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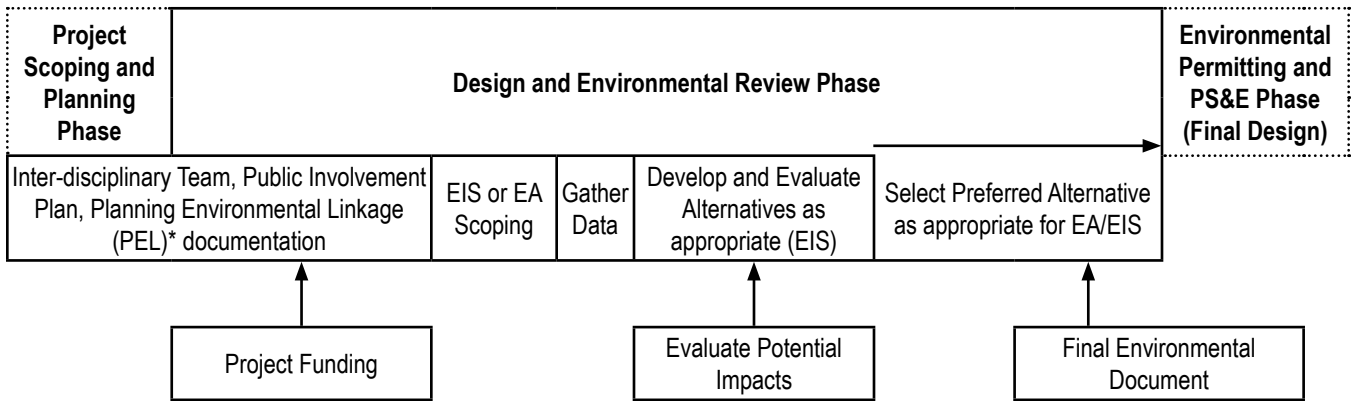
## **400.01 Environmental Review in Project Development**

WSDOT uses a [Practical Solutions](#) approach for transportation decision-making ([RCW 47.01.480](#)). The Practical Solutions approach is performance based and data driven, using the latest tools and performance measures to support efficiencies in operation, to reduce travel demand, and to reduce the need for costly new infrastructure. Community engagement is a key factor in finding Practical Solutions. Additionally, there is emphasis on developing a concise definition of the project performance needs to include only the work necessary to achieve a needed improvement. In doing so, the multimodal system as a whole receives the greatest return on investment. WSDOT projects transition from Transportation Planning ([Chapter 200](#)) 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. 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:** Planning and Environmental Linkage (PEL) refers to the approach of considering environmental goals in planning and using work done in planning to inform the environmental process.

The Environmental Review phase ends with approval of environmental documentation including:

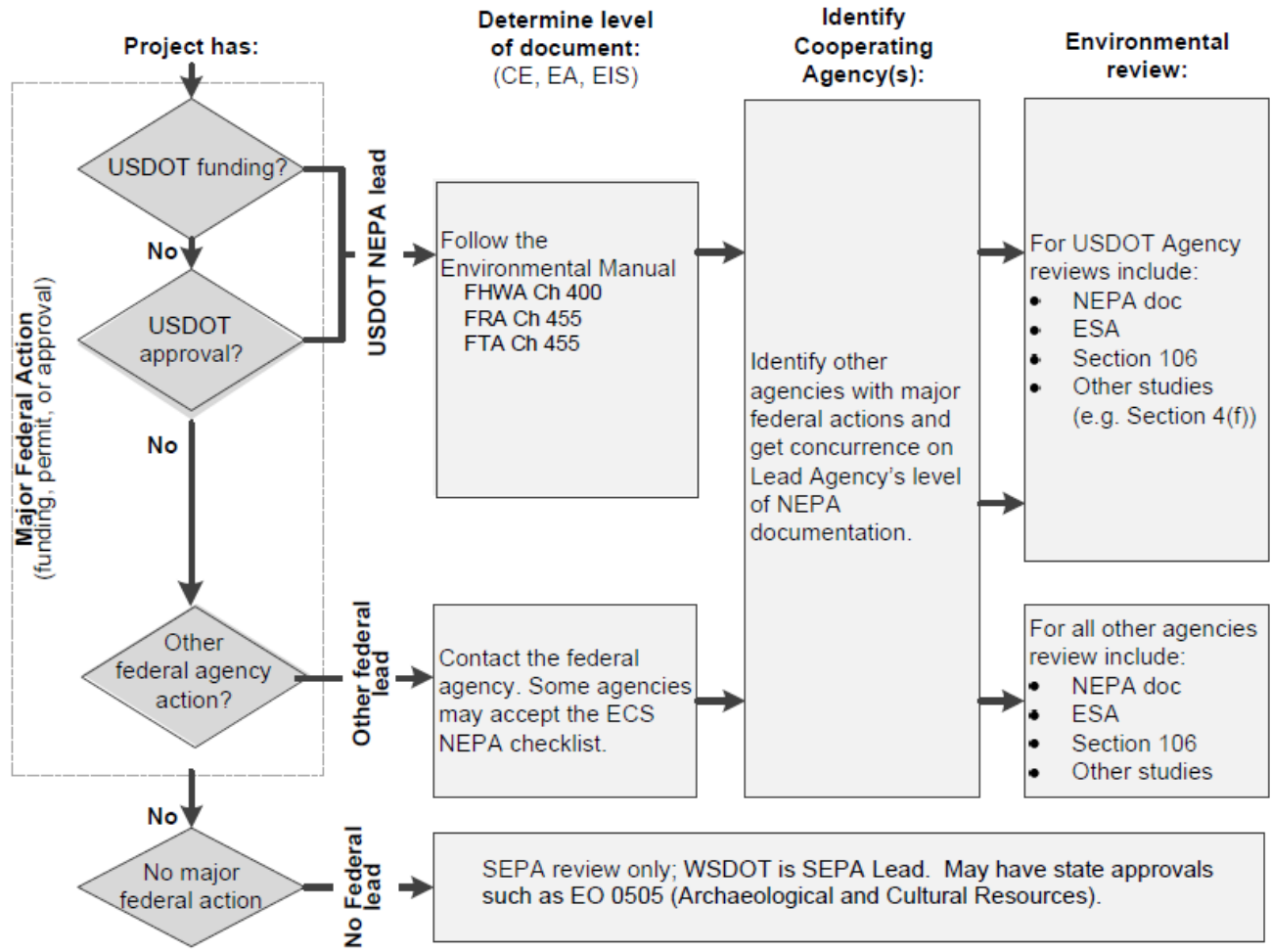
- NEPA/SEPA ([Chapter 400](#))
- Endangered Species Act ([Chapter 436](#))
- Section 106 of the National Historic Preservation Act ([Chapter 456](#))
- Section 4(f) of the Department of Transportation Act ([Chapter 457](#))
- Section 6(f) Outdoor Recreation Resources ([Chapter 457](#))

After the environmental documents are finalized environmental permits can be issued and PS&E can begin. Also, if applicable, 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.

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, access break, etc.), funding, or a permit. When WSDOT initially scopes a project it determines whether or not 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 & documentation needs

**Determining the lead agency & documentation needs**



## 400.02 Roles and Responsibilities

### 400.02(1) Lead Agencies

Federal and state laws require designation of an agency to lead the environmental review process. [40 CFR 1501.5](#) lists factors to consider in determining federal lead agency, as well as the process for resolving lead agency disputes. The primary role of the federal NEPA lead agency is decision making. They also provide guidance and independently evaluate the adequacy of the environmental document (see [42 USC 4332\(D\)\(ii\)](#) and [23 CFR 771.123](#)). Guidance for determining lead agency for State Environmental Policy Act (SEPA) is found in [WAC 197-11-922](#).

Federal NEPA leads 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 FHWA as the NEPA lead. [One Federal Decision](#) provides new requirements for the federal lead on EIS level projects, discussed further below.

Agencies may co-lead the environmental review if the project is funded by more than one federal agency or if they have additional approval responsibilities. Potential NEPA co-leads 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. WSDOT staff is advised to contact any federal lead or co-lead agency to understand their NEPA requirements and define the role of each co-lead before settling on a strategy to complete NEPA. If your project will require a US Coast Guard Section 9 permit, refer to the MOA between the US Coast Guard and FHWA for NEPA coordination requirements ([Appendix B](#)).

WSDOT, FHWA, and the local government agency share co-lead agency status under NEPA for local agency projects funded by FHWA. Together, the co-lead agencies approve and sign the NEPA environmental document. However, the local agency is generally the lead agency responsible for SEPA.

WSDOT is the SEPA lead agency ([WAC 197-11-926](#)) for transportation projects it identifies on the state system. In accordance with state law, WSDOT has adopted its own rules and procedures for implementing SEPA ([WAC 468-12](#)). WSDOT's SEPA responsibilities are based on its authority to site, design, construct and operate state transportation facilities. WSDOT typically prepares, approves and signs its own SEPA documents.

## 400.02(2) Cooperating/Consulted Agencies

Under NEPA, any federal agency with jurisdiction must be asked to become a cooperating agency. By serving as a cooperating agency, the agency can ensure that any NEPA document needed for the project will be crafted to also satisfy the NEPA requirements for its particular jurisdictional responsibility. WSDOT's policy is to invite non-federal agencies and tribes to be cooperating agencies when they have jurisdiction or special expertise. See [Exhibit 400-2](#) 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 is required from cooperating agencies whose authorization is required for the project. The terms and requirements of agency involvement under SEPA are similar to that of NEPA. For regulatory guidance, see [CEQ 40 CFR 1501.6](#), [23 CFR 771.109](#) and [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 a permitting timetable, identify a project point of contact, and define and agree on roles and expectations at the beginning of the project. Project teams will define the roles and expectations in a [Coordination Plan](#).

1. **Requesting Cooperation** – According to CEQ regulations, federal agencies with jurisdiction must accept cooperating agency status. The federal NEPA 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.
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 U.S. Forest Service, Bureau of Land Management, Bureau of Indian Affairs, 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.
3. **Local Agencies** – Local jurisdictions 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](#).

## 400.02(3) Participating Agencies

Federal transportation law also allows "participating agency" status. This term is unique to 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 the development of a project's environmental checklist, coordination plan, and concurrence on project schedule.

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. 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 in regards to 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.

Care should be taken when evaluating your list of potential participating agencies. It is not necessary to invite agencies that have only a tangential, speculative, 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 with regard to 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 the Coordination Plan (see the [NEPA & SEPA Guidance](#) webpage). It is appropriate to tailor an agency's participation to its area of interest or jurisdiction.

#### **400.02(4) Tribal Participation**

Tribes can be involved in four capacities under NEPA:

- As a cooperating agency (with expertise and/or jurisdiction);
- As a participating agency on EIS projects;
- As a consulted party;
- As an affected community.

See [Chapter 530](#) and the WSDOT [Tribal Consultation](#) webpage for guidance on when and how to consult with tribes during the NEPA environmental review process on projects.

#### **400.02(5) Public Involvement/Community Engagement**

Public involvement and a systematic interdisciplinary approach (involving other agencies with jurisdiction/expertise) are essential parts of the transportation project development process ([23 CFR 771.105\(c\)](#)). NEPA and SEPA require notification and circulation of environmental documents to allow consideration of public input before decisions are made. Lack of public notice can justify an appeal of the procedural aspects of NEPA and SEPA processes and delay projects.

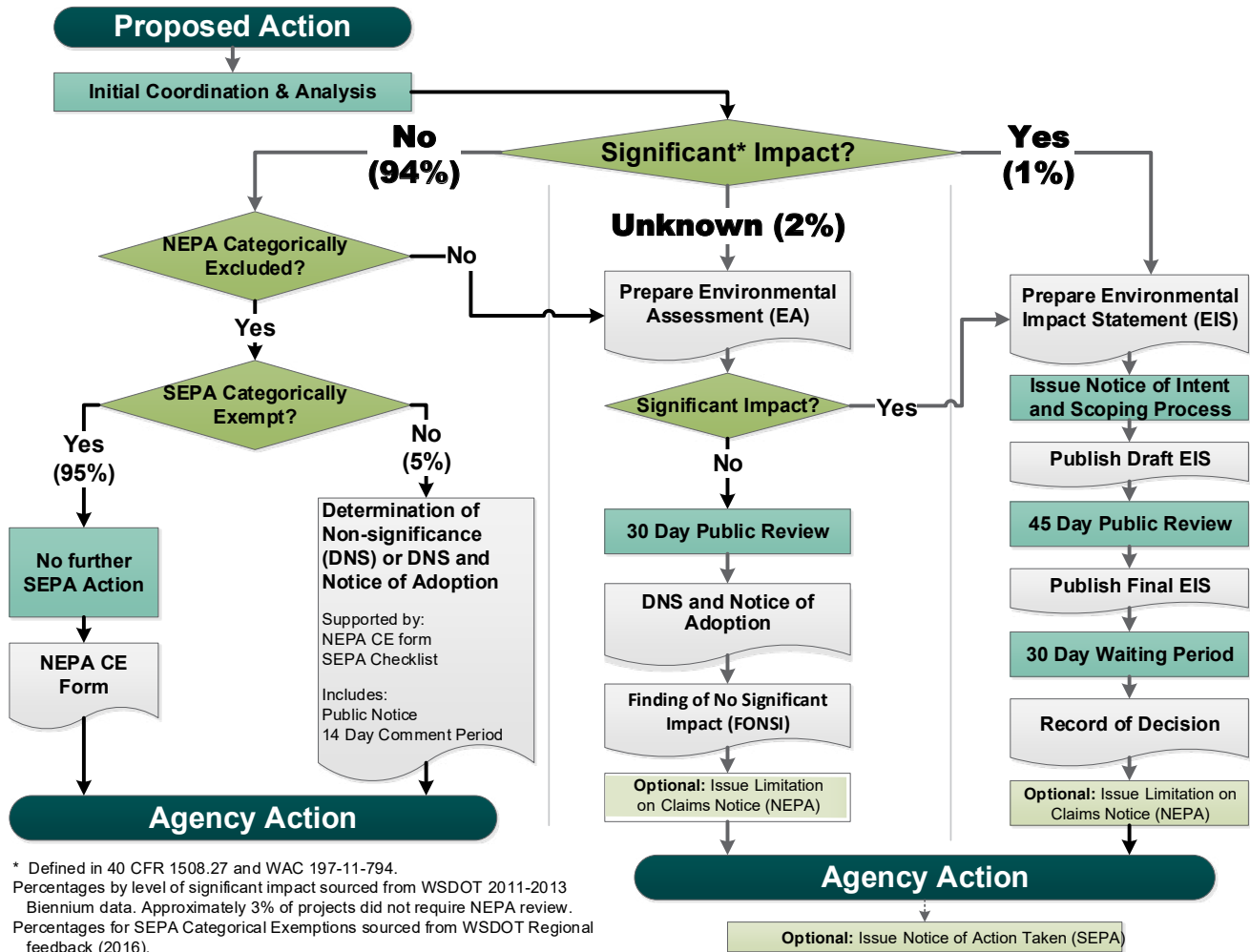
There are no public notice requirements for NEPA or SEPA CEs, but open houses, newsletters, and other virtual or in person public outreach are encouraged for any transportation projects. The project’s complexity and/or level of controversy should be used to judge the right amount of public involvement.

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](#) (2016).

Exhibit 400-3 Potential Cooperating Agencies

Agency	Jurisdiction
Environmental Protection Agency (USEPA)	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) U.S. 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 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 Act (Section 6(f)) and review of some Section 4(f) Evaluations
Rural Electrification administration (REA)	Relocation of utilities constructed or assisted with REA loans
Tribal Governments	Tribes with expertise or jurisdiction
U.S. Army Corps of Engineers (USACE)	Section 10 and Section 404 Permits, including wetland fill activities
U.S. Coast Guard (USCG)	Projects involving water crossings (bridges or culverts)
U.S. Fish & Wildlife Service (USFWS)	Areas funded under various fish and wildlife related grant programs or projects affecting endangered species (ESA)
Washington State Agencies: Dept. of Archaeology & Historic Preservation (DAHP) Dept. of Ecology (DOE) 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

Exhibit 400-4 NEPA/SEPA Environmental Review Process



**400.02(6) WSDOT Internal Roles and Responsibilities**

See the [NEPA/SEPA Documentation Roles and Responsibility Table](#) for a summary of WSDOT and FHWA NEPA/SEPA roles and responsibilities.

**Projects with WSDOT as the Lead Agency**

When WDOT 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 regional and modal offices by developing policies, programs, and initiatives to implement the agency’s environmental policy and to assist with project delivery. ESO staff assists region and modal staff by ensuring document quality and providing an independent third party review prior to signature.

The Director of Environmental Services is the Responsible Official for all NEPA EIS/EAs and SEPA EISs in draft, final, supplemental and adoption formats. For all other NEPA and SEPA documents, the Responsible Official is the regional or modal Environmental Manager. This applies to all projects where WSDOT is the lead agency, including ferry and rail projects. The ESO NEPA Specialist works with project teams regarding project re-evaluations, including assessing projects with numerous re-evaluations to ensure the ESO Director is aware



of changes in the project following the initial determination regarding significance. The Responsible Official is the signatory authority for the document. The Responsible Official:

- Verifies whether the project has significant impacts and the appropriate level of study needed to describe the impacts.
- Assures the procedural requirements of NEPA/SEPA have been satisfied, including public involvement (as appropriate), comment and response.
- Ensures the project has been identified as being fiscally constrained (for example listed on the STIP).
- Signs environmental documents to verify the document's adequacy and that document quality standards have been met.

NEPA EISs/EAs, SEPA EISs and any Supplemental EAs/EISs prepared by region and modal offices are reviewed by ESO before they are submitted as final. The ESO Director signs these documents along with FHWA, or other federal oversight agencies for NEPA purposes. The ESO Director signs SEPA EISs and Supplemental EISs as the agency approver.

### Projects with a Local Public Agency as the Lead Agency

Local Programs Office oversees the distribution of federal funds to cities and counties. The 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.

## 400.03 Identifying the Type of Environmental Document

Projects are classified for environmental review during Project Scoping. This process is documented using WSDOT's Environmental Review Summary (ERS) 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 environmental impact or controversy and controls the type of environmental document as shown below.

- Class I projects require an EIS and result in a Record of Decision (ROD).
- Class II projects are Categorically Excluded from the NEPA process or Categorically Exempt from the SEPA process. For FHWA projects, NEPA Categorical Exclusions are documented with WSDOT's CE Checklist (aka the ERS/ECS). FTA and FRA use CE worksheets to document their decisions. For local agency projects see the [Local Agency Guidelines](#) M 36-63. If you need access to the appropriate form to document a NEPA CE contact your HQ environmental staff.
- Class III projects require a NEPA Environmental Assessment (EA) or a SEPA Environmental Checklist to determine project impacts. Depending on level of impact from these documents, an EA results in a Finding of No Significant Impacts (FONSI) or a Notice of Intent to develop an EIS (if project impacts are found to be significant). Similarly, an Environmental Checklist leads to a Determination of Non-Significance (DNS), or a Determination of Significance (DS) and Scoping Notice to draft an EIS. ([WAC 197-11-310](#)).

Projects excluded from NEPA review may still require SEPA review ([WAC 197-11-660](#)). Likewise, projects categorically exempt under SEPA may require additional documentation for the NEPA process.

Each level of environmental review requires WSDOT and local agencies to comply with a set process and complete a specific type of environmental document. [Exhibit 400-3](#) shows the NEPA process and document type required for each level of environmental review and the SEPA process and document type. The time required for environmental review varies for each documentation type.

## 400.04 NEPA/SEPA Procedures

Procedures supporting these policies can be found on the NEPA & SEPA Guidance webpage. The webpage allows the reader to follow a step by step process for completing NEPA and SEPA documentation.

Federal transportation legislation is often passed with rules that modify how USDOT implements NEPA.

A final rule on the Environmental Review Process ([23 CFR 771](#)) and Section 4(f) Requirements ([23 CFR 774](#)) was published in the Federal Register in October 2018. The rule change reflects FAST Act and MAP-21 changes to NEPA and 4(f) implementing procedures, discussed below, and adds the Federal Railroad Administration (FRA) to both regulations. The complete, redline changes to the rules can be viewed [here](#).

In April of 2018, a “[One Federal Decision](#)” memorandum of understanding was issued for the implementation of Presidential Executive Order [13807](#). The MOU and the order establish a framework for federal agencies to streamline the NEPA EIS and permitting processes by implementing a coordinated NEPA process that results in a single EIS and ROD. The MOU establishes specific concurrence points for cooperating agencies at key milestones such as purpose and need development and range of alternatives. Also presented is a permitting timetable for completing NEPA within two years from the issuance of the notice of intent, [page limits](#) for EA and EIS documents, and a renewed emphasis on pre-scoping and Planning Environmental Linkage (PEL) work. This MOU is a continuation of the FAST Act and MAP-21 streamlining and efficiencies focus.

In 2015, the Fixing America’s Surface Transportation Act or FAST Act was signed into law. FAST act stresses project coordination and builds on the requirements in Moving Ahead for Progress in the 21st Century Act (MAP-21). Major changes 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 a permitting dashboard. The Act imposes several limitations on judicial review, requiring that challenges 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, and requiring the courts to consider impacts of the court decision on jobs and the economy when issuing a project stay during litigation.

MAP-21, passed in 2012, created new Categorical Exclusions and provided opportunity to accelerate the EIS process by allowing certain projects to complete an FEIS by attaching an errata sheet to a DEIS. The Act required a programmatic review to compare and contrast NEPA with NEPA-like state laws. MAP-21 modified the statute of limitations from 180-days statute of limitation established in SAFETEA-LU to a 150-day statute of limitations for challenges to NEPA actions ([23 USC 139\(l\)](#)).

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A legacy for Users or SAFETEA-LU was signed into law in 2005, expired in 2009, but was renewed until replaced with MAP 21. SAFETEA-LU began a series of delegations from USDOT to state DOTs, including delegation of Categorical Exclusions for all states and complete NEPA assignment to 5 states. The Act increased responsibilities for a new category of NEPA stakeholders called “participating agencies” and added procedures for notice and comment related to defining project purpose and need and determining project alternatives.

## 400.05 Ensuring Environmental Document Quality

Well written documents make it easy for government agencies and interested persons to understand the project, encourage timely issue resolutions, reduce project costs and help us meet project deadlines.

### 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.

EISs and EAs should be as concise as possible. Both NEPA and SEPA suggest page limits, 75 pages for NEPA EAs, 150 to 300 pages for NEPA EISs ([USDOT Policy](#)), 75 to 150 pages for SEPA EISs ([Ecology handbook](#)). 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 document 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 [Preparing quality environmental documents](#) webpage.

WSDOT’s [Reader Friendly Tool Kit](#) provides specific tools for developing EISs and EAs. Discipline reports, intended for specific technical audiences, do not need to adhere to the standard reader friendly format. However, they should be clearly written following the plain language principles ([EO 05-03](#)). The WSDOT region and modal teams have access to examples of reader friendly environmental documents and can provide those to others upon request.

### **400.05(2) Publication Standard Messages**

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

- Availability and cost of environmental document
- [Title VI and ADA compliance](#)

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 [Web Accessibility and Section 508](#) webpage for guidance on making webpages and pdfs accessible.

## **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.150](#) and [WAC 197-11-600](#)). If an analysis has already been done for the proposed project or a similar project, use it as long as 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 1502.21](#) 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 NEPA lead agencies to determine if a formal re-evaluation is required.

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

- It has been more than three years since the DEIS was published and no acceptable FEIS on the project has been submitted to FHWA. WSDOT re-evaluates other NEPA documents if major steps to advance the action have not occurred within three years of the most recent Federal action. Following approval of the FHWA decision document (CE, ROD, or FONSI) WSDOT must consult with FHWA prior to further FHWA approvals (such as authority to undertake final design, acquisition of a significant portion of right of way, or approval of the plans, specifications, and estimates) to determine if the NEPA document is still valid.

- There is a substantial change in project scope or proposed action and it is uncertain if a supplemental environmental document is required. 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.
- 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.

WSDOT or the federal NEPA 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. The FHWA Area Engineer may make an informal inquiry with a note to the project file or request that the project office complete a formal re-evaluation.

For CEs, project changes can typically be documented with a new categorical exclusion.

There is no required format for a written re-evaluation. Check with the federal NEPA lead to ensure you are following their procedures.

For FHWA, re-evaluations can be documented with a letter, memo, or in the ERS/ECS database within the Environmental Documentation tab (when printed, Part 2 of the CE Checklist (ECS) form will identify the document as a reevaluation). When determining which method to use, consider how much explanation is needed, how extensive the changes are, and whether or not 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.

The re-evaluation needs to address all the environmental elements and 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 and to ask the federal lead agency if they concur. Federal review and approval of the re-evaluation document is required.

A re-evaluation is not a supplemental environmental document. If supplemental information is required by the FHWA Area Engineer, a re-evaluation cannot be used.

2. **SEPA** – ([WAC 197-11-600\(4\)](#), [197-11-620](#), [197-11-625](#)) 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 regional 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).

The re-evaluation process is not used for 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 does not result in any new significant adverse impacts ([WAC 197-11-600\(4\)\(c\)](#) and [625](#)).

#### **400.06(2) Supplemental Documents**

Supplemental documents are drafted when existing environmental documents don't cover the breadth or scope of impacts of a project. Supplemental documents are generally required:

- When there is a substantial change in the project scope.
- If the project's selected alternative changes.
- When a new alternative outside the scope of the ones considered in the original analysis is being considered.
- When impacts or mitigation requirements have substantially changed since issuance of the environmental documents.

The FHWA Area Engineer or other federal lead will determine when a NEPA supplemental document is required. NEPA supplemental documents include a Supplemental DEIS (SDEIS), or a new DEIS. ([23 CFR 771.130](#) and [40 CFR 1502.9](#)). EAs can also be supplemented by following the same rules.

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. Although scoping may be helpful for a new DEIS.

There is no required format for a supplemental NEPA EIS. Because the process is similar to that of an EIS, there is a Draft and a Final SEIS. However, the FHWA Technical Advisory [T 6640.8A](#) on pages 49 and 50 directs that the following information be supplied:

- Sufficient information to briefly describe the proposed action.
- The reason why the SEIS is being prepared.
- Status of a previous DEIS or FEIS.

- Only address changes that required the SEIS to be written and new information that was not available.
- Reference and summarize previous EIS as appropriate.
- Update 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 DEIS. See the WSDOT [NEPA & SEPA Guidance](#) webpage for guidance.

### **400.06(3) Using NEPA Documents for SEPA**

All WSDOT projects with federal funding will require NEPA and SEPA documentation. Completing the NEPA and SEPA process concurrently and in the same document is preferred when a project requires an EIS ([RCW 43.21C.150](#) and [WAC 197-11-610\(3\)](#)). The NEPA and SEPA processes can also run concurrently with a NEPA EA. A NEPA EA is the functional equivalent of the SEPA Checklist and can be adopted as a DNS ([WAC 197-11-610\(2\)](#)). However, any major changes that occur as part of the EA/FONSI, must be reflected in the project SEPA documentation as part of the project file. The SEPA determination for an adopted EA can be either a DNS or a DS. If the lead agency determines the information in an EA suggests the project will have significant adverse environmental impacts and therefore issues a DS for the project, the agency will initiate scoping and develop a SEPA EIS.

SEPA regulations allow WSDOT to adopt the NEPA CE Checklist (ECS) as the SEPA checklist (with supplemental information attached). The SEPA determination and checklist would then be sent out for public review as appropriate. Adopting and sending out the ECS for review in place of the SEPA checklist is not recommended due to its unfamiliarity with other agencies reviewing SEPA checklists.

### **400.07 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, as illustrated in [Exhibit 400-3](#). See the [NEPA & SEPA](#) webpage for step by step guidance.

If you are considering using a Programmatic or Tier 1 EA/EIS for a broad strategic program, plan, or policy level decision (not project-site-specific) make sure you discuss this in the NEPA Strategy Meeting with ESO.

The Practical Solutions approach parallels work required by NEPA and SEPA. Defining a project's purpose and need, assessing alternatives, and the role of community engagement are shared principles of all three processes. As the team prepares to document a project, ensure a Practical Solutions approach is included.

## 400.07(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 1501.7](#), [23 CFR 771.105\(a-d\)](#), [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.

The purposes of scoping are:

- To present the project Purpose and Need and solicit comment.
- To present the range of alternatives that will be considered in the environmental document and solicit comments.
- To initiate the public involvement process, invite and solicit comments from affected persons, businesses, organizations, agencies, and tribes.
- To identify potential environmental impacts and benefits of the proposed action.
- Begin documenting the rationale for subsequent decisions.

It is important to keep in mind that USDOT funding or policy changes, such as the 2015 [FAST Act](#), can change or add new requirements to NEPA. Guidance for how to design the scoping process and on new NEPA regulations is provided on the [NEPA & SEPA Guidance](#) webpage.

### Essential Elements of Scoping

1. **Notice of Intent (NOI)** – NEPA CEQ regulations require that a Notice of Intent (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. The One Federal Decision EO 13807 states a goal for the completion of major infrastructure project within 2 years of the NOI.
2. **Coordination Plan** – The 2015 FAST Act 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. FAST Act also 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.
3. **Purpose and Need Statement** – The Purpose and Need Statement explains the importance of and reason for the project. It 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 general public such as mobility, safety, or economic development. WSDOT considers multimodal and environmental context and assets in a project's need.



The lead agency 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. The opportunity for involvement occurs during EIS 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.

4. **Alternatives to the Proposal** – The environmental document includes a comparison of impacts for different alternatives to the proposal. An EIS must discuss the no build alternative and a reasonable range of build alternatives.

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. The opportunity for involvement occurs during EIS scoping. Comments and responses are documented in 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 guidance [TA 6640.8A](#).

- b. **SEPA Criteria for Alternatives** – 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.

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.

#### **400.07(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. The DEIS summarizes the early coordination and EIS scoping process, identifies key issues, and presents pertinent information obtained through these efforts.

1. **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 be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

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.

2. **Analysis of Impacts - Direct, Indirect, and Cumulative** – 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 potential impacts and the type, size, and location of the facility will dictate the scope of the impact analysis. Project teams may elect to complete discipline reports if additional information or technical detail is needed to support the analysis presented in the EIS or EA. These reports should be “right sized” to

adequately address the issue without over analysis. Guidance for completing a discipline report can be found on the WSDOT [Preparing quality environmental document](#) webpage and on individual discipline webpages.

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.
- Briefly discuss alternatives that were eliminated from detailed study and explain why they were dropped.
- Devote substantial treatment to each alternative considered in detail, including the proposed action, so reviewers may evaluate their comparative merits.
- Include a discussion of the no action alternative.
- Identify the agency's preferred alternative or alternatives.
- Include appropriate mitigation measures not already included in the proposed action or alternatives.
- Evaluate all alternatives to a comparable level of detail. The lead agency may choose to develop the preferred alternative to a higher level of detail ([23 USC 139\(D\)](#)) if the preferred alternative has been identified in the document with FHWA/lead federal agency approval.

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

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.

Both NEPA and SEPA require analysis of direct and indirect impacts, and cumulative effects. See [Chapter 412](#) for guidance on analysis of indirect and cumulative impacts. Climate change implications of the project should also be discussed, as appropriate. See the [WSDOT Climate Change – Adapting and Preparing](#) webpage for the most recent climate change guidance and contact information.

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.

Include a notice statement in the DEIS that a combined FEIS/ROD might be prepared.

3. **Mitigation of Impacts** – The environmental document must discuss the proposed means to mitigate the identified environmental impacts. Under CEQ regulations ([40 CFR 1508.20](#)), mitigation may include:
  - Avoiding the impact altogether.
  - Minimizing impacts by limiting the scale of the action.
  - Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  - Reducing or eliminating the impact over time by preservation and maintenance operations.
  - Compensating for the impact by replacing or providing substitute resources or environments.
4. **Publish and Circulate the DEIS** – Circulation of a Draft EIS is required under federal and state regulations ([40 CFR 1502.19](#), [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 U.S. Environmental Protection Agency (USEPA) for publication in the Federal Register. To ensure the document is distributed before filing, the documents should be distributed to USEPA at the same time it is distributed to the public and agencies. FHWA will post EIS projects to the Federal Infrastructure permitting dashboard, as described in the Preparing an EIS procedure located on the [WSDOT EIS/EA Processes](#) webpage.

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

5. **Public Hearing** – Under NEPA, public hearings are required for all NEPA EIS projects.

Under SEPA, public hearings are held when ([WAC 197-11-502](#), [197-11-535](#), [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.

Refer to [Design Manual Chapter 210](#) for hearing requirements and procedures.

### **400.07(3) Final EIS (FEIS)**

The FEIS: contains WSDOT's final recommendation and preferred alternative(s); 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.

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:

- Document sufficiently identifies and analyzes the impacts and mitigation of a proposed action or whether 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. The procedure is described on the [EIS/EA Processes](#) webpage.
  2. **Notice of Availability and Distribution of the FEIS** – After approval, the regional or modal offices distributes copies of the FEIS or a notice that it is available ([40 CFR 1502.19\(d\)](#), [WAC 197-11-460](#)). For procedures see the [EIS/EA Processes](#) webpage.
    - A NEPA FEIS must be distributed before the document is filed with USEPA for publication of the FEIS Notice of Availability 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.

### **400.07(4) Record of Decision (ROD)**

Under NEPA, the lead federal agency issues a Record of Decision (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](#)). 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 a Notice of Availability (NOA) for the ROD in the same newspapers previously used for other project notices.

A draft Record of Decision (ROD) is generally drafted 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 & SEPA Guidance](#) webpage for procedures.

Under certain circumstance, the ROD can be combined with the final EIS into a single document ([23 CFR 771](#)), eliminating the 30-day review public review period between the final EIS and ROD. To combine final EIS and ROD, the final EIS cannot: 1. Make substantial changes to the proposed action that are relevant to the environmental or safety concerns compared to the DEIS or 2. Have significant new circumstance or information relevant to environmental concerns that bear on the proposed action of the impact of the proposed action as compared to the DEIS.

## 400.08 Documenting an Environmental Assessment (EA) or SEPA Checklist

Environmental Assessments or SEPA Checklists are completed for projects when the environmental impacts are unknown or are not clearly understood (see [Chapter 300](#) for more information). The purpose of the Environmental Assessment or SEPA Checklist is to analyze the environmental impacts and determine if an EIS is warranted. The steps for an EA are similar to those of an EIS, as illustrated in [Exhibit 400-3](#). See the [EIS/EA Processes](#) webpage for step by step guidance.

### 400.08(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.
  - a. **Scoping** – Scoping is recommended, but not required for an EA ([40 CFR 1501.7](#), [23 CFR 771.105\(a-d\)](#), [23 CFR 71.119\(b\)](#), [23 CFR 771.123](#), [WAC 197-11-408](#)). Because scoping is optional for an EA, a Notice of Intent (NOI) is not required. Advertisement of the optional scoping meeting in a local newspaper or on the project website is sufficient.
  - b. **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.

2. **Issue Notice of Availability (NOA)** – (30 day public review period) After approval of an EA, the regional or modal office distributes copies of the EA or a notice that an EA is available to interested parties ([40 CFR 1502.19\(d\)](#), [WAC 197-11-460](#)). For procedures see the WSDOT [NEPA & SEPA Guidance](#) webpage or contact the Environmental Services 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. The FONSI includes any decisions or agreements that led to the FONSI.

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 & SEPA Guidance](#) webpage or contact the Environmental Services NEPA/SEPA Compliance Program for assistance.

#### **400.08(2) SEPA Threshold Determination (SEPA Checklist)**

The SEPA rules require agency responsible officials to make a threshold determination ([WAC 197-11-330](#)) based on questions answered in the SEPA environmental checklist. Ecology maintains guidance for completing the checklist on its website. At WSDOT, much of the information needed to complete the environmental checklist can be found on the GIS – Environmental Workbench. Region and modal staff use GIS to answer the checklist questions. Region and modal Environmental Managers review the checklist and make a determination regarding the significance of project impacts. If the project is minor, the region issues a Determination of Non-Significance. If the project is likely to result in significant adverse environmental impacts, the agency issues a Determination of Significance and begins scoping for an EIS (see [Section 400.07](#)).

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

## 400.09 Categorical Exclusions/Exemptions (CEs)

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 Categorically Excluded from the NEPA process or Categorically Exempt from the SEPA process. NEPA and SEPA identify conditions that might elevate an action from its exempt status.

Agency NEPA environmental procedures ([23 CFR 771.117](#)) describe conditions when otherwise excluded activities require further documentation to justify the exclusion. Likewise, Ecology conditions each category of exemption to describe when the exemption does not apply ([WAC 197-11-800](#)). Also, SEPA rules 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 CE Checklist, also known as the ECS (Environmental Classification Summary) database for highway projects. FTA and FRA use CE worksheets to document their decisions. Whereas FHWA has delegated some decisions regarding CEs to WSDOT, FTA and FRA have not and must sign the CE as a NEPA document.

### 400.09(1) NEPA CEs (Categorical Exclusions)

Categorical Exclusions are projects that by definition ([23 CFR 771.117\(a\)](#)) do not have significant environmental impacts. WSDOT has a programmatic agreement with FHWA that allows WSDOT to approve NEPA Categorical Exclusions ([23 CFR 771.117\(c\)](#) and [23 CFR 771.117\(d\)](#)). Projects with unusual circumstances as described in [23 CFR 771.117\(b\)](#) require review and approval by FHWA.

Project types described in [23 CFR 771.117\(d\)](#) 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 NEPA CE Checklist (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 CE level projects is accomplished in the ERS/ECS. A signed copy of the ECS serves as the official NEPA documentation. Guidance for completion of the form and who can sign the document is provided in ERS/ECS on-line "help". Contact HQ environmental staff for assistance if you do not have access to the ERS/ECS database.

### 400.09(2) SEPA CEs (Categorical Exemptions)

There is no requirement to document exemptions in SEPA, but it is WSDOT practice to document in the ECS form to ensure SEPA was considered. SEPA categorical exemptions are listed in SEPA law ([RCW 43.21C](#)) 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.



## 400.10 Environmental Document Legal Considerations

### 400.10(1) Statute of Limitations

1. **NEPA Statute of Limitations (SOL)** – [23 CFR 771.139](#) and [MAP 21 Section 1308](#) establish 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; and
  - A statute of limitations notification was published in the Federal Register announcing the action; and
  - The action is considered to be 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 EISs, and many EAs. Project teams should issue an SOL anytime it identifies controversy that cannot be easily resolved. FHWA guidance on when to issue a SOL to limit claims is provided in Appendix E of FHWA's 2006 SAFETEA-LU Environmental Review Process Guidance.

2. **SEPA Notice of Action (NAT)** – Also referred to as a [Notice of Action Taken](#), 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 Notice of Action.

WSDOT's policy is to publish a Notice of Action 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 time period, project schedules are less likely to be disrupted. The decision to publish a Notice of Action is made by the project office. Normally the Environmental Manager of a region or modal office will write and sign the Notice of Action.

[RCW 43.21C.080](#) describes the process for publishing the NAT. Guidance for preparing the NAT is provided on the WSDOT [NEPA & SEPA Guidance](#) webpage.

### 400.10(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 & SEPA Guidance](#) 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 or not 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 AGs Office 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
- 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
- Corridor, design, and access plan approvals
- Affidavit of publication of Notice of Action
- 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 our Assistant Attorney General when preparing the record.

## 400.11 Applicable Statutes and Regulations

### 400.11(1) National Environmental Policy Act (NEPA)

President Nixon signed the National Environmental Policy Act (NEPA) in January 1970 as the “national charter for protection of the environment” (PL 91 190, as amended). 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 Council on Environmental Quality (CEQ) and are codified as 40 CFR 1500 – 1508. FHWA regulations applicable to federally aided highway projects are codified as 23 CFR 771 and 23 USC 139.

### 400.11(2) Other Federal Environmental Statutes

In addition to NEPA, there are a number of 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, publishing a FONSI or FEIS) for a project.

1. **Endangered Species Act** – Section 7 of the Endangered Species Act requires federal agencies to confer with the U.S. 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 U.S. Department of Transportation 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 USC 303 and 23 USC 138, is implemented by the Federal Highway Administration (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 Act (LWCFA) of 1966 prohibits the conversion of property acquired or developed with LWCFA grant funds to a non-recreational purpose without the approval of the Department of Interior’s National Park Service (NPS) (see Chapters 455 and 457 for details).
5. **Title VI** – Under 49 CFR 21.5 a recipient may not make a selection of 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.

### 400.11(3) State Environmental Policy Act (SEPA)

Washington's State Environmental Policy Act (SEPA) ([RCW 43.21C](#)), adopted in 1971, directs state and local decision makers to consider the environmental consequences of their actions. State SEPA Rules are maintained by the Washington State Department of Ecology (Ecology). The SEPA Rules ([WAC 197-11](#)), and Ecology's guidance, the SEPA Handbook, are posted on the [Ecology SEPA](#) webpage.

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

## 400.12 Abbreviations and Acronyms

AASHTO	American Association of State Highway and Transportation Officials
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 Non-significance (SEPA)
DS	Determination of Significance (SEPA)
EA	Environmental Assessment (NEPA)
ECS	Environmental Classification Summary
EIS	Environmental Impact Statement (NEPA/SEPA)
ERS	Environmental Review Summary
ESO	Environmental Services Office
FAST Act	Fixing America's Surface Transportation Act
FEIS	Final Environmental Impact Statement
FONSI	Finding of No Significant Impact (NEPA)
MAP-21	Moving Ahead for Progress in the 21st Century Act
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)
OFD	One Federal Decision
PEL	Planning and Environmental Linkage
ROD	Record of Decision (NEPA)
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SDEIS	Supplemental Draft Environmental Impact Statement (NEPA/SEPA)
SEIS	Supplemental Environmental Impact Statement (NEPA/SEPA)

SFEIS	Supplemental Final Environmental Impact Statement (NEPA/SEPA)
SEPA	State Environmental Policy Act
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
USDOT	United States Department of Transportation

## 400.13 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 Environmental Assessment/Checklist or Environmental Impact Statement. See Sections [300.04](#) and [300.05](#).

**Cumulative Impact/Effect** – The impact on the environment that results from the incremental effect of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time ([40 CFR 1508.8](#)).

**Direct Impact/Effect** – A direct impact (or effect) is caused by the proposed action and occurs 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 1508.8](#)).

**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 data is so voluminous, 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 subject specific analysis is needed to support some other permit or approval requirement independent of the NEPA/SEPA process.

**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 Environmental Checklists (SEPA), Section 4(f) Evaluations, Section 106 Reports, Environmental Justice Reports and other documents.

**Environmental Checklist (SEPA)** – A standard form used by all 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 environmental checklist.

**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 give appropriate consideration to the environment in decision making.

**Feasible and Prudent Avoidance Alternative** – A feasible and prudent avoidance alternative avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property.

**Federal Nexus** – A determination that a federal agency:

- Is a proponent of a specified proposal (usually by providing funding or oversight)
- Must issue a federal 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 Department of Transportation Act, Section 6(f) of the Land and Water Conservation Fund Act, and Section 7 of the Endangered Species Act.

**Indirect Impacts/Effects (NEPA)** – Effects or impacts caused by the proposed action or alternative that occur later in time or 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 1508.8](#)).

**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 1508.20](#)) 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.

**Non-project Action** – Governmental actions involving decisions on policies, plans, or programs that contain standards controlling the use or modification of the environment, or that will govern a series of connected actions.

**Planning and Environmental Linkage (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 the [Environmental Planning and PEL](#) webpage for additional PEL guidance.

**Practical Solutions** – An approach to making project decisions that focuses on the specific problems the project is intended to address. This performance-based approach looks for lower cost solutions that meet outcomes that WSDOT, partnering agencies, communities and stakeholders have identified. With practical solutions, decision-making focuses on maximum benefit to the system, rather than maximum benefit to the project. Focusing on the specific project need minimized the scope of work for each project so that system-wide needs can

be optimized. For additional information see [Design Manual Chapter 1100](#) and the WSDOT Practical Solutions webpage.

**Project Description** – A narrative written by the proponent to describe the project proposal. It may include explanations of the existing physical, environmental, social, and economic setting around the proposed project, a legal description of the location, and an explanation of the intended improvements.

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

**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 environmental impact statement (EIS) or an environmental assessment (EA). It should not be confused with internal scoping to set a project's budget.

**Significant Impact** – Under NEPA ([40 CFR 1500-1508](#)) the determination of a significant impact is a function of both context and intensity, including:

- The type, quality, and sensitivity of the resource involved.
- The location of the proposed project.
- The duration of the effect (short or long term).
- The setting of the proposed action and the surrounding area.

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 Determination of Non-significance (DNS), or a Determination of Significance (DS). A DS requires preparation of an EIS. State and local agencies use the environmental 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.