

State Environmental Policy Act

Case Law Summary



The following summaries are a collection of court decisions affecting Chapter 43.21C RCW. This is not a complete list of all applicable opinions on the State Environmental Policy Act (SEPA).

[King County v. Friends of Sammamish Valley, 102, 117-1\(2024\)](#)

Key terms: Comprehensive Plan, Land Use, Nonproject, checklist

The case involves an ordinance passed by King County that regulated wineries, breweries and distilleries in land designated as rural and agricultural under the GMA. The central SEPA issue in the case was whether the County used the appropriate baseline in which to compare the impacts of the ordinance. The Central Puget Sound Growth Management Hearings Board invalidated the ordinance, in part because the County failed to properly consider the impacts of the ordinance in its SEPA checklist. The Court of Appeals reversed the Board, finding that the County complied with SEPA when it considered existing uses of the land. In reversing the Court of Appeals, the Supreme Court found that is not the current uses of the land that is relevant, but rather the type of land that affects the breadth of the SEPA analysis. The court considered that the GMA requires agricultural land to be preserved for future agricultural uses, regardless of how the land is currently being used, and any action that removes potential productivity of agricultural land may have a probable significant adverse impact.

[Wild Fish Conservancy v. Department of Fish & Wildlife, 198 Wn.2d 846, 502 P.3d 359 \(2022\)](#)

Key terms: Alternatives analysis

An agency must analyze alternatives to proposal that involves “unresolved conflicts concerning alternative uses of available resources,” even if the proposal does not require an EIS. RCW 43.21C.030(2)(e). An alternatives analysis is appropriate outside of an EIS when a proposal involves a competition over the use of a resource whereby selecting one manner of using the resource will preclude all other uses. These competing uses cannot be theoretical, and there must be an active dispute. In this case, an alternatives analysis was not required for WDFW’s approval of permit allowing cultivation of steelhead trout in existing net pens. The company did not propose to expand its net-pen infrastructure. Therefore, approving the permit did not preclude other potential uses of the resource.

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[City of Puyallup v. Pierce County, 20 Wn. App. 2d 466, 500 P.3d 216 \(2021\)](#)

Key terms: Lead agency, Prior SEPA decisions

When an agency with jurisdiction assumes lead agency status, prior SEPA decisions on the same proposal can be voided. However, information included in those decisions, like studies, reviews, and permits related to the decision may still be used by the new lead agency in its SEPA decisions so long as they still apply to the proposed action. In this case, the City assumed lead agency status after the County issued its MDNS and thus, the City had authority to void the MDNS by issuing a determination of significance. “By its nature, a DS overrides a prior MDNS and necessitates completing an EIS. See WAC 197-11-948(2).” 20 Wn. App. at 472. But the DS does not “prevent reliance on information gathered or reviews generated during the prior process.” *Id.*

[Heritage Baptist Church v. Central Puget Sound Growth Management Hearings Board, 2 Wn. App. 2d 737, 413 P.3d 590 \(2018\)](#)

Key terms: Nonproject, EIS, Impacts analysis

A nonproject EIS is inadequate if it fails to analyze impacts in the context of maximum potential development of an area and instead, relies on existing plans, laws, and rules to limit the area analyzed. In this case, the Church’s EIS was inadequate because it assumed only part of the property was developable. It did not account for the possibility that changes to existing plans, laws, and regulations could make the land developable. Thus, the EIS should have analyzed impacts for the entire property.

[Davidson Serles & Associates v. City of Kirkland, 159 Wn. App. 616, 246 P.3d 822 \(2011\)](#)

Key terms: Land use, Major action, Duplicative action

This is another example of how a proposal does not qualify as a “major action” if it does not change the actual current uses of the property or the impact of continued use on the surrounding environment. In this case, the City adopted a planned action ordinance that simplified and expedited land use permitting by relying on preexisting land use plan policies and development regulations. The court ruled that adopting the ordinance was not a major action and an EIS was not required because the planned action ordinance did not change any uses or impacts from those allowed under the preexisting plans, policies, and regulations.

Chuckanut Conservancy v. Dep't of Natural Resources, 156 Wn. App. 274, 232 P.3d 1154 (2010)

Key Terms: Major action, Significant effects

The court discussed the “baseline” against which the agency must evaluate environmental impacts. The term “baseline” is borrowed from the National Environmental Policy Act (NEPA). If a proposal does not change the actual current uses on the subject property, nor the impact of continued use on the surrounding environment, the proposal is not a major action significantly affecting the environment. In this case, a timber management plan ceased logging in one-third of a regularly logged forest and allowed logging to continue at existing levels in the other two-thirds of the property. The proposal was not a major action because it did not change uses on the property and the change in intensity of use did not cause significant adverse effects that were independent of the prior use. The court held that the agency must “analyze the proposal’s impacts against existing uses, not theoretical ones.” 156 Wn. App. at 290.

Glasser v. City of Seattle, 139 Wn. App. 728, 162 P.3d 1134 (2007)

Key terms: Programmatic EIS, Nonproject actions, Project actions

If a project is proposed and is consistent with an existing, valid nonproject action (like a programmatic EIS), the project EIS should focus on items specific to the project and not analyzed in the nonproject EIS. The lead agency should review the nonproject EIS to ensure its analysis is still applicable and if the nonproject EIS is not applicable, the project EIS should reanalyze the issue. However, opponents may not use a project EIS to collaterally challenge a nonproject EIS and, instead, must directly challenge the nonproject EIS. In this case, a project-level fish hatchery EIS was consistent with the programmatic habitat conservation plan EIS that specifically considers fish hatcheries. Thus, the court upheld the hatchery EIS.

Clallam County Citizens v. Port Angeles, 137 Wn. App. 214, 151 P.3d 1079 (2007)

Key terms: Categorical exemptions

“As applied” or “case by case” challenges to specific actions that fit within categorical exemptions are not reviewable. In this case, citizens challenged the City’s plan to fluoridate the public drinking water supply, arguing that SEPA review is required. However, SEPA administrative rules clearly included fluoridation of drinking water as categorically exempt from SEPA. Instead, the proper way to challenge fluoridation would have been to challenge the administrative rule that established the categorical exemption or argue that the action is not consistent with the exemption.

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[Bargmann v. City of Ephrata, 122 Wn. App. 1022, 2004 WL 1535621 \(2004\)](#) (unpublished)

Key terms: Phased review, Existing documents

Phased review is not appropriate if substantial changes to the proposal occur after submission of the original proposal, resulting in improper segmenting and inability to consider the entire proposal's impacts in one SEPA document. In this case, the Bargmanns' application for a building permit contained a SEPA checklist and indicated that the project would be built in three phases over a 15-month time period. The following year, the Bargmanns withdrew their original application and submitted a new application, using the same SEPA checklist. More than two years later, the Bargmanns applied for a conditional use permit, which indicated that the project was to be developed in five phases over an indefinite period of time. The court ruled against the Bargmanns because the original checklist did not consider impacts for the changes in number of phases and timelines. These changes were substantial and made phased review inappropriate.

[Citizens for Safe and Legal Trails v. King County, 118 Wn. App. 1048, 2003 WL 22172793 \(2003\)](#) (unpublished)

Key terms: EIS, Phased review

Phased review is appropriate where the early-stage EIS focuses on issues related to site selection, decision-makers have an opportunity to demand greater detail at a later project design stage, and the multiple phases are not interdependent. Phased review is not appropriate when it would segment and avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document. In that event, proposals must be closely enough related to be in effect a single course of action. Closely related means interdependent parts of a larger proposal. In this case, phased review was appropriate because site selection for a proposed trail was the first phase and design and planning of the trail was the second phase.

[Moss v. City of Bellingham, 109 Wn. App. 6, 31 P.3d 703 \(2001\)](#)

Key terms: Threshold determinations

A lead agency may reissue a DNS as an MDNS if it provides proper notice for both actions and bases the MDNS on reasonable, carefully calculated mitigating conditions. In this case, the City issued a DNS and during the comment period, received comments with concerns about environmental impacts. The City considered the comments and imposed a handful of new mitigation measures that aimed to correct the environmental issues and prevent significant

environmental impacts. The court upheld the MDNS because the mitigation measures were reasonable and because the City followed public notice and involvement requirements.

[Bellevue Farm Owners Ass'n v. Shorelines Hearings Bd., 100 Wn. App. 341, 997 P.2d 380 \(2000\).](#)

Key terms: DNS, Relationship to other laws/authority

Issuance of a DNS does not prevent other local or state agencies from conducting non-SEPA environmental reviews under other laws. In this case, the County issued a DNS for a proposal to construct a dock and the project proponents argued the DNS compelled the Shoreline Hearings Board to grant a dock permit under the Shoreline Management Act. However, the court determined that the DNS is only final and binding for SEPA decisions and that other agencies retain authority to approve or deny permits that are subject to other laws outside of SEPA.

[City of Des Moines v. Puget Sound Regional Council, 98 Wn. App. 23, 988 P.2d 27 \(1999\)](#)

Key terms: EIS, Impacts analysis, Expert testimony

Evidence and testimony on environmental impacts provided by parties with expertise receive deference and will not be contradicted unless their findings are clearly erroneous. In this case, cities surrounding the airport brought action against Port of Seattle, Puget Sound Regional Council, and City of Sea-Tac, challenging the approval and implementation of a project to construct a third runway at the airport. Court of Appeals held that expert testimony, including expert's use of methodology used at most of country's major airports for estimating future aviation demand, supported the finding. Further, the Port of Seattle and the FAA are agencies with expertise in forecasting aviation demand and should receive deference in choosing the appropriate methodology for forecasting aviation activity for purposes of evaluating impacts under SEPA.

[King County v. Central Puget Sound Growth Management Hearings Bd., 138 Wn.2d 161, 979 P.2d 374 \(1999\)](#)

Key terms: EIS, Alternatives analysis

Alternatives in an EIS do not need to be legally certain or uncontested. In this case, an EIS for residential development was adequate even though it included an alternative allowed under the prior zoning code but not the current code, where the vested status of the alternative had not been finally determined. If all alternatives were required to be legally certain or completely uncontested, projects would halt until judicial determinations of status. An alternative can still

be reasonable even if it is uncertain or contested. In this case, one alternative involved development of a one acre lot that was allowed at the time of the land use application, but was no longer allowed after a zoning code amendment. The court determined that the alternative was still reasonable because it was valuable for purposes of comparing impacts. Thus, whether an alternative is reasonable is the key standard for alternatives in an EIS.

[Concerned Taxpayers Opposed to the Modified Mid-South Sequim Bypass v. Dep't of Transp., 90 Wn. App. 225, 951 P.2d 812 \(1998\)](#)

Key terms: Alternatives analysis, EIS, Piecemealing

An EIS for a state highway bypass was upheld even though it considered only four-lane alternatives, did not evaluate a scaled-down version of the project, and only two lanes will be built in the short-term until funding becomes available. The EIS is not a compendium of every conceivable effect or alternative to a proposed project, but is simply an aid in the decision making process. The lead agency's project team examined six alternatives, including a two-lane couplet alternative that made it to the second round of screening and received extensive analysis. If the state had done the project in reverse (analyze two-lane projects only and then build two more lanes when funding is available), such action would constitute impermissible piecemealing of a project. In summary, the court upheld the EIS because it considered reasonable alternatives and accurately analyzed the impacts of the alternatives.

[Dioxin/Organochlorine Ctr. v. Pollution Control Hearings Bd. \(Dioxin II\), 131 Wn.2d 345, 932 P.2d 158 \(1997\)](#)

Key terms: NEPA, Duplicative action

Duplicative reviews under SEPA are inconsistent with state law, waste resources, and cause undesirable delays. In this case, Dioxin challenged Ecology's determination that NPDES permit renewals were not major actions under SEPA even though Congress had already determined that such renewals were not major actions. Because the federal government has authority over NPDES issues, there were no discretionary actions left for Ecology to take. Thus, SEPA review would have been duplicative and was not required.

[Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 \(1997\)](#)

Key terms: Threshold determination

Even if a proposal is large-scale and complicated, an MDNS is appropriate if the mitigation measures prevent significant adverse environmental impacts. In this case, a community group challenged an MDNS for a soil bio-remediation facility and argued that an EIS was required due

to numerous comments from the public and the mayor requesting a DS and arguing that impacts were significant. The court upheld the MDNS because the challengers failed to cite any facts or evidence demonstrating that any of the 54 mitigating conditions would fail to prevent significant impacts. The challengers also failed to cite any environmental impacts that the MDNS and its 54 conditions did not address. Thus, the decision was not clearly erroneous because community displeasure and preference for an EIS do not outweigh the in-depth analysis and conditions that the MDNS provided.

[Organization to Preserve Agric. Lands v. Adams County, 128 Wn.2d 869, 913 P.2d 793 \(1996\)](#)

Key terms: Private project, Public project, Landfill, Solid waste

Whether a project is public or private requires a factual assessment of the level of public involvement in the project. In this case, a regional landfill was considered a private project because the project proponent was not under contract with the county to build the landfill, the facility would serve customers throughout the Pacific Northwest, and the county had not decided whether to use the landfill. Although the private entity had proposed a municipal landfill at an earlier time, no government entity ever endorsed or assisted with the project. Public proposals must include off-site alternatives; private proposals only require reasonable alternatives for achieving the proposal's objective at the same site. *See* WAC 197-11-440(5)(d).

[Foster v. King County, 83 Wn. App. 339, 921 P.2d 552 \(1996\)](#)

Key terms: Determination of Significance, Categorical exemptions

Categorical exemptions do not apply to actions that are a mixture of exempt and non-exempt activities. In this case, the County issued a Determination of Significance for a proposal to divert water for a pond that would serve: 1) an irrigation system and 2) as a water-skiing facility. The proponents challenged the DS, claiming that a DS is improper for categorically exempt uses. The court upheld the DS because while the diversion for irrigation use was categorically exempt, the water skiing facility was not categorically exempt and exemptions do not apply to actions that include non-exempt activities.

[Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm'rs of Pub. Hosp. Dist. No. 304, 78 Wn. App. 333, 897 P.2d 1267 \(1995\)](#)

Key terms: Categorical exemptions

Actions of hospital boards operating jointly to consolidate some hospital services were categorically exempt from SEPA review under WAC 197-11-800(15)(h). WAC 197-11-800(15)

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exempts procurement and distribution of general supplies, equipment and services authorized/necessitated by previously approved functions/programs; personnel actions; agency organization, reorganization, internal operation, coordination of plans or functions. The consolidation of hospital boards was consistent with the exemption and did not include any other actions affecting the environment. Thus, the action was not subject to SEPA.

[Northwest Steelhead and Salmon Council of Trout Unlimited v. Dep't of Fisheries, 78 Wn. App. 778, 896 P.2d 1292 \(1995\)](#)

Key terms: Wildlife, Lead agency, Relationship to other laws/authority

An agency with jurisdiction is not obligated to assume lead agency status unless some source of authority—like a statute or administrative rule—requires it to do so. In this case, the City was lead agency for a home construction proposal that would impact wetlands and water quality of a salmon-bearing stream. The Department of Fisheries provided input on the proposal but did not assume lead agency status, despite its statutory mandate to protect fish life. The court ruled this was acceptable because as a practical matter, the Department cannot intervene in every action affecting fish and needs some discretion to determine which processes to devote resources to.

[Citizens Alliance to Protect Our Wetlands v. City of Auburn, 126 Wn.2d 356, 894 P.2d 1300 \(1995\)](#)

Key terms: Private project, Public project, Alternatives analysis, On-site alternatives, Off-site alternatives, Project actions, Non-project actions

If a proposal includes both private and public projects and project and nonproject actions, the EIS should discuss alternatives for each specific piece of the proposal. In this case, the City's EIS discussed a proposed horse racing track, a project action that was private because horse racing is not a traditional or historical government function. Thus, the EIS only needed to discuss on-site alternatives for that aspect of the proposal. It also discussed a proposed zoning code text amendment to allow horse racing in light industrial zones, which was a public nonproject action requiring discussion of off-site alternatives. The court upheld the City's EIS because it discussed only on-site alternatives for the private projection action and discussed off-site alternatives for the public nonproject action.

[Indian Trail Property Owner's Ass'n v. City of Spokane, 76 Wn. App. 430, 886 P.2d 209 \(1994\)](#)

Key terms: Land use/zoning, Building permit, Major action

For an action to be “major,” the action must include enough detail for reviewers to identify

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A proposal to expand a shopping center and proposals to install underground fuel tanks and a car wash in the center were, in effect, a single course of action. They should have been evaluated in the same environmental document and their cumulative impacts considered. Phased project reviews are inappropriate if they would prevent analysis of cumulative effects.

[Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 873 P.2d 498 \(1994\)](#)

Key terms: Public project, Private project, Landfill, Solid waste

A sanitary landfill proposed by a private company under contract with the county constituted a “public project” requiring evaluation of offsite alternatives in the EIS. In this case, the project was considered public because the parties had executed a contract requiring the private entity to perform a government function—handling and disposal of solid waste—on behalf of the government.

An EIS must include a reasonably detailed analysis of a reasonable number and range of alternatives. In this case, brief, conclusory descriptions of sites examined in the selection process failed to meet requirements in WAC 197-11-440(5)(c) for evaluating alternatives in an EIS. These descriptions did not include any location information (maps, addresses, legal descriptions), descriptions of site features, descriptions of potential environmental impacts, or comparisons of impacts between sites. Thus, the court struck down the EIS.

[Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn.2d 619, 860 P.2d 390 \(1993\), as amended by 866 P.2d 1256 \(1994\)](#)

Key terms: EIS, Impacts analysis, Cultural resources

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Courts review adequacy of an EIS de novo but must give “substantial weight” to the lead agency’s decision that an EIS is adequate. An EIS is adequate if it presents decisionmakers with a “reasonably thorough discussion of the significant aspects of probable environmental consequences” of the decision. 122 Wn.2d at 633. The degree of detail in an environmental impact statement must be commensurate with the importance of the environmental impacts and the plausibility of alternatives. A nonproject plan EIS can analyze impacts at a more general level, but cursory, superficial discussion will not suffice. It was inadequate for the EIS to defer to site-specific analyses and to state generally that some impacts would occur without any real analysis.

[Solid Waste Alternative Proponents v. Okanogan County, 66 Wn. App. 439, 832 P.2d 503 \(1992\)](#)

Key terms: Alternatives analysis, Nonproject vs. Project actions, Solid waste, Landfills

SEPA requires only a discussion of reasonable alternatives to the project action proposed in the EIS, not of nonproject alternatives. Alternatives discussed need not be exhaustive but must present sufficient information for a reasoned choice of alternatives. An expert agency’s decision on which alternatives are reasonable should be given great weight. In this case, the court upheld the county’s policy decision that long-haul alternative was not a reasonable alternative to siting a landfill in the county and thus, the EIS did not need to include regional landfills as an alternative. The record shows that regional landfills were outside the scope of the proposed action and thus, the EIS was sufficient.

[Levine v. Jefferson County, 116 Wn.2d 575, 807 P.2d 363 \(1991\)](#)

Key terms: Mitigation measures, Evidence in the record, DNS

An agency may attach environmental mitigation measures as conditions for approval even after issuing a DNS. The agency must include in the record the policies on which the measures are based and findings of fact setting forth the adverse environmental impacts sought to be mitigated. If the record is devoid of evidence supporting the need for mitigation measures, the court may require that the permit be issued without mitigation measures rather than remanding to the agency to complete the record. Lead agencies have authority to attach mitigative restrictions before issuing a DNS or after issuance of the DNS based on public comment.

[Harris v. Hornbaker, 98 Wn.2d 650, 658 P.2d 1219 \(1983\)](#)

Key terms: Duplicative actions

Duplicate EIS's are not required as long as the lead agency for a project prepares an EIS before making the decision. In this case, WSDOT undertook a 6-year road improvement plan and the county board of commissioners was allowed to make a recommendation on which plan to adopt. The county prepared materials to study the issue but did not prepare an EIS. The court ruled that the county was not required to prepare an EIS because WSDOT prepared an EIS for the same project and was the lead agency making the final decision.

[D.E.B.T., Ltd. v. Clallam County Comm'rs, 24 Wn. App. 136, 600 P.2d 628 \(1979\)](#)

Key terms: Responsible official

The lead agency has discretion to determine who the "responsible official" for SEPA will be. In this case, county ordinance stated that the Board of Commissioners would be the responsible official, and/or their designees such as the Planning Commission. Even though the Planning Commission determined that an EIS was not required, this determination was just a recommendation, and the Board retained authority as the "responsible official" to determine that an EIS would be prepared.

[Lassila v. City of Wenatchee, 89 Wn.2d 804, 576 P.2d 54 \(1978\)](#)

Key terms: Threshold determinations, Comprehensive plans, Nonproject actions, Evidence in record/findings

Establishment of a Community Center Fund, purchase and resale of realty with no development plan, and contracting for market analysis and land use studies were not major actions under SEPA. None of these actions included details about the proposed community center or committed the City to proceeding with the development, so evaluation of impacts would have been speculative. However, pairing these items with an area plan and adopting them into the Comprehensive Plan would require SEPA because the area plan would provide details that could be used to evaluate impacts.

[Marino Property Co. v. Port of Seattle, 88 Wn.2d 822, 567 P.2d 1125 \(1977\)](#)

Key terms: Actions subject to SEPA, DNS, Nonproject action

Purchase of property without change in use does not trigger SEPA. SEPA is directed at use of property, not ownership. In this case, the Port issued bonds to finance purchase of the property and to continue existing uses. While a change in the type of use or the intensity of the use may trigger SEPA, issuance of bonds and buying the property did not.

Eastlake Community Council v. Roanoke Assocs., 82 Wn.2d 475, 513 P.2d 36 (1973)

Key terms: Duplicative actions, Land use/zoning

SEPA applies to projects so long as a discretionary, nonduplicative governmental action is left to be taken. An action is nonduplicative if new issues or considerations present themselves. In this case, the renewal of an existing building permit was nonduplicative and triggered SEPA because the original building permit did not include any environmental review.