



# STATE ENVIRONMENTAL POLICY ACT

## *OVERVIEW AND UPDATES*

Department of Ecology

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# Overview of Day -morning

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- **SEPA Overview and Background**
- **Agency Roles and Responsibilities**
- **Exemptions and Exceptions**
- **Lead Agency Designations**
- **How to evaluate a proposal and make a threshold determination**

# Afternoon Agenda

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- **Issuing documents and public notice**
- **Non-project review**
- **Use of Existing Documents  
(addend, revise, supplement, adopt)**
- **NEPA-SEPA Integration**

# What is SEPA? - RCW 43.21c

## **Policy:**

*Each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.*

## **Substantive Duty:**

*All agencies use all practicable means to . . . Attain the widest range of beneficial uses of the environment without degradation . . . Preserve cultural heritage . . . Fulfill responsibilities as a trustee of the environment for succeeding generations*

# What is SEPA? - RCW 43.21c

## **Procedural Duty:**

Law directs, to the fullest extent possible:

*All branches of government of this state, including state agencies, municipal and public corporations, and counties shall:*

*(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official*

## **Substantive Authority:**

*The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all branches of government of this state, including state agencies, municipal and public corporations, and counties. Any governmental action may be conditioned or denied pursuant to this chapter.*

# What is SEPA?

- ◎ SEPA's environmental policies and goals supplement those in existing authorizations of all branches of government of this state.
- ◎ A governmental action may be conditioned or denied pursuant to SEPA [RCW 43.21C.060].
- ◎ Works with other regulations to provide a comprehensive review of a proposal.
  - Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable impacts for all elements of the environment

# What is SEPA?

Applies to all state and local public agencies

- Agency decision-makers must *appropriately consider* likely broad-based environmental consequences of their actions.
- Agency decision-makers may use supplemental authority to *protect* the environment.

# What is SEPA?

## ○ Key Aspects

- Disclosure process for agencies and the public
- Addresses regulatory gaps and overlaps
- Reviews impacts early in process
- Streamlines decision-making
  - identifies mitigation early in permit process
  - integrates with agency planning and permitting
  - adopts existing environmental analysis



# Why Do SEPA?

- ◎ Agency decisions (actions) benefit from the “hard look” at impacts, alternatives and mitigation options before commitment to specific course of action.
- ◎ Provides transparency and accountability for chain of decision-making for public programs and projects
- ◎ Promotes early public involvement in planning and project development

# Why Do SEPA Anymore?

In light of land-use regulations, pollution control laws and natural resource management protections . . . .

## Regulatory “gaps”

outdated land-use plans and development regulations

vested projects with outdated regulations

un-regulated resources –such as cultural/historical

un-regulated pollution – greenhouse gases

changing environment due to climate impacts

# When does SEPA Apply?

- ⦿ Nonproject actions
  - Agency decisions on policies, plans, or regulations
- ⦿ Project actions
  - Agency decisions to license, fund, or undertake a proposal (public or private)
  - Agency decisions to purchase, sell, or lease resources

# Agency Action Scenario #1

## *Does SEPA apply?*

- ◎ Project proposed in shoreline management area.
- ◎ Applicant submits request for exemption from substantial development permit.
- ◎ Local agency determines exemption should be granted

Is this an agency action subject to SEPA?

# Scenario #1 - answer

Yes, the decision on SDP exemption is an agency action:

- Definition of “*agency action*” includes “*license*”
  - *Any form of written permission . . . As required by law or agency rule . . . permit, certificate, approval . . . to facilitate a particular proposal.*  
WAC 197-11-760

However, many of these projects are exempt from SEPA because they are minor new construction activities.

# Agency Action Scenario #2

## Does SEPA apply?

- ◎ Wind energy company plans to install a number of temporary wind monitoring devices up to 200 ft. high
- ◎ Potential impacts to air traffic and wildlife are identified
- ◎ Sites and access points are on private property
- ◎ No agency permits or approvals are required

# Scenario #2 - answer

- No SEPA review because there is no agency decision or other involvement
- Agency action is trigger for SEPA procedural requirements

# SEPA Review Process

- ⦿ Determine if SEPA is required
- ⦿ Identify the SEPA lead agency
- ⦿ Evaluate the proposal
  - Identify impacts, alternatives, mitigation
- ⦿ Make “threshold determination”
- ⦿ Issue a DNS, MDNS or DS/EIS
- ⦿ Consider feedback
- ⦿ Complete the review process
- ⦿ Make an informed decision



# SEPA is a Collaboration

- ⦿ Environmental review required under SEPA goes beyond any one agency's Expertise
  - Interagency consultation and cooperation
  - Review and commenting on documents
  - Applicant and consultant Involvement
  - Public involvement

# *All for One - One for All!*

- Lead agency has duty to complete SEPA review on behalf of agencies with jurisdiction.
  - An overall decision to proceed with a course of action may involve a series of actions or decisions by one or more agencies. The agencies shall comply with lead agency determination requirements in WAC 197-11-050 and 197-11-922.
  - Any agency acting on the same proposal shall use an environmental document unchanged, except when there are substantial changes or new information. (WAC 197-11-600(3))
  - No action shall be taken by an agency until final DNS or EIS. (WAC 197-11-070)

# Agency Roles

- ◎ Lead Agency/Co-Lead Agencies
  - Threshold determination
  - Preparation of documents
- ◎ Agency with Jurisdiction
  - State, local and federal agencies
- ◎ Agency with Expertise
- ◎ Affected local jurisdiction
- ◎ Consulted Agency
- ◎ Tribes – not agencies, but government to government

# Properly define the proposal

- ❖ Identify all aspects and agency approvals
- ❖ Evaluate interdependent pieces together
  - ❖ Proposal evaluated for SEPA review can be permitted in phases without further SEPA
- ❖ Evaluate similar proposals together
- ❖ Phased review
- ❖ Refer to WAC 197-11-060

# Is SEPA Required?

- ⦿ Is the entire proposal defined?
- ⦿ Is an agency taking an action?
- ⦿ Is the proposal or action exempt?
- ⦿ Has SEPA already been completed?

# Has SEPA already been done?

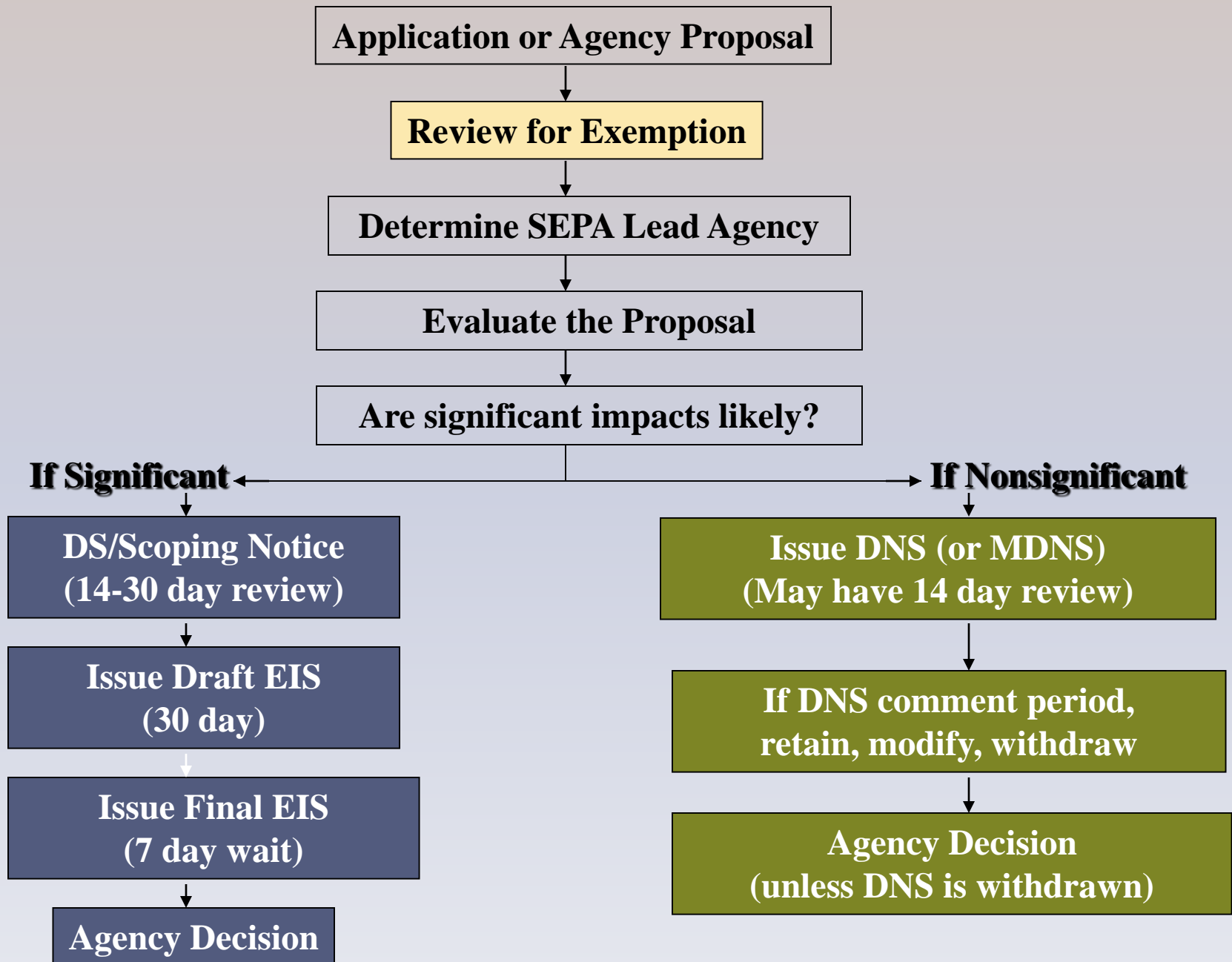
- ◎ If so:

- Compare project descriptions
- Consider any new information
- Use the SEPA document in decision-making

- ◎ If not:

- Ensure the proposal is properly defined
- Decide if the proposal is categorically exempt
- Identify the lead agency







# Categorical Exemptions

- ◎ Statutory exemptions in SEPA
- ◎ SEPA Rule exemptions in WAC 197-11 Part Nine
- ◎ City/county options
  - Flexible exemption levels
  - Eliminate exemptions in critical areas
  - In-fill, Planned Action, and transit-friendly “upfront SEPA” streamlining

# Statutory Exemptions

- ◎ Not related to significance of adverse impacts
- ◎ Not subject to exceptions and qualifications in SEPA Rules unless explicitly stated
- ◎ Examples:
  - Forest Practices I, II, III
  - Annexations to city or town (not district)
  - Fish enhancement projects
  - Newer ones: development regulations, electric car charging stations

# Exemptions in General

- Exemption can be specific to type of activity (project or non-project)
  - Example is minor new construction activities
- Exemption can be specific to the type of agency decision
  - short plat subdivision (minor land use decisions)
  - Hydraulic Project Approval from WDFW if under 50 cu/yd of dredging
  - Water quality certification

# Categorical Exemptions

**WAC 197-11-800 (1) –(26) Commonly used:**

- minor new construction (with flexible thresholds)
- repair, remodel and maintenance activities
- Minor land-use decisions
- Utilities
- procedural actions

# Flexible Threshold Maximum Levels

## Minor New Construction

Project Types	SEPA Default Exemption Threshold 197-11-800(1)	Maximum Option for Cities and Counties for Urban Growth Area	Maximum Option for other areas – outside UGA and in non-fully planning counties
Single family <b>residential</b>	4 units	30 units	20 units
<b>Multifamily residential</b>	4 units	60 units	25 units
<b>Agricultural</b>	10,000 sq ft	40,000 sq ft	40,000 sq ft
Office, school, <b>commercial</b> + parking or stand-alone parking lot	4,000 sq ft 20 spaces	30,000 sq ft 90 spaces	12,000 sq ft 40 spaces
Landfill or excavation	100 cu yds	1000 cu yds	1000 cu yds

# Process for Adopting Flexible Thresholds

At a minimum, the following process shall be met in order to raise the exempt levels.

(i) **Documentation** that elements of environment are addressed

(ii) **Description** of the project-level **public comment** opportunities

(iii) **Provide a minimum of 60 days notice** for public comment

# Addressing Cultural Resources

- ◎ A local ordinance or resolution shall include, but not be limited to, the following:
  - Use of available data and other project review tools ... such as inventories and predictive models provided by DAHP, other agencies, and tribal governments.
  - Planning and permitting processes that ensure compliance with applicable laws.
  - Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.

# Land Use Decision Exemptions

- ◎ Confusing text in 197-11-800(6) and did not get simplified with amendments
- ◎ Intent of amendments:
  1. Allow for “change of use” decisions to be exempt when applied to “minor” structures
  2. Allow for some rezone decisions to be exempt – when it is done as a update to be consistent with comp. plan.
  3. Provide an exemption for boundary line adjustments.
  4. Expand the short plat exemption to include further subdivisions within total short plat parcel maximum



# Categorical Exemptions

- ◎ **Caution** : Watch for “exceptions”
  - Lands covered by water
  - Rezones
  - Permits to discharge to air or water
- ◎ Check restrictions in WAC 197-11-305
  - Critical areas
  - Segment of a proposal -If part of project or one of the agency approvals is not exempt – then entire project is not exempt

# Definition of Wetlands

## WAC 197-11-756 – Definitions

- Revise SEPA definition of *Lands Covered by Water* to be consistent with GMA definition of *Wetlands*
  - Artificially created waterways are not included (except for habitat restoration projects).
  - Clarification that buffers and adjacent lands above the ordinary high water mark are not “lands covered by water”.

# Exceptions to Exemptions – Example

- ⦿ Minor commercial construction project
- ⦿ City has building/clearing & grading permits to issue
- ⦿ Permit application describes project that may require an air pollution control permit.
- ⦿ Applicant or City permit staff confirm that project involves air discharge permit decision from Ecology or local air agency.
- ⦿ Is there an exemption here?
- ⦿ Which agency is lead?

# Answer

- ◎ No minor construction exemption because of “exception” provision. WAC 197-11-800(1).
- ◎ City is the lead agency pursuant to standard default - WAC 197-11-932

# Related Activities

Exempt + Not Exempt = Not Exempt

*Example of how 197-11-305 applies:*

- ◎ Dredging project requires Water Quality Certification (Sect. 401) from Ecology
  - Exemption for 401 certs. In 800(9)
- ◎ DNR lease required for dredging
- ◎ WDFW HPA required

Is this project exempt from SEPA?

Which agency is the lead?

# Answer

- ◎ The decision on the 401 certification is functionally and physically connected to the WDFW and DNR agency actions for this proposal.
- ◎ WAC 197-11-305 includes an exception to Part 9 exemptions for these types of proposals.
- ◎ SEPA review is required for this project
- ◎ Ecology is lead agency pursuant to 197-11-936

# Exemption Scenario #1

- ◎ One single-family home construction project
  - No wetlands or critical area
- ◎ Construction involves excavation of 10,000 cu/yds of soil

Is this project exempt?

# Answer

- ◎ Exempt because minor new construction exemption applies.
  - 800(1)(b)(v) . . . and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.



# Modified Scenario #1

## Proposal:

“Construction of a new 500 ft. residential driveway involving the removal of sod, grading for and the placement of 266 cy of gravel.”

- Exemption threshold for excavation/fill is 100 cy.
- Proposed house is on site plan map, but no permits requested for house construction

Is this project exempt?

# Answer

- ◎ It depends on how the lead agency defines the total proposal
- ◎ It could be considered exempt because residential construction exemption applies.
  - 800(1)(b)(v) . . . and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

Or

- 800(2)(e) (e) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto

# Exemption Scenario #2

- ⦿ Landowner proposes to subdivide lot and build another home on new parcel
  - Small part of the entire lot has a stream running through
  - House site is not near stream

**Is this proposal exempt from SEPA?  
Why or Why Not?**

# Answer

- ◎ Not exempt, because agency action involves entire parcel – the subdivision decision
- ◎ Part of the parcel includes *lands covered by water*
- ◎ WAC 197-11-800(6) includes exception to land use decisions for lands covered by water.

# Other 2012 Exemption Amendments

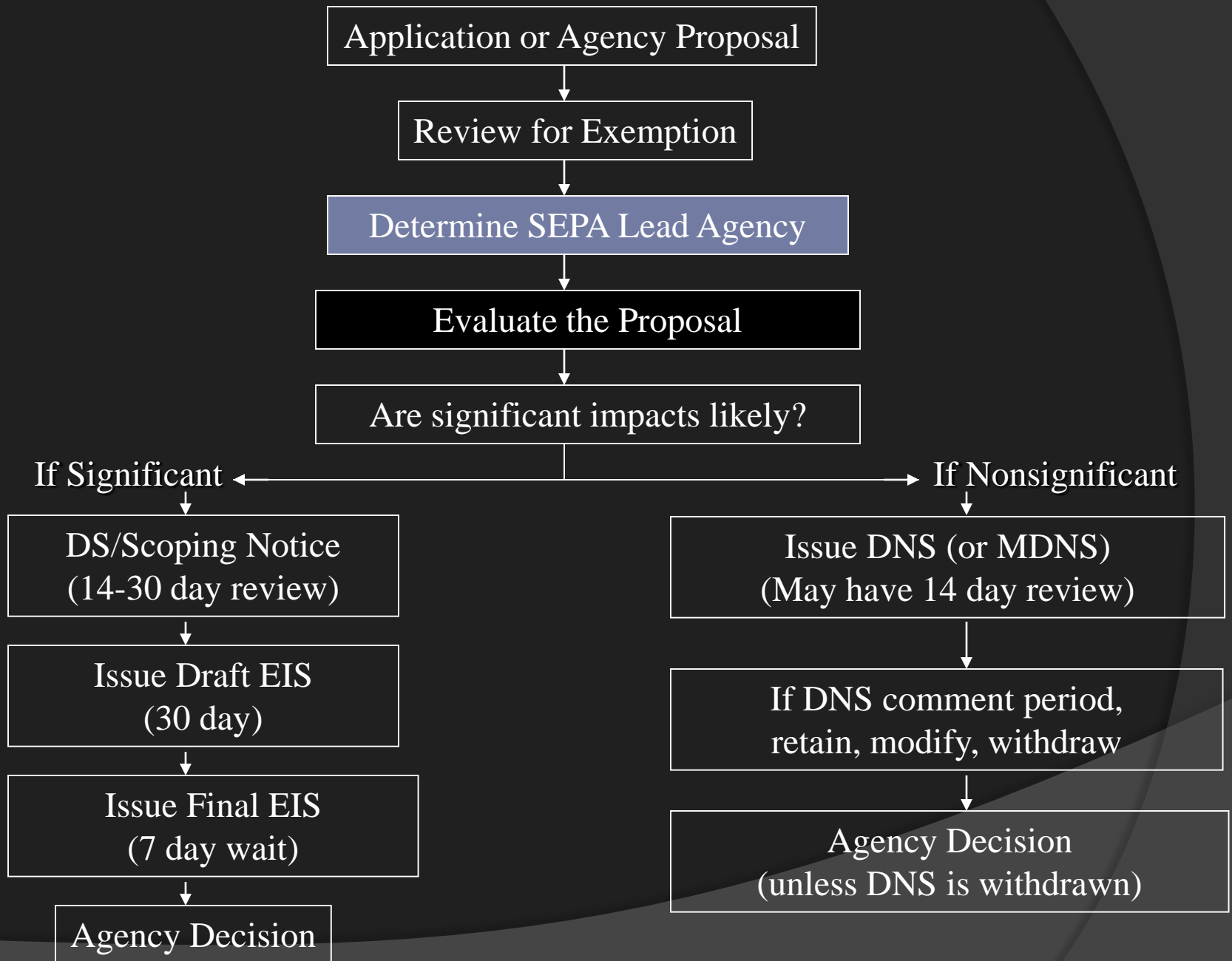
- ⦿ Minor new construction and *mixed use* projects
- ⦿ Maintenance dredging is exempt up to 50 cubic yards of material
- ⦿ Addition of above-ground storage tanks
- ⦿ Accessory solar energy equipment to existing structure
- ⦿ Addition of *Special Purpose Districts* –along with exemption for Local Improvement Districts
- ⦿ Clarification of “authorized public use” in exemption for sale of public lands

# Transportation Exemptions

- New WSDOT project exemptions
  - repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes),
- 2016 proposed rule amendment to exempt structurally deficient locally owned bridges

# Exemption *Themes*

- Proposal must be defined clearly and completely prior to exemption determination
- All agency permits/approvals must be identified as early as possible to determine what comprises the scope of the project and if an exemption applies.
- The lead agency might have an otherwise “exempt” permit or approval on a project - but is still lead because another agency has a non-exempt action.





# Which agency is lead?

- Public proposal
  - agency proposing the action
- Private projects
  - usually city/county
- Special designations
  - WAC 197-11-938

# Lead Agency Duties

- ⦿ Conduct environmental review
  - Identify and evaluate likely impacts
  - Consult with other agencies with jurisdiction and expertise
  - Identify mitigation measures
  - Issue a threshold determination (documentation)
  - Comply with procedural requirements
- ⦿ “Show your work” to other agencies and the public
- ⦿ Consider comments and revise as necessary

# Lead Agency Scenarios

Who is the lead agency?

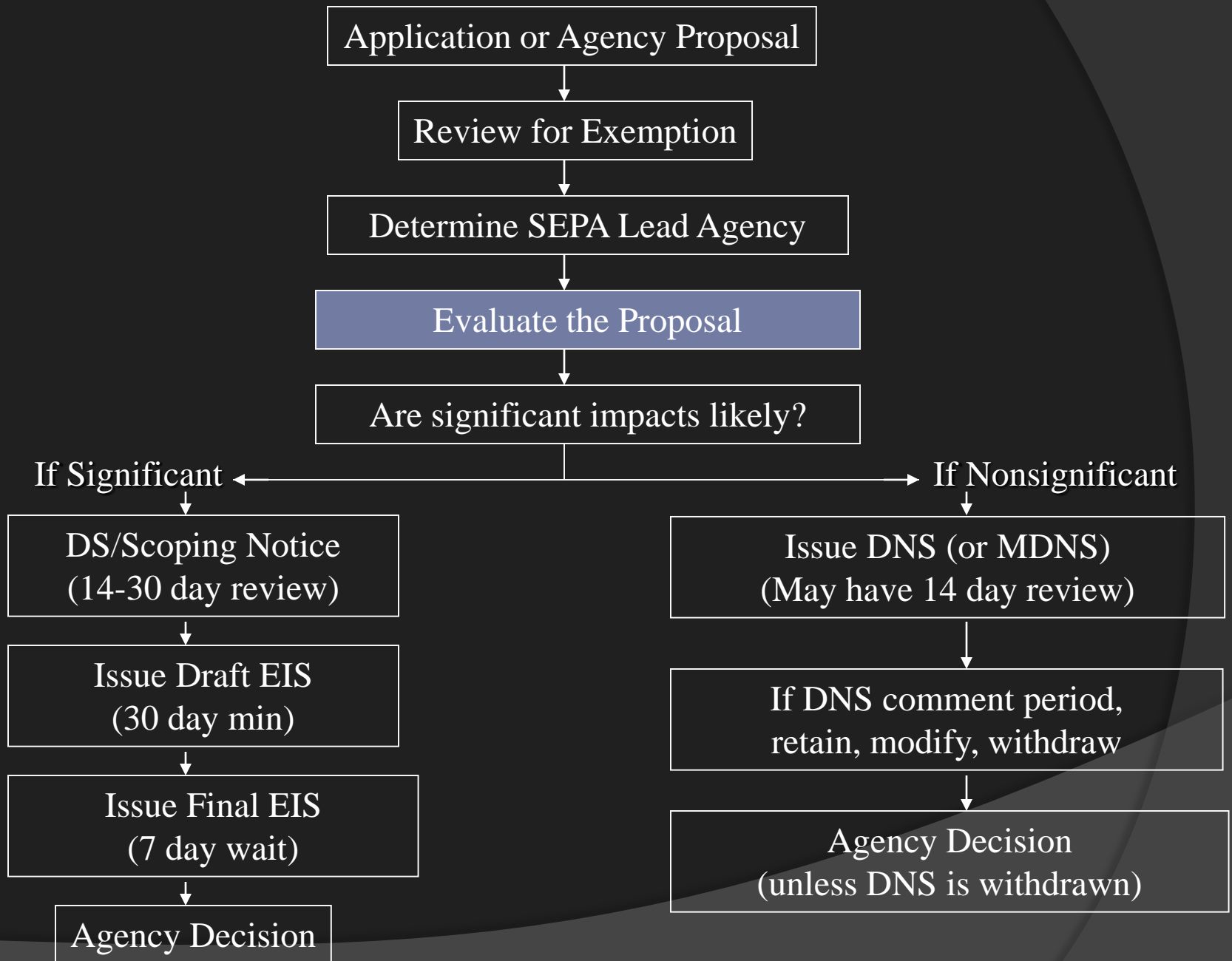
- New construction for Yakima County Courthouse in City of Yakima . . .
- Minor new construction project located in city but requires air discharge permit from Ecology . . .
- Proposed new power plant in Cowlitz County but proponent is a public utility company . . .

# What if your agency does not want to be SEPA lead?

- Any agency may volunteer to be the lead agency if all agencies with jurisdiction agree (WAC 197-11-942)
- Agencies may agree to share lead agency responsibilities as co-leads. One must be “nominal lead” and all other agencies with jurisdiction shall be notified. (WAC 197-11-944)
- Small towns (<5000 pop.) and counties (<18,000 pop) may transfer lead for private projects to a state agency with jurisdiction. (WAC 197-11-940)

# What if your agency prefers to be lead but is not?

- ◎ Negotiation for resolution with options on previous slide.
- ◎ Agency with jurisdiction may assume lead agency status from the designated lead, during comment period of DNS – but must also publish DS/Scoping notice concurrently. (WAC 197-11-948)
- ◎ Agency with jurisdiction may prepare a separate Supplemental EIS at its own expense. (WAC 197-11-600(3)(c) and 620)



# Evaluating the proposal

- Review the environmental checklist
  - Or proceed with EIS
- Identify other needed information
- Determine consistency with plans and programs
- Identify existing conditions
- Identify impacts to the environment
- Identify possible mitigation measures
- Evaluate significance of total proposal
- Make a threshold determination

# Content of Environmental Review

- ◎ Continually refer to WAC 197-11-060
  - *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.*
- ◎ Dependent upon:
  - Each particular proposal
  - The agency's existing planning and decision-making processes
  - The point at which alternatives and impacts can be most meaningfully evaluated



# Scope of Environmental Review

- ◎ Agencies shall properly define proposal
- ◎ Scope of Proposal vs. Scope of Impacts
  - Proposal for private projects = agency action(s) plus applicant(s) proposal
  - SEPA review must include interdependent parts of larger proposal.
  - A larger proposal than what a specific agency decision might involve.

# Scope of Impacts to Analyze

- ◎ Impacts = the effects of a proposal – the entire proposal
- ◎ Direct, indirect, across jurisdictions, over entire life of proposal – and beyond
- ◎ Cumulative effects can result from direct or indirect impacts combined with past, present or future impacts of other proposals.

# Elements of the Environment

## Built Environment

- Environmental Health
  - Noise, Risk of explosion, toxics, hazardous materials
- Land and Shoreline Use
  - Plan consistency, Housing, Light and glare, Aesthetics, Recreation, Historic and cultural preservation, Agricultural crops
- Transportation
- Public Services/Utilities
  - Fire, Police, Schools, Parks, Maintenance, Communications, Water/storm water, sewer/solid waste, other governmental services or utilities

# Elements of the Environment

## Natural Environment

- Earth
  - Geology, Soils, Topography, Unique physical features, erosion, accretion
- Air
  - Air quality, Odor, Climate
- Water
  - Surface water, Runoff/absorption, Floods, Groundwater movement
- Plants and animals
  - Habitat, diversity, population of species, unique species, fish and wildlife migration routes
- Energy and natural resources
  - Quantity, rate, efficiency, source and availability, Nonrenewable resources, conservation and renewables, scenic resources

# Environmental Checklist

## ⦿ Environmental checklist includes:

- Existing conditions
- Changes caused by the proposal
- Applicant's proposed mitigation

## ⦿ Checklist does not include:

- Analysis of impacts
- Requirements of other regulations

# Revised Checklist Questions

- ◎ New checklist template
  - Updated text in Part B
  - Revised questions for Cultural Resources, Environmental Hazards and Land Use sections
- ◎ Updated guidance for Checklist
  - Help with answering questions
  - Help with reviewing applicant's answers

# Checklist Guidance

- ◎ **On-line “help button” format - embedded in Checklist template**
- ◎ **Filled with resource links**
  - Send edits/comments on guidance to [sepahelp@ecy.wa.gov](mailto:sepahelp@ecy.wa.gov)
- ◎ **Link to checklist template:**  
**<http://www.ecy.wa.gov/programs/sea/sep/docs/checklistGuidanceLinks.docx>**

# Evaluating the Checklist

- Review for **complete** and **accurate** information
  - Lead agency accountable for information used to make threshold determination
  - Request additional information if necessary
- Document the comments and make changes if necessary
- Distribute draft checklist for interagency Consultation



# Additional Information

- ◎ Checklist is first step – but evaluation is not limited to this
- ◎ “complete application” could require more information from applicant
  - Additional studies and reports
  - Previously prepared SEPA or NEPA documents
  - Local information
    - Critical areas ordinances
    - GIS maps

# Analysis of Impacts

- ◎ **Which elements will be affected?**
- ◎ **When will the change occur?**
- ◎ **How long will it last?**
- ◎ **Is an adverse impact likely?**
  
- ◎ **Consider:**
  - **Short and long term**
  - **Direct and indirect**
  - **Cumulative**

# Consider Proposed Mitigation

**After initial review and consultation with other agencies. . .**

- ⊙ **Will other regulations condition the proposal?**
- ⊙ **Is the applicant willing to change the proposal to incorporate mitigation (“voluntarily”)**
- ⊙ **Any additional “reasonable” mitigation available to address impacts?**

# What is Mitigation?

- ◎ **Avoiding**
- ◎ **Minimizing**
- ◎ **Rectifying**
- ◎ **Reducing over time**
- ◎ **Compensating**
- ◎ **Monitoring the impact and taking corrective measures**

# Mitigation Drivers in SEPA

- ⦿ Decision to achieve an environmentally preferable outcome
- ⦿ Commitment for mitigation to support a MDNS and proceed without EIS
- ⦿ In both cases, mitigation is not assured until it's adopted and implemented
- ⦿ Agency procedures needed to document, monitor and implement mitigation plans

# NEPA Guidance

## Mitigation and Monitoring – *when finding no significant impacts*

- ◎ CEQ seeks to enable agencies to create successful mitigation planning and implementation procedures
- ◎ Develop robust public involvement and monitoring programs
- ◎ Improvements needed because monitoring of mitigation measures are not necessarily successful avoiding significance
- ◎ [https://ceq.doe.gov/current\\_developments/docs/Mitigation\\_and\\_Monitoring\\_Guidance\\_14Jan2011.pdf](https://ceq.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf)

# What is Adaptive Management?

- ◎ **Required monitoring of possible impacts or mitigation performance resulting from implementation of proposal**
- ◎ **Established thresholds that would trigger review and revision of mitigation plan**
- ◎ **Enforcement of monitoring and reporting requirements**

# Threshold Determination Process

- ◎ An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact
- ◎ The determination of whether a proposed project or nonproject proposal will have probable significant adverse environmental impacts is the “threshold determination.”



# Determine Significance

- ◎ SEPA Rules WAC 197-11-330
- ◎ Identify and document probable significant adverse environmental impacts
- ◎ Significance involves:
  - Context – physical setting
  - Intensity – magnitude and duration
  - Severity
  - Likelihood of occurrence

# Considerations

- ◎ Will the proposal adversely affect:
  - Environmentally sensitive/special areas
  - Endangered or threatened species
  - Public health or safety
- ◎ Will the proposal:
  - Conflict with local, state or federal laws or regulations
  - Establish a precedent for future actions

# Threshold Determination

- ⦿ Is a significant adverse environmental impact likely?
- ⦿ Have adverse impacts been mitigated?
- ⦿ Significant  $\Rightarrow$  DS/EIS
- ⦿ Nonsignificant  $\Rightarrow$  DNS
- ⦿ Significant, but mitigated  $\Rightarrow$  MDNS

# Contents of a DNS

- ⦿ Not intended to be just a formality – but the justification of why EIS is not needed
- ⦿ If legally challenged, an agency's procedural compliance with SEPA may stand or fall on the contents of its environmental documents (often the adequacy of the DNS)
- ⦿ Clarity on type of document is important
- ⦿ Helpful to list all the agency approvals that must consider this information

# Mitigated DNS

- Issued when impacts are reduced by changes or conditions to reduce impacts to a nonsignificant level
- List the mitigation in the DNS
- Always has a comment period

# Document Distribution

- When issuing SEPA Documents
  - Include detailed project description
  - Attach related documents – **checklist**, maps, site plan, all referenced material
- Involve other agencies and the public
  - Required distribution
    - SEPA Unit, Tribes, agencies with jurisdiction. Affected jurisdictions (special districts, counties, cities)

# Distribute to Which Agencies?

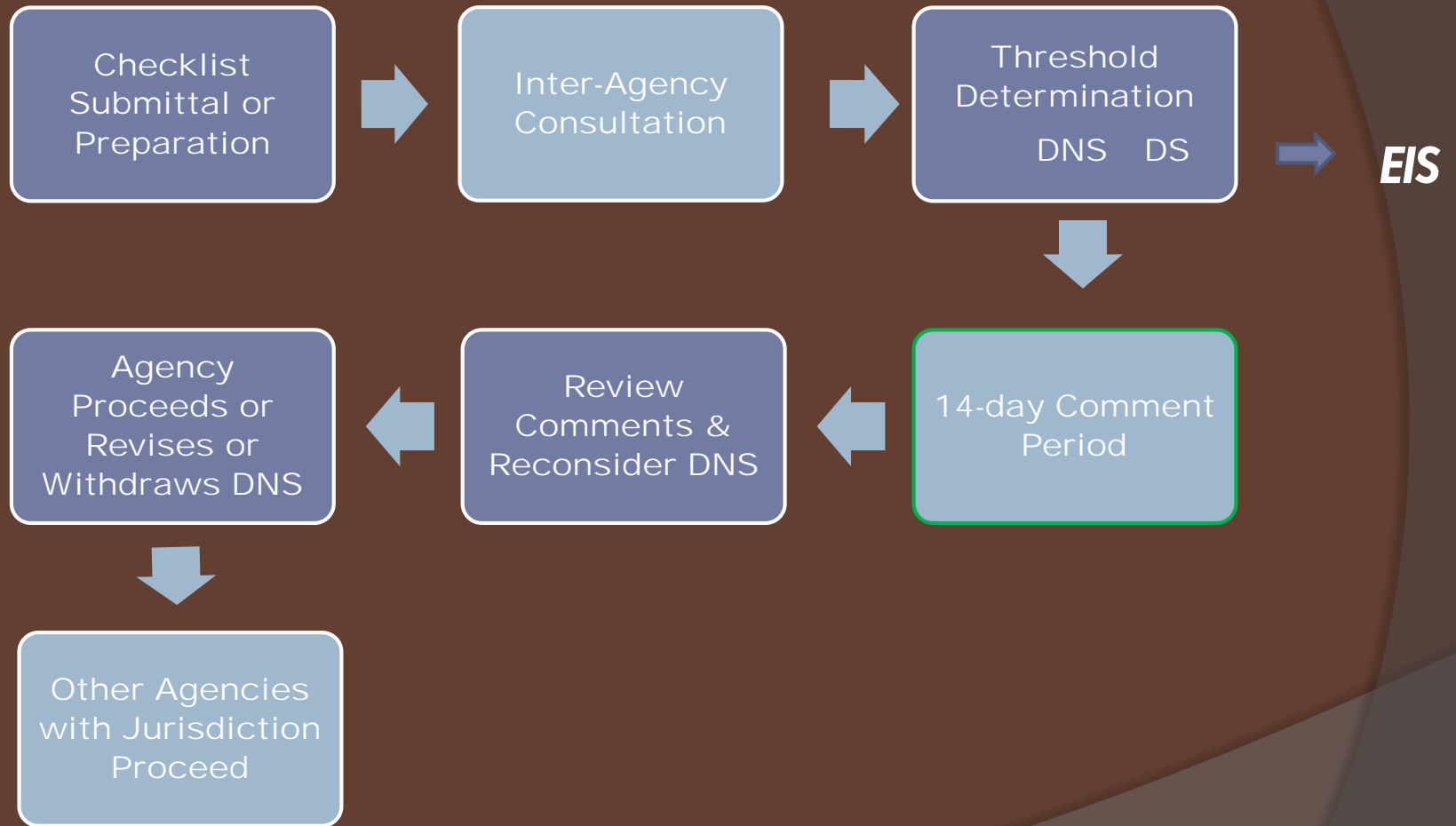
- ◎ Always to SEPA Register:
  - [separegister@ecy.wa.gov](mailto:separegister@ecy.wa.gov)
- ◎ Consult SEPA Contacts list on website:
  - <http://www.ecy.wa.gov/programs/sea/sepa/sepac ont.html>
- ◎ Tribal contacts
  - <http://www.goia.wa.gov/default.htm>
  - <http://www.wsdot.wa.gov/tribal/tribalcontacts.htm>
  - <http://www.dahp.wa.gov/tribal-contact-information>

# Consider Comments

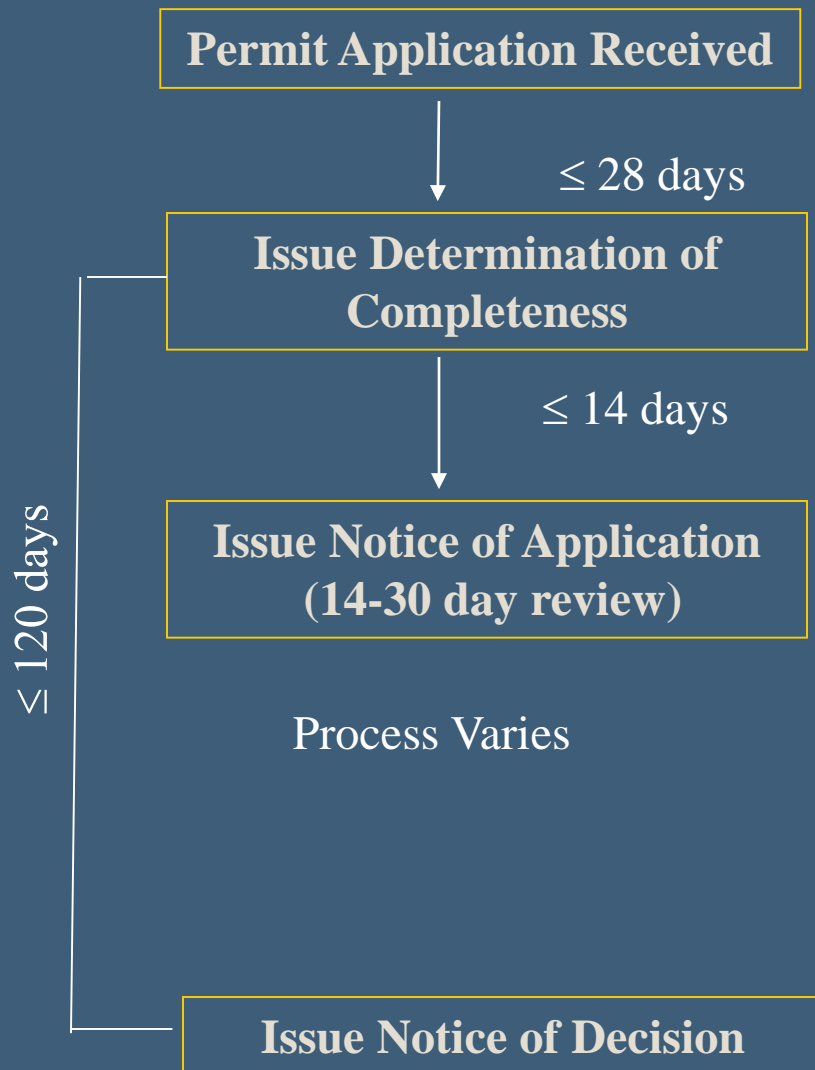
- ⦿ Retain DNS
  - No additional documentation required
  - If “final DNS” is issued – please identify previous
- ⦿ Modify/Revise DNS (see modification slide)
  - Important to do this prior to any agency’s action
  - No comment period required unless it’s an MDNS with different mitigation
  - Include new checklist if modified or addendum to checklist
- ⦿ Withdraw DNS
  - Starts the process again



# DNS Process



## GMA Local Project Review RCW 36.70B



## SEPA Review Process\*

- Receive checklist with permit application
- Review checklist for accuracy & completeness
- May circulate checklist for interagency consultation
  
- Issue DNS, MDNS or DS/scoping notice
- Or use optional DNS process Combined comment period with NOA
  
- Complete SEPA before making permit decisions (7-day wait after Final EIS)
- Issue modified DNS, or document retained DNS

# Optional DNS Process

- ◎ **Not applicable for:**

1. Non-project proposals (including local ordinances)

- See definition of *project permit* in RCW 36.70B.020

2. Public projects

- when SEPA is done prior to permitting

- ◎ **Use caution when issuing an MDNS**

- Must list mitigation required in NOA notice

# Questions?



# Nonproject Actions

- ◎ Contain standards controlling use or modification of the environment
- ◎ Provide the basis for future projects
- ◎ Foreclose future options
- ◎ Often constitute a sequence of decisions that build-upon each other
- ◎ Authorize future projects

# Types of Nonproject Actions

1. Legislation, ordinances, rules & regulations that contain standards controlling use of environment
2. Land use plans and zoning laws
3. Policy, plan or program that governs development of series of connected actions (programmatic)
4. Creation and annexation of districts
5. Capital budgets and plans
6. Road, street and highway plans

# Nonproject Actions

Characteristic	Example
<b>Directs</b> future projects	-Subarea Plan, transportation plan
<b>Encourages</b> future projects	-Comp Plan
<b>Constrains</b> future projects	-Regulatory Ordinance
<b>Permits</b> future projects	-Programmatic or general permit

# Importance of Non-Project SEPA

- ◎ Provides a “big picture” analysis
- ◎ Useful opportunity to address cumulative impacts
- ◎ Documents consideration of broad range of impacts and reasonable alternatives
- ◎ Streamlines SEPA review for subsequent project decisions



# Key Concepts

- ◎ Begin in early stages of proposal development and continue as “work in progress”
- ◎ Integrated into development of rule, plan, policy, general permit etc.
  - Continuous review
  - Consider impacts as preliminary decisions are made
- ◎ Part B of Checklist is optional – *depending on type of proposal and potential impacts*
- ◎ Non-project EIS should not be feared!

# Benefits of Non-Project EIS

- ◎ Do not have to discuss, debate, defend finding of non-significance
- ◎ Format and content is flexible
- ◎ Robust public involvement can streamline future project-level review
- ◎ More in-depth discussion of alternatives can benefit decision-makers

# Steps in Nonproject SEPA Review

- ◎ Start the SEPA process when given mandate or decision to pursue plan, policy, rule, general permit, etc.
- ◎ Update analysis throughout development of the proposal
- ◎ Issue DNS or DEIS with the draft proposal and concurrent comment period.
- ◎ Consider comments and finalize
- ◎ Use information in decision-making

# Key Tasks for Nonproject Review

- ◎ Identify the problem and need for action
- ◎ Identify objectives
- ◎ Describe key issues
- ◎ Identify possible alternatives that achieve objectives
- ◎ Evaluate the impacts of each alternative
- ◎ Consider ways to reduce impacts

# Nonproject Review Form or Staff Report

- Additional nonproject oriented questions can be used as a “staff report” to supplement *Part D of Checklist*.

## Need and Objectives

- Describe the need for the action. (Whenever possible this should identify the broad or fundamental problem or opportunity that is to be addressed, rather than a legislative or other directive.)
- Describe the objective(s) of the proposal, including any secondary objectives which may be used to shape or choose among alternatives.

# Nonproject Review Form/ Staff Report

## Environmental Overview

- ◎ Describe in broad terms how achieving the objective(s) would direct or encourage physical changes to the environment. Include the type and degree of likely changes such as the likely changes in development and/or infrastructure, or changes to how an area will be managed.

## Regulatory Framework

- ◎ Describe the existing regulatory/planning framework as it may influence or direct the proposal.

# Relation to Project-Level Review

- ◎ Project-level SEPA review should:
  - Focus on issues not addressed during planning
  - Build on environmental analysis from development regulations, general permits, and other laws and regulations
  - Focus on the gaps
- ◎ Nonproject SEPA documents can be adopted and supplemented

# Impacts Not Addressed

- ◎ Additional review may be needed for project-level impacts:
  - Resulting from changed conditions
  - Indicated by new information
  - Not reasonably foreseeable in planning
  - Specifically reserved for project review



# Phased Review

- Focus on issues ready for decision
- Non-project phase identifies total proposal and significance of “big picture” impacts
- Appropriate to sequence from:
  - Nonproject document to site specific
  - Site selection to detailed design
- Not appropriate:
  - From narrow project to broad policy
  - To segment a proposal to avoid review

# Questions?



# Modifying SEPA Documents

- ⦿ Modification, revision and supplement of documents is used when SEPA review was started/completed on the same proposal
- ⦿ Not necessary when permits have been issued and will not be withdrawn and reconsidered.
  - Except when there is misrepresentation or lack of material disclosure
- ⦿ New DNS on same proposal is called “Modified DNS” or “Revised DNS”
- ⦿ EISs can have supplemental or addendum

# Adopting Existing Documents

- ◎ Adoption when using NEPA documents on same proposal in lieu of SEPA Checklist or EIS
- ◎ Adoption of SEPA documents prepared for similar but different proposals.
  - Non-project proposals – common for adoption of SEPA documents
  - Phased review – adopting programmatic review when agency actions are focused on project-level decisions.

# Adopting Existing Documents

- ◎ Note that an Adoption always includes a new threshold determination.
  - This signifies that SEPA review has been done even though new analysis may not be involved.
- ◎ For DS and DNSs – SEPA review can add “addendum” (additional information but not an analysis of significant impacts)
- ◎ For DS/Adoption of EIS – a Supplemental EIS may be added

# NEPA and SEPA

- ◎ NEPA applies to federal agencies
  - Federal project, federal permits, or federal funding
- ◎ Both NEPA and SEPA reviews may be required on the same proposal
- ◎ NEPA documents may be adopted under SEPA –but usually not vice-versa

# Comparison of NEPA & SEPA

NEPA	SEPA
Categorical Exclusion (CE), <u>40 CFR 1508.4</u> , <u>40 CFR 1507.3</u>	Categorical Exemption, <u>WAC 197-11-800-880</u> . Statutory Exemptions, <u>RCW 43.21c</u>
Environmental Assessment, <u>40 CFR 1508.9</u> , <u>40 CFR 1501.3</u>	<u>Environmental Checklist</u> , <u>WAC 197-11-960</u> ,
Finding of No Significant Impact, <u>40 CFR 1508.13</u>	Determination of Nonsignificance (DNS), <u>WAC 197-11-340</u> .
Notice of Intent, <u>40 CFR 1508.22</u>	Determination of Significance (DS) and Scoping notice. <u>WAC 197-11-360</u> .
Draft Environmental Impact Statement (DEIS), <u>40 CFR 1502</u> , <u>40 CFR 1508.11</u> <u>Review</u>	Draft Environmental Impact Statement (EIS), <u>WAC 197-11-455</u> .
Final Environmental Impact Statement (FEIS), <u>40 CFR 1502</u> , <u>40 CFR 1508.11</u>	Final EIS (FEIS), <u>WAC 197-11-460</u> .
Supplemental EIS,	Supplemental EIS,
Record of Decision, <u>40 CFR 1505.2</u>	SEPA agencies must wait seven days before taking action. <u>WAC 197-11-460</u>

# Integrating the Review Process

- ◎ **State and federal agencies collaborate as “co-leads” and issue combined NEPA-SEPA documents**
- ◎ **SEPA review “shadows” the NEPA document production and distribution**
- ◎ **SEPA is done separately from the NEPA review process.**



# New Type of NEPA Adoption

A “Documented Categorical Exclusion” can be used in lieu of a SEPA Checklist to support a DNS

1. The SEPA lead agency must review and ensure that the DCE meets the requirements of SEPA review and addresses the elements of the environment under WAC 197-11-444.
2. A DNS must be issued along with the adoption of the NEPA DCE.
3. A public and interagency comment period is required for the DNS/DCE Adoption.

# Adoption Notice Examples

- ◎ DNS/Adoption (*with or without Addendum*)
  - Adopting NEPA EA or DCE for same or different proposal
  - Adopting SEPA DNS & Checklist for different proposal
  
- ◎ DS/Adoption of EIS (*with or without Addendum or Supplemental*)
  - Adopting NEPA EIS for same proposal
  - Adopting SEPA EIS for different (or phased review) proposal

# Agency Action –making a decision

- ◎ Decision makers must consider environmental issues
- ◎ Decision makers (all agencies with jurisdiction) may use SEPA supplemental authority
- ◎ Require additional mitigation when:
  - Impacts are identified in the SEPA document
  - Agency has adopted SEPA policies allowing use of substantive authority

# Make a Decision on Proposal

- ⦿ After SEPA is complete (14 days for DNS, 7 days for FEIS)
- ⦿ Review the environmental documents and comments
- ⦿ Consider environmental impacts, alternatives, and mitigation
- ⦿ Identify permit requirements
- ⦿ Decide if SEPA supplemental authority is needed to fill the gaps



# SEPA Substantive (Supplemental) Authority

- ◎ All agencies with jurisdiction can require mitigation or changes to a proposal
- ◎ Mitigation based solely upon specific adverse impacts identified in the environmental documents
- ◎ Used for gaps in existing local, state & federal requirements
- ◎ Mitigation conditions put in permits, agreements or reflected in revised proposal.
- ◎ May deny proposal when a FEIS identifies significant adverse impacts that cannot be reasonably mitigated

# Agency Compliance

- ◎ Adoption of SEPA Policies and Procedures
- ◎ Must be consistent with SEPA rules (WAC 197-11)
- ◎ Critical area designation and exemptions
- ◎ Include procedures as a consulted agency
- ◎ Public notice requirements
- ◎ Submittal to SEPA Register

# Implementation Revised Rules

- Effective date of May 10, 2014
- Reminder to use revised checklist
- Local ordinances that reference WAC 197-11-800 exemptions will still be valid
- Local ordinances that reference repealed Model Ordinance are still o.k. – but should be updated to reference WAC 197-11.
- Ecology is working on an updated Model Ordinance – to be included in guidance materials.

# Questions?





**SEPA**

**Consultations**

***Review and Commenting***

# The Purpose of Commenting

- ◎ To assist Lead agencies
  - Identify:
    - Inaccurate, incomplete information
    - Inadequate analysis or methods
    - Adverse environmental impacts
    - Applicable regulations
    - Necessary permits
  - Provide
    - Missing information
    - Input about possible alternatives
    - Input about possible conditions/mitigation

# Why Comment?

Because it is our responsibility . . .

Plus, commenting:

- Can identify, clarify & resolve major issues early in permit process
- Influence design changes – before it is finalized
- Achieve more environmentally sound proposals
- Create a better written record to support decisions of all agencies

# Why Comment?

- Helps ensure that SEPA review is adequate when we have a permit or other type of decision – reduces legal risk
- Supports efficiencies and reduces duplication, inconsistencies, and costly mistakes.
- Overall, environmental protection is a cooperative process that requires concerted action by individuals, industry, and government. For the process to work, each must have specific opportunities to provide information and voice concerns.

# Consequence of No Comment

## May limit ability to:

- Appeal
- Comment in the future
- Use supplemental authority (condition or deny permit)
- Influence project change
- Can lead to project delays – if problems identified after SEPA process
- If draft EIS —we are barred from objecting to final EIS
- Interpreted as ‘no objection’ to analysis of a proposal, WAC 197-11-545(2)

# Commenting Do's

- ◉ Describe your agency/program/organization's role (permit or expertise)
- ◉ Explain issues with context and reference background information
- ◉ Discuss solutions and alternatives
- ◉ Address cumulative impacts when applicable

# Commenting Don'ts

## ◎ Unexplained

- *(avoid quoting WACs or RCWs without providing the context or an explanation)*

## ◎ Vague or Redundant

- Provide enough detail information, but *don't repeat information already provided in the SEPA documents*

# Commenting on Non-project Actions

- ◎ **Affect future project decisions**
- ◎ **Address cumulative & incremental impacts more effectively**
- ◎ **Ensure adequate analysis of alternatives**
- ◎ **Identify possible mitigation measures for future projects**
- ◎ **May not have another chance to comment or appeal**
- ◎ **Don't hesitate to ask for an extension of comment period – non-project review can be extended . . .**



# Comments on DNS/Checklist

- ◎ Is there missing information?
  - Section A –proposal overview
  - Section B – impacts to elements of environment
- ◎ Has adequate mitigation been identified, and how will it be required?
- ◎ Has lead agency provided sufficient justification for determination of nonsignificance?

# Comments on DNS/Checklist

Negative conclusion:

*Based on the missing/incomplete/inaccurate information in the checklist . . . . .*

*a finding of nonsignificance cannot be supported.*

# Does Lead Agency Listen?

If your agency has “jurisdiction” and SEPA process and/or content is inadequate: *(last resort measures)*

- Assume Lead Agency –or at least inform them that it is an option during DNS comment period
- Issue new threshold determination with correct information (as long as justified under 197-11-600(3)(b))
- Add supplemental EIS (self-funded)
- Appeal/challenge administratively or judicially
  - -do not have to have “jurisdiction” to appeal

# Additional Resources

- SEPA Register – *past 18 years searchable – documents available since October 2016*
- SEPA Listserv – please join
- SEPA HelpLine –  
[sepahelp@ecy.wa.gov](mailto:sepahelp@ecy.wa.gov)

# Ecology SEPA Contacts

**SEPA HelpLine:** (360) 407-6922 [sepahelp@ecy.wa.gov](mailto:sepahelp@ecy.wa.gov)

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