PART ONE
AUTHORITY AND PURPOSE

§ 1.1. Authority.

The LOTT Wastewater Alliance (the “LOTT Alliance”) is a non-profit corporation formed under the laws of the State of Washington, Ch. 24.03 RCW, for the purpose of providing wastewater management services for the cities of Lacey, Olympia and Tumwater and to Thurston County (jointly, the “Partners”). The Partners created the LOTT Alliance through an interlocal agreement dated November 5, 1999 (the “Interlocal Agreement”). The Partners govern the LOTT Alliance through the power to appoint members of the Alliance’s governing board by and from the Partners’ respective legislative bodies. The Interlocal Agreement provides that the LOTT Alliance should operate and conduct its business as a public agency, and that it is generally in the public interest for the LOTT Alliance to directly manage environmental review of LOTT actions to assure the early consideration of environmental factors. The LOTT Alliance adopts these rules under the State Environmental Policy Act (SEPA), Section 43.21C.120 RCW, and Section 197-11-904 WAC. These rules contain the LOTT Alliance’s SEPA procedures and policies. The SEPA rules, Ch. 197-11 WAC (the “SEPA Rules”), must be used in conjunction with these rules.

§ 1.2. Purpose.

(A) In broad terms, SEPA requires governmental agencies to

(1) Consider environmental impacts before making important decisions; and

(2) Act to protect the environment by avoiding or reducing (“mitigating”) the environmental impacts of proposals, in the context of other vital public goals.

(B) The process the LOTT Alliance uses to consider environmental impacts is the “procedural” side of SEPA. A Board of Directors’ decision to approve, condition or reject a proposal or to incorporate any mitigation measures, under authority provided by SEPA, is the “substantive” side of SEPA.

(C) These rules contain the LOTT Alliance’s SEPA procedures, which describe the LOTT Alliance’s environmental review process under SEPA.

(D) The purpose of these rules is to ensure that all of the LOTT Alliance’s actions comply with the provisions and polices of SEPA.

(E) SEPA Application.

(1) SEPA itself does not have any permit requirements. SEPA review is required before a governmental agency takes action on a proposal, such as amending a comprehensive plan or authorizing a public development project. This action is called the “underlying governmental action.”
(2) Because SEPA applies only when governmental action is involved, SEPA supplements, or "overlays," governmental agencies' regular planning and decision making. SEPA provides a basic process for studying and responding to a proposal's environmental impacts, especially at the planning stages. The exact nature and timing of the SEPA process can vary for each type of governmental action and for each individual proposal.

(3) There are other environmental laws besides SEPA that apply to specific resources, such as land, air, water, historic areas, wildlife, and health. These other laws may require studies or serve as the basis for altering or canceling proposals.

(4) Compliance with other laws and SEPA shall be coordinated, to the extent LOTT can do so, to reduce "red tape," improve public involvement, and achieve better decisions.

(5) Anyone who is not sure how SEPA applies to a proposal or an appeal should identify the action (or actions) that the LOTT Alliance or any other government agency must take on the proposal. Except for certain basic requirements in this document, the SEPA process generally follows the timing and procedures for the underlying governmental action.

PART TWO
GENERAL REQUIREMENTS

§ 2.1. Purpose of this part and adoption by reference.

This part contains the basic requirements that apply to the SEPA process. The LOTT Alliance adopts the following sections of the SEPA Rules by reference:

WAC

197-11-040 Definitions.
197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.
197-11-158 GMA project review—Reliance on existing plans, laws, and regulations.
197-11-164 Planned actions—Definition and criteria.
197-11-168 Ordinances or resolutions designating planned actions—Procedures for adoption.
197-11-172 Planned actions—Project review.
197-11-210 SEPA/GMA integration.
197-11-220 SEPA/GMA Definitions.
197-11-228 Overall SEPA/GMA integration procedures.
197-11-230 Timing of an integrated GMA/SEPA process.
197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scooping.
197-11-235 Documents.
197-11-238 Monitoring.
§ 2.2. Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in these rules, the following terms shall have the following meanings, unless the context indicates otherwise:

(A) “Board of Directors” or “Board” means the board of directors of the LOTT Alliance.

(B) “Executive Director” means the chief administrative officer of the LOTT Alliance.

(C) “Interlocal Agreement” means the agreement entered by the cities of Lacey, Olympia, Tumwater and Thurston County entitled the “Interlocal Cooperation Act Agreement for Wastewater Management by the LOTT Wastewater Alliance,” and dated November 5, 1999.

(D) “LOTT Alliance Staff” means the employees of the LOTT Alliance who have responsibilities for the administration or operations of the LOTT Alliance Wastewater Treatment System.

(E) “LOTT Alliance Wastewater Treatment System” means the joint wastewater treatment facilities and conveyances as described in the Intergovernmental Cooperation Act Agreement for Wastewater Management by the LOTT Wastewater Alliance, dated November 5, 1999, as amended.

(F) “Partner” means any of the members of the LOTT Alliance.

(G) “Responsible Official” means the person or persons responsible for undertaking the LOTT Alliance’s SEPA procedural responsibilities, as designated by Section 2.3 of these rules.


(I) “TSC” means the Technical Subcommittee, as defined in the Interlocal Agreement.

§ 2.3. Designation of responsible official.

(A) For those proposals for which the LOTT Alliance is the lead agency, the responsible official shall be the Executive Director, or other LOTT Staff as designated by the Executive Director. The responsible official shall, prior to issuing final SEPA determinations (determination of significance, determination of non-significance, or environmental impact statement) consult with the Technical Subcommittee (“TSC”), as defined in the Interlocal Agreement.

(B) For all proposals for which the LOTT Alliance is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any
required environmental impact statement ("EIS"), and perform any other functions assigned to the “lead agency” or “responsible official” by those sections of the SEPA Rules that are adopted by reference.

(C) The LOTT Alliance shall maintain all documents required by the SEPA Rules and make them available in accordance with Ch. 42.17 RCW.

§ 2.4. Lead agency determination and responsibilities.

(A) Whenever the LOTT Alliance initiates a proposal that involves a nonexempt action, it shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940; unless the lead agency has been previously determined, or the LOTT Alliance is aware that another agency is in the process of determining the lead agency.

(B) When the LOTT Alliance is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(C) When the LOTT Alliance is not the lead agency for a proposal, the LOTT Alliance shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in forming recommendations on the proposal. The LOTT Alliance shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the LOTT Alliance may conduct supplemental environmental review under WAC 197-11-600.

(D) If the LOTT Alliance receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the LOTT Alliance must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of LOTT may be initiated by the responsible official.

§ 2.5. Additional timing considerations.

For nonexempt proposals, the DNS or the draft or final EIS for the proposal shall accompany the LOTT Staff’s recommendation to the Board.

PART THREE
CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

§ 3.1. Purpose of this part and adoption by reference.

This part contains the rules for deciding whether a proposal has a “probable significant, adverse environmental impact” requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The LOTT Alliance adopts the following sections by reference, as supplemented in this part:
§ 3.2. Use of exemptions.

(A) Whenever the LOTT Alliance initiates a proposal, the responsible official shall determine whether the proposal is exempt. The responsible official’s determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of these rules apply to the proposed. The LOTT Alliance shall not be required to complete an environmental checklist for an exempt proposal.

(B) In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency, even if the LOTT Alliance’s involvement in the proposal is exempt.

(C) If a proposal includes both exempt and nonexempt actions, the LOTT Alliance may authorize exempt actions prior to compliance with the procedural requirements of these rules, except that it may not give authorization for:

(1) Any nonexempt action;

(2) Any action that would have an adverse environmental impact; or

(3) Any action that would limit the choice of alternatives.

PART FOUR
ENVIRONMENTAL IMPACT STATEMENT (EIS)

§ 4.1. Purpose of this part and adoption by reference.

This part contains the rules for preparing environmental impact statements. The LOTT Alliance adopts the following sections by reference, as supplemented by this part:

WAC

197-11-400 Purpose of EIS.
197-11-402 General requirements.
§ 4.2. Preparation of EIS--Additional considerations.

(A) Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of LOTT Staff working under the direction of the responsible official. Before the LOTT Alliance issues an EIS, the responsible official shall be satisfied that it complies with these rules, SEPA and the SEPA Rules.

(B) The DEIS and FEIS or draft and final SEIS shall be prepared by the LOTT Staff, or by a consultant selected according to LOTT’s procedures.

PART FIVE COMMENTING

§ 5.1. Adoption by reference.

This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The LOTT Alliance adopts the following sections by reference, as supplemented in this part:

WAC

197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA register.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.

§ 5.2. Public notice.

(A) Whenever the SEPA Rules or these rules require notice to be given under this
section or WAC 197-11-510, the LOTT Alliance shall give public notice as follows:

(1) LOTT shall publish notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(2) LOTT shall file the documents required by WAC 197-11-508 with the state Department of Ecology for publication of notice in the state SEPA Register;

(3) LOTT shall post notice on the LOTT Alliance website (provided that temporary inaccessibility of the website for technical reasons shall not affect validity of notice); and

(4) LOTT shall, for project actions involving construction of facilities by the LOTT Alliance on a specific site, post notice at such sites, provided the current landowner (if not the LOTT Alliance) voluntarily allows LOTT to post such notice.

PART SIX
USING EXISTING ENVIRONMENTAL DOCUMENTS
§ 6.1. Purpose of this part and adoption by reference.

This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for LOTT’s own environmental compliance. LOTT adopts the following sections by reference:

WAC

197-11-600 When to use existing environmental documents.
197-11-610 Use of NEPA documents.
197-11-620 Supplemental environmental impact statement Procedures.
197-11-625 Addenda--Procedures.
197-11-630 Adoption--Procedures.
197-11-635 Incorporation by reference--Procedures.
197-11-640 Combining documents.

PART SEVEN
SEPA AND AGENCY DECISIONS
§ 7.1. Purpose of this part and adoption by reference.

This part contains rules concerning SEPA’s substantive authority, such as decisions to modify proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The LOTT Alliance adopts the following sections by reference:

WAC

197-11-650 Purpose of this part.
197-11-655 Implementation.
§ 7.2. SEPA Policies.

In formulating decisions, the LOTT Alliance shall consider the state policies set forth in RCW 43.21C.020. It is understood that any Partner that makes permitting decisions for site-specific LOTT Alliance projects may apply, in their permitting capacity, their own SEPA policies to condition such permits with appropriate mitigation measures.

§ 7.3. Administrative Appeals.

The following provisions shall apply to appeals from environmental determinations made by the LOTT Alliance:

(A) SEPA Decisions Subject to Administrative Appeal. Administrative appeals are provided for final SEPA procedural determinations (e.g., DNS or final EIS), except that an administrative appeal is not provided for a determination of significance. Appeals of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) are not allowed.

(B) Who May Appeal. A party wishing to file an administrative appeal of a LOTT Alliance SEPA determination under this section (Petitioner) must demonstrate that his or her interests are arguably within the zone of interests protected by SEPA and that the SEPA determination under appeal will cause the Petitioner injury-in-fact. In addition, to file an administrative appeal of an EIS issued by the LOTT Alliance, the Petitioner must demonstrate that he or she provided timely written or oral comments on the draft EIS.

(C) How to Appeal. Appeals of SEPA determinations are made by mailing or delivering a letter of appeal to the LOTT Alliance Executive Director. Appeals received by facsimile transmission are acceptable, but electronic mail (email) transmission is not acceptable. The letter must include the information and filing fee set out in Section 7.3(E) below.

(D) Timing of Appeals. The letter of appeal and filing fee must be received by the office of the Executive Director by 5:00 p.m. of the fourteenth (14th) calendar day following the date the challenged environmental document or determination is issued. In order to allow public comment on a DNS prior to requiring an administrative appeal be filed, this appeal period shall be extended for an additional seven (7) days if the appeal is of a DNS for which public comment is required under the SEPA Rules. When the last day of an appeal period is a Saturday, Sunday, or a national, state, or LOTT Alliance holiday, the appeal period runs until 5 p.m. on the next business day.

(E) Filing Appeals. For an appeal to be accepted, the letter of appeal must:

1. Be in writing;
2. Contain a statement that sets forth:
   
(a) The basis for the Petitioner's standing, including
i. How the Petitioner's interests are arguably within the zone of interests protected by SEPA; and

ii. How the SEPA decision being appealed will cause the Petitioner injury-in-fact. If the alleged injury-in-fact has not already occurred, Petitioner must set forth facts establishing the immediate, concrete, and specific future injury-in-fact that will occur to that Petitioner as a result of the SEPA determination under appeal;

(b) The document or determination being appealed;

(c) The specific errors complained of;

(d) The corrective action being sought;

(e) The reasons why the determination should be changed;

(f) Whether further oral or written comment or a hearing is requested; and

(g) The signature, address, and phone number of the Petitioner and the name and address of Petitioner's designated representative, if any.

Supporting documents may be submitted with the letter of appeal;

3. Be accompanied by an appeal fee of $230.00, escalated each calendar year after 2001 using the U. S. Bureau of Labor Statistics Consumer Price Index Seattle Urban Wage Earners W (CPI-W). (The current fee for a calendar year is available from the responsible official.); and

4. Be timely received by the office of the Executive Director, as described in 7.3(D), above.

Failure to comply with the procedural requirements of this section is grounds for dismissal of an appeal.

(F) Hearing Examiner. If an appeal is determined to contain all of the elements listed under Section 7.3(E) above, the Executive Director shall appoint to hear the appeal an individual familiar with SEPA and hearing procedures as Hearing Examiner.

(G) Appeal Procedures. The Hearing Examiner will conduct an appeal hearing consistent with these rules and procedures, applicable legal requirements, and any Hearing Examiner Rules of Practice and Procedure adopted by the Executive Director pursuant to section 7.3(J) of these rules.

(H) Deadlines. The Hearing Examiner shall have thirty (30) days after securing sufficient information to issue a written decision.

(I) Appeal Hearing. A hearing shall be provided if requested by the Petitioner. Multiple appeals of the same SEPA decision shall be consolidated for hearing. The hearing shall
provide reasonable opportunity for the parties to present oral or written testimony and argument, consistent with these rules, SEPA and the SEPA Rules. Procedural determinations made by the responsible official shall be entitled to substantial weight. Consistent with any rules of practice and procedure adopted pursuant to section 7.3(J), the Hearing Examiner may by order establish case-specific procedures for the hearing, and may set the time period allowed for each party to the appeal, including LOTT Staff, to file documents and to present its case. The Hearing Examiner shall prepare a record for use in any subsequent appeal proceedings. The record shall consist, at minimum, of findings and conclusions, testimony under oath, and taped or written transcript.

(J) Authority of Executive Director to Adopt Hearing Examiner Rules of Practice and Procedure. The Executive Director shall have the authority to adopt rules of practice and procedure for the Hearing Examiner to use in implementing this section and may delegate this authority to appropriate LOTT Staff. Adoption of or amendments to these rules of practice and procedure by the Executive Director (or the Executive Director’s delegates) does not require legislative action by the LOTT Alliance Board.

(K) Exhaustion of Administrative Appeal Procedures. A party seeking judicial review of an LOTT Alliance SEPA decision subject to appeal under this section must, before seeking any judicial review, exhaust the administrative appeal procedures of this section. Any subsequent judicial review shall be conducted based on the record compiled for the administrative appeal hearing, pursuant to RCW 43.21C.075 and consistent with other applicable law.


(A) The LOTT Alliance may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(B) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be made available by the responsible official pursuant to RCW 43.21C.080.

PART EIGHT
DEFINITIONS

§ 8.1. Purpose of this part and adoption by reference.

This part contains uniform usage and definitions of terms under SEPA. LOTT adopts the following sections by reference, as supplemented by Section 2.2:

WAC

197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum.
197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.
PART NINE
CATEGORICAL EXEMPTIONS
§ 9.1. Adoption by reference.

The LOTT Alliance adopts by reference the following rules for categorical exemptions, as supplemented in these rules, including Section 3.2:

WAC

197-11-800 Categorical exemptions.
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.

PART TEN
AGENCY COMPLIANCE

§ 10.1. Purpose of this part and adoption by reference.

This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The LOTT Alliance adopts the following sections by reference:

WAC

197-11-900 Purpose of this part.
197-11-902 Agency SEPA policies.
197-11-916 Application to ongoing actions.
197-11-920 Agencies with environmental expertise.
197-11-922 Load agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
197-11-938 Lead agencies for specific proposals.
197-11-940 Transfer of lead agency status to a state agency.
197-11-942 Agreements on lead agency status.
197-11-944 Agreements on division of lead agency duties.
197-11-946 DOE resolution of lead agency disputes.
197-11-948 Assumption of lead agency status.

§ 10.2. Fees.

The LOTT Alliance may charge any person for copies of any document prepared under these rules, and for mailing the document, in a manner provided by Ch. 42.17 RCW.
§ 10.3. Effective date.

The effective date of these rules is June 22nd, 2001, with the Board of Directors' adoption of Resolution 01-008.

§ 10.4. Severability.

If any provision of these rules or their application to any person or circumstance is held invalid, the remainder of these rules, or the application of the provision to other persons or circumstances, shall not be affected.

PART ELEVEN
FORMS

§ 11.1. Adoption by reference.

The LOTT Alliance adopts the following forms and sections by reference:

WAC

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.