

# Afternoon Session

- **Open Q&A**
- **Appeals and Notice of Action Taken**
- **Use of Existing Documents**
- **NEPA-SEPA Integration**
- **Addressing Climate Change in SEPA**
- **Using SEPA in Agency Decision-Making**
- **Agency Compliance and Case Law**

# Appeals

## Three types of SEPA appeals:

- Administrative appeals to an agency
  - Substantive
  - Procedural
- Judicial appeal
  - Substantive or Procedural
  - Judicial appeals to the courts.
- Appeals of a decision by a non-elected official to a city or county elected body

# Administrative Appeals

- ◎ **Each agency must decide:**
  - **Whether to offer an administrative appeal**
  - **What type of appeal to allow**
  - **Who will hear the appeal**
  - **When the appeal will be heard**
- ◎ *If provided, administrative appeal processes must be specified in the agency's SEPA procedures*

# Consolidated Appeal

- ⦿ **SEPA appeal must be consolidated with a hearing/appeal of the underlying governmental action**
- ⦿ **Consolidation is not required for:**
  - **Determination of significance**
  - **Public project or nonproject action**
  - **Appeal of a non-elected official's decision**

# Administrative Record

- **Agencies providing for administrative appeals shall provide for a record as required by RCW 43.21C.075(3)(c)**
  - Findings and conclusions,
  - Testimony under oath, and
  - Taped or written transcript

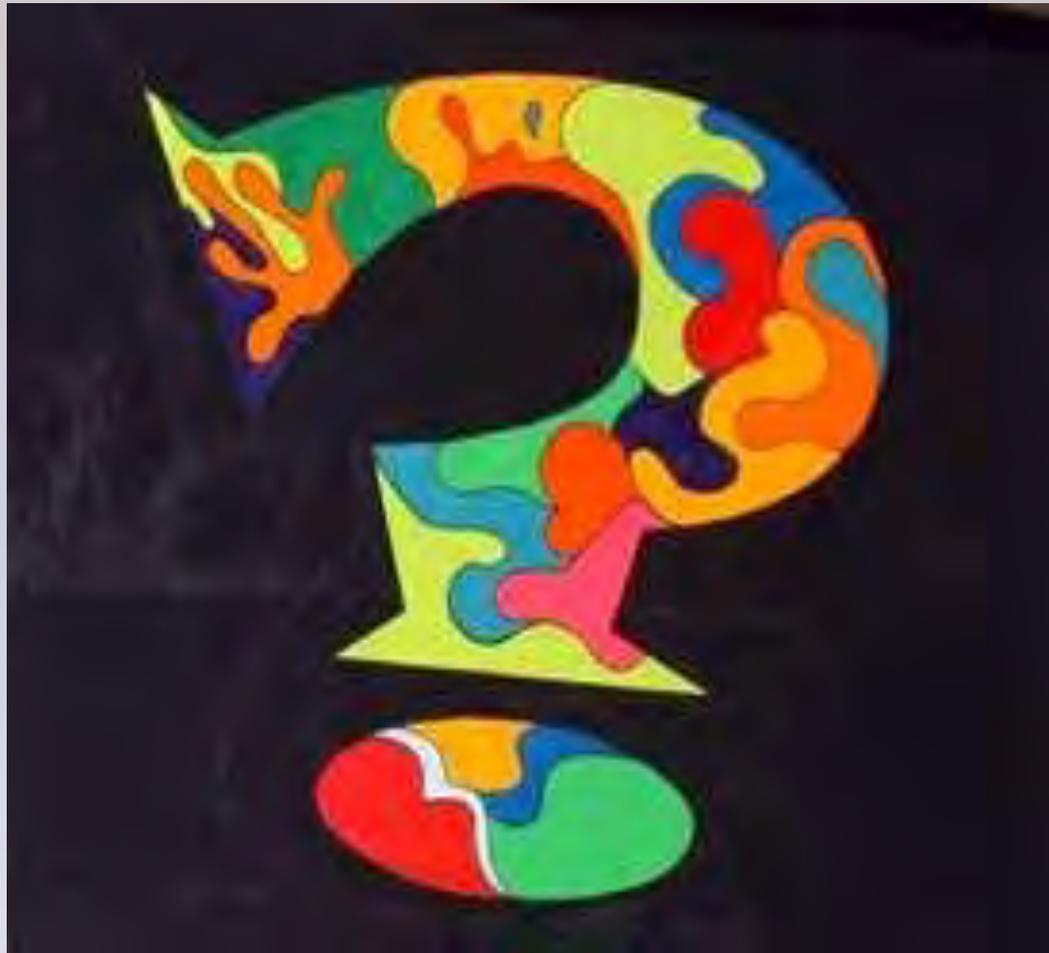
# Notice of Action Taken

- Optional notice to limit the time a judicial appeal can be filed.
- Used when the underlying government action has no set appeal limitations
- Procedures for using a notice of action are found in RCW 43.21C.080.
- Form is located in WAC 197-11-990

# Notice of Action Taken

## Reminder:

- ⦿ This adopts an appeal period in accordance with date of final agency decision.
- ⦿ The “decision” is the underlying government action for the proposal, such as the adoption of a comprehensive plan, ordinance, or rezone; or the issuing of a permit or approval.
- ⦿ It is not the issuance of a SEPA document.



# 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

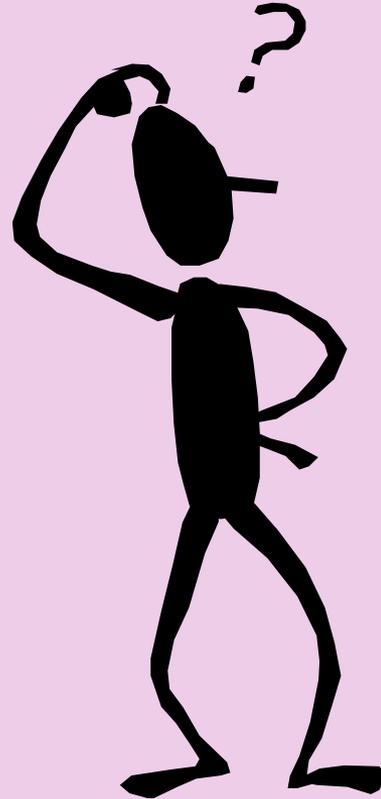
# Summary of Options

- ⊙ 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?





***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

# What to do with SEPA?

- ◎ 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



# 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

# **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 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

# SEPA Regulations & Guides

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

# Resources for Lead Agencies

- **Ecology SEPA Homepage**

*[www.ecy.wa.gov/programs/sea/sepa](http://www.ecy.wa.gov/programs/sea/sepa)*

- **Office of Regulatory Assistance**

*[www.ora.wa.gov/resources/permitting.asp](http://www.ora.wa.gov/resources/permitting.asp)*

- **Dept. of Commerce Growth Management Services**

*[www.commerce.wa.gov/site/375/default.aspx](http://www.commerce.wa.gov/site/375/default.aspx)*

- **Built Green Washington**

*[www.builtgreenwashington.org](http://www.builtgreenwashington.org)*

- **NEPA**

*[ceq.hss.doe.gov](http://ceq.hss.doe.gov)*

# Emerging Issues & Opportunities

- Archeological, cultural and historic Preservation
  - Improved guidance on this checklist question
  - More trainings (DAHP and others) on how to evaluate these impacts
- Emphasis on Agricultural Lands
  - More guidance for checklist questions
- Climate change
  - SEPA includes “climate” as element of environment
  - Requirement already exists to address climate change impacts
  - Based on the cumulative contribution
  - Both greenhouse gas emissions from project **plus** probable additional effects of climate change on a project

# New Resources

- SEPA Register *-11 years searchable*
- Electronic submittal to Ecology
- Listserv – please join
- Coming Soon!
  - New on-line guidance for Checklist

# SEPA Case Law 2011

- ❖ Brinnon Group v. Jefferson County 159

Wn.App. 446

EIS adequacy upheld on the basis of the range of alternatives and use of substantive authority

- ❖ City of Federal Way v. Town & County Real Estate, LLC & City of Tacoma WL1238909

Lead agency traffic mitigation requirements for cumulative impacts upheld.

# Case Law 2011 cont.

- ❖ Davidson Serles & Assoc. v. City of Kirkland  
159 Wn.App. 616

Planned action EIS lacked sufficient traffic analysis. Growth Management Hearings Board has jurisdiction on SEPA adequacy of GMA plans.

- ❖ Fremont Neighborhood Council v. City of Seattle *WL 768859*

Agency approval to reconstruct a transfer station was an action under SEPA, despite lack of funding.

# SEPA Case Law 2010

- ◎ Chuckanut Conservancy v. DNR 156 Wn. App. 274  
Upheld DNS that relied on previous non-project EIS and agency did not have to revisit analysis of existing levels of timber harvest.
- ◎ Douglas v. City of Spokane Valley 154 Wn.App. 408  
Upheld decision of Hearing Examiner to reject MDNS because of impacts to traffic and access to and egress from the development (area of high risk) during wildfires.
- ◎ Magnolia Neighborhood Planning Council v. City of Seattle  
155 Wn.App.305  
SEPA review was required for “project” involving property acquisition for redevelopment plan.

# Questions

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