECS, or publishing a FONSI or FEIS) for a project.

1. **Endangered Species Act – Section 7 of ESA** requires federal agencies to confer with the US Fish and Wildlife Service or National Marine Fisheries Service (see [Chapter 436](#) for details).
2. **Section 106** – Section 106 of the National Historic Preservation Act applies to transportation projects affecting historic property listed on or eligible for listing on the National Register of Historic Places (see [Chapter 456](#) for details).
3. **Section 4(f) Evaluation** – Projects requiring funding or approval from a USDOT agency must comply with Section 4(f) of the USDOT Act of 1966 which established the requirement for consideration of park and recreational lands, wildlife and waterfowl refuges, and historic sites when siting transportation facilities. The law, codified in [49 U.S.C. 303](#) and [23 U.S.C. 138](#), is implemented by the FHWA through [23 CFR 774](#) (see [Chapter 457](#) for details).
4. **Section 6(f) – Outdoor Recreation Resources** – Section 6(f) of the Land and Water Conservation Fund (LWCF) Act of 1965 prohibits the conversion of property acquired or developed with LWCF grant funds to a non-recreational purpose without the approval of the NPS (see [Chapters 455](#) and [457](#) for details).
5. **Title VI** – Under [49 CFR 21.5](#) a federal aid recipient may not select a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin.

400.12(3) State Environmental Policy Act (SEPA)

SEPA ([Chapter 43.21C RCW](#)), adopted in 1971, directs state and local decision makers to consider the environmental consequences of their actions. State SEPA Rules are maintained by Ecology.

The SEPA Rules ([Chapter 197-11 WAC](#)), and Ecology's guidance, the SEPA Handbook, are posted on the [Ecology SEPA](#) webpage.

The WSDOT's Agency SEPA procedures ([Chapter 468-12 WAC](#), as amended) are located at the [Office of the Code Reviser](#) website.

400.13 Abbreviations and acronyms

AASHTO	American Association of State Highway and Transportation Officials
AGO	Attorney General's Office
BIA	Bureau of Indian Affairs
CE	Categorical Exclusion (NEPA) or Categorical Exemption (SEPA)
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DEIS	Draft Environmental Impact Statement (NEPA/SEPA)
DNS	Determination of Nonsignificance (SEPA)
DS	Determination of Significance (SEPA)
EA	Environmental Assessment (NEPA)
Ecology	Washington State Department of Ecology
EIS	Environmental Impact Statement (NEPA/SEPA)
EPA	Environmental Protection Agency
ERS/ECS	Environmental Review Summary/Environmental Classification Summary
ESA	Endangered Species Act
ESO	Environmental Services Office
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact (NEPA)
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
LWCF	Land and Water Conservation Fund Act
MOU	Memorandum of Understanding
NAT	Notice of Action Taken (SEPA)
NEPA	National Environmental Policy Act
NOA	Notice of Availability (of a NEPA document)
NOI	Notice of Intent (to prepare a NEPA EIS)
NPS	National Park Service
OFD	One Federal Decision
PEL	Planning and Environmental Linkages

RCW	Revised Code of Washington
ROD	Record of Decision (NEPA)
SDEIS	Supplemental Draft Environmental Impact Statement (NEPA/SEPA)
SEIS	Supplemental Environmental Impact Statement (NEPA/SEPA)
SEPA	State Environmental Policy Act
SFEIS	Supplemental Final Environmental Impact Statement (NEPA/SEPA)
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USCG	United States Coast Guard
USDOT	United States Department of Transportation
USFS	United States Forest Service
WAC	Washington Administrative Code

400.14 Glossary

Categorical Exclusion/Exemption – An action that does not individually or cumulatively have a significant environmental effect, as defined in NEPA/SEPA regulations, and is classified as excluded (NEPA) or exempt (SEPA) from requirements to prepare an EA/SEPA checklist or EIS. See [40 CFR 1508.1\(e\)](#) for NEPA definitions and [Chapter 300](#) (sections 300.04 and 300.05) for more information on scope and classification.

Communities with Environmental Justice Concerns – are those communities that may not experience environmental justice (see definition below). See [Chapter 460](#) for additional information on Environmental Justice and affected communities.

Cumulative Effect – Effects on the environment that result from the incremental effects of the action when added to other past, present, and reasonably foreseeable actions, regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time ([40 CFR 1508.1\(i\)](#)). See [Chapter 412](#) for additional guidance on cumulative effects.

Degree (of Significance) – In considering the degree of the effects, consider:

- Short- and long-term effects.
- Beneficial and adverse effects.
- Effects on public health and safety.
- Effects that would violate federal, state, tribal, or local law protecting the environment.

Direct Effect – Direct effects are caused by the proposed action and occur at the same time and place. Direct effects may occur during construction or operation of the project. Effects may be ecological, aesthetic, historic, cultural, economic, social, or health related ([40 CFR 1508.1\(i\)](#)).

Discipline Report – A detailed WSDOT report or memo to document the environmental analysis in the rare cases where the environmental impacts are so substantial, the required analysis is so complex, or the pertinent dataset is so large, that the analysis cannot reasonably be included within the environmental document. A discipline report is typically included in the appendix of the environmental document. A discipline report may also be written if the specific analysis is needed to support some other permit or approval requirement independent of the NEPA/SEPA process.

Effects (or Impacts) – Changes to the human environment that are from the proposed action or alternatives that are reasonably foreseeable, including direct effects, indirect effects, and cumulative effects. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, such as disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative. Effects also include effects on tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives. Effects may also include those resulting from actions which may have both beneficial and adverse effects, even if on balance the agency believes that the effects will be beneficial. See [40 CFR 1508.1\(i\)](#).

Environmental Document – Includes documents prepared in response to state and federal environmental requirements such as: Environmental Impact Statements (NEPA and SEPA), Environmental Assessments (NEPA), SEPA Threshold Determinations (DS, DNS, and MDNS) and associated SEPA checklists, Section 4(f) Evaluations, Section 106 Reports, Environmental Justice Reports, and other documents. See [40 CFR 1508.1\(k\)](#).

Environmental justice – means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision making and other Federal activities that affect human health and the environment so that people: (1) Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (2) Have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices. See [Chapter 460](#) for additional information on Environmental Justice and affected communities.

Environmentally Preferable Alternative – means the alternative or alternatives that will best promote the national environmental policy as expressed in section 101 of NEPA ([40 CFR 1502.14\(f\)](#); [40 CFR 1508.1\(n\)](#)).

Environmental Review – Is the consideration of environmental factors required by NEPA and SEPA. The “environmental review process” is the procedure used by agencies and others to consider the environment in decision making.

Federal Nexus – A determination that a federal agency:

- Is a proponent of a specified proposal (usually by providing funding)
- Must issue a federal approval (for example a permit, license, or other entitlement such as a request to use federal funds or federal land) for the proposal to proceed.

A federal nexus (even on an otherwise non-federal proposal) typically triggers the need for the federal agency or agencies to comply with various federal statutes. These include but are not limited to NEPA, Section 106 of the National Historic Preservation Act, Section 4(f) of the USDOT Act, Section 6(f) of the LWCF Act, and Section 7 of ESA. See the [Federal Nexus Requirements](#) on WSDOT’s [NEPA and SEPA webpage](#) (Scoping tab) for more information.

Indirect Effect (NEPA) – Indirect effects are caused by the proposed action or alternative and occur later in time or are farther removed in distance but are still reasonably foreseeable. Indirect effects may include effects related to changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems ([40 CFR 1508.1\(i\)](#)). See [Chapter 412](#) for additional guidance on indirect effects.

Joint Lead Agency – means a federal, state, tribal, or local agency designated in [40 CFR 1501.7\(c\)](#) that shares the responsibilities of the lead agency for preparing the environmental impact statement or environmental assessment.

Logical termini – Logical termini for project development are defined as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts. The environmental impact review frequently covers a broader geographic area than the strict limits of the transportation improvements.

Mitigation – NEPA ([40 CFR 1508.1\(y\)](#)) and SEPA ([WAC 197-11-768](#)) mitigation means avoiding, minimizing, rectifying, rehabilitating, restoring, reducing or eliminating the environmental impact over time by preservation and maintenance operations during the life of the action. Mitigation can also mean compensating for the impact by replacing or providing substitute resources or environments for those impacted by the project.

Planning and Environmental Linkages (PEL) – A collaborative and integrated approach to transportation decision-making that (1) considers environmental, community, and economic goals early in the planning process, and (2) uses the information, analysis, and products developed during planning to inform the environmental review process. See [Chapter 200](#) and WSDOT’s [PEL webpage](#) for additional PEL guidance.

Potentially Affected Environment – The affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act.

Purpose and Need – The Purpose and Need statement explains to the public, decision makers, and interested parties why the project should be implemented. The Purpose and Need statement is the foundation for determining which alternatives will be considered.

Reasonable Alternatives – Reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action. ([40 CFR 1508.1\(hh\)](#)).

Responsible Official – Official of the lead agency who has been delegated responsibility for complying with NEPA and SEPA procedures.

Scoping (public and agency scoping) – A formal process for engaging the public and agencies to comment on the project Purpose and Need statement, identify the range of alternatives, environmental elements and impacts, and mitigation measures to be analyzed in an EIS or an EA. It should not be confused with internal scoping to set a project’s budget.

SEPA Checklist – A standard form used by state and local agencies to obtain information about a proposal and to assist them in making a threshold determination. 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 SEPA rules under [WAC 197-11-960](#) list the information required in an SEPA checklist.

Significant Impact (also Significant Effects) – Under NEPA ([40 CFR 1501.3\(d\)](#)), agencies must analyze both the context of the action and the intensity of the effect. In assessing context and intensity, agencies should consider the duration of the effect. Other considerations include: setting, likelihood of occurrence, and severity, magnitude, or duration of the impact. Almost every transportation project that would be recognized as major federal action, no matter how limited in scope, has some effect on the environment. Additional information and examples for determining significance is found in [Section 400.03\(1\)](#), [40 CFR 1501.3\(d\)](#), and [40 CFR 1508.1](#).

Under SEPA, [WAC 197-11-330](#) specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

Threshold Determination (SEPA) – The threshold determination process is the process used to evaluate the environmental consequences of a proposal and determine whether the proposal is likely to have any “significant adverse environmental impacts.” The SEPA lead agency makes this determination and documents it as either a DNS, or a DS. A DS requires preparation of an EIS. State and local agencies use the SEPA checklist (see above) to help make a threshold determination.

Tribal Consultation – As defined in WSDOT Executive Order [E 1025](#), Tribal Consultation means respectful, effective communication in a cooperative process that works towards a consensus, before a decision is made or action is taken on actions that affect identified tribal rights and interests.