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# Streamlining the environmental review of highway transportation projects

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**Consolidating and coordinating compliance with the  
National Environmental Policy Act and  
Washington's State Environmental Policy Act**

**Report to Legislature  
December 2016**

**Prepared for:**

Joint Transportation Committee

**Prepared by:**

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## Executive Summary

The 2015 Legislature directed the Washington Department of Transportation (WSDOT) to form a state agency workgroup to “identify issues, laws, and regulations relevant to consolidating and coordinating the review processes under the national environmental policy act, 42 U.S.C. Sec. 4321 et seq. and chapter 43.21C RCW [State Environmental Policy Act] to streamline the review of and avoid delays to projects on state highways as defined in RCW 46.04.560.” ([RCW 47.01.315](#)) This report summarizes the workgroup’s findings and includes:

- An inventory of federal and state environmental regulatory authority
- A discussion of the issues pertaining to the current process and timelines used by state and federal agencies for reviewing projects on state highways
- Recommendations for legislation or rules that would reduce delays and time associated with review by state and federal agencies

The state agency workgroup consisted of representatives from the Department of Archaeology and Historic Preservation, Department of Commerce, Department of Ecology, Department of Fish and Wildlife, Department of Natural Resources, and WSDOT.

A key finding of this review is that previous streamlining efforts have aligned SEPA with NEPA. The state agency workgroup did not find problem areas that require rule or statutory changes.

## Recommendations

The state agency workgroup developed two procedural recommendations for further streamlining the NEPA and SEPA reviews for state transportation projects.

### Recommendation 1

WSDOT should develop internal guidance and provide education on the use of SEPA exemptions.

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	WSDOT assumes this work could be done within existing resources
<b>Anticipated Timeline:</b>	June 2017
<b>Benefit:</b>	Reduces the number of duplicative review documents; saves time and resources; improves the accuracy of application of state rules

## Recommendation 2

WSDOT, with assistance from Ecology and the Office of the Attorney General, should consider revising the current review process for projects that qualify as a NEPA EA so that the public reviews for NEPA and SEPA occur concurrently.

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	WSDOT assumes this work could be done within existing resources
<b>Anticipated Timeline:</b>	December 2017
<b>Benefit:</b>	Reduces the total amount of time a project is in public review; SEPA 14-day review would occur concurrent with the 30-day NEPA review, rather than after the federal decision

## Acronyms

2ESSB	Second Engrossed Substitute Senate Bill
CE	Categorical Exclusion (NEPA) Categorical Exemption (SEPA)
CEQ	White House Council on Environmental Quality
CFR	Code of Federal Regulation
DNS	Determination of Non-Significance (SEPA)
DOT	Department of Transportation, US or state
EA	Environmental Assessment (NEPA)
EIS	Environmental Impact Statement (NEPA and SEPA)
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact (NEPA)
FTA	Federal Transit Administration
GAO	US Governmental Accountability Office
JLARC	State of Washington Joint Legislative Audit and Review Committee
JTC	Washington State Joint Transportation Committee
MAP-21	Moving Ahead for Progress in the 21 <sup>st</sup> Century Act
MAP-Team	Multi-Agency Permitting Team
NEPA	National Environmental Policy Act
RCW	Revised Code of Washington
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SEPA	(Washington) State Environmental Policy Act
USC	United States Code
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation

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## 1.0 Introduction

The Washington State Department of Transportation (WSDOT) is responsible for the planning, development, and construction of state transportation projects. The environmental review of these transportation projects begins in the early stages of planning and continues through construction. In delivering new projects and programs, WSDOT complies with local, state and federal laws, including the national environmental policy act (NEPA) and the state environmental policy act (SEPA).

This report is in response to Section Six of Senate Bill 5994. This study is one of nine legislative directions in the bill which strive “to retain environmental protections while making the transportation permitting process more efficient and effective, and to reduce pre-construction delays” (House Bill Report 2ESSB 5994, 2015).

The bill required WSDOT to form a state agency workgroup to identify issues, laws, and regulations relevant to streamlining the environmental review of projects on state highways. The purpose of the workgroup and this report is to make recommendations on ways to consolidate and coordinate the NEPA and SEPA review processes to avoid delays to project delivery. The bill required the report to include:

- An inventory of federal and state environmental regulatory authority
- A discussion of the issues pertaining to the current process and timelines used by state and federal agencies for reviewing projects on state highways
- Recommendations for legislation or rules that would reduce delays and time associated with review by state and federal agencies, including suggestions for new categorical exemptions (CEs)

SEPA was adopted into state law in 1971 and was modeled after NEPA, enacted in 1969. NEPA review is required when an action involves federal funds, permits, or approvals. SEPA is required for state actions. SEPA and NEPA have nearly identical purposes and similar environmental review processes.

This report explores the alignment between SEPA and NEPA affecting state transportation projects proposed by WSDOT. This report is solely focused on WSDOT’s role as SEPA lead agency for state transportation projects, not as a commenter on proposals by other entities as an agency with jurisdiction.

## 2.0 Approach and background

### 2.1 Approach

To meet the requirements from Section Six of Senate Bill 5994, WSDOT used the following approach:

- 1) Coordinate a State Agency Workgroup
- 2) Prepare background information
- 3) Meet with the Workgroup
- 4) Prepare report

#### Coordinate a State Agency Workgroup

As directed in SB 5994 the workgroup included “[WSDOT], the department of ecology, and any other relevant agencies” ([RCW 47.01.315](#)). WSDOT drew from resource agencies it previously worked with as part of an interagency SEPA team. The SEPA leads from each agency on the team were invited to be part of the workgroup (Table 2-1).

**Table 2-1 SB 5994 Workgroup Participants**

State Agency	Participant Name	Title
Department of Archaeology and Historic Preservation	Dennis Wardlaw	Transportation Archaeologist
Department of Commerce	Doug Peters	Senior Planner
Department of Ecology	Brenden McFarland	Environmental Review and Transportation Manager
Department of Fish and Wildlife	Lisa Wood	SEPA Responsible Official and HPA Appeals Coordinator
Department of Natural Resources	Rochelle Goss	SEPA Program Lead
	Elizabeth O’Neal	External SEPA Coordinator
	Carol Lee Roalkvam	Environmental Policy Branch Manager
Department of Transportation	Chris Regan	NEPA/SEPA Program Manager
	TaraLyn Stone	Project Delivery Environmental Specialist

Department of Health and the Washington State Parks and Recreation Commission were invited to participate in the workgroup but were unable to attend.

#### Prepare background information

The State of Washington and the Federal government have a long history of successfully streamlining environmental reviews, including coordinating and consolidating NEPA and SEPA reviews. WSDOT reviewed previous streamlining and coordination efforts, regulatory reforms, and studies to map the current environmental review process and to identify issues. The results of this review were discussed with the workgroup and are shared in Section 2.2. A timeline of Washington State transportation project environmental review streamlining efforts since 2000 can be found in Appendix A.

### Meet with the Workgroup

The workgroup met on September 26, 2016 to consider the issues and areas of duplication identified by WSDOT and to develop recommendations for legislation or rules to reduce environmental review times for transportation projects. A follow-up meeting was held on October 11, 2016, to refine the ideas from the September meeting into recommendations for this report. Workgroup members were invited to comment on the draft report in early November.

## 2.2 Summary of Previous Efforts

For this report, WSDOT examined previous studies, streamlining efforts and the results of recent SEPA reform.

### In-state Studies & SEPA Reform

The Washington State Transportation Performance Audit Board assigned the state Joint Legislative Audit and Review Committee (JLARC) two studies: one to look at successful initiatives to streamline and reduce the cost of permitting; and, one to look at specific WSDOT projects to identify permitting issues. For these studies, permitting included the environmental review of projects under NEPA and SEPA.

The *Overview of Environmental Permitting for Transportation Projects* (JLARC, 2005a) study found that Washington is a national leader in “promoting environmental permit streamlining for transportation projects.” WSDOT and natural resource agencies were already implementing the actions recommended in this report, including streamlining efforts identified in a study of Florida and Minnesota DOTs, upgrades to WSDOT’s Geographic Information System, and the creation of the complete application guidance by the MAP-Team.

In the *Business Process Review of Environmental Permitting for Transportation Projects* (JLARC, 2005b) study, JLARC reviewed ten complex transportation projects to analyze factors that contributed to delays. JLARC interviewed more than 60 state staff who worked on environmental documentation and permitting for the ten sample projects. This review concluded that the NEPA documentation process was not the cause of delay; the major contributing causes of project delay were funding uncertainties, design changes, lack of adequate federal and state resource agency staffing, and changes to or new regulation. None of the recommendations coming out of this report involved NEPA or SEPA compliance. The report’s recommendations identified priorities for streamlining efforts and focused on project scheduling and permit coordination across agencies.

Almost a decade later, the Washington State Joint Transportation Committee (JTC) published *Efficiencies in the Construction and Operation of State Transportation Projects* (JTC 2014). The purpose of this report was to identify “the major cost drivers and evaluate efficiency initiatives in the construction and operation of Washington State highway and bridge improvement and preservation projects.” The report examined WSDOT’s project-level NEPA and SEPA compliance, and examined data from 2011-2013 projects. The report noted that large, complex projects used a combined NEPA/SEPA process and there was little duplication of effort. However, they found that: “For smaller, routine projects, SEPA is more onerous than NEPA.

Some smaller projects qualify as NEPA CEs but not SEPA CEs. For these projects, the SEPA checklist is more time consuming than the documentation prepared for Federal Highway NEPA Categorical Exclusions (CE). NEPA CEs have been updated many times in the past few years, whereas SEPA has not. SEPA adds process requirements on projects that require SEPA checklists and Determinations of Non-Significance that do not exist with NEPA CE projects (e.g., public notice, circulation, and 14- day comment period).” (JTC, 2014, page 53)

The report summarized WSDOT’s three typical review scenarios:

1. Large projects that use combined NEPA/SEPA documents. In this case, NEPA requirements are used by WSDOT;
2. Projects that are categorically exempt by SEPA and don’t require any further SEPA review; and,
3. Smaller projects that qualify for a NEPA categorical exclusion but not a SEPA categorical exemption (these require both NEPA categorical exclusion documentation and a SEPA checklist with comment period).

The report recommended:

- a change to SEPA rules so that documentation in support of a NEPA CE can satisfy SEPA checklist requirements
- expand SEPA exemptions to match the NEPA categorical exclusions

Both of these recommendations were implemented through Ecology’s rulemaking in 2014 (which was occurring concurrently with the JTC review). The first issue was addressed by reforming [WAC 197-11-610\(2\)](#). The second was achieved with the addition of [WAC-197-11-800\(26\)](#)<sup>1</sup>. Ecology added this new categorical exemption solely for state transportation projects to align with language in the federal regulations for transportation projects categorically excluded from NEPA.

### National Studies & NEPA Reform

The US Congress often includes regulatory streamlining provisions in the federal surface transportation legislation. As a result, the US Department of Transportation has very robust

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<sup>1</sup> “State transportation project. The following Washington department of transportation projects and activities shall be exempt: The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation” as long as the project is within the right-of-way and does not add lanes or capacity (WAC [197-11-800\(26\)](#)).

NEPA guidance, particularly in Title 23 CFR 771 directing compliance for both the Federal Highway and Transit Administrations. Key federal transportation acts include:

- 2005 The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) included environmental streamlining provisions including a new environmental review process for Environmental Impact Statements (EISs) and the delegation of authority to states for the review of categorical exclusions.
- 2012 The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) created new categorical exclusions and expanded the use of CEs to other types of projects, including multi-modal.
- 2015 The Fixing America's Surface Transportation (FAST) Act added specific timeframes for environmental notices and reviews and required the establishment of an online public access website (Dashboard) for publishing the status of NEPA and permitting activities for all Environmental Assessment (EA) or EIS level projects.

For this report, WSDOT focused on a US Government Accountability Office (GAO) review of NEPA and NEPA-like state laws. The review was required by MAP-21. In the 2014 report, GAO presented the findings of an investigation into whether state environmental reviews duplicate federal reviews for highway projects. The report found that among 18 states with existing state environmental policies there was little to no duplication of effort. In most circumstances the state requirements were found to be less strict than the Federal Highway Administration's (FHWA) NEPA requirements, especially at the EA and EIS level. The report (GAO, 2014) also found that "When separate federal and state reviews are required, the processes are often carried out concurrently, with joint planning processes, research and studies, and public hearings, as well as the use of blended documents." Specifically, WSDOT reported duplication from "supplemental state requirements" and from the "misalignment of federal and state environmental review documents." This duplication was because WSDOT prepares a separate SEPA checklist in addition to the NEPA CE when projects are not SEPA exempt. The report noted the 2014 Ecology rulemaking which aligned the NEPA CEs and SEPA exemptions to avoid this duplication.

In 2015, the Council on Environmental Quality (CEQ) worked with states to develop memoranda comparing NEPA and NEPA-like state laws and regulations. The purpose of the memoranda was to "familiarize Federal NEPA practitioners with state or local environmental review requirements and procedures, and to help them find opportunities to realize efficiencies through collaboration with state and local governments by aligning and, where appropriate, combining the environmental review requirements." (CEQ, 2015) These memoranda were used to map the NEPA and SEPA processes within Washington State as well as understand other state's processes. A review of the memoranda shows existing efficiencies. Out of 19 states, nine allowed for the federal NEPA review to fully satisfy the state review. Nine others, including Washington, allow for full or partial adoption of the NEPA review to support the state review.

### 3.0 Regulatory authority

#### 3.1 State Environmental Policy Act

This law requires all state and local governments within the state to:

- "Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the environment;" and
- Ensure that "...environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations; ..." ([RCW 43.21C.030\(2\)\(a\) and \(2\)\(b\)](#))

The policies and goals in SEPA supplement those in existing authorizations of all branches of government of this state, including state agencies, counties, cities, districts, and public corporations.

WSDOT is the SEPA lead agency ([WAC 197-11-926](#)) for transportation projects implemented on the state highway system. WSDOT is responsible for approving and signing its own SEPA documents. WSDOT has the authority to develop policies and specific guidance for SEPA implementation for highway transportation projects through state law (Table 3-1).

**Table 3-1 SEPA regulatory authority**

Law	Authority
43.21C RCW	State Environmental Policy Act (SEPA) from Washington State Legislature
197-11 WAC	Department of Ecology SEPA Policy
468-12 WAC	Transportation Commission and Transportation Department SEPA Rules

SEPA directs agencies to reduce duplication by using existing environmental documents for SEPA purposes ([RCW 43.21C.034](#)). SEPA contains a provision that reduces duplication of effort if an EIS is required. Section 150 ([RCW 43.21C.150](#)) states that when a detailed statement (EIS) is prepared pursuant to NEPA, that EIS can be used in lieu of a separate SEPA EIS. Because WSDOT prepares NEPA and SEPA documents for state highway proposals, the agency typically issues joint NEPA/SEPA EIS's for projects requiring an EIS.

SEPA rules provide further clarification addressing the use of other NEPA documents to satisfy SEPA ([WAC 197-11-610](#)).

### 3.2 National Environmental Policy Act

The lead federal agency for NEPA is determined by a project’s federal nexus, or major federal action. Major federal actions are “new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals” ([40 CFR 1508.18](#)).

Most WSDOT projects on state highways involve the FHWA as the NEPA lead triggered by FHWA’s funding or approval. Federal Transit Administration (FTA) serves as the federal lead on major transit projects like the Mukilteo Multimodal Terminal. WSDOT also works with other federal transportation agencies for other modes (e.g., Federal Railroad Administration and Federal Aviation Administration) but projects administered by these modes aren’t normally state highway projects as defined in [RCW 46.04.560](#). The lead federal agency under NEPA provides guidance and evaluates the adequacy of environmental documents. FHWA authority is derived through Congressional declaration and CEQ regulations (Table 3-2).

**Table 3-2 NEPA regulatory authority**

Law	Authority
42 USC 4321-4370	National Environmental Policy Act (NEPA) Congressional declaration
40 CFR 1500-1508	CEQ Regulations
23 CFR 771	FHWA & FTA NEPA Policy

“This regulation ([23 CFR 771](#)) prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and supplements the NEPA regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (CEQ regulation). Together these regulations set forth all FHWA, FTA, and Department of Transportation (DOT) requirements under NEPA for the processing of highway and public transportation projects.”

As allowed by federal law [23 USC 326](#), WSDOT has a robust programmatic agreement with FHWA that expedites NEPA for small project actions. WSDOT assumes FHWA’s signature authority, as the lead agency, for the NEPA review of certain CE highway project-level actions.

Projects that are initiated without a federal nexus may receive funding or require an unexpected federal approval later in the design process which would trigger a NEPA review (which can involve a different federal lead agency). As a result, WSDOT often elects to conduct a NEPA review from the start to avoid the potential for delay in these circumstances.

## 4.0 Issues pertaining to the current process and timelines

### 4.1 Current process and timelines

The level of environmental review required for a project is determined by the potential significance of its impacts. While NEPA and SEPA have different documentation and processes for the environmental reviews; they have similar definitions of “significant” ([40 CFR 1508.27](#) for NEPA and [WAC 197-11-794](#) for SEPA). Both also allow the use of existing documents to reduce duplication and unnecessary paperwork. 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](#))

These similarities and allowances, paired with WSDOT’s commitment to having efficient environmental reviews, have led to a streamlined process for reviewing projects under SEPA and NEPA (Figure 4-1). Through this process, WSDOT conducts one consolidated review instead of two separate, concurrent reviews.

### 4.2 Issues with the current process

Previous studies found that environmental reviews are generally not the primary cause of delays to project schedules or increased costs (JLARC 2005, JTC 2014). The workgroup agreed with the findings of two prior reports. No duplication of effort or noticeable increase in cost was found for large, complex projects requiring an EIS.

The state agency workgroup’s review of the current process found that some duplication of effort does exist within the environmental review process. The duplication occurs:

- When a project qualifies as a NEPA CE but not a SEPA CE, thus requiring both a NEPA CE document and SEPA checklist and determination; and,
- With separate non-concurrent public reviews when a project requires a SEPA Determination of Non-significance (DNS) and NEPA Finding of No Significant Impact (FONSI).

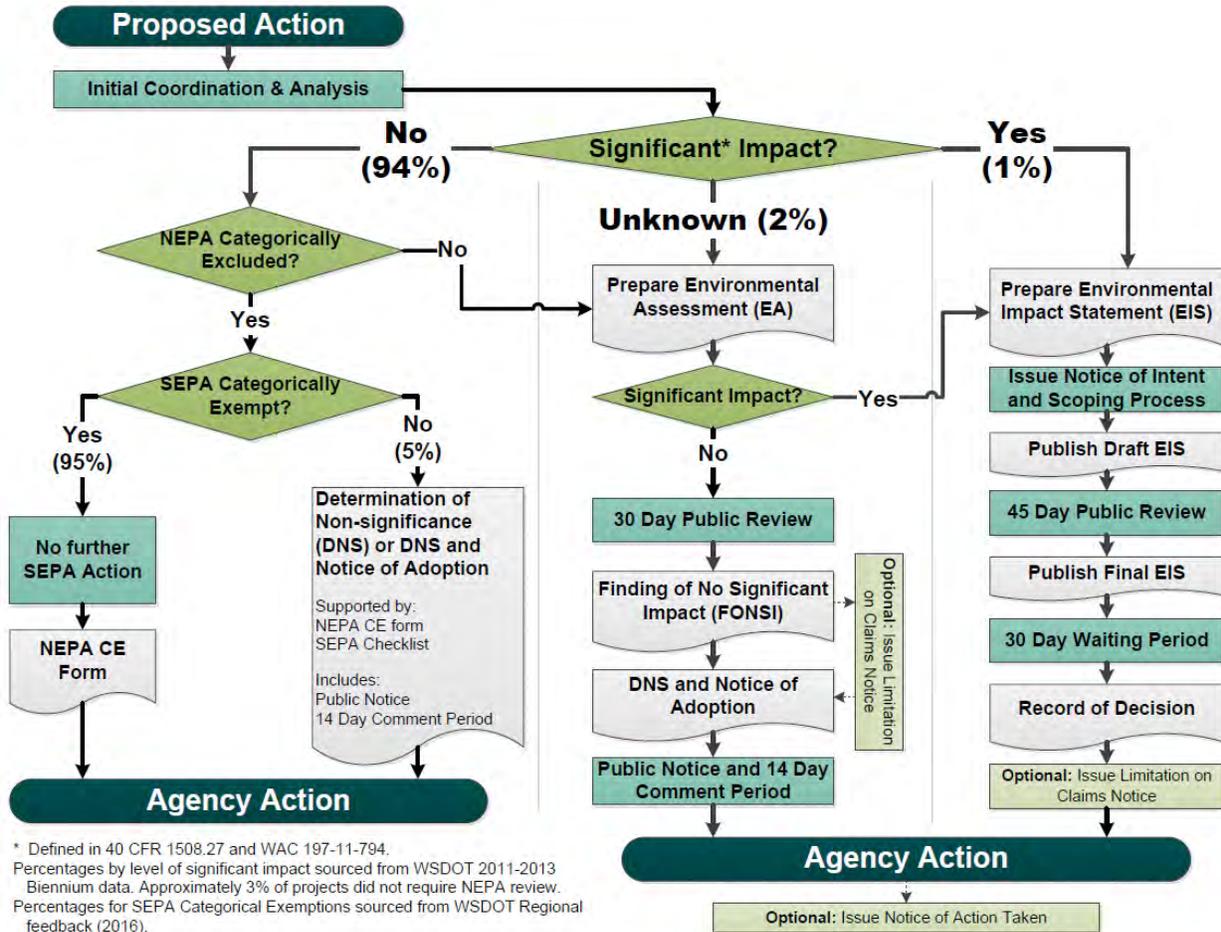


Figure 4-1 NEPA and SEPA Environmental Review Process for Federal Projects

When an action meets a NEPA CE definition but needs a SEPA checklist

The majority of projects that fit within FHWA’s NEPA CEs are also categorically exempt under SEPA. This is especially true after Ecology’s 2014 SEPA rulemaking which better aligned the SEPA exemptions (by adding [WAC 197-11-800\(26\)](#)), with FHWA’s list of NEPA CEs ([23 CFR 771.117](#)).

More time is needed to determine just how well the new 800(26) is working. The workgroup discussed the likelihood that WSDOT’s project teams may not be using all the SEPA CEs that are available. Some activities may be exempt as minor new construction ([WAC 197-11-800\(2\)](#)) and as maintenance ([WAC 197-11-800\(3\)](#)). Other minor new construction includes the “construction or installation of minor road and street improvements by any agency or private party” ([WAC 197-11-800\(2\)\(d\)](#)).

In discussions with the workgroup, it was agreed that there is some additional effort and time needed to comply with SEPA in environmentally sensitive areas like wetlands. The few NEPA CE level projects that WSDOT has determined are not SEPA exempt generally involve work

outside the existing right-of-way or cause impacts to “lands covered by water”, including wetlands.

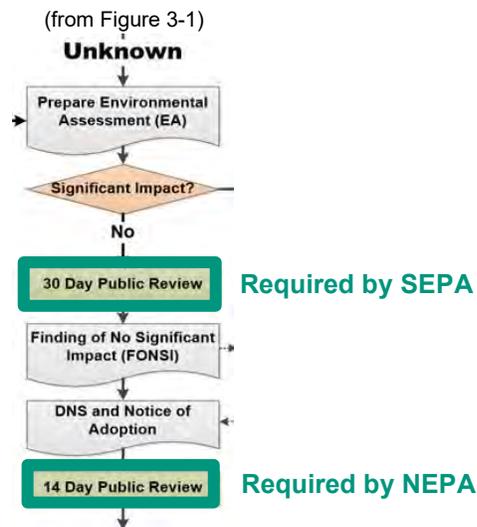
In conversations with Ecology regarding WAC 197-11-800(26), WSDOT staff determined that work outside of WSDOT’s right-of-way is more likely to be of interest to the public and therefore should include public notice, something that neither NEPA nor SEPA CE’s require. Similarly, as part of Ecology’s 2012 rulemaking process, the work group that Ecology convened to vet proposed changes to 197-11 WAC included extensive discussion regarding the SEPA rules limitation on applying exemptions to lands covered by water (Ecology, 2013). That discussion included recognition that although there are other laws regulating project activities in water, SEPA serves a valuable role in ensuring public and agency notice and opportunity for review.

The duplication of effort includes separate documentation consisting of a NEPA CE form and a SEPA DNS with supporting documentation. In addition, projects that issue a DNS require notice ([WAC 468-12-510](#)) and must have an accompanying 14-day public review period for the DNS ([WAC 197-11-340\(2\)](#)). The DNS must be circulated to the public, affected tribes and agency stakeholders. There is no public involvement requirement for NEPA CE’s.

**Duplicative public reviews when a SEPA DNS and NEPA EA are required**

For projects that are not exempt/excluded, WSDOT prepares a NEPA Environmental Assessment (EA). The EA is used to support NEPA and SEPA determinations that a project will have no significant impact (i.e., FONSI for NEPA and a DNS for SEPA). The content of the supporting documentation for the determinations vary substantially; however, they serve a similar purpose.

The SEPA DNS is a short statement that the agency has determined the project will not have a “probable significant adverse impact on the environment” ([WAC 197-11-340](#)). WSDOT’s determination can attach a SEPA checklist, or can include language adopting the EA in place of the SEPA checklist ([WAC 197-11-630](#)).



**Figure 4-2 Requisite Public and Agency Reviews**

The EA and FONSI contain more information than what is required by SEPA. FHWA’s NEPA procedures for the preparation of an EA are more detailed than most other federal agencies. The FONSI includes a summary of the environmental document and justifies the determination that there are no probable significant impacts ([40 CFR 1508.13](#)).

NEPA and SEPA have public and agency involvement requirements at different times in the process (Figure 4-2). For NEPA, the EA is made available for public review for 30 days prior to making a finding regarding the significance of a project’s impacts ([23 USC 771.119\(h\)](#)).

After the EA comment period, the federal lead makes a finding. If the EA does not lead to an EIS, a FONSI is issued. A notice of availability of the FONSI is sent to the public and agency stakeholders but does not have a comment period ([23 USC 771.121](#)).

For SEPA, WSDOT's current process is sequential (not concurrent) and waits for the FONSI before issuing a SEPA DNS to ensure any changes to the project design that result from public review and federal decision are noted before making the agency's final SEPA determination, triggering the 14-day comment period.

## 5.0 Recommendations

A key finding of this review is that previous streamlining efforts have aligned SEPA with NEPA. The state agency workgroup did not find problem areas that require rule or statutory changes. As a result, this report does not include specific “recommendations for legislation or rules that would reduce delays and time associated with review by state and federal agencies, including suggestions for new categorical exemptions”. ([RCW 47.01.315](#))

WSDOT and the state agency workgroup determined, as a result of previous streamlining efforts and the efficiency of the current environmental review process, there is little opportunity to further streamline and consolidate the NEPA and SEPA reviews for projects on state highways. The workgroup did recognize that small, procedural improvements may help make the processes run more smoothly. Therefore, WSDOT and the workgroup make the following recommendations.

### Recommendation 1

WSDOT should develop internal guidance and provide education on the use of SEPA exemptions.

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	WSDOT assumes work could be done within existing resources
<b>Anticipated Timeline:</b>	June 2017
<b>Benefit:</b>	Reduces the number of duplicative review documents; saves time and resources; improves the accuracy of application of state rules

### Recommendation 2

WSDOT, with assistance from Ecology and the Office of the Attorney General, should consider revising the current review process for projects that qualify as a NEPA EA so that the public reviews for NEPA and SEPA occur concurrently.

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	WSDOT assumes work could be done within existing resources
<b>Anticipated Timeline:</b>	December 2017

**Benefit:** Reduces the total amount of time a project is in public review; SEPA 14-day review would occur concurrent with the 30-day NEPA review, rather than after the federal decision

## 6.0 References

### 6.1 Laws, statutes, and regulations

#### Federal

42 USC 4321, National Environmental Policy Act

40 CFR 1500-1508, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

23 CFR 771, FHWA Environmental Impact and Related Procedures

23 USC 326, State assumption of responsibility for categorical exclusions

23 USC 327, Surface transportation project delivery program

23 USC 330, Program for eliminating duplication of environmental reviews

#### State

RCW 43.21C, State Environmental Policy Act

RCW 47.01, Department of Transportation

197-11 WAC, SEPA Rules

468-12 WAC, Transportation Commission and Transportation Department State Environmental Policy Act Rules

### 6.2 Studies, reports, and other resources

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## Appendix A: Timeline of Environmental Streamlining Actions

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Below is a timeline of Washington State transportation project environmental review streamlining efforts, since 2000. Efforts are categorized as:



Study/Report



Streamlines process(es)



Consolidates processes

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### 2000 Blue Ribbon Commission Report



Recommended streamlining permitting for transportation projects in addition to numerous other project design and delivery recommendations and benchmarks. Included recommendation that WSDOT complete environmental reviews early, establish consistent standards for review, coordinate efforts with local and state agencies, and better integrate National Environmental Policy Act (NEPA) and Washington's State Environmental Policy Act (SEPA) reviews.

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### 2001 Transportation Permit Efficiency and Accountability Committee (TPEAC) established



The legislature (through Senate Bill 6188) formed the Transportation Permit Efficiency and Accountability Committee (TPEAC). The purpose of TPEAC was to streamline the environmental permitting process for transportation projects in Washington State. Some of the goals of TPEAC were to reduce mitigation cost, increase environmental benefit, reduce the redesign of transportation projects, and reduce time required to obtain permits.

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### 2002 Office of Permit Assistance (Office for Regulatory Innovation and Assistance (ORIA))

ORIA was created within the Governor's Office in 2002 by the Washington State Legislature and was initially called the Office of Permit Assistance (RCW 43.42). In 2013, Governor Inslee renamed the office to reflect his interest in pursuing innovative solutions to regulatory improvements. ORIA helps citizens and businesses understand and navigate Washington's environmental permitting and business licensing processes. Staff answers questions about local, state, and federal permits and regulatory requirements.

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### 2003 WSDOT Multi-Agency Permitting (MAP) Team (Liaisons)



The MAP team was created as a transportation project delivery organizing framework by WSDOT, Department of Ecology, and Fish & Wildlife. The MAP Team evolved to match demands of state transportation project delivery. Today it is known as the Liaison Program and consists of representatives from state and federal regulatory agencies and WSDOT.



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### 197-11 WAC Revised (Washington State Register (WSR) 03-16-067)

Clarified that threshold determinations are not required for projects that are statutorily exempt in 43.21C RCW.

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## 2005 Overview of Environmental Permitting for Transportation Projects- Joint Legislative Audit Review Committee (JLARC) (05-04) \*



Transportation Performance Audit Board (TPAB) requested this review of initiatives to reduce the cost and time required for the permitting process while maintaining environmental standards. WSDOT and natural resource agencies completed the actions recommended in this report, including a study of Florida and Minnesota DOTs streamlining efforts, upgrades to WSDOT's Geographic Information System, and the creation of the complete application guidance by the MAP-Team.

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### Business Process Review of Environmental Permitting for Transportation Projects- JLARC (05-14)



A second review examined the environmental permitting issues for specific WSDOT projects. JLARC found that Environmental activities can be root causes of delays but they are often accompanied by or the result of non-environmental complications that impact a project's overall schedule attainment. WSDOT and Ecology completed the recommended actions, including taking steps to improve project scheduling, updating the joint permit application, and updating WSDOT's guidance.

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## 2006 TPEAC Sunsets

As a result of TPEAC, WSDOT and resource agencies were using multi-agency programmatic permits, web-based permit applications, watershed-based mitigation, and local permitting improvements for more efficient permitting.

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### Executive Order 06-02: Regulatory Improvement - Improve, Simplify, and Assist



The Governor directed all state agencies to provide user-friendly, interdisciplinary, and simplified processes. Established the Governor's Regulatory Improvement Program to work with agencies to develop a one-stop business portal, provide multi-agency reviews for permits, engage in on-going Regulatory Improvement, etc.

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## 2009 Memorandum of Agreement (MOA) between WSDOT and FHWA



Established a streamlined procedure for classifying and documenting NEPA CEs. This agreement allowed WSDOT to document all (c) listed and some (d) listed CEs without sending the documentation on to FHWA. This revised and further streamlined an MOA signed in 1999.

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## 2012 43.21C RCW Revised (SB 6406)



Required the Department of Ecology to update categorical exemptions to SEPA minor code amendments, add statutory categorical exemptions, increase thresholds (specifically for residential, agricultural, and commercial building construction), revise the checklist, and improve integration of SEPA with the provisions of the Growth Management Act.

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\* A list of streamlining activities (as of 2005) and an assessment of their successes in terms of reducing time and cost, environmental performance, and stakeholder satisfaction can be found in Section 4, Figure 5 of this report.

**2012 197-11 WAC Revised (WSR 13-02-0655)**

As directed by SB 6406, Ecology increased flexible thresholds and added exemptions for local governments to exempt minor new construction. Also allowed for electronic submittal and signature of the checklist for all lead agencies.

**2013 WSDOT Programmatic Agreement with FHWA**

Through this programmatic agreement, FHWA delegated the responsibility of determining if a project is a CE. FHWA retained their responsibilities under all other federal laws. This agreement replaces the 2009 MOA.

**2014 Efficiencies in the Construction and Operation of State Transportation Projects- Joint Transportation Committee (JTC)**

This study includes recommendations to align SEPA with NEPA where possible. (use direct quote for specifics)

**197-11 WAC Revised (WSR 14-09-026)**

Clarifies that NEPA Environmental Assessments and documented CEs support the SEPA Determination of Non-Significance (-610). Consistent with the recommendations of the JTC report aligns the SEPA categorical exemptions with NEPA for certain WSDOT activities as long as they occur within the existing right-of-way. This rule also updated and added new minor new construction exemptions and updated the definition of "lands covered by water".

**2015 SB 5996/RCW 47.85.020**

Codified WSDOT's process for streamlining including the MAP team.

**SB 5994/RCW 47.01.315**

Required WSDOT to form a workgroup to identify issues, laws, and regulations relevant to consolidating and coordinating the review processes under NEPA and SEPA to streamline the review of and avoid delays to projects on state highways

**WSDOT Programmatic Agreement with FHWA**

Updates the 2013 programmatic agreement following increased authority by MAP-21. Through the agreement, WSDOT was authorized to determine if projects qualify as a CE and approve the CEs on behalf of FHWA pursuant to 23 USC 326.

**43.21C RCW Revised (HB 1219)**

House Bill 1219 created a new statutory exemption from the State Environmental Policy Act (SEPA) for the repair or replacement of state bridges deemed structurally deficient by WSDOT (RCW 43.21C.480). Also amends RCW 47.28.170 to allow WSDOT to do emergency contacting the repair or replacement of a state bridge deemed structurally deficient. Adds a definition for structurally deficient bridges to RCW 47.04.010.

**WSDOT shortened and simplified the NEPA CE form for (c) listed activities**

WSDOT reduced the amount of information required to document (c) listed activities.