

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Office of Archaeology and Historic Preservation

(agency name)

Administrative Order No. 10

(1) I, Jacob E. Thomas, director of

Office of Archaeology and Historic Preservation

do promulgate and adopt at 111 West 21st Ave, Olympia, WA (place)

the annexed rules relating to:

the implementation of Chapter 197-11 WAC, SEPA rules as applicable to the Office of Archaeology and Historic Preservation.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 86-09-038 filed with the code reviser on April 14 1986. These rules shall take effect: [x] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2). [ ] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[ ] (a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.

[x] (b) This rule is promulgated pursuant to RCW RCW 27.34.220 and RCW 43.21C.120 which directs that the

Office of Archaeology & Historic Preservation (agency)

has authority to implement the provisions of

Title 43.21C RCW (name of act or RCW citation)

[ ] (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED June 2 19 86

STATE OF WASHINGTON FILED

JUN 5 1986

CODE REVISER'S OFFICE

WSR 86-13-002

By Jacob E. Thomas Director Title

## Chapter 25-42 WAC

## STATE ENVIRONMENTAL POLICY ACT RULES

## WAC

25-42-010	Definitions.
25-42-020	Impact of SEPA on office.
25-42-030	Purpose.
25-42-040	Scope and coverage of this chapter.
25-42-050	Agency policy--Substantive authority and mitigation.
25-42-060	Timing of the SEPA process.
25-42-070	Summary of information which may be required of an applicant.
25-42-080	Assumption of lead agency status.
25-42-090	Designation of responsible official.
25-42-100	Mitigated DNS.
25-42-110	SEPA public information center.
25-42-120	Public notice.
25-42-130	Severability.

NEW SECTION

WAC 25-42-010 DEFINITIONS. The definitions of the words and terms of WAC 197-11-700 through 197-11-799 are made a part of this chapter along with the following additions:

(1) "Office" means the Washington state office of archaeology and historic preservation.

(2) "Director" means the state historic preservation officer as provided for in chapter 27.34 RCW.

NEW SECTION

WAC 25-42-020 IMPACT OF SEPA ON OFFICE. The office fully endorses the intent and purpose of SEPA and will make every effort to implement and fulfill the intent and requirements of SEPA and the SEPA rules. The capacity of the office to provide full service to the public and other agencies is limited by funds and manpower. The office will make every effort to implement SEPA in the best manner possible with the resources available.

NEW SECTION

WAC 25-42-030 PURPOSE. (1) The purpose of this chapter is to implement chapter 197-11 WAC, SEPA rules, as applicable to the office.

(2) These policies and procedures are developed to implement SEPA in a manner which reduces duplication, establishes effective and uniform guidelines, encourages public involvement, and promotes certainty with respect to the requirements of the act.

(3) These policies and procedures are not intended to cover compliance by the office with respect to the National Environmental Policy Act of 1969 (NEPA). In those situations where the office is required by federal law or regulations to perform some element of compliance with NEPA, compliance will be governed by the applicable federal statute and regulations.

NEW SECTION

WAC 25-42-040 SCOPE AND COVERAGE OF THIS CHAPTER. (1) It is the intent of the office that compliance with this chapter shall constitute complete procedural compliance with SEPA for all actions as defined in WAC 197-11-704.

(2) This chapter applies to all actions as defined in WAC 197-11-704 and applies to all activities of the office. Furthermore, although these guidelines normally do not apply to actions of the office exempted under WAC 197-11-800, the office accepts the responsibility of attempting to follow the intent of SEPA and its decision making process for exempt actions.

(3) To the fullest extent possible, the office shall integrate procedures required by this chapter with existing planning and permitting procedures. These procedures should be initiated early, and undertaken in conjunction with other governmental operations to avoid lengthy time delays and unnecessary duplication of effort.

NEW SECTION

WAC 25-42-050 AGENCY POLICY--SUBSTANTIVE AUTHORITY AND MITIGATION. (1) The overriding policy of the office is to avoid or mitigate adverse environmental impacts which may result from its decisions. This policy results from:

(a) The legislated duty of the office to preserve and protect the heritage of the state in a manner that does not impair the resource (RCW 27.34.200); and

(b) Recognition of the fact that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment (RCW 43.21C.020(31)).

(2) If an action is subject to SEPA, including an activity or activities requiring a permit from the office, and is reasonably likely to have an adverse environmental impact as identified in an environmental document, the office will:

(a) Require reasonable alternatives to the action and/or proven measures which will mitigate or eliminate the identified potential adverse impact, and make such alternatives and/or proven mitigation measures conditions of the office's approval; or

(b) Deny the proposal if significant adverse impacts as identified in a final or supplemental environmental impact statement prepared under chapter 197-11 WAC are not satisfactorily avoided or mitigated by proven techniques.

NEW SECTION

WAC 25-42-060 TIMING OF THE SEPA PROCESS. (1) The environmental review process will normally begin upon receipt of a determination of nonsignificance (DNS), determination of significance (DS), scoping notice, or draft environmental impact statement (DEIS) when another agency is the lead agency. When the office is the lead agency for nonagency actions, review will begin upon receipt of a complete permit application and a complete environmental checklist. For agency actions, environmental review will normally begin when the proposed action is sufficiently developed to allow preliminary decisions.

(2) Upon written request of an applicant, preliminary environmental review will be conducted prior to receipt of detailed project

plans and specifications. In such instances, the applicant shall submit information judged by the office to be sufficient to make a preliminary review.

(3) The preliminary review will be advisory only and not binding upon the office. Final review and determination will be made only upon receipt of detailed project plans and specifications.

#### NEW SECTION

WAC 25-42-070 SUMMARY OF INFORMATION WHICH MAY BE REQUIRED OF AN APPLICANT. (1) The applicant for each project for which the office is the lead agency shall submit a complete environmental checklist along with a complete application for the required approval.

(2) After review of the environmental checklist, the office may require the applicant to submit additional information necessary to properly evaluate the potential environmental impacts of the project. Field investigation or research may be required of the applicant or conducted by the office at the applicant's cost.

(3) A draft and final EIS is required for each project for which a determination is made that the proposal will have a probable significant adverse impact on the environment. Preparation of the EISs is the responsibility of the office, by or under the direction of its responsible official, as specified by office procedures. No matter who participates in the preparation of the EIS, it is the EIS of the agency. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

(4) The office may have an EIS prepared by office staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the office. The office shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(5) If a person other than the office is preparing the EIS, the office shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency and the public;

(b) Assist in obtaining any information on file with other agencies that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the office that relate to the subject of the EIS, under RCW 42.17-.250 through 42.17.340.

(6) Normally, the office will prepare EISs for its own proposals.

(7) For applicant proposals, the office normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of this chapter and chapter 197-11 WAC. Expenses shall include fees of any consultants, if required, the office's consultation time and cost of any required materials. A performance bond in an amount specified by the office may be required of the applicant to ensure payment of the office's expenses.

(8) The office may require an applicant to provide information that the office does not possess, including specific investigations. The applicant is not required to supply information that is not required under this chapter and chapter 197-11 WAC.

(9) A supplemental EIS shall be prepared as an addition to either the draft or final EIS if the office decides that:

(a) There are substantial changes to a proposal which will have a probable significant adverse environmental impact; or

(b) There is significant new information relative to the probable significant environmental impact of a proposal; or

(c) Its written comments on the DEIS warrant additional discussion for the purposes of it's action than that found in the lead agency's FEIS.

The provisions of subsection (3) of this section except for the first sentence, also pertain to a supplemental EIS or addendum.

(10) Upon the written request of an applicant for a project for which the office is the lead agency, the office will consider initiating environmental review and preparation of an EIS at the conceptual stage as opposed to the final detailed design state.

#### NEW SECTION

WAC 25-42-080 ASSUMPTION OF LEAD AGENCY STATUS. (1) Whenever the office feels that a DNS issued by another lead agency is inappropriate and that the proposal in question could cause significant harm to the resources under its jurisdiction, the office will assume lead agency status per WAC 197-11-948.

(2) Within ten days of assuming lead agency status, the office will notify the proponent of the proposal in writing as to the reasons for its assumption of lead agency status.

(3) Prior to preparation of an EIS for the proposal, the office will consult with the proponent and give the proponent an opportunity to modify or change the proposal in such a way that an EIS may not be necessary as outlined in WAC 197-11-360(4).

#### NEW SECTION

WAC 25-42-090 DESIGNATION OF RESPONSIBLE OFFICIAL. Under normal circumstances, the responsible official is the director or his designee. The responsible official shall carry out duties and functions for the purpose of assuring the office's compliance with SEPA and SEPA guidelines. The responsible official may delegate duties and functions assigned under this chapter and chapter 197-11 WAC; the responsible official alone, however, is wholly responsible for proper accomplishment of such duties and functions.

#### NEW SECTION

WAC 25-42-100 MITIGATED DNS. (1) An applicant may ask the office whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the office is lead agency; and

(c) Precede the office's actual threshold determination for the proposal.

(2) The responsible official shall respond to the request within ten working days of receipt of the letter, the response shall:

(a) Be written;

(b) State whether the office is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the office 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 office shall not continue with the threshold determination until 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 office will make its threshold determination based on the changed or clarified proposal:

(a) If the office'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 office shall issue a DNS and circulate the DNS for comments as in WAC 197-11-340(2).

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

(5) The office 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 office shall issue a DNS and circulate it for review under WAC 197-11-340(2).

(6) When an applicant changes or clarifies the proposal, the clarification 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 office may require the applicant to submit a new checklist.

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

(8) The office's written response under subsection (2) of this section shall not be constructed 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 office to consider the clarification or changes in the 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. Unless the office'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.

#### NEW SECTION

WAC 25-42-110 SEPA PUBLIC INFORMATION CENTER. The office designates its main office as its SEPA public information center. The mailing address is 111 West 21st Ave. Olympia, Washington 98504; telephone (206) 753-5010.

NEW SECTION

WAC 25-42-120 PUBLIC NOTICE. (1) When required under chapter 197-11 WAC, the office will give public notice by one or more of the following methods as appropriate for the specific circumstances:

(a) Notifying public and private groups and agencies with known interest in a certain proposal or in the type of proposals being considered;

(b) Notifying individuals with known interest in a certain proposal or in the type of proposal being considered;

(c) Publication in a newspaper of general circulation in the area in which the proposal will be implemented;

(d) Notifying the news media; and/or

(e) Posting on the property site in question.

(2) The office may require an applicant to perform the public notice requirements at the applicant's expense.

NEW SECTION

WAC 25-42-130 SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances shall not be affected.