

WAC 463-47-080 Mitigated DNS. (1) An applicant may ask the council whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;
(b) Follow submission of an application and environmental checklist for a nonexempt proposal for which the council is lead agency; and
(c) Precede the council's actual threshold determination for the proposal.

(2) The council shall respond to the request within ten working days of receipt of the letter; the response shall:

(a) Be written;
(b) State whether the council is considering issuance of a DS;
(c) Indicate the general or specific area(s) of concern that led the council to consider a DS; and

(d) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The council shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the council will make its threshold determination based on the changed or clarified proposal.

(a) If the council's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the council shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC 197-11-350(2).

(b) If the council indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the council shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The council may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the council shall issue a DNS and circulate it for review under WAC 197-11-350(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the council may require the applicant to submit a new checklist.

(7) The council may change or clarify features of its own proposals before making the threshold determination.

(8) The council's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the council to consider the clarifications or changes in its threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other approval. Unless the council's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

[Statutory Authority: RCW 80.50.040(1). WSR 84-19-031 (Order 84-2), § 463-47-080, filed 9/14/84.]