ppendix B - Significant SEPA Appellate Court Decisions

The broad language in SEPA provides many opportunities for interpretation. In their decisions and interpretation, Washington State courts recognize SEPA as an important law and tool for protecting the environment, and provide more definitive direction regarding how SEPA is expected to work. As a result of the courts' decisions, the level of attention SEPA receives from agencies, the public, and the development community is greater.

The Attorney General's Office has summarized the Supreme Court and Court of Appeals cases from 1973 to August 1998 that they felt had significant discussions of SEPA. The resulting cases have been selected by their office as most consequential. The cases are ordered first by the main SEPA subject raised in the case and then in chronological order within each section—with the most recent case listed first. Each case listing contains a short paragraph describing the important SEPA holdings of the case. Please note that all issues regarding SEPA within a case may not be included within the following descriptions. Anyone interested in these cases to the full text of the court decision. Also, subsequent amendments to SEPA and the SEPA Rules may affect the holdings of any given case.

B.1. Activities Subject to SEPA

Indian Trail Property Owner's Ass'n v. City of Spokane, 76 Wn. App 430, 886 P.2d 209 (1994)
A request for a zoning interpretation coupled with an application for a building permit constitutes a "major action" that triggers review under SEPA.

Harris v. Hornbaker, 98 Wn.2d 650, 658 P.2d 1219 (1983)
A six-year road plan is not an action under SEPA. Implies that comprehensive plans also are not actions. Contrary SEPA Guidelines provisions are not discussed.

Bellevue v. King County Boundary Review Bd., 90 Wn.2d 856, 586 P.2d 470 (1978)
Annexations are actions under SEPA. The burden is upon an agency subject to SEPA to show that it actually considered environmental matters in a threshold determination.

Carpenter v. Island County, 89 Wn.2d 881, 577 P.2d 575 (1978)
Annexations to a sewer district are not actions requiring SEPA compliance. The decision suggests that the this result is consistent with the SEPA Guidelines.

Lassila v. City of Wenatchee, 89 Wn.2d 804, 576 P.2d 54 (1978)
Establishment of a Community Center Fund, purchase and resale of realty with no development plan, and contracting for market analysis and land use studies are not actions under SEPA. Proposed amendment of the comprehensive plan is an action, and the city must demonstrate that it was preceded by a threshold determination.

Marino Property Co. v. Port of Seattle, 88 Wn.2d 822, 567 P.2d 1125 (1977)
Purchase of property without change in use does not trigger SEPA. SEPA is directed at use of property, not ownership. Failure to object to use changes for over four years results in the objection being barred by laches.

Byers v. Board of Clallam County Comm'rs, 84 Wn.2d 796, 529 P.2d 823 (1974)
SEPA compliance is required on proposals for legislation, which includes adoption of a zoning ordinance. Difficulty of compliance is no excuse.

ovelace v. Yantis, 82 Wn.2d 754, 513 P.2d 1023 (1973)
n early major SEPA case. SEPA compliance is required for any discretionary nonduplicative stage of the governmental approval rocess. This includes preliminary plats. Early SEPA review is emphasized.

astlake Community Council v. Roanoke Assocs., 82 Wn.2d 475, 513 P.2d 36 (1973)
EPA applies to projects ongoing at the time the Act passed so long as a discretionary, nonduplicative governmental action is left o be taken. SEPA is triggered by proposals to permit private projects. Another early major SEPA case.

Stempel v. Department of Water Resources, 82 Wn.2d 109, 508 P.2d 166 (1973)
The first SEPA appellate decision. SEPA applies to issuance of permits which did not become final until after enactment of SEPA. Strong language suggests that agencies must consider (and perhaps act upon) all potential impacts of projects before them for licensing, including impacts normally within the jurisdiction of other agencies. (A water resource agency is directed to consider septic tanks associated with homes for which a water right is sought.)

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B.2. Exemptions

Dioxin/Organochlorine Ctr. v. Boise Cascade Corp. (Dioxin II), 131 Wn.2d 345, 932 P.2d 158 (1997)
Actions that fit within categorical exemptions promulgated by the Department of Ecology pursuant to RCW 43.21C.110(1)(a) may not be reviewed on a case by case basis to determine whether they have probable significant adverse environmental impacts. The categorical exemption rule itself may be challenged on the basis that the type of action addressed by the exemption involves probable significant adverse environmental impacts. An action claimed to be categorically exempt may be challenged on the basis that the specific action itself is not of the type addressed by the exemption.

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

Snohomish County v. State, 69 Wn. App 655, 850 P.2d 546 (1993)
Except when WAC 197-11-305(1) applies, the State Department of Natural Resources is not required to determine whether forest practices that are statutorily exempt from EIS requirements have a potential for a substantial environmental impact. The exemption from environmental review applies to environmental checklists, threshold determinations, and draft EISs as well as to final EISs.

Noel v. Cole, 98 Wn.2d 375, 655 P.2d 245 (1982)
Footnote 2 of this opinion supports the notion that the categorical exemptions in the SEPA Guidelines are only presumptively applicable, and that the courts may require an EIS for an action with significant environmental impacts even though it is exempt under the SEPA Guidelines. (But see Dioxin II.)

Downtown Traffic Planning Comm. v. Royer, 26 Wn. App. 156, 612 P.2d 430 1980)
The SEPA Guidelines' categorical exemptions are only presumptively applicable. Agencies should consider likely environmental effects before applying exemptions. If there are potential significant impacts, agencies should require full SEPA compliance. (But see Dioxin II.)

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B.3. Lead Agency/Responsible Official

Northwest Steelhead v. Department of Fisheries, 78 Wn. App. 778, 896 P.2d 1292 (1995)
State Department of Fisheries was not required to assume lead agency status after city issued DNS despite the department's statutory mandate to preserve and protect fish life in state waters.

Spokane County Fire Protection Dist. No. 8 v. Spokane County Boundary Review Bd., 27 Wn. App. 491, 618 P.2d 1326 (1980)
A boundary review board may rely on the threshold determination by the lead agency to comply with SEPA. Upholds the lead agency rules in the SEPA Guidelines.

D.E.B.T., Ltd. v. Clallam County Comm'rs, 24 Wn. App. 136, 600 P.2d 628 (1979)
The County Commissioners could retain "responsible official" duties with themselves, and reject a planning commission recommendation not to require an EIS for a preliminary plat.

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B.4. Threshold Determination

Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 (1997)
The decision to use the mitigated DNS process under the SEPA rules to address significant impacts rather than an EIS is within the discretion of the governmental agency and is entitled to substantial weight. A mitigated DNS will be upheld under the clearly erroneous standard if (1) environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with SEPA, (2) it is based on information sufficient to evaluate the development's probable environmental impacts, and (3) the mitigation measures are reasonable and capable of being accomplished.

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)
Remote impacts and impacts on property values need not be considered under SEPA.

Indian Trail Property Owner's Ass'n v. City of Spokane, 76 Wn. App 430, 886 P.2d 209 (1994)
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. Error held to be harmless. For purposes of review under SEPA, economic competition, in and of itself, is not an element of the environment.

King County v. Boundary Review Bd., 122 Wn.2d 648, 860 P.2d 1024 (1993)
A proposed land use related action is not insulated from EIS requirements simply because there are no existing specific proposals to develop the land or because no immediate land use changes will result from the proposal. Instead, an EIS is required if, based on the totality of the circumstances, future development is probable following the action and if that development will have a significant adverse effect upon the environment.

Pease Hill Community Group v. County of Spokane, 62 Wn. App. 800, 816 P.2d 37 (1991)
The agency issued a mitigated DNS with addendum rather than requiring the preparation of an EIS prior to the issuance of a permit. When a governmental body determines that an environmental impact statement is not mandated, the record must demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA. The determination must be based on information reasonably sufficient to determine the environmental impact of the proposed project.

West 514, Inc. v. Spokane County, 53 Wn. App. 838, 770 P.2d 1065 (1989)
The entity responsible for determining the environmental significance of a new project may, in a mitigated DNS, specify environmental studies on which the ultimate approval of the project will depend.

Murden Cove Preservation Ass'n v. Kitsap County, 41 Wn. App. 515, 704 P.2d 1242 (1985)
A determination of nonsignificance is given substantial weight and is reviewed under the clearly erroneous standard. The imposition of mitigative conditions is not by itself sufficient to require an EIS in the absence of more than a moderate effect on the environment. In the absence of specific plans for future development, SEPA does not require consideration of every remote and speculative consequence of an action.

Brown v. City of Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981)
A negative threshold determination (DNS) for a 34-unit condominium in an urban area is affirmed. The Court approved, under the old SEPA Guidelines, a process somewhat similar to the "mitigated DNS" in the new SEPA Rules.

Hayden v. Port Townsend, 93 Wn.2d 870, 613 P.2d 1164 (1980), overruled on other grounds, Save a Neighborhood Env't v. Seattle, 101 Wn.2d 280, 676 P.2d 1006 (1984).
A written threshold determination is not required. The SEPA Guidelines are not discussed. Strong dicta to the effect that SEPA compliance is not required for nonproject rezones. The contrary holding in Byers is not discussed.

ASARCO, Inc. v. Air Quality Coalition, 92 Wn.2d 685, 601 P.2d 501 (1979)
The environmental impact of a proposed air emission standards variance includes pollutants which would be emitted under the variance (even though they are existing emissions). The federal doctrine of functional equivalence (excusing an EIS for regulatory activities under certain environmental laws) is rejected. A short statutory time period for processing an application can be reconciled with the requirements of SEPA. Strong language on fundamental and inalienable rights.

Short v. Clallam County, 22 Wn. App. 825, 593 P.2d 821 (1979)
Affirmative threshold determinations (DSs) are reviewed under the arbitrary and capricious, rather than the clearly erroneous, standard.

Sisley v. San Juan County, 89 Wn.2d 78, 569 P.2d 712 (1977)
Record of a negative threshold determination (DNS) by local government must demonstrate that environmental factors were considered. Letters of federal and state agencies were used as evidence to reverse local negative threshold determination.

Swift v. Island County, 87 Wn.2d 348, 552 P.2d 175 (1976)
A negative threshold determination is reversed under the "clearly erroneous" standard primarily because of impacts on wildlife and a state park.

Norway Hill Preservation and Protection Ass'n v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976)

Negative threshold determinations (DNSs) under SEPA (including those of local government) will be reviewed under the "clearly erroneous" standard in the state administrative procedure act --a standard of review broader than would otherwise apply. An EIS is required whenever more than a moderate effect on the quality of the environment is a reasonable probability.

arrowsview Preservation Ass'n v. City of Tacoma, 84 Wn.2d 416, 526 P.2d 897 (1974)
ıe decision not to prepare an EIS on a rezone is affirmed because development under the new zoning would not have a ıbstantially greater impact than development under the old zoning. Consideration of the impacts of the particular development question could be postponed until the preliminary plat or building permit stage "when details of the specific structure and use the property are more clearly defined."

ıanita Bay Valley Community Ass'n v. City of Kirkland, 9 Wn. App. 59, 510 P.2d 1140 (1973)
ıne first appellate case addressing threshold determinations. Before deciding not to prepare an EIS, an agency must actually consider environmental factors (and later be able to demonstrate this consideration to a court on appeal). SEPA introduces an element of discretion into decisions that were formerly considered ministerial.

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B.5. Environmental Impact Statement

King County v. Central Puget Sound Growth Management Hearings Bd., 91 Wn. App. 1, 951 P.2d 1151 (1998)
Alternatives in an EIS need not be legally certain and uncontested. 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.

Concerned Taxpayers Opposed to the Modified Mid-South Sequim Bypass v. Department of Transportation, 90 Wn. App. 225, 951 P.2d 812 (1998)
An EIS for a state highway bypass is 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.

Organization to Preserve Agric. Lands v. Adams County, 128 Wn.2d 869, 913 P.2d 793 (1996)
Whether a project is public or private requires a factual assessment of the level of public involvement in the project. A regional landfill was held to be a private project where 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. 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 two phases are not interdependent.

Citizens Alliance to Protect Our Wetlands v. City of Auburn, 126 Wn.2d 356, 894 P.2d 1300 (1995)
A proposed development qualifies as a “private project”, and is exempt from the requirement to discuss offsite alternatives in an EIS, if it is initiated and sponsored by a private organization and is neither a traditional nor historical governmental function. When a project and nonproject action are interrelated, the lead agency may discuss the environmental significance of both in the same EIS. When the project qualifies as a “private project”, the discussion of offsite alternatives in the EIS must, at a minimum, satisfy the requirements for offsite alternatives to nonproject actions established by SEPA. Under WAC 197-11-440(5)(b)(iii), a municipality may choose to limit alternatives in EIS to sites within city limits.

Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 873 P.2d 498 (1994)
Sanitary landfill proposed by private company under contract with the county held to be a "public project", requiring evaluation of offsite alternatives in the EIS, because handling and disposal of solid waste is a governmental function. EIS must include a reasonably detailed analysis of a reasonable number and range of alternatives. Conclusory statements concerning sites examined in site selection process failed to meet requirements in WAC 197-11-440(5)(c) for evaluating alternatives in an EIS.

Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn.2d 619, 860 P.2d 390, 866 P.2d 1256 (1993)
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 need only analyze environmental impacts at a highly generalized level of detail, but cursory superficial discussion will not suffice.

Solid Waste Alternative Proponents v. Okanogan County, 66 Wn. App 439, 832 P.2d 503 (1992)
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. Agency's decision on which alternatives are reasonable should be given great weight. Court upheld county's policy decision that long-haul alternative was not a reasonable alternative to siting a landfill in the county. General discussion of mitigation measures not invalid for failure to include cost and effectiveness of measures.

City of Richland v. Franklin County Boundary Review Bd., 100 Wn.2d 864, 676 P.2d 425 (1984)
An EIS for annexation with accompanying zoning that would allow a shopping center is not invalid for failing to consider socio-economic consequences of a large regional shopping center, because no shopping center was proposed at the time of decision.

Save Our Rural Env't v. Snohomish County, 99 Wn.2d 363, 662 P.2d 816 (1983)

SEPA requires discussion of alternatives in an EIS, but does not require that government pick the best alternative. Government is required, however, to act to mitigate adverse impacts in entire affected area. (The source of this requirement is not clear.)

Toandos Peninsula Ass'n v. Jefferson County, 32 Wn. App. 473, 648 P.2d 448 (1982)
lternatives in an EIS are limited by a rule of reason.

athcart - Maltby - Clearview Community Council v. Snohomish County, 96 Wn.2d 201, 634 P.2d 853 (1981)
pproved phased or "piecemeal" EIS. A "bare bones" EIS on a rezone for a large residential development is okay so long as ore complete compliance is done for the later, more detailed approval stages. Follows Narrowsview.

arrie v. Kitsap County, 93 Wn.2d 843, 613 P.2d 1148 (1980)
his is "Barrie II." Holds that an EIS must discuss socio-economic issues. (Holding is affected by subsequent legislative amendments.) The adequacy of an EIS is a question of law. Extensive discussion of alternatives in an EIS is related to the objective of the proposal.

Save a Valuable Env't v. City of Bothell, 89 Wn.2d 862, 576 P.2d 401 (1978)
During a rezone for a shopping center, a city may not act in disregard of impacts outside of its boundaries; rather the "zoning body must serve the welfare of the entire affected community." This rule is derived at least in part from the fundamental and inalienable right to a healthful environment which SEPA grants all citizens, including those in adjoining areas.

Mentor v. Kitsap County, 22 Wn. App. 285, 588 P.2d 1226 (1978)
An agency need not follow its procedural rules when justice requires that the rules be relaxed. EIS adequacy is reviewed using a "rule of reason." Minor errors in an EIS description of a comprehensive plan are not fatal.

Ullock v. City of Bremerton, 17 Wn. App. 573, 565 P.2d 1179 (1977)
An EIS for a nonproject rezone is adequate if impacts of the maximum potential development of the property are discussed. It is very difficult for a rezone to violate the substantive policies of SEPA because, without further governmental action, a rezone has no immediate environmental consequences.

Cheney v. City of Mountlake Terrace, 87 Wn.2d 338, 552 P.2d 184 (1976)
SEPA does not require that every remote and speculative consequence be included in an EIS. An EIS for a highway need not consider later specific development proposals for adjoining private property.

Merkel v. Port of Brownsville, 8 Wn. App. 844, 509 P.2d 390 (1973)
Upland work on a project should not be commenced before a shoreline substantial development permit is secured for the shoreline portion. SEPA's provisions help lead to this result.

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B.6. Using Existing Environmental Documents

Concerned Taxpayers Opposed To The Modified Mid-South Sequim Bypass v. Department of Transportation, 90 Wn. App. 225, 951 P.2d 812 (1998)
Procedural errors in the EIS process are subject to the rule of reason. Failure to formally incorporate by reference a document into an EIS constitutes harmless error if the document was circulated with the EIS and considered by the agency making the decision.

Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn.2d 619, 860 P.2d 390, 866 P.2d 1256 (1993)

The court upheld the incorporation by reference of a draft environmental document into a draft EIS where the incorporated document became final by the date the final EIS was issued. A document incorporated by reference into an EIS is subject to the entire review and comment process required under SEPA. County's failure to fully respond to comments on incorporated document was inconsequential procedural error which did not, under the rule of reason, render the EIS inadequate.

Incorporating by reference, in a nonproject plan EIS, impact statements for specific projects that implement the plan is not improper if the agency reserves the decision on the projects until after the decision on the nonproject action is made.

Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 785 P.2d 447 (1990)
A minor change in location of a project is not sufficient to require the preparation of a supplemental EIS pursuant to WAC 197-11-600(4)(d). The EIS, containing some information regarding potential fogging problems at the airport, held sufficient so that a supplemental EIS was not mandated to address fogging issues in more detail as new information did not significantly impact conclusions drawn concerning the environmental effect of a project.

West 514, Inc. v. Spokane County, 53 Wn. App. 838, 770 P.2d 1065 (1989)
A supplemental EIS is only required when the new information is based on more than mere speculation. Testimony that the building of a shopping mall could cause a decline in retail sales in the central business area held not an environmental effect necessitating an EIS. No evidence of physical impacts of decline in retail sales was present.

SEAPC v. Cammack II Orchards, 49 Wn. App. 609, 744 P.2d 1101 (1987)
A developer submitted a proposal for a planned housing development containing 234 units of manufactured housing and for

approval to subdivide the perimeter area into 31 lots. The developer later withdrew the manufactured housing plan. The court held that a new EIS was not needed when an amended proposal does not have a substantially different impact on the environment from the previous proposal. The court also ruled that the possibly adverse impact of a proposal on the value of surrounding property is not a factor that must be considered under SEPA.

isqually Delta Ass'n v. City of Dupont, 103 Wn.2d 720, 696 P.2d 1222 (1985)
his is the second Nisqually Delta case. The EIS discussed a proposed and alternative export dock location, while the final roposed location (not discussed in the EIS) was midway between them. No significant differences in impacts existed between ıe actual location chosen and those described in the EIS. The notice referencing the EIS was held adequate for the Shoreline anagement Act. Absent differing impacts, no new notice to adjoining jurisdictions was required. The proposed action was not "a ew proposed action" requiring either a supplemental EIS or notice that an old EIS was being used for a new proposed action under provisions of the old SEPA Guidelines.

Save a Neighborhood Env't v. City of Seattle, 101 Wn.2d 280, 676 P.2d 1006 (1984)
Upholds and applies SEPA Guidelines requirement that lead agency's threshold determination is binding upon other agencies and that no agency shall repeat the threshold determination procedures for substantially the same proposal.

Barrie v. Kitsap County Boundary Review Bd., 97 Wn.2d 232, 643 P.2d 433 (1982)
This is "Barrie III." Construes the old WAC 197-10-495 as to when an amended or supplemental EIS is required. Passage of time, alone, is not "significant new information" requiring an amended EIS.

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B.7. SEPA Substantive Authority

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

Victoria Tower Partnership v. City of Seattle (Victoria II), 59 Wn. App. 592, 800 P.2d 380 (1990)
A substantive decision based on SEPA is reviewed under the clearly erroneous standard. The fact that a proposed project complies with zoning does not prevent the decision-maker from denying or limiting the project based on SEPA grounds. The consideration of aesthetics is proper under SEPA.

Maranatha Mining, Inc. v. Pierce County, 59 Wn. App. 795, 801 P.2d 985 (1990)
SEPA does not require that all adverse impacts be eliminated but merely seeks a balance, restraint and control of development. A decision based on community displeasure and not on reasons backed by policies and standards will not withstand review. In denying the proposal based on SEPA, the county failed to identify policies relied on or reasons why impacts could not be mitigated.

Cougar Mt. Assocs. v. King County, 111 Wn.2d 742, 765 P.2d 264 (1988)
Review of decisions under SEPA shall be made under the "clearly erroneous" standard of review which holds that only when the court is left with the definite and firm conviction that a mistake has been committed can the court then reverse the decision. Before denying a proposal on SEPA grounds, the agency must (1) specifically set forth potential adverse environmental impacts that would result from the project, and (2) specifically set forth reasonable mitigation measures, or, if such measures do not exist, (3) specifically state why the impacts are unavoidable and development should not be allowed.

Nagatani Bros. v. Skagit County Bd. of Comm'rs, 108 Wn.2d 477, 739 P.2d 696 (1987)
SEPA mandates that a denial action be based only on specific proven significant impacts. The agency must make a complete record establishing those facts.

West Main Assocs. v. City of Bellevue, 49 Wn. App. 513, 742 P.2d 1266 (1987)
To justify denial of a project under SEPA, adverse impacts included in an EIS need not be specifically labeled "significant" as long as the decision-maker concludes they are significant. Comprehensive plan policies, a land use code, and the SEPA statute's statements of purpose and policy may be adopted as SEPA policies and used as the basis for denial of a proposal under SEPA.

Prisk v. City of Poulsbo, 46 Wn. App. 793, 732 P.2d 1013 (1987)
The city enacted an ordinance that required developers to pay a park fee in lieu of dedication of land as a condition of subdivision approval. The Supreme Court in another case had held that those types of ordinances were invalid as they constituted an unconstitutional taxing. The city attempted to rely on the invalid ordinance by citing to the ordinance as a city policy under SEPA. The court held that since the ordinance was invalid it could not be used as a basis under SEPA.

Buchsieb/Danard, Inc. v. Skagit County, 99 Wn.2d 577, 663 P.2d 487 (1983)
SEPA empowers county to deny preliminary plat based on environmental impacts. No mention of RCW 43.21C.060.

Department of Natural Resources v. Thurston County, 92 Wn.2d 656, 601 P.2d 494 (1979)
SEPA's substantive authority allows the county to deny a preliminary plat to protect eagles, even though the Shorelines Hearings Board had previously ruled that the same project would not inappropriately impact eagles and had reversed the county's denial of a shoreline substantial development permit. The Court implied that the county's environmental discretion under SEPA is broader than the discretion of the Shorelines Hearings Board in reviewing a permit decision.

Polygon Corp. v. City of Seattle, 90 Wn.2d 59, 578 P.2d 1309 (1978)
The landmark case holding that SEPA grants substantive authority to condition or deny proposals to avoid adverse environmental impacts, even though the project in question meets all express requirements of other statutes and ordinances. (This authority is limited by later amendments to RCW 43.21C.060). Denials may be based upon primarily aesthetic grounds, so long as other types of impacts would also be avoided. Exercises of SEPA's substantive authority are also reviewed under the "clearly erroneous" standard.

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B.8. Vested Rights

Victoria Tower Partnership v. City of Seattle (Victoria I), 49 Wn. App. 755, 745 P.2d 1328 (1987)
The vested rights doctrine, which requires that a building permit application be evaluated under the zoning and building regulations in effect at the time of application, applies to land use decisions made under SEPA. Policies proposed but not adopted at the time of application could not be used as basis for mitigation under SEPA.

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B.9. Appeals

Saldin Securities, Inc. v. Snohomish County, 134 Wn.2d 288, 949 P.2d 370, (1998)
Interlocutory judicial review of a determination of significance may be obtained through a constitutional writ of certiorari (inherent review power). The project proponent must allege facts that, if verified, indicate the agency's determination of significance was illegal or arbitrary and capricious.

CLEAN v. City of Spokane, 133 Wn.2d 455, 947 P.2d 1169 (1997)
An aggrieved person must exhaust administrative remedies before seeking judicial review of a mitigated determination of nonsignificance. If the record does not show that a party attempted to use the administrative appeal process, a court may conclude that no administrative appeal was made.

Felida Neighborhood Ass'n v. Clark County, 81 Wn. App 155, 913 P.2d 823 (1996)
If official notice of the date and place for commencing a judicial appeal is not provided in substantial compliance with SEPA, the SEPA rules adopted by the Department of Ecology, and any implementing ordinance, the time limit for filing an appeal is tolled.

Snohomish County Property Rights Alliance v. Snohomish County, 76 Wn. App 44, 882 P.2d 807 (1994)
Economic interests are not within the zone of interests protected by SEPA such as to provide standing to challenge a SEPA determination.

State of Washington ex rel. Friend & Rikalo Contractor v. Grays Harbor County, 122 Wn.2d 244, 857 P.2d 1039 (1993)
SEPA requires that administrative review procedures be exhausted before judicial review is sought. Judicial review under SEPA must be of the underlying governmental action together with the accompanying environmental determinations (the "linkage" requirement). A county ordinance that mandated judicial review of the underlying governmental action before completion of the administrative SEPA appeal process violated both these requirements. When neither the contingent nor optional time periods for appeal in SEPA apply, the court will apply the longer of analogous appeal periods.

Dioxin/Organochlorine Ctr. v. Department of Ecology (Dioxin I), 119 Wn.2d 761, 837 P.2d 1007 (1992)
Under RCW 43.21B.310(1) and the doctrines of primary jurisdiction and exhaustion of remedies, the Pollution Control Hearings Board, and not the superior court, was the proper forum to hear a challenge to the Department of Ecology's determination that certain permits were categorically exempt from SEPA.

Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 785 P.2d 447 (1990)
WAC 197-11-680(5)(a) applies to judicial appeals but not to administrative appeals.

Nolan v. Snohomish County, 59 Wn. App. 876, 802 P.2d 792 (1990)
A county had an ordinance that required the notice of intent to seek judicial review of a land use decision on environmental grounds to be served on the clerk of the quasi-judicial body that reviewed the decision. SEPA requires service be on the lead agency. County ordinance held invalid as it conflicted with SEPA.

Waterford Place Condominium Ass'n v. City of Seattle, 58 Wn. App. 39, 791 P.2d 908 (1990)
A letter sent by the city informing the parties of record of the decision of the council is not an "Official Notice of Agency Action" pursuant to RCW 43.21C.080(3). A city ordinance required that a filing for a judicial writ of review must be done within 15 days. The issue before the court was whether SEPA extends the 15 day period to 30 days. The court held that SEPA did not extend the time period. An appeal of underlying governmental actions must be filed within the local time limits prescribed

(here, 15 days), and the appellant has up to 30 days to amend or supplement its claim to include SEPA issues.

West Main Assocs. v. City of Bellevue, 49 Wn. App. 513, 742 P.2d 1266 (1987)
A city ordinance had a shorter appeal period for SEPA decisions than is found in its ordinance for appeal time for the underlying ction. The court held that SEPA required the consolidation of local appeal procedures for the underlying government action and EPA determination into one action. Therefore, the shorter SEPA appeal period was not applicable.

kada v. Park 12-01 Corp., 103 Wn.2d 717, 695 P.2d 994 (1985)
EPA challenges using writs of certiorari must be filed within 30 days of the governmental decision. (Now, RCW 43.21C.075 ffects timing of appeal.)

isqually Delta Ass'n v. City of Dupont, 95 Wn.2d 563, 627 P.2d 956 (1981)
This is the first Nisqually Delta case, holding that people living outside an annexed area have no statutory right to appeal the Boundary Review Board decision approving the annexation. The court held that an allegation of impairment of plaintiffs' fundamental and inalienable right to a healthful environment would not expand a statutory right to appeal. However, if plaintiffs had made the same allegation in a petition for a writ (addressing the court's inherent jurisdiction) the result may have been different.

Citizens Interested in the Transfusion of Yesteryear v. Board of Regents of the Univ. of Washington, 86 Wn.2d 323, 544 P.2d 740 (1976)

A private project being undertaken on government land pursuant to a government lease is still private for the purposes of RCW 43.21C.080, and any appeal governed by that section must be brought within the shorter time frame.

Leschi Improvement Council v. Washington State Highway Comm'n, 84 Wn.2d 271, 525 P.2d 774 (1974)
Plaintiffs who allege their fundamental and inalienable right to a healthful environment is impaired may go to court even though they did not exhaust an available administrative remedy. (Note that only a four-judge opinion reaches this conclusion.) The adequacy of an EIS is a question of law for the court to decide.

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Appendix B Supplement - Significant SEPA Appellate Court Decisions 1999 thru May 2002

The following is a summary of significant SEPA appellate court decisions prepared by the Washington State Attorney General's Office for the period 1999 through May 2002. Please note that all issues regarding SEPA within a case may not be included within the following descriptions. Also, subsequent amendments to SEPA and the SEPA Rules may affect the holdings of any given case.

Exemptions

Plum Creek Timber Co., L.P. v. Washington State Forest Practices Appeals Board, 99 Wash.App. 579 (2000). WAC 197-11-305 can require SEPA review of a Class III forest practice which is otherwise exempt, if such forest practice is a segment of a proposal which as a whole has a probable significant adverse environmental impact.

Threshold Determinations

Boehm v. City of Vancouver, 2002 WL 960272 (May 10, 2002). The Boehms argued that the threshold determination should be remanded because the City didn't consider the site specific impacts of Fred Meyer's proposed gas station. The court held that SEPA review need not address cumulative impacts when speculative; when a party can point to no specific impact, those impacts are speculative.

Moss v. Bellingham, 109 Wash.App. 6 (2001). Large-scale subdivision development did not per se have significant environmental impacts requiring an environmental impact statement (EIS), regardless of attempts to mitigate the impacts prior to permitting. In reviewing the environmental impacts of a project and making a threshold determination, a Growth Management Act (GMA) county/city may, at its option, determine that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations and comprehensive plan adopted under RCW 36.70A and in other applicable local, state, or federal laws or rules, provide adequate analysis of and mitigation for some or all of the specific adverse environmental impacts of the project.

Donwood, Inc. v. Spokane County, 90 Wash.App. 389 (1998). Counties have the authority under SEPA to condition or deny a land use action based on adverse environmental impacts even where the proposal complies with local zoning and building codes. The comments noted on the environmental checklist indicated that the reviewing official was unable to determine various impacts from the proposed development without a specific site plan. Accordingly, the County had the authority, limited by legitimate governmental interest, to mitigate the impact of the project's development.

Alpine Lakes Protection Society v. Washington State Department of Natural Resources, 102 Wash.App. 1 (2002). Forest Practices Appeals Board was required to consider impact of unproposed but probable future forest practices

in determining the necessity of an EIS under SEPA for a watershed analysis prepared by a timber company. Although the watershed analysis made no mention of any future forest practices, it was unlikely that the timber company would go to the expense of performing it without making a future application for forest practices in the watershed. Even proposals intended to protect or improve the environment may require an EIS under SEPA. For purposes of determining the necessary of preparing an EIS, the absence of specific development plans should not be conclusive of whether an adverse environmental impact is likely.

sing Existing Environmental Documents

'ells v. Whatcom County Water District No. 10, 105 Wash.App. 143 (2001). City's unsigned interim agreement that it would :mporarily reduce the amount of diversion from a river to a lake if certain levels of stream flow did not occur was not "new formation" and therefore, did not require the county water district to provide a supplemental environmental impact statement (SEIS). No scientific information supported the hypothesis that the agreement, if implemented, would increase pollution in the lake.

Appeals

Wells v. Whatcom County Water District No. 10, 105 Wash.App. 143 (2001). Failure to comply with the twenty-one day limit for bringing a challenge alleging noncompliance with SEPA barred the argument that allegedly new information required further environmental review and a SEIS. Attorneys Fees

Plum Creek Timber Co., L.P. v. Washington State Forest Practices Appeals Board, 99 Wash.App. 579 (2000). Because State Equal Access to Justice Act (EAJA) is patterned after the federal act, federal standard for determining whether action of administrative agency was substantially justified as will bar award of attorney fees to prevailing party in judicial review of agency action is applied. Under this standard, "substantially justified" means justified in substance or in the main. In other words, justified to a degree that could satisfy a reasonable person. Determination of whether action was substantially justified to bar award of attorney fees under the EAJA is reviewed for an abuse of discretion.

Apline lakes Protection Society v. Washington State Dept. of Natural Resources, 102 Wash.App 1 (2000). Attorneys fees incurred at the administrative level are ordinarily not available under the state EAJA. Under the EAJA, fees are available to a qualified party that prevails in a judicial review of an administrative action. The statute is silent as to fees incurred at the administrative level. The clear implication is that the Legislature did not intend to make fees incurred at the administrative level available under the act. Standing

Kucera v. State Dept of Transportation, 140 Wn.2d. 200 (2000) Shoreline property owners pleaded a sufficient injury in fact to have standing under SEPA to challenge the operation of a passenger ferry whose large wakes allegedly caused damage to the shoreline environment. Their SEPA claim was based on the State's alleged failure to consider the environmental effects of the ferry, not its economic effects, and they alleged damage to both private and public shorelines. Injunctive Relief

Kucera v. State Dept of Transportation, 140 Wn.2d. 200 (2000). The Superior Court entered a preliminary injunction limiting the speed of a passenger ferry along a portion of its run pending compliance with SEPA. The Supreme Court held that (1) Shoreline property owners had an adequate remedy at law in the form of monetary damages for erosion allegedly caused by large wakes from the ferry and thus were not entitled to preliminary injunctive relief; (2) Trial court's failure to make any finding as to whether deployment or operation of the ferry caused harm to shoreline property when determining whether to issue preliminary injunctive relief under SEPA was an abuse of discretion. Absent such a finding, shoreline property owners could not satisfy their burden of establishing actual and substantial harm; and (3) Even assuming that deployment or operation of the ferry was causing actual and substantial injury to the environment, issuance of a preliminary injunction pursuant to SEPA without balancing the relative interests of the parties and the public was an abuse of discretion. SEPA does not require that those evaluating a proposed action consider environmental factors alone. Rather, the essential factors balanced frequently are the substantiality and likelihood of environmental cost and economic cost.

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