



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**
- **2012-2014 Rule Amendments**
- **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
- Review and Commenting on SEPA Documents

What is SEPA?

Law directs, to the fullest extent possible:

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

- ① Identify and develop methods and procedures to insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(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

What is SEPA?

A detailed statement includes:

- (i) the environmental impact of the proposed action;
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) alternatives to the proposed action;
- (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

What is SEPA?

- Applies to all state and local public agencies
- Agency decision-makers must *consider* likely 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 #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

How to: SEPA Review Process

- ⦿ Determine if SEPA is required
- ⦿ Identify the SEPA lead agency
- ⦿ Evaluate the proposal
 - Identify impacts, alternatives, mitigation
- ⦿ 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

Agency Roles

- ⦿ Lead Agency/Co-Lead Agencies
 - Threshold determination
 - Preparation of documents
- ⦿ Agency with Jurisdiction
- ⦿ Agency with Expertise
- ⦿ Affected local jurisdiction
- ⦿ Consulted Agency

When does SEPA start?

- ⦿ Process starts when:
 - A proponent submits a permit application
 - An agency decides to undertake a proposal (project or nonproject)
- ⦿ Preapplication consultation

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

Example of Defining the Proposal

- ⦿ Applicant submits 1 plat application, but the plans include 4 connected plats because development will occur in phases
- ⦿ New water line needs to be connected to all plats
 - *Should all 4 plat applications be evaluated in the same environmental document?*
 - *Should cumulative impacts of all 4 plats be evaluated as if it they were one proposal?*

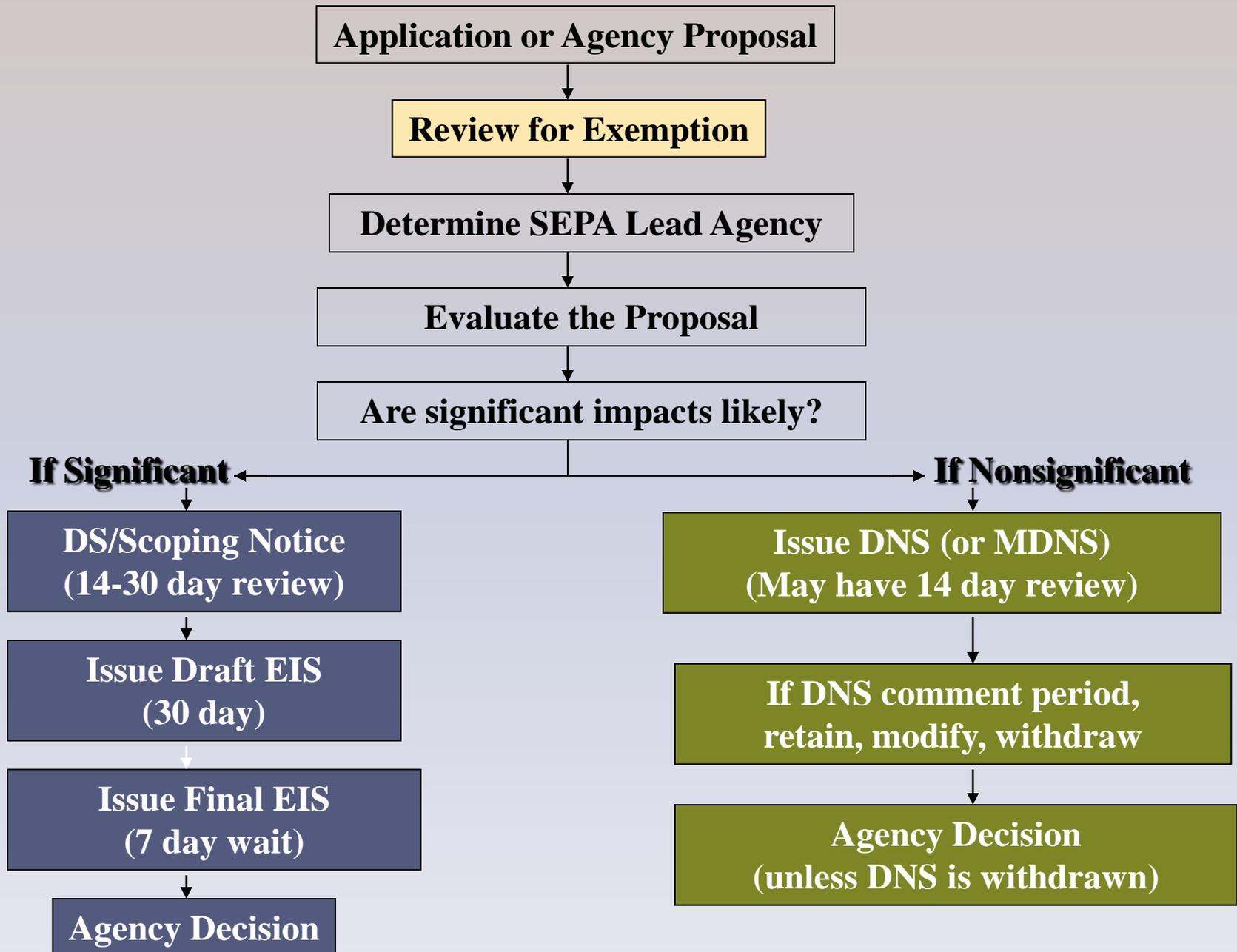
Is SEPA Required?

- 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 exemptions (2003 Legislation)

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

Statutory Exemptions

- Not related to significance of adverse impacts
- Not subject to exceptions and qualifications in SEPA Rules unless explicitly stated
- Listed in SEPA Handbook section 2.3.3
- Examples:
 - Forest Practices I, II, III
 - Annexations to city or town (not district)
 - Fish enhancement projects

Categorical Exemptions

WAC 197-11-800 (1) –(25) Commonly used:

- minor new construction (with flexible thresholds)
- repair, remodel and maintenance activities
- Minor land-use decisions
- utilities
- property sale or acquisition
- procedural actions

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

Exemption “cross check”

1. Lead agency considers “total proposal” requirements in WAC 197-11-060
2. Agency considers a “non-exempt” component of proposal and applies WAC 197-11-305 (1)(b)
3. Specific agency action in #1 is not considered exempt – total proposal is reviewed under SEPA

Exemption Scenario #1

- Short Plat/Small Subdivision proposal
 - No lands covered by water or forest conversion
 - Proposal involves installation of utilities and other activities that exceed exemption levels in other sections of 197-11 Part Nine

Is the Short Plat Decision Exempt?

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?**

Exemption Scenario #3

- Ecology receives application for water rights transfer of less than 1 cu ft/sec of surface water from agricultural to municipal use
 - -within exemption in 800(4)
- Applicant is same company proposing major subdivision nearby

Is SEPA required for Water Right Transfer?

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 if exemption applies.
- The lead agency might have an otherwise “exempt” permit or approval on a project - but is still lead because another agency has an non-exempt action.

2012 Statutory Changes to SEPA

- 1. Planned actions:** expanded to include essential public facilities and clarification of public involvement
- 2. Infill exemption:** *Includes mixed use developments*
- 3. New statutory exemptions:** *Development regulations when impacts have been analyzed previously*
- 4. Checklist Flexibility:** *Clarifies ability for lead agencies to answer some or all questions*
- 5. Agricultural Lands:** *New declaration in statute on importance of protecting and preserving agricultural lands*

SEPA Rulemaking Requirements

- **2012 (6-month process)**
 - minor new construction and electric lines exemption thresholds
 - Checklist “efficiencies”
- **2013 (12-month process)**
 - Review other exemptions, GMA-SEPA integration
 - Address agricultural resources in checklist
- **Advisory Committee to assist Ecology**
 - public notice
 - Tribal consultation

Final 2012 Rule Amendment

Flexible Threshold Maximum Levels

	Fully Planning GMA Counties		All other counties
Project Types	In Urban Growth Area	Other areas	Incorporated and unincorporated areas
Single family residential	30 Units	20 units	20 units
Multifamily residential	60 units	25 units	25 units
Agricultural	40,000 sq ft	40,000 sq ft	40,000 sq ft
Office, school, commercial + parking	30,000 sq ft 90 spaces	12,000 sq ft 40 spaces	12,000 sq ft 40 spaces
Landfill or excavation	1000 cu yds	1000 cu yds	1000 cu yds

Final 2012 Rule Amendment

Process for Adopting Flexible Thresholds

Further amended in 2014:

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

- The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. . . The local ordinance or resolution shall include, but not be limited to, the following:
- Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.
 - Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.
 - Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects

What kind of Documentation?

- ◎ Describe types, sizes and locations of projects proposed for new exemption level
- ◎ List SEPA's applicable elements of the environment (for types, sizes and locations)
- ◎ List applicable authorities and regulations
- ◎ Describe how much these regulations reduce impacts on each element of the environment for project types, sizes and locations.

What kind of Project Level Public Notice Remains?

- ◎ SEPA might be the only reason some permit decisions involve public notice
- ◎ If more projects are exempt from SEPA – public notice could be eliminated
- ◎ Rule language does not require all project-level decisions to include public notice
- ◎ The intent is to disclose and inform the public and other agencies of the project-level public involvement/notice that remains despite increasing SEPA exemption levels.

What kind of Public Distribution?

- ◎ Lead agency SEPA procedures are exempt from SEPA review
- ◎ Increasing exemption thresholds is important type of proposal to coordinate with other agencies, Tribes and the public
- ◎ Intention of rule language was to mimic the SEPA distribution and public involvement requirements – and create a minimum comment period longer than the 14-day DNS period

2013-2014 SEPA Rulemaking

- ⦿ Proposed revisions to other exemptions
 - Opportunity to update, clarify and expand
 - Revisit “exceptions” to exemptions
- ⦿ Checklist Revisions
 - Required to “review” for ensuring consideration of agricultural lands
- ⦿ Public Notice Requirements
 - Consider improvements for process and content –especially in light of increased exemptions

Rule Change Highlights

- ⦿ Public Notice and SEPA Register
- ⦿ NEPA-SEPA Integration
- ⦿ General Categorical Exemptions
 - Additional provision for increasing flexible thresholds
 - Modified definition of *Wetlands*
- ⦿ Agency-specific categorical exemptions
- ⦿ Environmental Checklist
- ⦿ Updated list of Agencies with Expertise

SEPA Register and Public Notice

- ◎ **WAC 197-11-508 & 510**
- ◎ The goal was to improve processes to ensure timely notice, provide open and accessible documents, and adequate comment periods.
- ◎ Amendments include:
 - Clarify that register is web-based and updated daily.
 - Add the provision of a “interested parties” list to the types of public notice options.

Additional 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.

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 wetlands are not included.
 - Clarification that buffers and adjacent lands above the ordinary high water mark are not “lands covered by water”.

Transportation Exemptions

- ⦿ “Other” minor new construction – transportation – minor clarifications
- ⦿ 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),

Misc. Exemptions

- ⦿ Minor new construction and *mixed use* projects
- ⦿ Further clarification of *fill and excavation* exemption – adding “necessary for” the construction of an otherwise exemption structure
 - “and any excavation, fill or grading necessary for an exempt project in”
- ⦿ Maintenance dredging is exempt up to 50 cubic yards of material

Misc. Exemptions

- ⦿ 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

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

Agency Specific Exemptions

1. Updated names of agencies
2. Clarification that the exemptions only apply to projects and programs of named agencies.
3. New exemption for DNR's "sales of rock" from public lands.

Implementation of New Rules

- Effective date of May 10, 2014
- New checklist template
- Only a handful of exemptions apply to all agencies
- Local ordinances that reference WAC 197-11-800 exemptions will still be valid
- Local ordinances that reference repealed Model Ordinance are still

Which agency is lead?

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

Lead for Public Projects

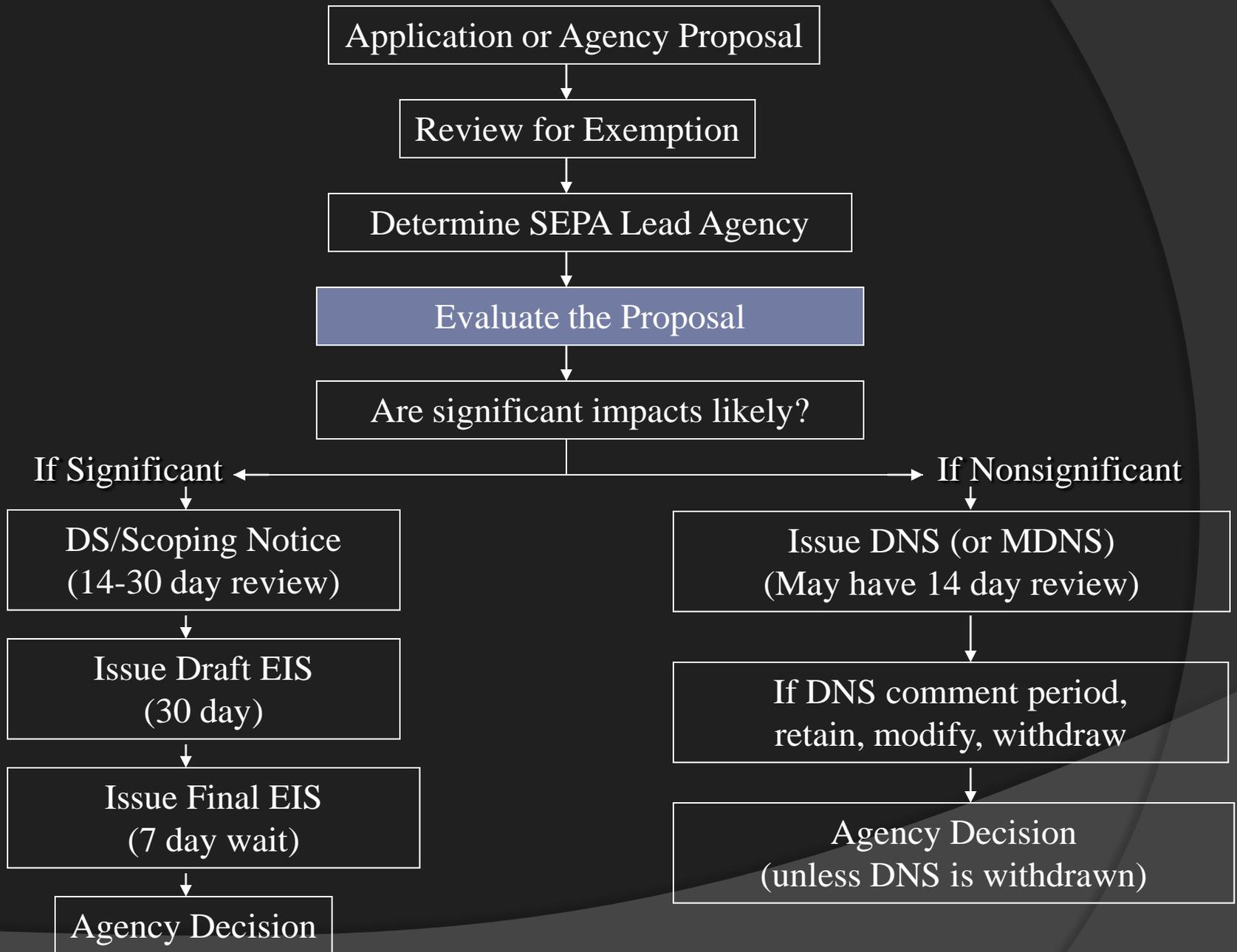
- ◎ Who is the lead agency for public projects?
 1. Local agency issuing permits?
 2. State agency issuing permits?
 3. County next door?
 4. Agency that initiates proposal? (WAC 197-11-926)
- ◎ When possible, SEPA officials should be different than project leads
- ◎ When there are two or more agencies or public-private partnerships – agreements are made

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

- 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 County but proponent is a public utility company



Evaluating the proposal

- Review the environmental checklist
- Identify other information
- Determine consistency
- Identify existing conditions
- Identify impacts to the environment
- Identify possible mitigation measures
- Make a threshold determination

Content of Environmental Review

- ⦿ Continually refer to WAC 197-11-060
- ⦿ 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

Elements of the Environment

Natural

- ⊙ Earth
- ⊙ Air
 - Odor
 - climate
- ⊙ Water
- ⊙ Plants/Animals
- ⊙ Energy/Natural Resources
 - Scenic resources

Built

- ⊙ Environmental Health
 - Noise
- ⊙ Land/Shoreline Use
 - Light and glare
 - Aesthetics
 - Historic and cultural
- ⊙ Transportation
- ⊙ Public Services/Utilities

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

Checklist Guidance

- ◎ Updated guidance for Checklist
- ◎ On-line “help button” format
- ◎ Embedded in Checklist template
- ◎ Filled with resource links
- ◎ Link:

http://www.ecy.wa.gov/programs/sea/sepa/pdf/checklist_guidance.pdf

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

Identify 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

New NEPA Guidance

- **CEQ seeks to enable agencies to create successful mitigation planning and implementation procedures**
- **Develop robust public involvement and monitoring programs**
- **Needed because monitoring of mitigation measures is limited and can be improved**
- **ceq.hss.doe.gov/current_developments/new_ceq_nepa_guidance.html**

[Link to guidance](http://ceq.hss.doe.gov/current_developments/new_ceq_nepa_guidance.html)

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

- ⦿ **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 action 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

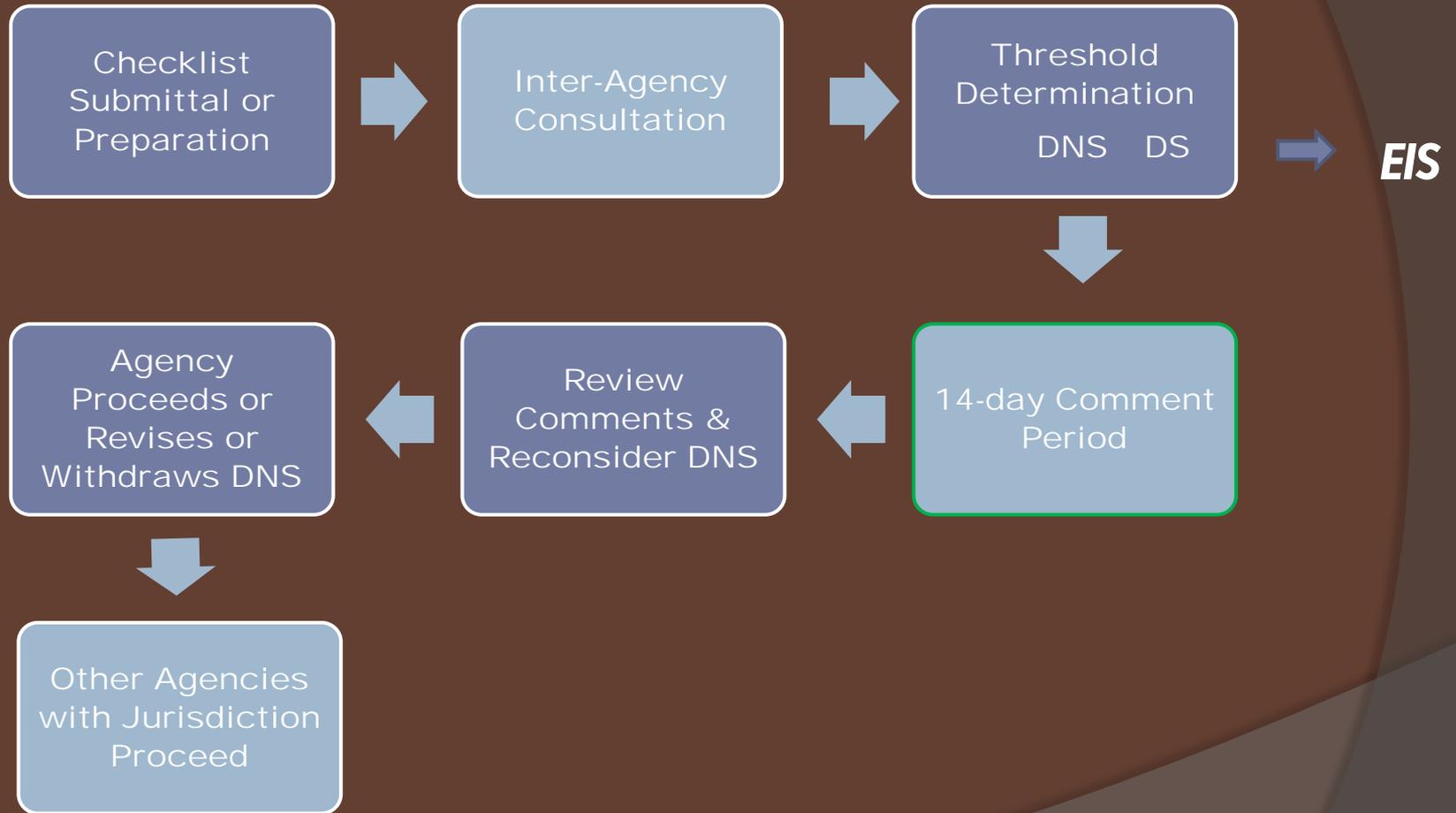
Considerations

- ⦿ 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

DNS Process



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
- Distribute with a comment period

Document Distribution

For 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

Issue a DNS

- ⦿ Requires a 14 day comment period if:
 - Another agency with jurisdiction
 - Mitigated DNS
 - Nonexempt grading or demolition
 - GMA action
 - DNS issued after DS withdrawn
- ⦿ Allows other agencies, tribes and the public to review and comment

Consider Comments

⦿ Retain DNS

- No additional documentation required
- If “final DNS” is issued – please identify previous

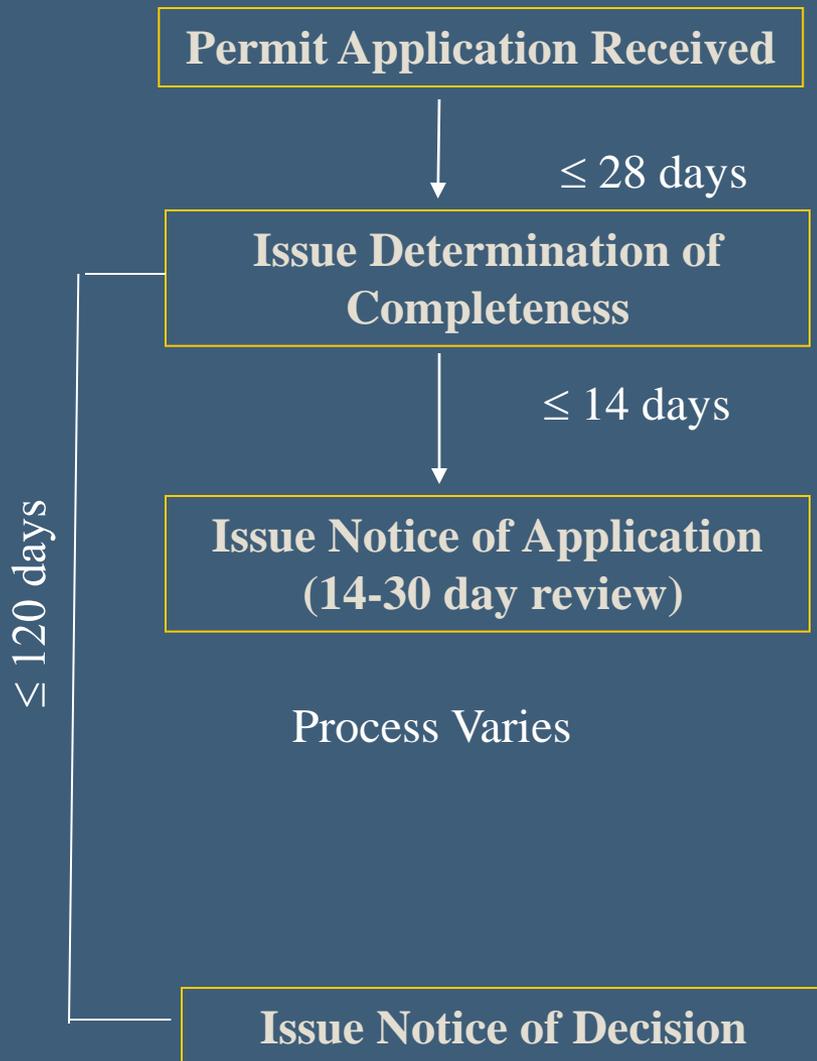
⦿ Modify/Revise DNS

- 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

GMA Local Project Review RCW 36.70B



SEPA Review Process*

- Received 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 (unnecessary)
- Combined comment period with NOA
- Complete SEPA before making permit decisions (7-day wait after Final EIS)
- Issue modified DNS, or document retained DNS

Review steps

- Determination of Completeness
- Notice of Application
- Notice of Decision—issued within 120 days of the Determination of Completeness
- Combined permit and SEPA administrative appeals

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

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
Directs future projects	-Subarea Plan, transportation plan
Encourages future projects	-Comp Plan
Constrains future projects	-Regulatory Ordinance
Permits 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
- 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
- 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
- Evaluate the impacts of each alternative
- Consider ways to reduce impacts

Nonproject Review Form

- Optional tool for use at outset of SEPA review
- Complements existing SEPA requirements
- NPRF format:
 - Part I – Framework
 - Part II – Impact Analysis/Alternatives
 - Part III – Implementation
- Designed to use all, part or none as applicable

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

Phased Review Example - Spokane Wastewater Plant

- County Wastewater Facilities Plan EIS
 - Evaluates options to increase capacity
 - Regional treatment plant option selected
- 2002 SEIS, evaluates siting options, construction, and operation
- 2004 SEIS, evaluates another site

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

- ⦿ **Categorical Exclusion**
- ⦿ **Documented Categorical Exclusion**
- ⦿ **Environmental assessment**
- ⦿ **FONSI or DS/EIS**
- ⦿ **Record of Decision**

SEPA

- ⦿ **Categorical exemption**
- ⦿ **Environmental checklist**
- ⦿ **DNS or DS/EIS**

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.**

Using Existing Documents

- ◎ **How is the “new” proposal related to proposal in document being used?**
 - **Same proposal as in SEPA document?**
 - **Modified proposal?**
 - **Different – but related proposal?**
 - **Same proposal as one reviewed in NEPA document?**

Same proposal

- ⦿ SEPA is completed
- ⦿ No adoption or revision/addendum unless there's new information or change in the project

Same but Modified proposal?

⦿ **Does SEPA need changing?**

⦿ **If yes,**

- **New checklist or addendum to checklist**
- **Revised or modified DNS**
- **Supplemental analysis for EIS**
- **Addendum for EIS - no change in analysis of significant impacts**

Different but related proposal?

- ① A separate threshold determination must be made
- ① Existing documents need can be adopted or incorporated by reference.
 - “addendum” (no change in analysis of significant impacts),
 - Supplemental analysis for EIS

Same proposal as one in NEPA document?

- NEPA EA or EIS can be adopted or incorporated by reference.
- A SEPA separate threshold determination is required (unless exempt)
- If necessary, add:
- “addendum” (no change in analysis of significant impacts),
 - Supplemental analysis for EIS

Summary of Options

- ⊙ Adoption (with new threshold determination)
 - NEPA or SEPA documents
- ⊙ Addendum
 - Adds minor information
- ⊙ Incorporation by reference
 - SEPA/NEPA documents, studies, etc
- ⊙ Supplemental EIS
 - Analyze new impacts or alternatives

Examples

- ⊙ DNS/Adoption (combination format)
 - Adopting NEPA EA for same proposal
 - Adopting SEPA DNS & Checklist for different but similar proposal
- ⊙ EIS Addendum or Supplemental
 - Same proposal with added information for decision-makers
- ⊙ DS/Adoption of EIS (combination format)
 - Adopting NEPA EIS for same proposal
 - Adopting SEPA EIS for similar (or phased review) proposal

Questions?



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

Substantive Authority

- SEPA authority supplements other agency authorities
- Condition based on:
 - Impacts identified in the SEPA document
 - Adopted SEPA policies
- May deny when a FEIS identifies significant adverse impacts that cannot be reasonably mitigated

Relation to other laws

- SEPA works with other regulations
- Should be integrated with planning and project review
- Does not duplicate requirements
- Used for the “gaps and overlaps”



Agency Decision Options

Without SEPA

- Approve proposal
- Approve with conditions using permit regulations
- Deny using permit regulations

With SEPA

- Approve after considering impacts
- Approve with conditions using permit regulations
- Approve with conditions using SEPA authority
- Deny using permit regulations
- Deny using SEPA

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

Questions?



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?

- Commenting allows you to:
 - Identify, clarify & resolve concerns early
 - Influence design changes
 - Achieve more environmentally sound proposals
 - Collaborate with lead agency as an agency with jurisdiction
 - Improve environmental information in SEPA documents
 - Create a written record

Consequence of No Comment

- ❑ May limit ability to:
 - ❑ Comment in the future
 - ❑ Use supplemental authority (condition or deny permit)
 - ❑ Appeal
- ❑ Missed opportunity to influence project change
- ❑ Lead agency may assume we have no information regarding impacts or jurisdiction
- ❑ DEIS—barred from objecting to Lead Agency's EIS compliance, WAC 197-11-545(1)
- ⦿ Interpreted as 'no objection' to analysis of a proposal, WAC 197-11-545(2)
- ⦿ Possible project delays

Tips for Preparing Effective Comments

- Decide what you want to say before you begin
- Create an outline
- Organize into logical order
- Write short sentences and an active voice
- Avoid asking questions (use “if...then” technique)

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
- Include how and where to locate information
- Include your contact information
- Be mindful of your tone and audience

Commenting Don'ts

- Overall Qualitative
 - *(avoid saying the project is "good" or "bad")*
- Unexplained
 - *(never quote 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

Non-project Actions are agency decisions on policies, plans, or program that will regulate future on-the-ground projects

Review is Important:

- **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 . . .**

Your Review of Checklist

Create a Template:

- What are the questions that you want answered?
 - Identify them in the checklist.
- What regulations are subject to your review?
 - Do they apply to the specific project?
 - Are they identified by the lead agency?
- What information is missing that you can supplement -*do not rely on the checklist questions/answers to make use of your expertise*

DNS/MDNS Letter

- Format established in SEPA rule, but varies between different agencies
- 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 (incl. checklists)

DNS Contents

Look Closely:

- Project Description – is it the same as checklist?
- Project Location
 - Look up the site on the Coastal Atlas
- Proponent/Applicant
- Applicable rules, regulations, laws
 - Sites municipal/county code
- Conclusions/Findings? – or at least a summary or staff report
- Mitigation
- Date of Issuance
- Comment Deadline
- Does it list all agency actions connected to proposal?

Discussion

- What are the problems with this DNS & Checklist?
- What, if any, mitigation is necessary and feasible?
- Are there any gaps in the regulatory requirements where mitigation is needed?
- What comments are helpful based on these issues?

Reviewing the EIS

- Facts Sheet
- Summary
 - -what is the scope of review?
- Table of Contents
 - Identify relevant sections
- Two basic Sections of Text
 - Alternatives
 - Impacts to the Environment

Commenting Tips

- ❑ Start with any general comments and follow with specific, page-by-page comments
- ❑ Offer specific revisions in addition to pointing out problems
- ❑ Use headings and/or topic sentences
- ❑ When appropriate -identify the things that you support
- ❑ Give specific examples to illustrate your concern

Does Lead Agency Listen?

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

- Assume lead –or at least inform them that it is an option during DNS comment period
- Issue new threshold determination with correct information
- Add supplemental EIS (self-funded)
- Appeal/challenge administratively or judicially (do not have to have “jurisdiction”)

Summary:

SEPA Regulations & Guides

- SEPA, RCW 43.21C
- SEPA Rules, WAC 197-11
- SEPA Procedures Model Ordinance
- Your Agency's Policies and Procedures
- SEPA Handbook
- Checklist Guidance
- New Climate Change Guidance
- Citizen's Guide to SEPA

Additional Resources

- SEPA Register - *14 years searchable*
- Listserv – please join
- New on-line guidance for Checklist

Questions

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