

WAC 332-41-350 Mitigated determination of nonsignificance (DNS).

(1) **How may a proponent request an early notice of a determination of significance (DS)?** When DNR is the lead agency, a proponent may ask DNR whether issuance of a DS is likely for a proposal. A non-DNR request for early notice must satisfy three requirements. The request:

- (a) Must be in writing;
- (b) Shall follow submission of a permit application, if applicable, and environmental checklist; and
- (c) Must be received by DNR before DNR issues an initial threshold determination for the proposal.

(2) **How should DNR respond to an early notice request?** The responsible official or designee should respond to a request for early notice within ten business days of receipt. DNR should respond to a forest practices applicant as soon as possible because RCW 76.09.050 only allows ten days to conduct a threshold evaluation. If DNR is not the proposal's proponent, the response shall meet the following requirements:

- (a) The response must be in writing;
- (b) The response shall state whether DNR is considering issuance of a DS;
- (c) The response shall indicate the general or specific area(s) of concern that led DNR to consider a DS; and
- (d) The response shall 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) **How should early review requests and responses to DNR proposals be processed?** If a project leader from within DNR requests early notice, it is advisable that both the request and the response be documented in writing for tracking purposes.

(4) **What is the review process for proposals pending a request for early notice?** DNR shall continue to conduct SEPA review on the originally submitted proposal until a proposal's proponent requests, in writing, that the proposal be changed or clarified.

(5) **What should DNR review when changes or clarifications are added to a proposal?** If a proponent submits changes or clarifications under this section, DNR shall review these changes or clarifications as part of the proposal.

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

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

(6) **May DNR propose mitigation to reduce impacts of the proposal?** Even without a request for early notice, DNR may specify mitigation measures that would allow DNR to issue a DNS. If a proponent changes or clarifies the proposal to include DNR's proposed measures, DNR shall issue a DNS consistent with WAC 197-11-350 and circulate it for review.

(7) **How may a proponent change a proposal?** When a proponent changes or clarifies the proposal, the changes or clarifications may

be added as attachments to previously submitted documents. If the environmental checklist and supporting documents would be difficult to read and/or understand in conjunction with the attachment(s), DNR may require the applicant to submit a new checklist.

(8) **May DNR change its own proposals?** DNR may change or clarify features of its own proposals before making the threshold determination consistent with WAC 197-11-350.

(9) **What is the effect of preliminary discussions?** DNR's indication that a DS appears likely shall not be construed as a determination of significance. DNR's preliminary discussion of possible clarification or changes shall not bind DNR in making a determination of nonsignificance.

(10) **When should DNR issue a notice of final determination for a mitigated determination of nonsignificance?** DNR should issue a notice of final determination after the SEPA comment period has ended. This notice should document whether the determination has been:

- (a) Retained;
- (b) Modified;
- (c) Delayed; or
- (d) Withdrawn.

(i) If an initial threshold determination is delayed, DNR should issue another notice of final determination to identify whether the proposal has been retained, modified or withdrawn.

(ii) DNR should send any notice of final determination to the original mailing list for the proposal and any additional parties that commented on the proposal.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), and [197-11]-904(1). WSR 07-08-021, § 332-41-350, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. WSR 84-18-052 (Order 432), § 332-41-350, filed 9/5/84. Formerly chapter 332-40 WAC.]