



STATE ENVIRONMENTAL POLICY ACT

BASICS AND BEYOND

Department of Ecology

Annie Szwetecz

Overview of Day 1

2

Morning Session

- **Purpose and Overview of the SEPA process**
- **Agency Roles and Responsibilities**
- **Exemptions and Exceptions**
- **Lead Agency Designations**
- **How to evaluate a proposal and make a threshold determination**
- **Issuing SEPA documents and public involvement**
- **Integration with Local Project Review Act**

Afternoon Session –Day 1

3

- **Open Q & A**
- **Appeals and Notice of Action Taken**
- **Use of Existing Documents (addend, revise, supplement, adopt)**
- **NEPA-SEPA Integration**
- **Addressing Climate Change**
- **Using SEPA in decision-making**
- **Agency Compliance and Case Law**

Objectives of Training

- **Review the basics**
 - What is SEPA?
 - Why do SEPA?
 - Who does SEPA?
 - When to do SEPA?
 - How to do SEPA?
 - What to do with SEPA?
- **Discuss advanced topics in afternoon**
- **Answer question and discuss common problems**

What is SEPA?

- State Environmental Policy Act
 - Enacted in 1971
- Modeled after the National Environmental Policy Act (NEPA)
 - Enacted in 1969
- SEPA sets environmental policy and agency responsibilities to protect the environment
- Requires agencies to consider broad range of impacts from agency actions and the use of public funds



What is SEPA?

“All agencies are to act as a Trustee for the Environment.”

“The legislature recognizes that 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.” (RCW 43.21C.020(3))

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

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

Is SEPA triggered?

- Project applicant submits application for a shoreline permit exemption to County
- County reviews application for consistency with SMP requirements
- County issues letter approving of exemption
- No other permits or approvals are necessary

Agency Action Scenario #2

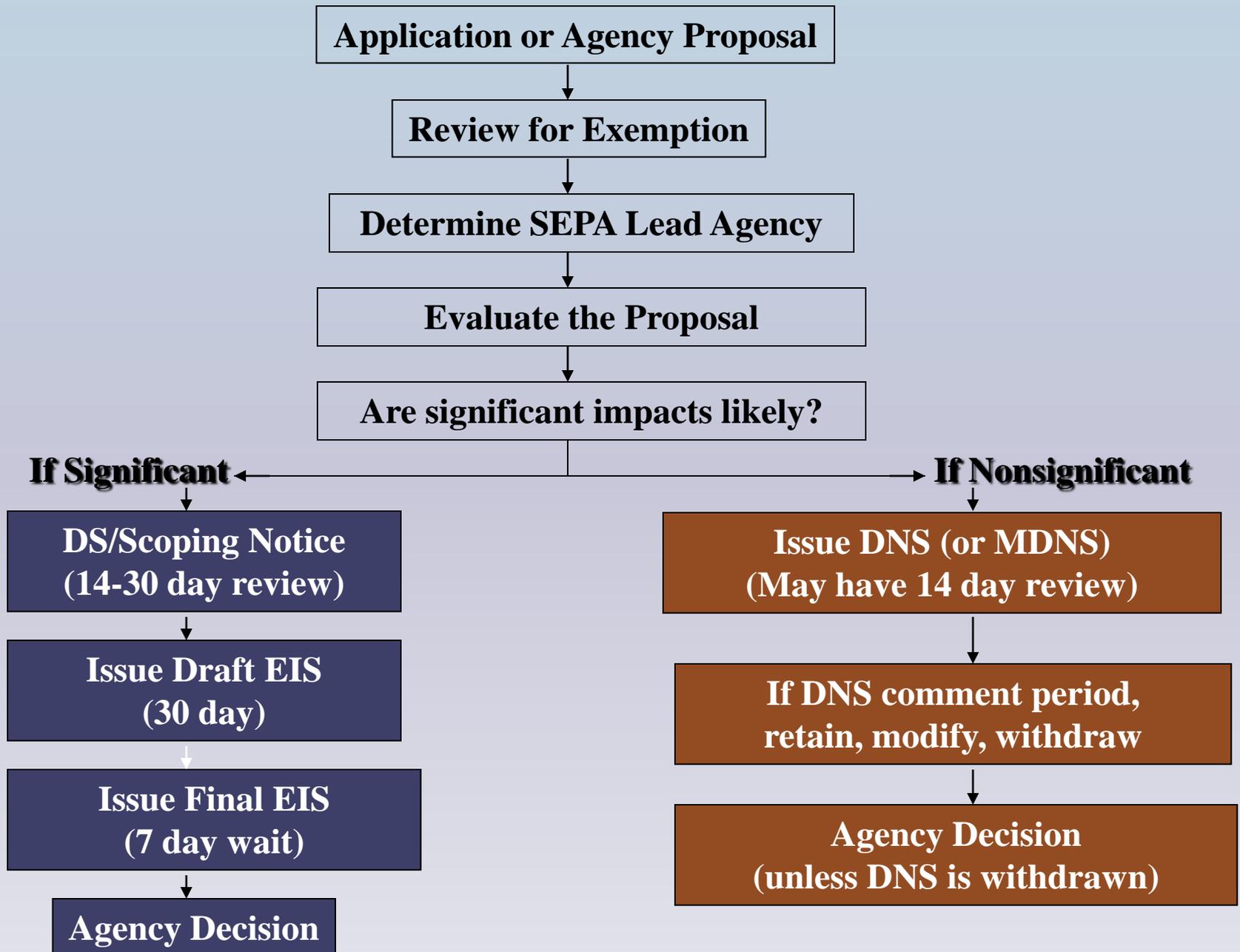
Is SEPA triggered?

- 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: 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

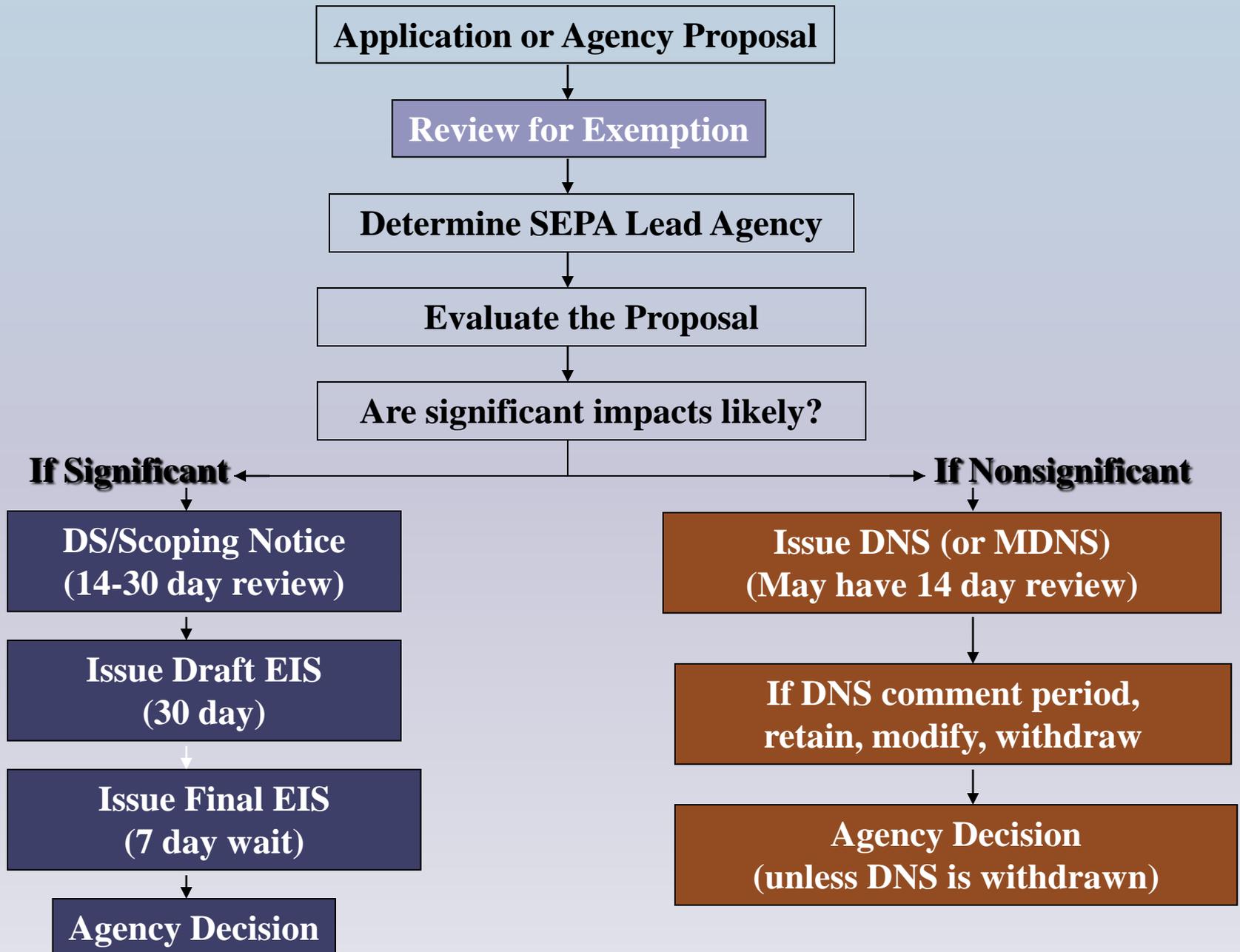
- Applicant submits 1 plat application, but the plans include 4 connected plats because development will occur in phases
- New water line needs to be connected to all plats
 - *Should all 4 plat applications be evaluated in the same environmental document?*
 - *Should cumulative impacts of all 4 plats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

Categorical Exemptions

Administrative Exemptions in Part Nine of SEPA Rules

“The proposed actions are exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305”

Exemption “cross check”

1. Specific agency action for a specific proposal is listed as exempt in Part Nine
2. Agency considers “total proposal” requirements in WAC 197-11-060
3. Agency considers “non-exempt” component of proposal and applies WAC 197-11-305 (1)(b)
4. 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 Scenario #4

- City applies for a Hydraulic Project Approval from WDFW for culvert repair and falls under 50 cu/yd of dredging exemption
- Exemption reads:

The following activities of the department of fisheries are exempted:

HPAs where there is no other agency with jurisdiction (besides the department) requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials . . .

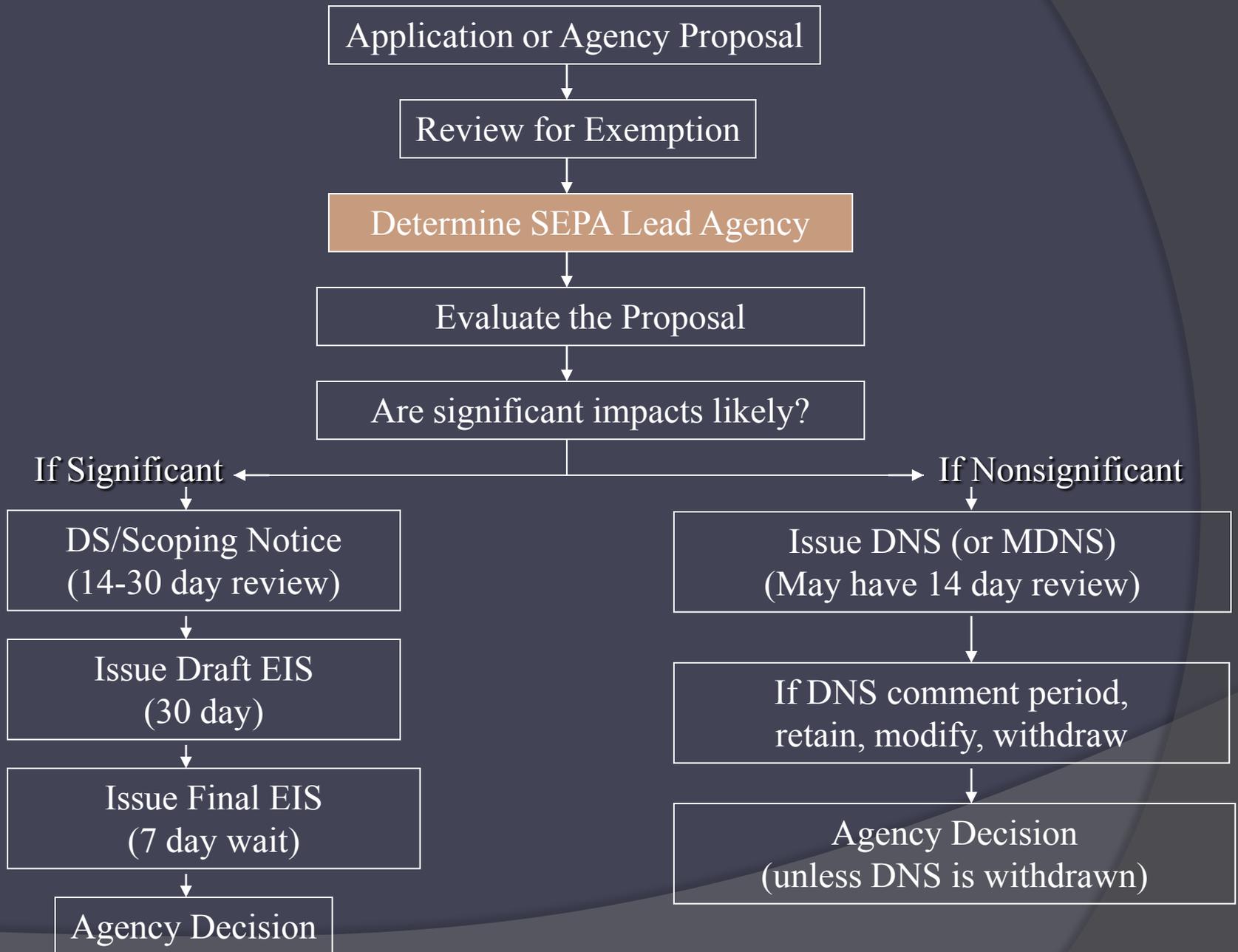
Is this proposal exempt from SEPA?

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.

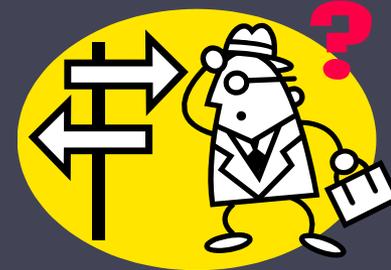
Questions





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

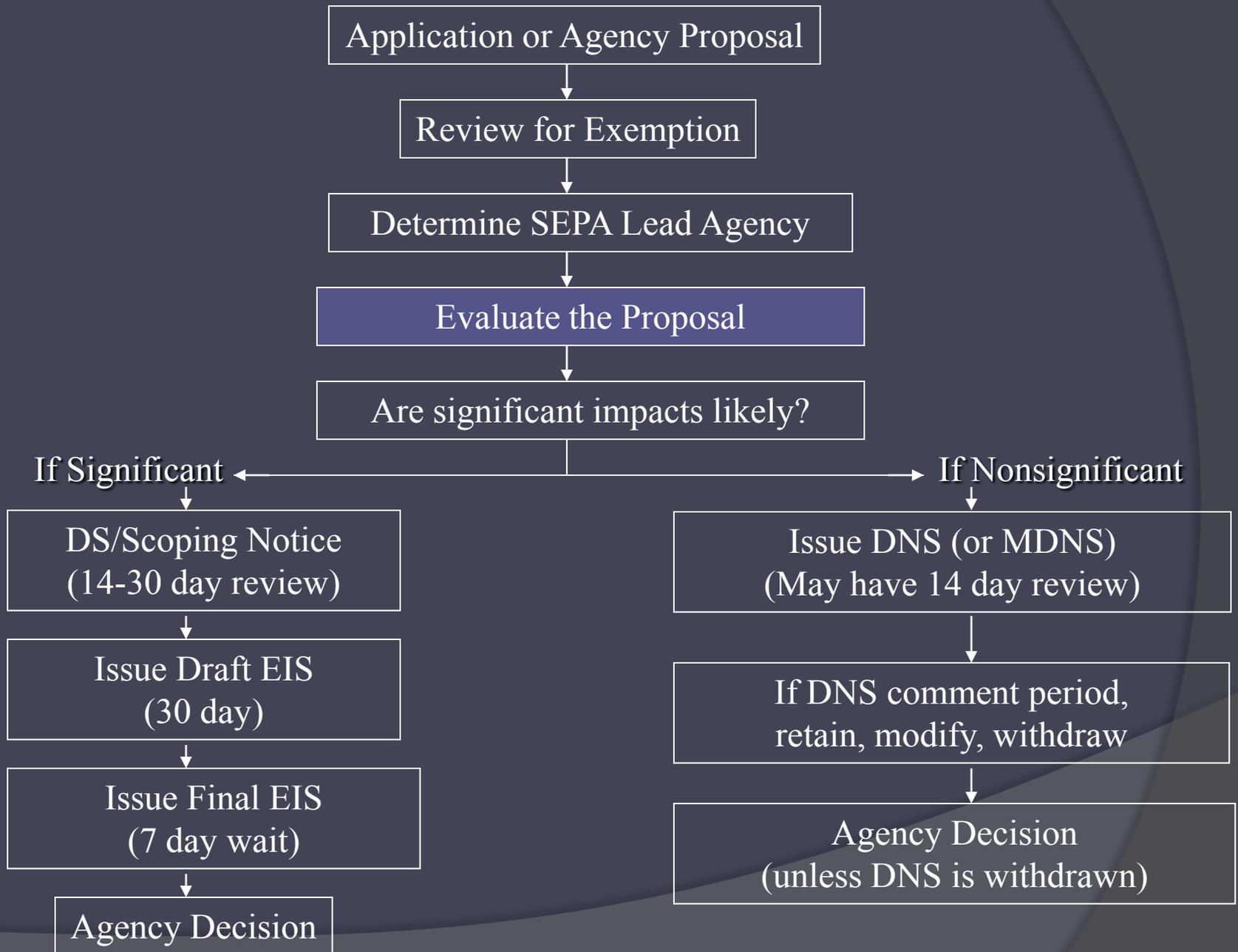
Lead Agency Duties

- 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

Questions?



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

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

Coming Soon...

- Updated guidance for Checklist
- On-line “help button” format
- Located on e-permitting website:
<http://www.epermitting.wa.gov/>
- Filled with resource links
 - Examples of checklist answers & other SEPA documents

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

Information and Resources

- **Washington Coastal Atlas**

- <https://fortress.wa.gov/ecy/coastalatlant/viewer.htm>

- **Office of Regulatory Assistance – Environmental Permitting**

<http://www.ora.wa.gov/resources/permitting.asp>

- **Green Building Resources**

- <http://www.ecy.wa.gov/programs/swfa/greenbuilding/>

- **NEPA**

- <http://ceq.hss.doe.gov/nepa/nepanet.htm>

Office of Regulatory Assistance

Resources:

- Environmental Permitting
 - *Web-based “Project Questionnaire” for applicants and lead agencies*
<http://apps.ecy.wa.gov/opas/>
- Small Business Assistance
- Regulatory Improvements

www.ora.wa.gov

help@ora.wa.gov

1-800-917-0043

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

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

Questions?

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

- May require 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

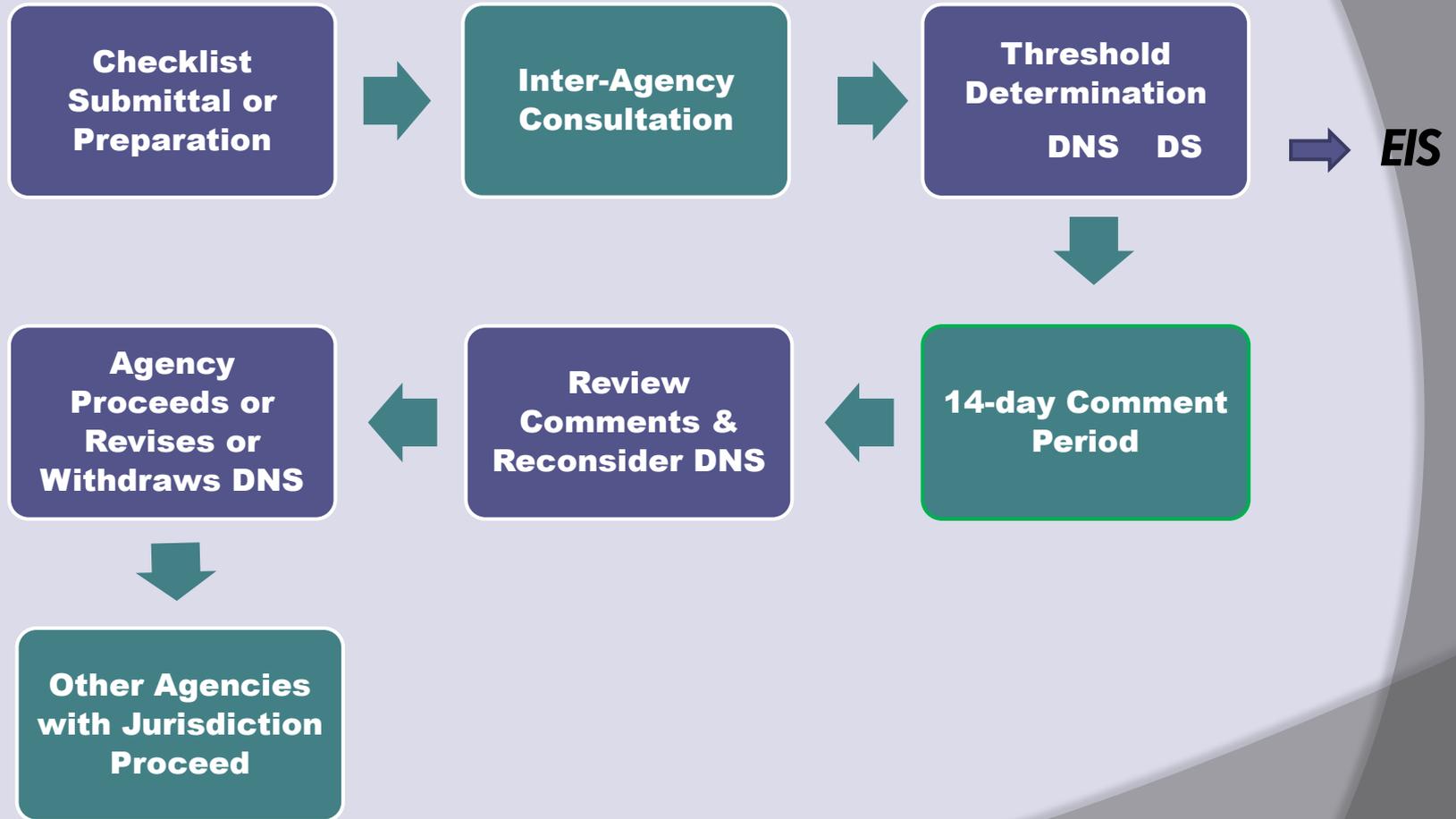
⦿ Modify/Revise DNS

- 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

DNS Process



Questions?



SEPA & Local Project Review Act

It Requires all counties and cities to combine environmental review with permit review

Directs GMA counties and cities to rely on existing land use planning decisions

to be discussed in afternoon:

Infill Development Exemption

Planned Actions

Streamlining Themes

- Environmental analysis is done at planning stage
- Local ordinance addresses project-level mitigation
- SEPA documents/analysis are integrated with GMA planning process

Optional DNS Process

1. Unnecessary, confusing, problematic
 - Use is ambiguous and incorrect in Notice of Application and Notice of Decision documents
2. Not allowed for SEPA on non-project proposals (including local ordinances)
 - See definition of *project permit* in RCW 36.70B.020

Why use the ODNS Process?

- The original 1995 legislation prohibited issuing a DNS before the NOA comment period.
- Ecology starting amending SEPA rules to accommodate a combined comment period.
- 1997 legislature removed the prohibition
- Ecology retained “option” in SEPA rules to allow combining NOA and DNS documents.

Review steps

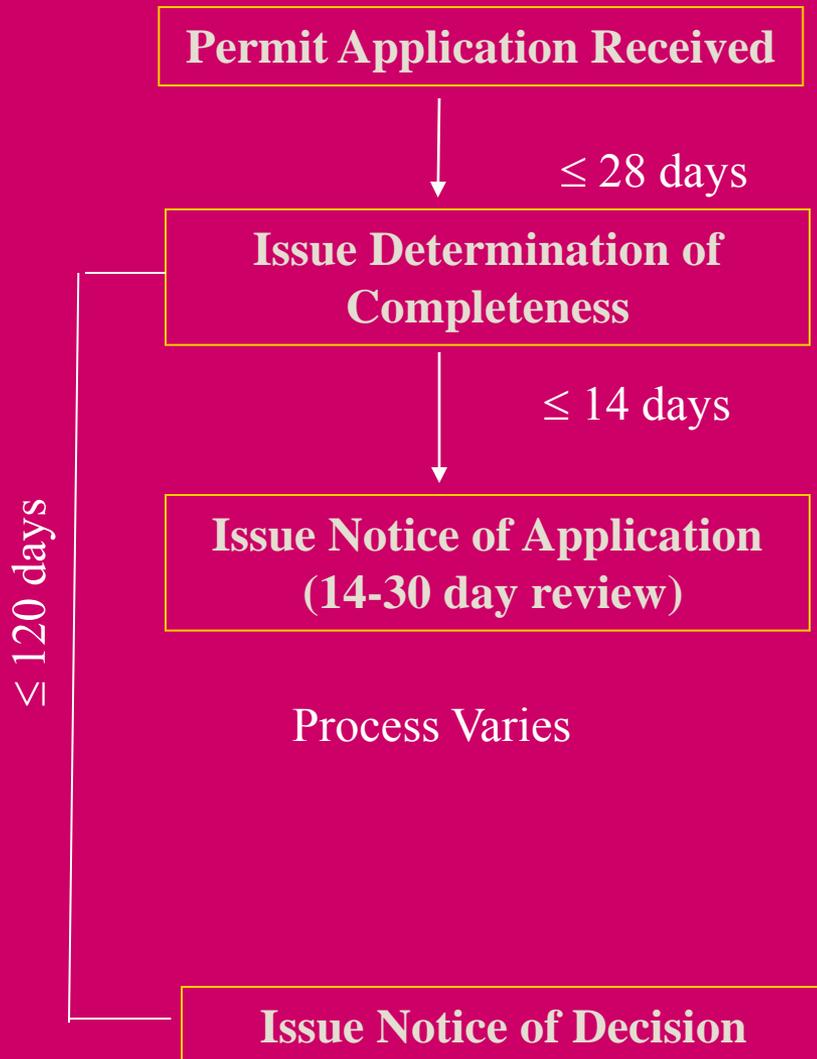
- Determination of Completeness
- Notice of Application
- Notice of Decision—issued within 120 days of the Determination of Completeness
- Combined permit and SEPA administrative appeals

How to Improve ODNS Process

Avoid ODNS confusion:

1. Conduct SEPA pre-threshold consultation if necessary prior to determination of “*complete application.*”
2. Issue the DNS or MDNS with the *NOA*
3. “Retain” or “modify” DNS and combine with *Notice of Decision*
4. Avoid “Optional Process” and hopefully avoid confusion

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

Notice of Application –no ODNS

- Dates & Project description
- List of permits, studies, existing environmental documents, regulations for project mitigation
- Include actual DNS, MDNS or DS/Scoping notice
- Combined comment period
- *Notice of Decision* mentions SEPA completion or “Retaining DNS”

Questions ?