



**MEMORANDUM**

**To:** Kirkland Hearing Examiner

**From:**  Eric Shields, Planning Director, SEPA Responsible Official

Susan Lauinger Susan Lauinger, Associate Planner

**Date:** October 1<sup>st</sup> 2015

**Subject:** **STATE ENVIRONMENTAL POLICY ACT (SEPA) APPEAL**

**City's Determination:** MITIGATED DETERMINATION OF NONSIGNIFICANCE (MDNS);  
**FILE NO.** SEP15-02240 (refer to Exhibit A)  
**PROJECT ACTION:** HEDEEN SHORT PLAT -6 LOTS  
**SHORT PLAT FILE:** SUB15-02156 (NOTE: SHORT PLAT APPEAL IN SEPARATE MEMO)

**I. INTRODUCTION**

- A. Appellants: On July 8<sup>th</sup> 2015 George and Sarah Finkensteadt, and Joe and Winnie Kates (together) filed an appeal of the City's SEPA determination associated with a short subdivision for 6 lots (see Exhibit B). The same appellants filed appeals of the associated short subdivision application. This memo addresses only the SEPA appeal.
- B. Applicant: James Jordan, agent for Arne Hedeem and Lenore Hedeem.
- C. Action Being Appealed: SEPA Responsible Official (Planning Director) decision to issue a Mitigated Determination of Nonsignificance (MDNS) for the Hedeem Short Plat. The SEPA review was conducted in conjunction with a 6-lot short plat, which also has an associated shoreline Substantial Development Permit (SDP).
- D. Appeal: The appeal challenges the City's decision to issue a Mitigated Determination of Nonsignificance (MDNS) regarding the Hedeem proposal. The appellants claim to be "directly affected by the proposed action" and have cited several varying concerns mostly related to tree removal and protection of specifically identified species of birds as well as "other wildlife" that are not identified in the appeal.

The appeal filed requests that an Environmental Impact Statement (EIS) be required. See Sections IV for specific analysis on the appeal letter and Exhibit B for the letter of appeal.

**II. RULES AND CRITERIA FOR APPEAL AND DECISION**

- A. Rules: Kirkland Municipal Code (KMC) Sections 24.02.220 through 24.02.240 set forth the rules for SEPA appeals. In the event that a project permit does not include an open record public hearing, the SEPA appeal will be heard and decided upon by the hearing examiner using the provisions of KMC Subsections 24.02.230 (g), (h), and (i), which include hearing notice, participation, and staff report requirements.

- B. Criteria for Submission of an Appeal: Under KMC Section 24.02.230, an appeal must be filed with the environmental coordinator within fourteen calendar days of the date of the determination is issued by the responsible official. Additionally, the appeal must be in written form and must contain a brief and concise statement of the matter being appealed, the specific components or aspects that are being appealed, the appellants basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include.
- C. Participation in the Appeal: Only the applicant or proponent, city staff, and persons who have appealed the SEPA determination may participate in the appeal. These persons may participate in the appeal in either or both of the following ways:
1. Submit written testimony to the Planning Department prior to distribution of the staff report.
  2. Appear at the hearing and submit oral or written testimony directly to the hearing body. The hearing body may reasonably limit the extent of oral testimony to facilitate the orderly and timely conduct of the hearing.
- D. Hearing Scope and Considerations: KMC Section 24.02.230(i)(1-4) sets forth the following additional appeal procedures.
1. The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.
  2. The decision of the responsible official shall be accorded substantial weight.
  3. All testimony will be taken under oath.
  4. The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of Nonsignificance (MDNS).
- E. Pre-Hearing Conference/EXHIBIT AND WITNESS LIST:
1. A pre-hearing conference was held by the Hearing Examiner on September 2<sup>nd</sup>, 2015 to discuss the case schedule for pre-hearing motions, witnesses and exhibits for the applicant, appellants and the City. Per that order, the City offers this report with Exhibits, listed at the end (see section VII below).
  2. Additionally, the City would like to reserve the right to offer a PowerPoint presentation at the hearing, presented by the project planner.
  3. The witness list on behalf of the City is as follows: John Burkhalter, Development Engineering Supervisor and Stacey Rush, Senior Surface Water Engineer.
- F. Decision on the Appeal: Pursuant to KMC Section 24.02.230(h), the hearing body shall consider all information and material within the scope of the appeal submitted by persons entitled to participate in the appeal. The hearing body shall either:
1. Affirm the decision being appealed; or
  2. Reverse the decision being appealed; or
  3. Modify the decision being appealed.

### **III. BACKGROUND AND SITE DESCRIPTION**

- A. Site Location: The Hedeen property is located at 7921 NE 112<sup>th</sup> Street in Kirkland, Washington (see Exhibit C).
- B. Zoning and Land Use: The zoning designation for the Hedeen property is RSA 8. This designation allows 8 dwelling units per acre and allows a minimum lot size of 3,800 square feet. If built to zoned capacity, the Hedeen property, which is 56,769 SF would allow 10 lots. Additionally, the Hedeen property lies within an overlay zone called the Holmes Point Overlay (HPO), which contains requirements limiting lot coverage and protections for native vegetation.
- C. Development Review Process: An application was submitted on November 13<sup>th</sup> 2014 for a 7-lot short plat, and an associated Substantial Development Permit, and SEPA review. During the public comment period several public comments were received, many associated with environmental concerns. A neighborhood meeting was held on March 2<sup>nd</sup> 2015 to address the concerns raised. City staff in attendance to answer questions included the following: Rob Jammerman, Development Engineering Manager, Thang Nguyen, City's Transportation Engineer, Susan Lauinger, Planner and Jeremy McMahan, Planning Manager. Subsequently, the applicant changed the proposal to a 6-lot short plat, which is the number of lots approved by the City on June 23<sup>rd</sup> 2015.

On June 26<sup>th</sup>, 2015, the City issued a SEPA Mitigated Determination of Nonsignificance (MDNS) (see Exhibit D). During the appeal period, which ended on July 10<sup>th</sup>, 2015, an appeal letter was submitted by the appellants.

### **IV. Issues raised in the SEPA Appeal:**

- A. Timely Comments Received: Per Washington Administrative Code (WAC) 197-11-355, and KMC 24.02.170, the Optional DNS process was used for the comment period wherein the SEPA public comment period was combined with the underlying comment period for the Hedeen Short Plat. Timely comments were received and are included in Exhibit A as Attachment 6 in the Short Plat Decision (file SUB14-02156).
- B. Timely Appeal Received: Per KMC 24.02.230, an appeal must be filed within 14 days of the date a DNS is issued. The Mitigated DNS was issued on June 26<sup>th</sup>, 2015 and the appeal was received on July 8<sup>th</sup> 2015.
- C. Issues Raised in Appeal: The appeal comments as summarized in section I.D. above are addressed by subject and followed by staff response below. Note that some appeal items in the letter of appeal are not SEPA issues and are called out as such in the analysis below.
- D. Staff Response Criteria: The SEPA "threshold determination" is the formal decision as to whether the proposal is likely to cause a significant adverse environmental impact for which mitigation cannot be easily identified. The SEPA Rules state that *significant* "means a reasonable likelihood of more than a moderate adverse impact on environmental quality [WAC 197-11-794(1)]". In addition, *significant* involves an analysis of the context, intensity, and severity of the impact.
- E. Many environmental concerns have been addressed and incorporated in the City's codes and development regulations. Where City regulations have been adopted to address an environmental impact, it is presumed that such regulations are adequate to achieve sufficient mitigation [WAC 197-11-660(1)(e)]. Therefore, when requiring project mitigation based on adverse environmental impacts, the City would first consider whether a regulation has been adopted for the purpose of mitigating the

environmental impact in question. The City would then look at the project site and the proposed use and determine if it presents unusual circumstances or impacts as a result of different site size or shape, transition between uses, topography, or inadequate infrastructure. Mitigation may then be required if the proposal results in significant adverse environmental impacts which are not sufficiently addressed by adopted City codes.

F. In light of this approach, the City has reviewed the appellants appeal issues and provides the following finding of facts and conclusions. Note: The appeal issues raised by the appellants lack specificity to environmental impacts; staff has therefore summarized the appeal issues.

1. Appeal issue (paragraph one):The Hedeen property has significant trees that provide critical habitat for specific species of birds, including eagles, herons and osprey and for "other wildlife in the area":

Staff Response:

a. Facts:

- 1) The City's regulations for tree retention, wetland and stream protection, slope protections, shoreline protection and stormwater and erosion mitigation have dual purpose in that they allow development in a reasonable manner while protecting natural areas. On the Hedeen property, there is also the added protection of the Holmes Point Overlay, which requires that 25% of each lot be maintained as a native planted area in perpetuity. These regulations, by design, also protect habitat that wildlife may or may not use. The removal of vegetation and resultant loss of habitat is typical of all land development and no unique conditions are identified on the Hedeen property. Additionally, there are no policies within the Comprehensive Plan that would support SEPA mitigations designed to protect specific bird species or "other wildlife in the area."
- 2) "Fish and wildlife habitat conservation areas" are included in the definition of "Critical Areas" under Kirkland Zoning Code ("KZC") Section 90.30.7. Other than that, there are no specific ordinances within the City's Municipal Code, or Zoning Code that provide authority to deny or condition a short plat application to include the protection of habitat for birds or other wildlife in general.
- 3) Furthermore, there is no proof provided in the appeal letter that the Hedeen property contains "critical habitat" for eagles, herons, or osprey, and the appellants have not claimed in their appeal to have seen any of the wildlife or bird species mentioned in the appeal on the Hedeen property. Nor have appellants provided any documents from biologists that these species exist on the Hedeen property or are endangered in any way by the proposed development.
- 4) Three separate site visits were made by staff to the Hedeen property to evaluate the existing conditions and no eagles, osprey, or herons were observed. Crows and songbirds were observed, but no nests were seen, nor were any other wildlife observed.
- 5) The environmental checklist requires that animals known to be on the property are listed. Exhibit E contains pages 8 and 9 of the environmental checklist provided by the applicant, indicating that the applicant has listed the animals known to be on the property. Songbirds and deer are listed. Additionally, during the comment period for the application, Sarah

Finkenstaedt submitted a list of wildlife, which staff included in the SEPA documents and can be found as Exhibit F. An email from Mrs. Finkenstaedt indicates that the list was prepared by gathering information from the Audubon Society, but does not indicate direct observation of any of these species on the Hedeen property (See Exhibit G).

- b. Conclusion: All evidence available was gathered in accordance with the SEPA requirements and an environmental checklist was provided by the applicant and verified by City staff. There is no evidence to suggest the Hedeen Short Plat will have significant adverse environmental impact on any species of wildlife.
2. Appeal issue: The Holmes Point Overlay regulations are not being followed (paragraph one and two):

Staff Response:

1. Facts: The Holmes Point Overlay regulations are requirements of the Kirkland Zoning Code.
  2. Conclusion: This appeal issue is not a SEPA issue. Review for compliance with the Holmes Point Overlay regulations will occur with the grading and building permit for the project and again with each building permit for each lot.
3. Appeal issue (paragraph 3 and 4): Removal of mature trees and understory vegetation on the Hedeen property is a substantial alteration of the property that impacts "wildlife around Lake Washington":

Staff Response:

1. Facts: KZC Chapter 95, contains adequate regulations for the protection of mature trees and provisions for replanting trees when mature trees are removed for development; provisions for protection of understory plants is found in Chapter 70 of the Kirkland Zoning Code, Holmes Point Overlay. The Hedeen property is subject to both chapters. It is unclear how the development of the Hedeen property will specifically impact "wildlife around Lake Washington."
  2. Conclusions: This appeal issue is a general comment. While vegetation is a SEPA issue, the City has regulations to adequately address tree retention. Review for compliance with the Holmes Point Overlay and KZC Chapter 95 regulations will occur with the grading and building permit for the project, and again with each building permit for each lot.
4. Appeal issue (paragraphs 7,8,9): The Hedeen development will remove trees that will affect endangered species and the City should therefore issue a Determination of Significance and order an Environmental Impact Statement (EIS):

Reference was made to the following WAC sections: WAC 197-11-970, 197-11-060(4)(e)

Staff Response:

- a. Facts: WAC 197-11-970: The body of the text for 197-11-970 of the WAC is provided in Exhibit H. The title of this section is "Part Eleven-Forms", and 197-11-970 is a section that indicates what needs to be on the forms provided by the agency with jurisdiction, in this case, the City of Kirkland. Page 2 of Exhibit D is the issuance of SEPA for the Hedeen SEPA case and contains all of the required information within 197-11-970.

- b. Conclusions: The city has followed the requirements of WAC 197-11-970.
- c. Facts: WAC 197-060(4)(e) (see Exhibit H):
  - 1) The appellants contend that an EIS is appropriate for the Hedeen proposal because there are "probable significant adverse impacts on the quality of the environment" due to the removal of trees, which will adversely affect "sensitive, candidate, monitored, threatened or endangered species."
  - 2) The appellants also contend that the documents on file "do not establish a sufficient record to allow the decision makers in this matter to evaluate properly the potential impacts of the proposed development described in the Hedeen Permit" and suggest that this is why an EIS is needed to evaluate the impacts.
  - 3) WAC 197-11-330 contains the criteria for deciding a threshold determination. The environmental checklist was evaluated, a geotechnical report was submitted and evaluated, the list of the wildlife submitted by the appellants was evaluated, and included in the determination, traffic mitigations were proposed based on the traffic report, site visits were performed by staff and by two arborists, trees were evaluated for their health and viability, and street lights were eliminated based on neighborhood concern. Each section of the environmental checklist was reviewed in light of the proposal and current city requirements and regulations.
  - 4) There were no "probable, significant, adverse impacts found in the evaluation of the documents. Traffic safety mitigation was proposed based on City Comprehensive Plan policies.
- d. Conclusions: The City has followed the requirements of threshold determination requirements within the WAC. No probable significant impacts were found and the Mitigated DNS is appropriate based on the City's Comprehensive Plan policies. An Environmental Impact Statement is not warranted for the Hedeen Short Plat. The appellants provide no evidence that significant adverse environmental impacts will occur when trees are removed for houses.

There is no proof that any endangered, threatened, sensitive or monitor species will be affected by the removal of trees to construct 6 homes on this site. This would have to be a likely outcome for the impacts to be "probable" under WAC 197-11-782, not just a possibility.

- 5. Appeal Issue (paragraph 10): Kirkland and Kenmore should adopt a 3-5 year building moratorium within ¼ to ½ mile of the Lake.

Staff Response:

- 1. Facts: There is no authority under SEPA to adopt building moratoriums within the City of Kirkland, nor is this a SEPA issue related to the Hedeen proposal. Kenmore is a separate city government and is not involved in the Hedeen proposal.
  - 2. Conclusions: This is not a SEPA issue.
- 6. Appeal issue (paragraph 11): Allowing the Hedeen proposal to go forward would violate Kirkland's "stated commitment to promote stewardship of the urban forest; moreover, this project would be in direct conflict with the State of Washington's

obligation to protect the environment, including all wildlife and the habitat of at-risk and protected species." The Hedeen proposal "contravenes federal, state, and local laws, regulations and policies".

Staff Response:

1. Facts: This paragraph is non-specific to the Hedeen proposal but is a general comment that is not based on SEPA policies.
  2. Conclusion: This is not a SEPA issue.
7. Appeal issue (paragraph 12): Traffic issues addressed in SEPA are important but are "insignificant compared to the cumulative environmental effects of the proposed development". The turn from 112<sup>th</sup> to Juanita Drive is a major safety hazard, but the mitigations are insufficient compared to the traffic which backs up on Juanita Drive. More infrastructure is needed before adding more development.
- a. Facts: Paragraph 12 of the appeal letter is non-specific as to SEPA traffic issues. While traffic safety and volume are SEPA issues, the appellants do not have a specific appeal issue concerning the mitigations that were proposed by the City and accepted by the applicant.
  - b. Conclusion: The traffic comments raised by the appellants in their appeal were reviewed by the City, and no significant traffic impacts from the Hedeen Short plat were identified.
8. Appeal issue (paragraph 13): The removal of vegetation caused by the Hedeen proposal will contribute to the Urban Heat Island effect and to local and global warming. A picture was provided of a development site near the Hedeen property that was approved when this area was in King County jurisdiction and reference was made that the City of Kirkland government will repeat the "mistakes of the past".
- a. Facts:
    - 1) The Urban Heat Island effect and global warming are not required to be measured for single family development. There is no direct evidence that the Hedeen proposal would add to these environmental issues.
    - 2) The development in the picture provided was approved by King County jurisdiction and is not based on City of Kirkland regulations or policies.
  - b. Conclusion: These issues are comments and are not specific SEPA appeal issues.

**V. STAFF RECOMMENDATION**

A. Recommendation regarding SEPA Appeal Issues

Staff did not find any significant adverse environmental impacts regarding the project in terms of degradation of wildlife or habitat degradation for wildlife. Nor did the City violate any SEPA policies or rules or contravene any state or federal laws. Therefore, staff recommends that the Hearing Examiner uphold the June 26<sup>th</sup> 2015 SEPA Mitigated Determination of Nonsignificance.

**VI. JUDICIAL REVIEW (KMC24.02.240)**

Judicial review of SEPA determinations is by RCW 43.21C.075 required to be heard only at the time of judicial review of the underlying action, i.e. approval or disapproval of the proposal for which SEPA review was required. For rules on perfecting and timing of the SEPA determination and judicial appeal, see RCW 43.21C.075 and WAC 197-11-680(4). The notice required by WAC 197-11-680(5) shall be appended to the permit or "notice of appeal" at the time of final city action. (Ord. 4150 § 2 (part), 2008)

**VII. SEPA APPEAL EXHIBITS**

- A. SEPA memo, determination and all attachments (note, not included in this report; sent separately to all parties and the Hearing Examiner).
- B. Letter of appeal by George and Sarah Finkenstaedt and Joe and Winnie Kates (note: paragraph numbers were added for clarity)
- C. Site map
- D. City's issued MDNS
- E. Pages 8 and 9 of the Environmental Checklist submitted by the applicant
- F. List of wildlife submitted by Sarah Finkenstaedt during the comment period
- G. Email from Sarah Finkenstaedt explaining the list of wildlife
- H. WAC sections cited in appeal letter

EXHIBIT A --SEP14-02240 memo, determination and all attachments

The SEPA memo, determination and all accompanying attachments were sent to all parties to the appeal prior to the hearing with the understanding that they would not be included in this packet of materials due to overwhelming file sizes.

All parties confirmed receipt including: The Hearing Examiner, the applicant, and the appellants.

In addition to the SEPA memo and determination the following attachments were included in that mailing:

Enclosures:

1. Vicinity Map
2. Short Plat Plans
3. Environmental Checklist
4. Geotechnical Report prepared by Batterman Geotechnical Consulting, Inc. & overhead view of the test pits
5. Wildlife list from the Hedeem Neighbors
6. Public Works lighting approval
7. Sight Distance Analysis by Transpo Group
8. Traffic Report by TSI
9. City Transportation Engineer traffic review



RECEIVED

JUL 08 2015

AM PM  
PLANNING DEPARTMENT

BY \_\_\_\_\_

Paragraph numbers:  
see staff analysis

July 8, 2015

VIA EMAIL (slauinger@kirklandwa.gov and jregala@kirklandwa.gov)  
and  
HAND DELIVERY

Ms. Susan Lauinger  
City of Kirkland Planning Department  
123 5<sup>th</sup> Avenue  
Kirkland, WA 98033

Ms. Nancy Cox  
City of Kirkland Environmental Coordinator  
123 5<sup>th</sup> Avenue  
Kirkland, WA 98033

Re: Hedeem Short Plat – Permit Number SEP14-02240 & SUB14-02156

Dear Ms. Lauinger and Ms. Cox:

1

We are writing to you to appeal the recent notice of Mitigated Determination of Nonsignificance (MDNS) for the 6 lot short plot on Lake Washington by James Jordan for Arne Hedeem at 7821 NE 112<sup>th</sup> Street in Kirkland. We are residents of Kirkland and live on 79<sup>th</sup> Place NE, very near the subject property. We are directly affected by the proposed action.

2

First, the significant trees located on the Hedeem Property constitute habitat that currently is critical to the perching, roosting, and nesting of eagles, heron and osprey, as well as being the current homes of other wildlife in the area. Second, the City of Kirkland has adopted NS-P23: “Holmes Point Site Disturbance P-suffix Conditions” (the “Holmes Point Conditions”). These conditions apply to the property covered by the Hedeem Permit, and describe the purpose of establishing site disturbance development standards as follows:

The purpose of the minimum site disturbance development standards is to allow infill at urban densities while providing an increased level of protection for the Holmes Point study area, an urban residential area characterized by a predominance of sensitive environmental features including but not limited to steep slopes, landslide hazard areas and erosion hazard areas, and further characterized by a low level of roads and other impervious surfaces relative to undisturbed soils and vegetation, tree cover and wildlife habitat. These standards limit the allowable amount of site disturbance on lots in

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Holmes Point to reduce visual impacts of development, maintain community character and protect a high proportion of the undisturbed soils and vegetation, tree cover and wildlife, and require an inspection of each site and the area proposed to be cleared, graded and built on prior to issuance of a building permit.

3 The Hedeem Permit project does not meet the Holmes Point Conditions with respect to vegetation preservation (particularly concerning “significant trees”), limitations on total building coverage and on all other impervious surfaces, and limitation of total site alteration, among other violations. Moreover, there do not appear to be any reports of the Department of Permitting and Environmental Review regarding the mandatory site inspections.

4 The removal of nearly all of the mature trees which provide habitat for a significant amount of wildlife, including several at-risk and protected species is not the only serious adverse consequence of the proposed Hedeem Permit project. The project also intends to eliminate all of the dense understory currently found on the property. The wholesale removal of all of the groundcover, together with the removal of 85% of the mature trees, will have a negative impact on the wildlife around Lake Washington.

5 Consequently, eliminating the understory and almost all of the “significant trees” on property slightly larger than one acre is a substantial, if not total, alteration of that property. Such adverse modification of important habitat and potentially impacting the environment, including the water system in and around Lake Washington should be evaluated very carefully.

6 We disagree with the mitigated determination of non-significance (“MDNS”) for this housing project. The environmental and ecological impacts of the proposed Hedeem Permit housing development can be devastating and irreversible. A determination of significance (“DS”) should be issued and an environmental impact statement (“EIS”) prepared before this project is allowed to proceed.

7 The State Environmental Policy Act (“SEPA”) mandates that all governmental agencies “consider the environmental impacts of a proposal before making decisions.” SEPA, chapter 43.21C RCW; WAC 197-11-970. Washington law requires that an EIS “must be prepared for all proposals with probable significant adverse impacts on the quality of the environment.” WAC 197-11-970. Moreover, the EIS analysis must consider all “direct, indirect, and cumulative impacts.” WAC 197-11-060(4)(e). Because of the large number of mature trees (101 “significant” trees) providing habitat for sensitive, candidate, monitored, threatened, or endangered species that will be impacted by this proposed housing development (85 trees are to be removed) and the proximity to Lake Washington, significant adverse impacts on the quality of the environment and on wildlife are likely rather than

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7 merely possible. *See, e.g.*, WAC 197-11-060(4)(e): “The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, WAC 197-11-792) may be wider than the impacts for which mitigation measures are required of applicants (WAC 197-11-660). This will depend upon the specific impacts, the extent to which the adverse impacts are attributable to the applicant’s proposal, and the capability of applicants or agencies to control the impacts in each situation.”

8 In violation of the requirements of SEPA, there is no evidence that all of the “direct, indirect, and cumulative impacts” have been evaluated with respect to the project proposed by the Hedeem Permit that may significantly affect the quality of the environment. Nor have all the potential impacts on human health and safety been adequately assessed. The documents on file concerning the Hedeem Permit do not establish a sufficient record to allow the decision makers in this matter to evaluate properly the potential impacts of the proposed development described in the Hedeem Permit. Without the analysis provided by an EIS, the “direct, indirect, and cumulative impacts” of the proposed Hedeem Permit project cannot be properly evaluated by the City.

9 In addition to recommending that the City of Kirkland reject the Hedeem Permit application, issue a DS, and order that an EIS be prepared, we encourage the City to develop policies that would allow it to consider all of its development decisions within a broader framework that will protect current and future citizens and the animal species that inhabit this area, including those that live in Lake Washington.

10 Kirkland recently annexed some very special urban forest lands, including the Hedeem Property, and it should manage such property in a manner which safeguards and promotes environmental and ecological values. While developing such broader policies, it would be prudent for the City to adopt a three- to five-year building moratorium on all land within at least one-quarter mile (perhaps one-half mile) of Lake Washington or other significant riparian areas between downtown Kirkland and the Kirkland – Kenmore city boundary, roughly along Juanita Drive. The City of Kenmore likewise should consider a building moratorium on any high-density building adjacent to Lake Washington. Until the proper measures are in place to enforce the Kirkland Urban Forestry Strategic Management Plan and, more broadly, to protect the territory of sensitive, candidate, monitored, threatened, and endangered species, it is irresponsible to allow the ad hoc destruction of sensitive habitat and degradation of existing natural resources.

11 Allowing the housing development to go forward as described in the Hedeem Permit, and associated documents, would violate Kirkland’s stated commitment to promote its stewardship of the urban forest; moreover, this project would be in direct conflict with the State of Washington’s obligation to protect the environment, including all wildlife and the habitat of at-risk and protected species. Additionally, the substantial alteration of the Hedeem

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Property as currently proposed contravenes federal, state, and local laws, regulations, and policies.

12

The traffic issues you addressed in your investigation are important, but are quite frankly insignificant compared to the cumulative environmental effects of the proposed development. While the turn to and from NE 112<sup>th</sup> Street from Juanita Drive is a major safety hazard, the addition of a yellow stripe and a convex mirror are small band aids to the real and recurring problems created by the local infrastructure not keeping up with the overall development in the area. Several times per day the traffic on Juanita Drive is backed up (bumper to bumper) for one half to three quarters of a mile and on occasion, up to a mile. Adding more development along the Juanita corridor before thoughtful infrastructure is added is not in the best long-term interests of the citizens of Kirkland and certainly not in the long-term interests to anyone living in the immediate area.

13

One additional environmental note relates to the significant temperature rise caused by the high-density housing development planned for the site. As vegetation (including large trees and natural understory) are converted to concrete, asphalt and buildings, the well known urban heat island (UHI) grows and contributes to local and global warming. See pictures on the following pages of the aerial views of the neighborhood and the significant deforestation caused by a similar development. This development was completed under the King County regulations, which we were told wouldn't happen again after the annexation by Kirkland. It appears no one in the Kirkland City government has learned anything and we are doomed to repeat the mistakes of the past.

Thank you for taking the time to consider our appeal to the SEPA Mitigated Determination of Nonsignificance. If you have any questions or issues you would like to discuss, please feel free to contact us.

Sincerely,

George and Sarah Finkenstaedt  
Joe and Winnie Kates

cc: Amy Walen, Mayor  
Deb Powers, Urban Forester  
U. S. Fish and Wildlife Service – Western Region  
Washington State Fish and Wildlife Department

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Proposed Hedeem Short Plat

Previous "clear cut" development





Hedeen Short Plat 6  
lots

Appellants on this  
street



Legend

- - - City Limits
- Grid
- QQ Grid
- █ Cross Kirkland Corridor
- █ Regional Rail Corridor
- Streets
- ▭ Parcels
- ▭ Buildings
- ▭ Lakes
- ▭ Parks
- ▭ Schools

1:2,540



Notes

0.1 0 0.04 0.1 Miles

NAD\_1983\_StatePlane\_Washington\_North\_FIPS\_4601\_Feet

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**CITY OF KIRKLAND**  
Planning and Community Development Department  
123 Fifth Avenue, Kirkland, WA 98033  
425.587.3225 - [www.kirklandwa.gov](http://www.kirklandwa.gov)

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## **CITY OF KIRKLAND**

# **NOTICE OF SEPA DETERMINATION**

The City of Kirkland has conducted an environmental review of the following project:

**Permit No.:** [SEP14-02240/SUB14-02156](#)

**Proponent:** James Jordan for Arne Hedeem

**Address or Location of proposal:** [7821 NE 112<sup>th</sup> Street](#)

**Description of project:** 6 lot short plat on Lake Washington

Notice is hereby given that on June 26, 2015 the City of Kirkland issued a Mitigated Determination of Nonsignificance (MDNS) in accordance with the State Environmental Policy Act (SEPA) and Chapter 197-11 of the Washington Administrative Code.

The proposal has been changed to include the following measures to mitigate impacts:

1. Stripe a yellow center line on the south leg of the intersection of Juanita Drive/NE 112<sup>th</sup> Street so that exiting vehicles would stay to the right of the street to provide room for vehicles turning right onto NE 112<sup>th</sup> St.
2. Install a convex mirror on the southeast corner of the intersection of Juanita Drive/NE 112<sup>th</sup> Street to improve visibility and safety for vehicle entering and exiting NE 112<sup>th</sup> Street.

### **Procedures to Appeal SEPA:**

***The Project Planner, Susan Lauinger is absent during the appeal period. If you need assistance, contact Planning Supervisor, Jon Regala, at 425-587-3255 or email [jregala@kirklandwa.gov](mailto:jregala@kirklandwa.gov).***

1. A written appeal must be filed with the Environmental Coordinator by **5:00 PM** on July 10, 2015 at the above address.
2. The appeal must contain a brief and concise statement of the matter being appealed, the specific components or aspects that are being appealed, the appellant's basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The following have standing to appeal: a) the applicant; b) any agency with jurisdiction; c) any individual or other entity who is specifically and directly affected by the proposed action. The appeal may also contain whatever supplemental information the appellant wishes to include.
3. Pay the \$220.46 fee to file an appeal.

More information is available at [www.mybuildingpermit.com](http://www.mybuildingpermit.com).

Publishing Date: June 30, 2015



**Distribute this notice with a copy of the Environmental Checklist to:**

GENERAL NOTICING

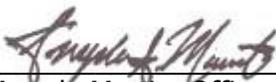
- Department of Ecology - Environmental Review
- Muckleshoot Tribal Council - Environmental Division, Fisheries Division Habitat
- Cascade Water Alliance – Director of Planning
- Finn Hill Neighborhood Association
- Lake Washington School District No. 414: Budget Manager and Director of Support Services

AGENCIES WITH JURISDICTION, AFFECTED AGENCIES, AND/OR INTERESTED PARTIES

- Department of Ecology - Environmental Review Department of Fish and Wildlife – Olympia
- Eastside Audubon Society
- Northshore Utility District - Operations Department, Engineering Director, and Senior Civil Engineer
- Parties of Record
- Interested Citizens

Cc: Applicants: James Jordan and Arne Hedeem  
File No. SUB14-02156

Distributed by: \_\_\_\_\_

  
(Angela Martin, Office Specialist)

June 26, 2015  
Date



4. PLANTS

a. Place an "X" next to the types of vegetation found on the site:

- deciduous tree: alder, maple, aspen, other
- evergreen tree: fir, cedar, pine, other
- shrubs
- grass
- pasture
- crop or grain
- wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation

  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 no wetlands or streams  
 on site  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

b. What kind and amount of vegetation will be removed or altered?  
**Trees and shrubs will be removed as necessary to accommodate access, utilities and future residences. Removal of vegetation will be done in accordance with approved plans.**

There are mostly non-native shrubs on site and several trees, most of which will be removed.

c. List threatened or endangered species known to be on or near the site.  
**None known**

see attached list from the neighborhood

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:  
**Portions of the site will have invasive species removed and replaced with native plant species as part of future development and enhancement of the Protected Natural Areas in compliance with conditions of the Holmes Point Overlay Zone requirements.**

each new lot is required to have 25% area set aside and planted with native trees and understory in a dense manner. Most of the existing trees are likely to be removed.

5. ANIMALS

a. What kinds of birds and animals have been observed on or near the site or are known to be on or near the site?

birds: hawk, heron, eagle, songbirds, other  
 mammals: deer, bear, elk, beaver, other  
 fish: bass, salmon, trout, herring, shellfish, other

see attached list prepared by the neighborhood

b. List any threatened or endangered species known to be on or near the site.

**None known**

c. Is the site part of a migration route? If so, explain.

**Unknown**

d. Proposed measures to preserve or enhance wildlife, if any:

**None proposed**

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# List of Wildlife Found Near Hedeem Short Plat Sub14-02156

## Birds

### WATERFOWL

- Greater White-fronted Goose\*\*
- Snow Goose\*\*
- Canada Goose\*
- Cackling Goose\*\*
- Brant\*\*
- Trumpeter Swan\*\*
- Tundra Swan\*\*
- Wood Duck\*
- Gadwall\*
- Eurasian Wigeon\*\*
- American Wigeon
- American Black Duck\*\*
- Mallard\*
- Blue-winged Teal
- Cinnamon Teal
- Northern Shoveler
- Northern Pintail
- Green-winged Teal
- Eurasian Green-winged Teal\*\*
- Canvasback
- Redhead\*\*
- Ring-necked Duck
- Greater Scaup
- Lesser Scaup
- Surf Scoter\*\*
- Bufflehead
- Common Goldeneye
- Barrow's Goldeneye\*\*
- Hooded Merganser
- Common Merganser
- Ruddy Duck
- PHEASANTS & QUAIL**
- Ring-necked Pheasant\*\*
- California Quail\*

### LOONS & GREBES

- Red-throated Loon\*\*
- Pacific Loon\*\*
- Common Loon
- Pied-billed Grebe\*
- Horned Grebe
- Red-necked Grebe
- Eared Grebe\*\*
- Western Grebe
- CORMORANTS & PELICANS**
- Double-crested Cormorant
- American White Pelican\*\*
- HERONS**
- American Bittern\*\*
- Great Blue Heron
- Green Heron\*
- VULTURES**
- Turkey Vulture\*\*
- RAPTORS**
- Osprey
- Bald Eagle
- Northern Harrier\*\*
- Sharp-shinned Hawk
- Cooper's Hawk
- Red-shouldered Hawk\*\*
- Red-tailed Hawk
- Rough-legged Hawk\*\*
- American Kestrel\*\*
- Merlin
- Peregrine Falcon\*\*
- RAILS & COOTS**
- Virginia Rail\*
- Sora\*
- American Coot\*
- CRANES**
- Sandhill Crane\*\*

### PLOVERS & SANDPIPERS

- Killdeer\*
- Greater Yellowlegs\*\*
- Lesser Yellowlegs\*\*
- Spotted Sandpiper
- Whimbrel\*\*
- Semipalmated Sandpiper\*\*
- Western Sandpiper
- Least Sandpiper
- Dunlin
- Long-billed Dowitcher
- Wilson's Snipe
- Red-necked Phalarope\*\*
- GULLS & TERNS**
- Bonaparte's Gull\*\*
- Mew Gull
- Ring-billed Gull
- California Gull
- Herring Gull\*\*
- Thayer's Gull\*\*
- Western Gull\*\*
- Glaucous-winged Gull
- Caspian Tern
- PIGEONS & DOVES**
- Rock Pigeon
- Band-tailed Pigeon\*
- Mourning Dove\*\*
- OWLS**
- Barn Owl
- Western Screech-Owl\*\*
- Barred Owl
- Long-eared Owl\*\*
- NIGHTJARS**
- Common Nighthawk\*\*
- SWIFTS**
- Black Swift
- Vaux's Swift

### HUMMINGBIRDS

- Anna's Hummingbird\*
- Rufous Hummingbird\*
- KINGFISHERS**
- Belted Kingfisher
- WOODPECKERS**
- Lewis's Woodpecker\*\*
- Red-breasted Sapsucker\*
- Downy Woodpecker\*
- Hairy Woodpecker\*
- Northern Flicker\*
- Pileated Woodpecker\*
- FLYCATCHERS**
- Olive-sided Flycatcher
- Western Wood-Pewee\*
- Willow Flycatcher\*
- Hammond's Flycatcher\*\*
- Pacific-slope Flycatcher
- SHRIKES**
- Northern Shrike\*\*
- VIREOS**
- Cassin's Vireo\*\*
- Hutton's Vireo\*
- Warbling Vireo
- Red-eyed Vireo
- CROWS & JAYS**
- Steller's Jay\*
- Western Scrub-Jay\*\*
- American Crow\*
- Common Raven\*\*
- SWALLOWS**
- Purple Martin\*
- Tree Swallow\*
- Violet-green Swallow\*
- Northern Rough-winged Swallow
- Cliff Swallow
- Barn Swallow\*

### CHICKADEES & BUSHTITS

- Black-capped Chickadee\*
- Mountain Chickadee\*\*
- Chestnut-backed Chickadee\*
- Bushtit\*
- CREEPERS & NUTHATCHES**
- Brown Creeper\*
- Red-breasted Nuthatch\*
- WRENS**
- Bewick's Wren\*
- Winter Wren
- Marsh Wren\*
- KINGLETS**
- Golden-crowned Kinglet\*
- Ruby-crowned Kinglet
- THRUSHES**
- Western Bluebird\*\*
- Swainson's Thrush\*
- Hermit Thrush
- American Robin\*
- Varied Thrush
- STARLINGS**
- European Starling\*
- PIPITS**
- American Pipit\*\*
- WAXWINGS**
- Cedar Waxwing\*
- WARBLERS**
- Orange-crowned Warbler
- Nashville Warbler\*\*
- Yellow Warbler\*
- Yellow-rumped Warbler
- Black-throated Gray Warbler

- Townsend's Warbler
- MacGillivray's Warbler
- Common Yellowthroat\*
- Wilson's Warbler
- TANAGERS**
- Western Tanager
- SPARROWS**
- Spotted Towhee\*
- Savannah Sparrow
- Fox Sparrow
- Song Sparrow\*
- Lincoln's Sparrow
- Swamp Sparrow\*\*
- White-throated Sparrow\*\*
- White-crowned Sparrow
- Golden-crowned Sparrow
- Dark-eyed Junco\*
- GROSBEAKS**
- Black-headed Grosbeak\*
- BLACKBIRDS & ORIOLES**
- Red-winged Blackbird\*
- Western Meadowlark\*\*
- Brewer's Blackbird\*\*
- Brown-headed Cowbird\*
- Bullock's Oriole\*
- FINCHES**
- Purple Finch
- House Finch\*
- Red Crossbill\*\*
- Common Redpoll\*\*
- Pine Siskin
- American Goldfinch\*

### OLD WORLD SPARROWS

- House Sparrow\*

## Mammals

- Beaver
- Muskrat
- Nutria
- Raccoon
- Opossum
- Eastern Cottontail
- Eastern Gray Squirrel
- Townsend's Chipmunk\*\*
- Townsend's Mole
- Long-tailed Weasel
- Coyote
- River Otter
- Little Brown Bat

## Amphibians & Reptiles

- Western Painted Turtle
- Red-eared Slider Turtle
- Snapping Turtle\*\*
- American Bullfrog
- Pacific Tree Frog
- Long-toed Salamander
- Northwestern Garter Snake
- Common Garter Snake

\* Nesting activity observed  
\*\* Rare or accidental

Please report any unusual or interesting sightings to  
juanitabay@etwas.org  
Revised August 2006 by MaryFrances Mathis,  
Juanita Bay Park Ranger/ELWAS



**From:** SARAH FINKENSTAEDT <sarahfink11158@gmail.com>  
**Sent:** Saturday, March 21, 2015 8:36 AM  
**To:** Susan Lauinger  
**Cc:** George 1 Finkenstaedt; Winnie Kates Joe &  
**Subject:** Hedeem Wildlife List for SEPA review  
**Attachments:** Hedeem Wildlife List 03 21 15.pdf

Morning Susan -

Attached is the result of my gathering information from Eastside Audubon, neighborhood bird watchers and some other agencies. As I began looking into the effects of the removal of the trees and the ground cover, I was focusing on the avian population. But, after my research, I now have a better understanding of what the addition of six houses will mean to all wildlife in our neighborhood.

The old decaying trees on the site provide homes for squirrels as well as the birds. The underbrush (which includes fallen trees) provides a safe environment for deer, rabbits, raccoons, opossums, moles, mice, snakes & frogs. (Based on the number of rabbits we see on our street, there must be quite a few on the Hedeem site.) The hawks and owls that live in our woods will miss their plentiful “animal buffet” and no doubt move to greener pastures. This proposed construction in the neighborhood will effect the entire ecological food chain and expedite the exodus of all wildlife from our area. We ask the planning department to mitigate that effect by reducing the number of houses on the Hedeem Short Plat (and the neighborhood in the future) and by limiting the destruction of natural habitat.

Again, many thanks for all your efforts in keeping us informed and moving on the right track.

Sarah Finkenstaedt



**PART ELEVEN - FORMS**

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

**WAC 197-11-970**

**Determination of nonsignificance (DNS).**

DETERMINATION OF NONSIGNIFICANCE

Description of proposal . . . .

. . . .

. . . .

Proponent . . . .

Location of proposal, including street address, if any . . . .

. . . .

. . . .

Lead agency . . . .

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW [43.21C.030](#) (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

- There is no comment period for this DNS.
- This DNS is issued after using the optional DNS process in WAC [197-11-355](#). There is no further comment period on the DNS.
- This DNS is issued under WAC [197-11-340](#)(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by . . . . .

Responsible official . . . .

Position/title . . . . Phone . . . .

Address . . . .

Date . . . . Signature . . . .

*(OPTIONAL)*

You may appeal this determination to (name) . .

..

at (location) . . . .

no later than (date) . . . .

by (method) . . . .

You should be prepared to make specific factual objections.

Contact . . . . . to read or ask about the procedures for SEPA appeals.

There is no agency appeal.

[Statutory Authority: 1995 c 347 (ESHB 1724) and RCW [43.21C.110](#). WSR 97-21-030 (Order 95-16), § 197-11-970, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW [43.21C.110](#). WSR 84-05-020 (Order DE 83-39), § 197-11-970, filed 2/10/84, effective 4/4/84.]

## PART TWO - GENERAL REQUIREMENTS

### WAC 197-11-060

#### Content of environmental review.

(1) Environmental review consists of the range of proposed activities, alternatives, and impacts to be analyzed in an environmental document, in accordance with SEPA's goals and policies. This section specifies the content of environmental review common to *all* environmental documents required under SEPA.

(2) The content of environmental review:

(a) Depends on each particular proposal, on an agency's existing planning and decision-making processes, and on the time when alternatives and impacts can be most meaningfully evaluated;

(b) For the purpose of deciding whether an EIS is required, is specified in the environmental checklist, in WAC [197-11-330](#) and [197-11-444](#);

(c) For an environmental impact statement, is considered its "scope" (WAC [197-11-792](#) and Part Four of these rules);

(d) For any supplemental environmental review, is specified in Part Six.

(3) **Proposals.**

(a) Agencies shall make certain that the proposal that is the subject of environmental review is properly defined.

(i) Proposals include public projects or proposals by agencies, proposals by applicants, if any, and proposed actions and regulatory decisions of agencies in response to proposals by applicants.

(ii) A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, or as a particular or preferred course of action.

(iii) Proposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions. A proposal could be described, for example, as "reducing flood damage and achieving better flood control by one or a combination of the following means: Building a new dam; maintenance dredging; use of shoreline and land use controls; purchase of floodprone areas; or relocation assistance."

(b) Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased

review is allowed under subsection (5).) Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they:

- (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or
- (ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.

(c) **(Optional)** Agencies may wish to analyze "similar actions" in a single environmental document.

(i) Proposals are similar if, when viewed with other reasonably foreseeable actions, they have common aspects that provide a basis for evaluating their environmental consequences together, such as common timing, types of impacts, alternatives, or geography. This section does not require agencies or applicants to analyze similar actions in a single environmental document or require applicants to prepare environmental documents on proposals other than their own.

(ii) When preparing environmental documents on similar actions, agencies may find it useful to define the proposals in one of the following ways: (A) Geographically, which may include actions occurring in the same general location, such as a body of water, region, or metropolitan area; or (B) generically, which may include actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, environmental media, or subject matter.

#### **(4) Impacts.**

(a) SEPA's procedural provisions require the consideration of "environmental" impacts (see definition of "environment" in WAC [197-11-740](#) and of "impacts" in WAC [197-11-752](#)), with attention to impacts that are likely, not merely speculative. (See definition of "probable" in WAC [197-11-782](#) and [197-11-080](#) on incomplete or unavailable information.)

(b) In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries (see WAC [197-11-330\(3\)](#) also).

(c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

(d) A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.

(e) The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, WAC [197-11-792](#)) may be wider than the impacts for which mitigation measures are required of applicants (WAC [197-11-660](#)). This will depend upon the specific impacts, the extent to which the adverse impacts are attributable to the applicant's proposal, and the capability of applicants or agencies to control the impacts in each situation.

#### **(5) Phased review.**

(a) Lead agencies shall determine the appropriate scope and level of detail of environmental review to coincide with meaningful points in their planning and decision-making processes. (See WAC [197-11-055](#) on timing of environmental review.)

(b) Environmental review may be phased. If used, phased review assists agencies and the public to focus on issues that are ready for decision and exclude from consideration issues

already decided or not yet ready. Broader environmental documents may be followed by narrower documents, for example, that incorporate prior general discussion by reference and concentrate solely on the issues specific to that phase of the proposal.

(c) Phased review is appropriate when:

(i) The sequence is from a nonproject document to a document of narrower scope such as a site specific analysis (see, for example, WAC [197-11-443](#)); or

(ii) The sequence is from an environmental document on a specific proposal at an early stage (such as need and site selection) to a subsequent environmental document at a later stage (such as sensitive design impacts).

(d) Phased review is not appropriate when:

(i) The sequence is from a narrow project document to a broad policy document;

(ii) It would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts; or

(iii) It would segment and avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document under WAC 197-11-060 (3)(b) or [197-11-305](#)(1); however, the level of detail and type of environmental review may vary with the nature and timing of proposals and their component parts.

(e) When a lead agency knows it is using phased review, it shall so state in its environmental document.

(f) Agencies shall use the environmental checklist, scoping process, nonproject EISs, incorporation by reference, adoption, and supplemental EISs, and addenda, as appropriate, to avoid duplication and excess paperwork.

(g) Where proposals are related to a large existing or planned network, such as highways, streets, pipelines, or utility lines or systems, the lead agency may analyze in detail the overall network as the present proposal or may select some of the future elements for present detailed consideration. Any phased review shall be logical in relation to the design of the overall system or network, and shall be consistent with this section and WAC [197-11-070](#).

## **WAC 197-11-792**

### **Scope.**

(1) "Scope" means the range of proposed actions, alternatives, and impacts to be analyzed in an environmental document (WAC [197-11-060](#)(2)).

(2) To determine the scope of environmental impact statements, agencies consider three types of actions, three types of impacts, and three types of alternatives.

(a) *Actions* may be:

(i) Single (a specific action which is not related to other proposals or parts of proposals);

(ii) Connected (proposals or parts of proposals which are closely related under WAC [197-11-060](#)(3) or [197-11-305](#)(1)); or

(iii) Similar (proposals that have common aspects and may be analyzed together under WAC [197-11-060](#)(3)).

(b) *Alternatives* may be:

(i) No action;

(ii) Other reasonable courses of action; or

(iii) Mitigation measures (not in the proposed action).

(c) *Impacts* may be:

(i) Direct;

- (ii) Indirect; or
- (iii) Cumulative.

(3) WAC [197-11-060](#) provides general rules for the content of any environmental review under SEPA; Part Four and WAC [197-11-440](#) provide specific rules for the content of EISs. The scope of an individual statement may depend on its relationship with other EISs or on phased review.

[Statutory Authority: RCW [43.21C.110](#). WSR 84-05-020 (Order DE 83-39), § 197-11-792, filed 2/10/84, effective 4/4/84.]

## **WAC 197-11-660**

### **Substantive authority and mitigation.**

(1) Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:

(a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.

(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decision maker. The decision maker shall cite the agency SEPA policy that is the basis of any condition or denial under this chapter (for proposals of applicants). After its decision, each agency shall make available to the public a document that states the decision. The document shall state the mitigation measures, if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.

(c) Mitigation measures shall be reasonable and capable of being accomplished.

(d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

(e) Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

(f) To deny a proposal under SEPA, an agency must find that:

(i) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and

(ii) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(g) If, during project review, a GMA county/city determines that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations or comprehensive plan adopted under chapter [36.70A](#) RCW, or in other applicable local, state or federal laws or rules, provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action under RCW [43.21C.240](#), the GMA county/city shall not impose additional mitigation under this chapter.

(2) Decision makers should judge whether possible mitigation measures are likely to protect or enhance environmental quality. EISs should briefly indicate the intended environmental

benefits of mitigation measures for significant impacts (WAC [197-11-440\(6\)](#)). EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

(a) Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and

(b) Will not be analyzed in a subsequent environmental document prior to their implementation.

(3) Agencies shall prepare a document that contains agency SEPA policies (WAC [197-11-902](#)), so that applicants and members of the public know what these policies are. This document shall include, or reference by citation, the regulations, plans, or codes formally designated under this section and RCW [43.21C.060](#) as possible bases for conditioning or denying proposals. If only a portion of a regulation, plan, or code is designated, the document shall identify that portion. This document (and any documents referenced in it) shall be readily available to the public and shall be available to applicants prior to preparing a draft EIS.

[Statutory Authority: 1995 c 347 (ESHB 1724) and RCW [43.21C.110](#). WSR 97-21-030 (Order 95-16), § 197-11-660, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW [43.21C.110](#). WSR 84-05-020 (Order DE 83-39), § 197-11-660, filed 2/10/84, effective 4/4/84.]