

WAC 197-11-660 Substantive authority and mitigation. (1) Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:

(a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.

(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decision maker. The decision maker shall cite the agency SEPA policy that is the basis of any condition or denial under this chapter (for proposals of applicants). After its decision, each agency shall make available to the public a document that states the decision. The document shall state the mitigation measures, if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.

(c) Mitigation measures shall be reasonable and capable of being accomplished.

(d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

(e) Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

(f) To deny a proposal under SEPA, an agency must find that:

(i) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and

(ii) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(g) If, during project review, a GMA county/city determines that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations or comprehensive plan adopted under chapter 36.70A RCW, or in other applicable local, state or federal laws or rules, provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action under RCW 43.21C.240, the GMA county/city shall not impose additional mitigation under this chapter.

(2) Decision makers should judge whether possible mitigation measures are likely to protect or enhance environmental quality. EISs should briefly indicate the intended environmental benefits of mitigation measures for significant impacts (WAC 197-11-440(6)). EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

(a) Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and

(b) Will not be analyzed in a subsequent environmental document prior to their implementation.

(3) Agencies shall prepare a document that contains agency SEPA policies (WAC 197-11-902), so that applicants and members of the public know what these policies are. This document shall include, or reference by citation, the regulations, plans, or codes formally designated under this section and RCW 43.21C.060 as possible bases for conditioning or denying proposals. If only a portion of a regulation, plan, or code is designated, the document shall identify that portion. This document (and any documents referenced in it) shall be readily available to the public and shall be available to applicants prior to preparing a draft EIS.

[Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. WSR 97-21-030 (Order 95-16), § 197-11-660, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110. WSR 84-05-020 (Order DE 83-39), § 197-11-660, filed 2/10/84, effective 4/4/84.]