



BACKGROUND MEMO

January 2017

What is SEPA?

Enacted by the Washington Legislature in 1971, the **State Environmental Policy Act** – commonly called SEPA – helps state and local agencies in Washington identify possible environmental impacts that could result from governmental decisions such as:

- Issuing permits for private projects such as an office building, grocery store, or apartment complex.
- Constructing public facilities like a new school, highway, or water pipeline.
- Adopting regulations, policies, or plans such as a county or city comprehensive plan, critical area ordinance, or state water quality regulation.

SEPA Informs Decisions

State and local agencies in Washington use SEPA to evaluate proposed decisions. Information learned through the review process can be used to:

- Change a proposal to reduce likely impacts.
- Apply conditions to or deny a proposal when adverse environmental impacts are identified.

Using SEPA in Decision-Making

Under SEPA, project proponents are usually asked to provide information about the proposal and its potential impacts on the environment. When a proponent has gathered and submitted enough information about their proposal, the lead agency can:

- Issue a **determination of non-significance** – also called a DNS – if it finds the proposal is unlikely to have a significant adverse environmental impact.
- Issue a **mitigated determination of non-significance** – or **MDNS** – concluding that identified significant impacts will be reduced to a level of non-significance through specific mitigated measures.
- Require an **environmental impact statement** – or an **EIS** – if the information indicates the proposal is likely to have a significant adverse environmental impact. An EIS needs to include:
 - An evaluation of alternatives to the proposal.
 - Measures that would reduce or eliminate likely environmental impacts.

The DNS, MDNS or EIS may be appealed by parties who participated in the review process. SEPA gives state and local agencies the authority to require conditions on permits to offset or mitigate any identified adverse environmental impacts. Federal and state court decisions make clear that any conditions imposed must be directly related and proportional to the impacts of the project.



Some Projects Can be Exempt

SEPA also gives local governments the option to allow some minor projects to be exempt from review. Other projects may be exempt if they are consistent with adopted plans that underwent SEPA review. Various options include:

- **Increased exemption levels for minor construction projects** (WAC 197-11-800(1)(c))
- **Urban infill exemption levels** (RCW 43.21C.229)
- **Planned Action – Environmental Impact Statement (EIS)** (RCW 43.21C.440)

These are described in more detail on page 4.

Options for SEPA Exemptions Were Considered as Part of the Downtown Strategy

As part of the process to form a Downtown Strategy (DTS), the City explored various options for exempting projects in the Downtown from SEPA. The purpose is to reduce uncertain costs and permit review times associated with development. Environmental issues are still addressed, but rather than relying on the SEPA process for this, environmental issues are addressed upfront in the development code. The purpose of exempting SEPA is to reduce duplicative *process*, not to reduce environmental mitigation.

During scoping for the DTS, the City decided not to complete a planned action EIS for the entire Downtown, as the same objective could be achieved by increased exemption levels and/or a SEPA urban infill exemption. The DTS planning team reviewed available options in light of Downtown objectives. As a result, the Downtown Strategy is recommending the City establish Downtown as an Urban Infill Exemption Area.

A GAP Analysis was Completed

A first step was to identify any gaps in our environmental regulations where we have had to use SEPA in the past to address an environmental issue in Downtown. The next step is to establish regulations for these currently unaddressed environmental issues.

A gap analysis revealed the City has often used SEPA to reiterate regulations that are required regardless of SEPA (e.g., remediating contaminated soil & groundwater, controlling dust at the construction site). The gap analysis also identified three areas that should be addressed before establishing a SEPA exemption:

- 1) **Flood risk associated with sea level rise:** In the past, the City has used SEPA to address flood risk due to sea level rise by requiring higher finished floor elevations in high risk Downtown areas. To ensure this issue could still be addressed without SEPA, the City adopted increased flood-proofing standards for the Downtown in August of 2016.



- 2) **Off-site traffic impact mitigation:** There are a few areas where it's possible a large traffic generating project could cause traffic impacts needing to be mitigated through infrastructure improvements at the time of development (i.e., a traffic light.) To ensure this issue could still be addressed without SEPA, the Downtown Strategy will likely recommend adopting a threshold (i.e., size) at which Downtown projects require a traffic study (typically part of SEPA) to determine any needed improvements that would then be required.
- 3) **Cultural resources:** Tribal agencies tend to use SEPA notice as their trigger to comment on projects, and Downtown is of particular interest to these agencies due to the historical and cultural significance of Downtown lands. As a next step, City staff will meet with tribal and State Department of Archaeology and Historic Preservation (DAHP) representatives to discuss the other available opportunities for comment (e.g., at notice of application) and potential code revisions that could address the primary issues that could occur Downtown.

DTS Recommends Establishing Downtown as an Urban Infill Exemption Area

The State's SEPA statute allows for urban infill exemptions in order to encourage residential or mixed use development in urban areas where the density goals of the comprehensive plan are not being met. When an EIS has been prepared to analyze the development goals in the comprehensive plan (which is the case for Olympia), a city can exempt some or all of the following types of development from additional SEPA review:

- Stand-alone residential
- Mixed use residential/commercial
- Stand-alone commercial less than 65,000, excluding retail

The exemption would not apply to:

- Industrial uses
- Lands covered by water (in most cases)
- Projects where part of the proposal requires both exempt and non-exempt actions
- Some other very specific cases outlined under the SEPA statute

Additional Considerations and Next Steps:

- City should define what is meant by retail to include certain uses that include sales of products produced on the premises (microbrewery, artist studio, etc.)
- Consider a threshold at which Downtown projects should require a traffic study
- Meet with DAHP and tribal agency representatives to address potential historic, cultural and archaeological issues



BACKGROUND: Options Considered for SEPA Exemption in Olympia's Downtown

1. **Increased exemption levels for minor construction projects** (WAC 197-11-800(1)(c)) – The WA Department of Ecology has adopted rules to exempt permits for smaller-scale construction projects from SEPA review. Ecology recently amended those rules to provide cities and counties with the option to increase the exemption levels for certain types of projects that are consistent with an adopted comprehensive plan that underwent SEPA review.

For example, Olympia currently exempts projects that include construction of 9 dwelling units or less. The new rules allow the city to increase the exemption up to 30 single-family homes or 60 units of apartments or condominiums.

Example: Seattle has used this provision in five urban centers and urban villages, and in its Downtown, to tailor SEPA review thresholds to infill for those specific areas.

2. **Urban infill exemption levels** (RCW 43.21C.229) – This provision of the statute is intended to encourage residential or mixed use development in urban areas where the density goals of the comprehensive plan are not being met. When an EIS has been prepared to analyze the development goals in the comprehensive plan (which is the case for Olympia), a city can exempt some or all of the following types of development from additional SEPA review:
 - Residential
 - Mixed Use
 - Stand-alone Commercial up to 65,000 square feet (excluding retail)

Example: Kent has adopted an urban infill exemption ordinance for a portion of its Downtown to encourage residential and mixed use development.

3. **Planned Actions** (RCW 43.21C.440) – Cities and counties may prepare a detailed EIS in conjunction with a comprehensive plan or subarea plan that evaluates the environmental impacts of all the types of development proposed in the plan. Using the information in the EIS, the city/county adopts a “planned action” ordinance that identifies the conditions that each type of development must meet. When a project application is submitted that meets the conditions specified in the planned action ordinance, no additional SEPA review of that project is required.

Examples: A 2009 review of the results of ten cities’ planned actions:

<http://www.mrsc.org/artdocmisc/munkberg.pdf>.



BACKGROUND: Factors to Consider with SEPA Options

	Increased Exemption Levels for Minor Construction Projects	Urban Infill Exemption Levels	Planned Action
City can designate geographic area	Yes	Yes	Yes
Additional EIS required of city	No	No	Yes (typical cost \$150,000 - \$250,000)
Additional SEPA review for project permits	None for types of development designated by city, subject to state maximum thresholds	None for types of development designated by city	None, in most cases; city could define exceptions
Development types eligible for SEPA exemption	Residential, office, school, commercial, recreational, service, storage, parking; subject to state maximum thresholds	Residential, mixed-use, stand-alone commercial up to 65,000 square feet (retail excluded)	Defined by city in planned action ordinance; must have been analyzed in city's EIS
Results in pre-defined conditions for new development (i.e., predictability)	In city codes and development standards	In city codes and development standards	Detailed in planned action ordinance, in addition to city codes and development standards
Possibility of appeal of SEPA review	None for exempted types of development	None for exempted types of development	For EIS only; none for development projects that are consistent with planned action
Length of time remains in effect	No end date; effective until City Council action to discontinue	No end date; effective until City Council action to discontinue	Defined in planned action ordinance; typically 10-20 years
Reduced time and cost of permit process (for applicant and city)	Yes, for exempted types of development	Yes, for exempted types of development	Yes, for nearly all development