

City of Shoreline - NEPA/SEPA Workshop

Aurora Corridor Improvement Project • N 165th Street to N 205th Street

January 24, 2007

Workshop Overview

- ✓ Introduction
- ✓ NEPA Overview
- ✓ SEPA Overview
- ✓ NEPA/SEPA Integration
 - Impacts and Mitigation
 - Integrated Processes
- ✓ NEPA/SEPA Strategy for Aurora Project

Introduction

Workshop Objectives

- ✔ Provide Overview of NEPA and SEPA
- ✔ Describe Approach to NEPA and SEPA Project Review
- ✔ Describe Aurora Corridor NEPA/SEPA Strategy

NEPA

National Environmental Policy Act

- ✓ Federal law

- 42 U.S.C. 4321;
- 40 C.F.R. 1500.1

- ✓ Established in 1970

- ✓ Requires federal agencies to prepare environmental evaluations prior to making decisions

SEPA

State Environmental Policy Act

- ✓ Washington State law
 - SEPA - RCW 43.21
 - SEPA Rules - WAC 197.11
- ✓ Enacted in 1971
- ✓ Modeled after NEPA
- ✓ Intended to ensure that environmental values are considered during decision-making by state and local agencies.

Purpose of Environmental Processes

- ✔ Objective analysis of potential environmental impacts according to established procedures
- ✔ Identification of mitigation measures to avoid / minimize impacts
- ✔ Public disclosure of impacts and mitigation
- ✔ Transparency in process

Purpose of Environmental Processes

- Objective analysis of potential environmental impacts according to established procedures
- Identification of mitigation measures to avoid / minimize impacts

Public Element

- **Public disclosure of impacts and mitigation**
- **Transparency in process**

NEPA Overview

Purpose of NEPA

- ✔ **Declare national policy encouraging productive and enjoyable harmony between people and environment**
- ✔ **Promote efforts that prevent, eliminate damage to environment and biosphere and stimulate health, welfare**
- ✔ **Enrich understanding of ecological system, important natural resources**
- ✔ **Establish Council on Environmental Quality (CEQ)**

42 U.S.C. 4321

Objectives of NEPA

- ✔ **Supplemental legal authority**
 - Gives federal agencies the responsibility and power to protect the environment
- ✔ **Procedural reform**
 - Requires federal agencies to look at the future interdisciplinary consequences of current decisions
- ✔ **Disclosure of environmental information**
 - Requires federal agencies to put environmental concerns on equal footing with technical, social and economic concerns

Objectives of NEPA

- ✔ **Resolution of environmental problems**
 - Requires federal agencies to look for solutions to environmental problems through disclosure and evaluation of alternatives and mitigation measures
- ✔ **Intergovernmental coordination**
 - Requires federal agencies to work with other federal agencies, state and local governments, and tribes
- ✔ **Enhanced public participation in government planning and decision making**
 - Creates different ways for public to be involved in process, and requires response to public concerns about environmental problems

Federal Actions

✔ What is an action?

- Adoption of official policies, rules, regulations
- Adoption of plans
- Adoption of programs
- Approval of specific projects

✔ If an action is federal, it is subject to NEPA

When is an action federal?

“Federal Nexus” =

- ✓ Federal agency proposes action
 - ✓ Federal land lease or right-of-way necessary
 - ✓ **Federal funding involved**
 - ✓ Federal agency is partner
 - ✓ **Federal agency permit necessary**
- Aurora
Corridor
Improvement
Project**
-
- The diagram consists of a central text block on the right side of the slide that reads 'Aurora Corridor Improvement Project' in red. Two red arrows originate from this text block. One arrow points to the left towards the bolded text 'Federal funding involved' in the list. The other arrow points downwards and to the left towards the bolded text 'Federal agency permit necessary' in the list.

Lead Agency

- ✓ In the State of Washington, when FHWA is lead agency:
 - WSDOT serves as liaison to FHWA – all communication with FHWA facilitated through WSDOT Local Programs representative
 - WSDOT provides specific guidance for compliance with FHWA NEPA regulations
 - Environmental Procedures Manual (M 31-11)
 - Local Agency Guidelines (M 36-63)
 - WSDOT reviews and approves all documentation prior to submittal to FHWA

Levels of Environmental Documents

✔ **Categorical Exclusion (CE)**

- Issued for an action that does not individually or cumulatively have a significant effect on the environment

✔ **Environmental Assessment (EA)**

- Prepared when the significance of environmental impacts is not clearly established

✔ **Environmental Impact Statement (EIS)**

- Prepared when it is known that the action will have a significant effect on the environment

Levels of Environmental Documents

✔ Documented Categorical Exclusion (DCE)

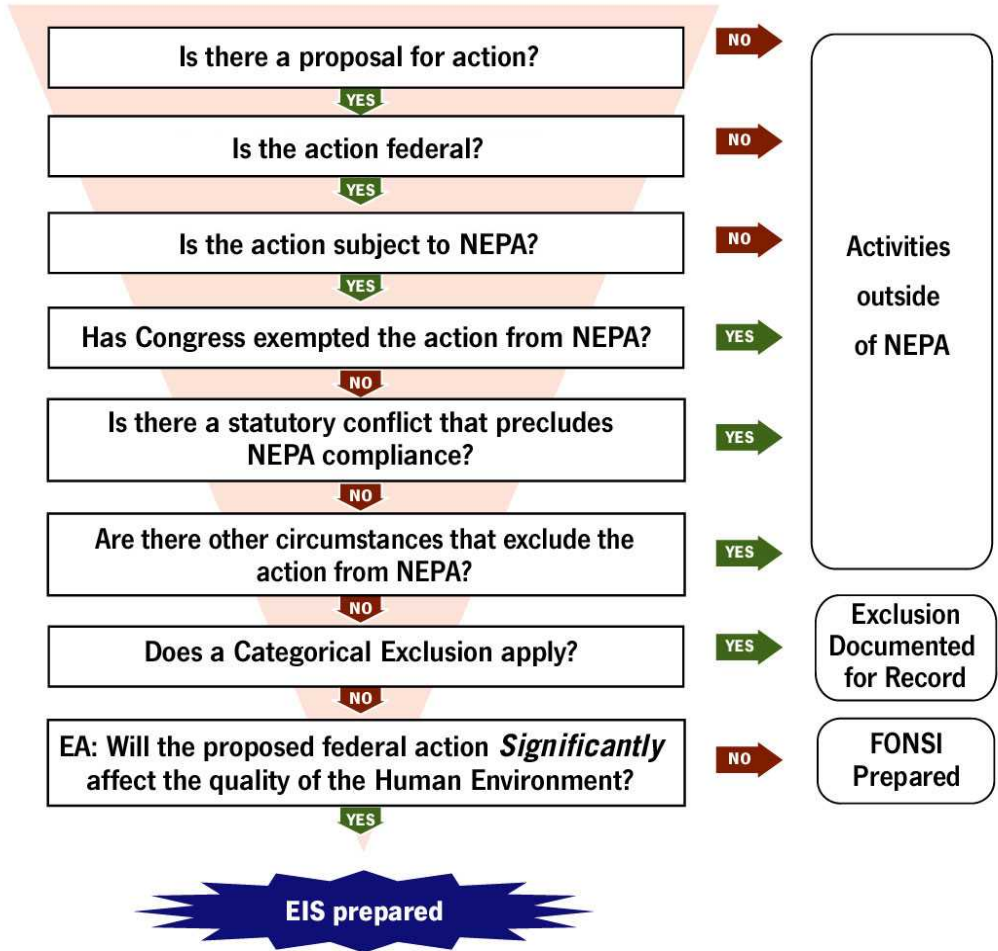
- “In between” a Categorical Exclusion and an Environmental Assessment
- Like a CE, issued for an action that does not individually or cumulatively have a significant effect on the environment
- Higher level of documentation required to prove no significant impacts

How is documentation level determined?

- ✔ **Level of required environmental documentation is determined through implementation of established process**
(Dog wags tail!)
- ✔ **Process is not determined by first establishing level of documentation**
(Tail does not wag dog!)

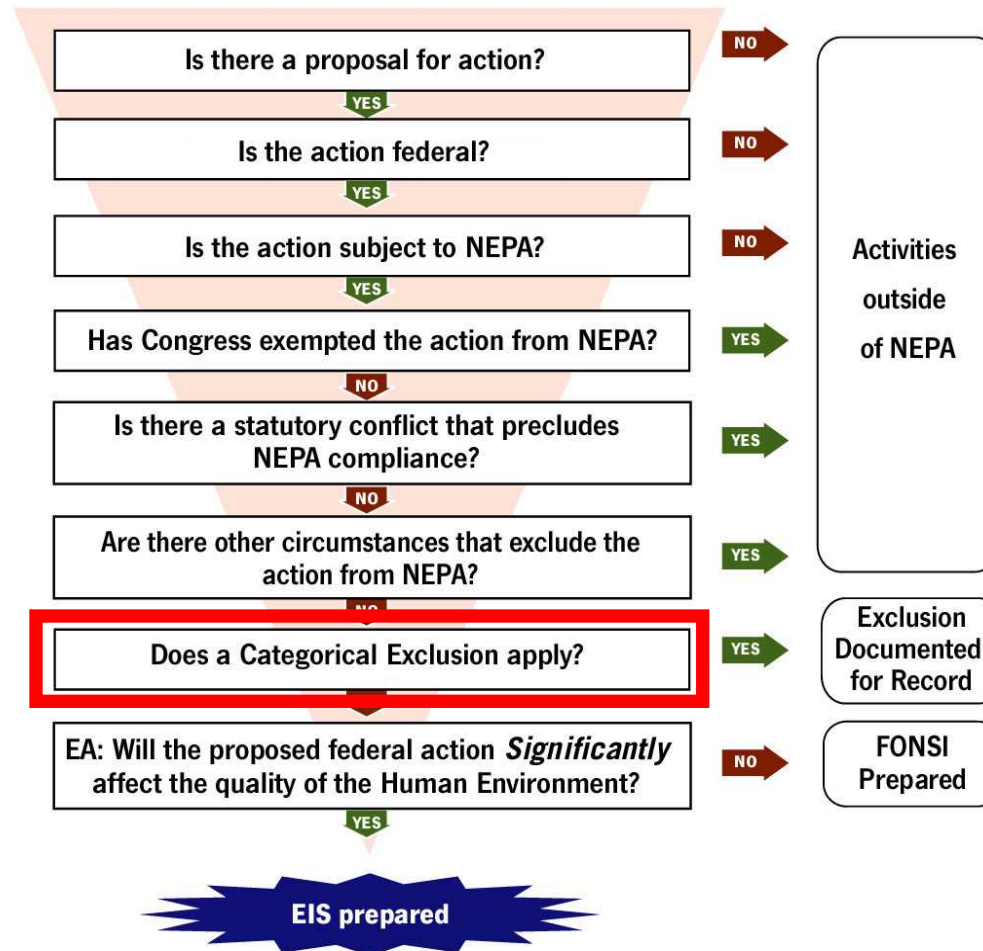
NEPA Process

Determining whether NEPA Applies to the Proposed Action



NEPA Process

Determining whether NEPA Applies to the Proposed Action



Categorical Exclusion

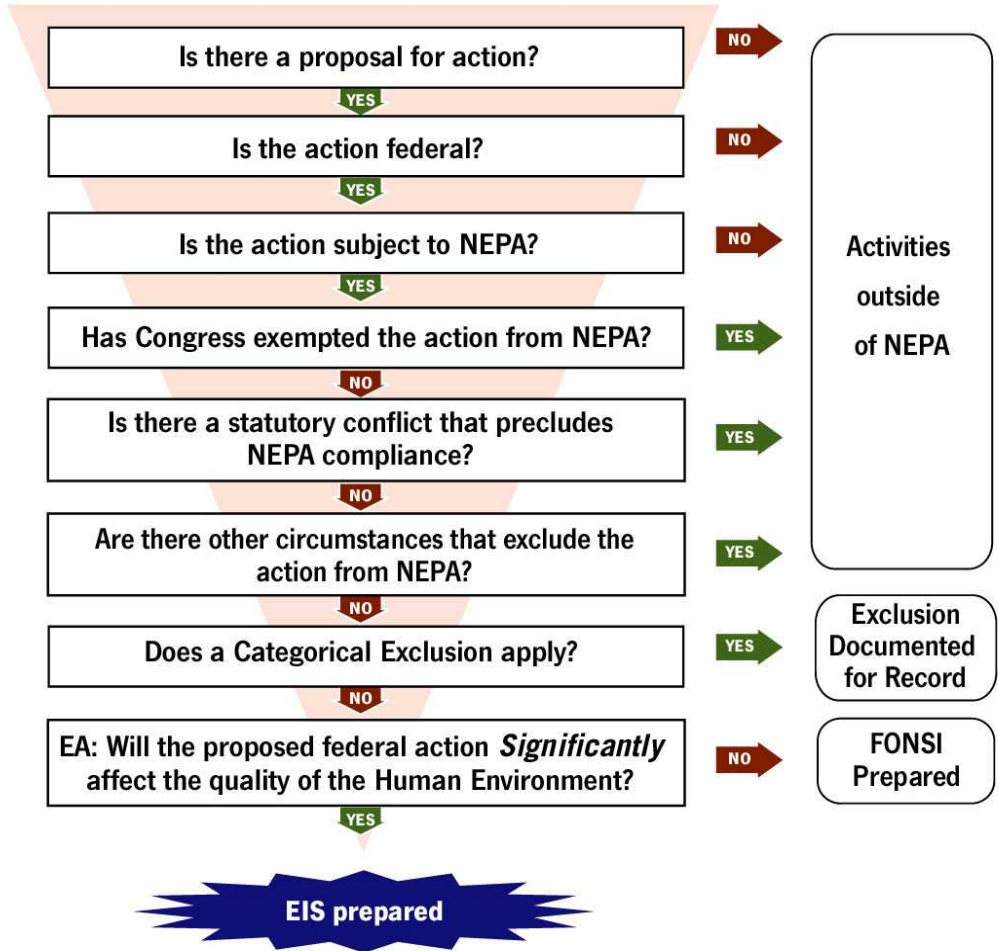
- ✔ **Activities normally causing no significant environmental effects**
- ✔ **Specified in agency NEPA regulations**
- ✔ **Documentation required by some federal agencies**
- ✔ **Exceptions for “unusual” circumstances**

Examples of Typical Categorical Exclusions

- ✔ **Construction of small new facilities**
- ✔ **Routine maintenance or repair of existing facilities**
- ✔ **Budgetary and personnel actions**
- ✔ **Administrative activities**
- ✔ **Enforcement actions**

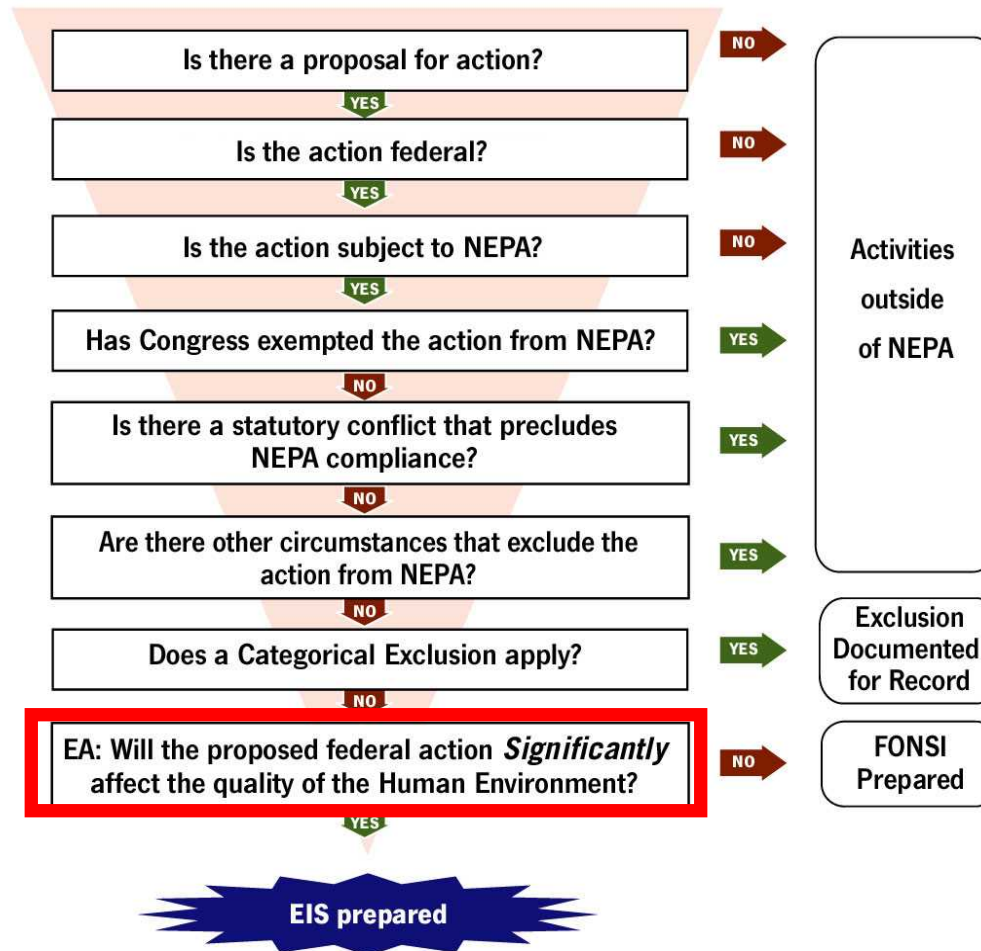
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Determining whether NEPA Applies to the Proposed Action



NEPA Process

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Environmental Assessment

Prepared when the proposed action is not:

- ✔ **Covered by a categorical exclusion**
- ✔ **Otherwise exempt from NEPA**

Environmental Assessment

Purposes of EA:

- ✔ Provide sufficient evidence to determine whether or not an EIS is required
- ✔ Support agency's NEPA compliance when no EIS is required
- ✔ Facilitate preparation of EIS when required

Environmental Assessment

- ✔ Environmental analysis and interagency review determine whether or not a project has significant impacts on the quality of the environment
- ✔ No significant impacts → Finding of No Significant Impact (FONSI) is issued
- ✔ Significant impacts are found → EIS is triggered

FONSI or EIS?

✔ Finding of No Significant Impact (FONSI)

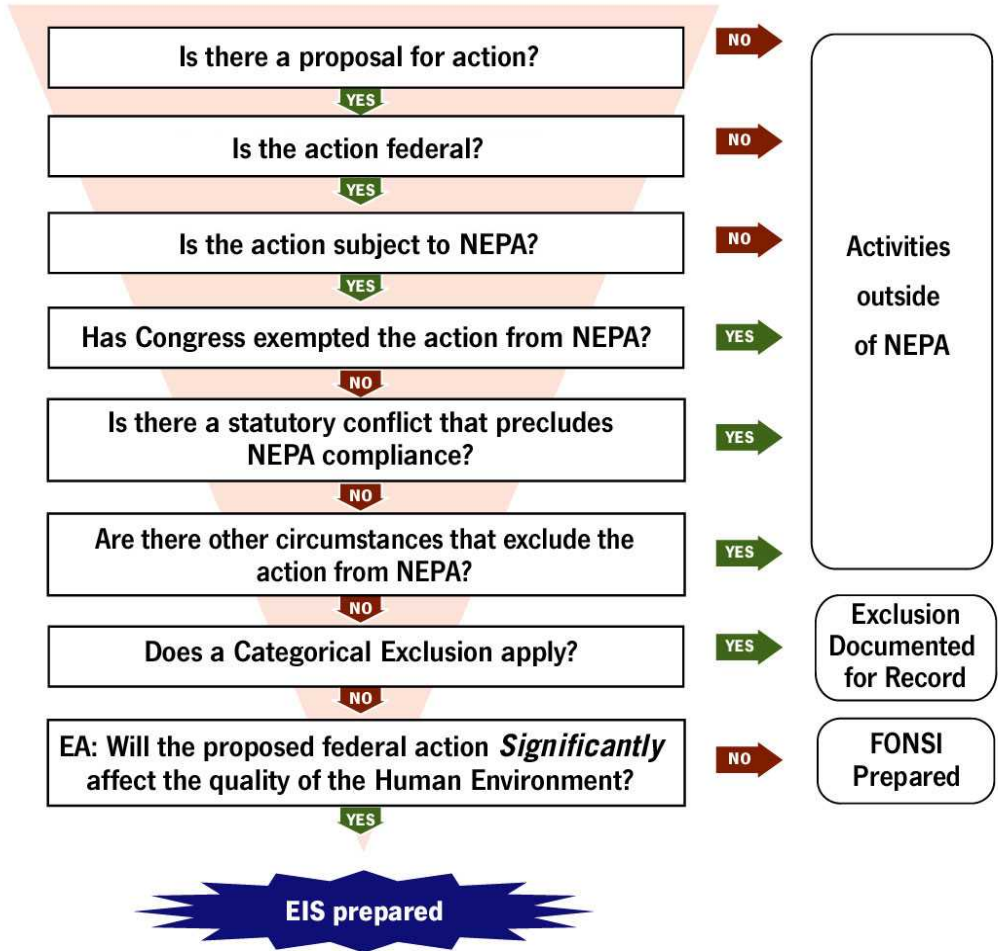
- Prepared when environmental analysis and interagency review concludes that the proposed action (with mitigation) will not significantly affect the quality of the human environment

✔ Environmental Impact Statement (EIS)

- Prepared when the EA concludes that the proposed action has the potential to significantly affect the quality of the human environment

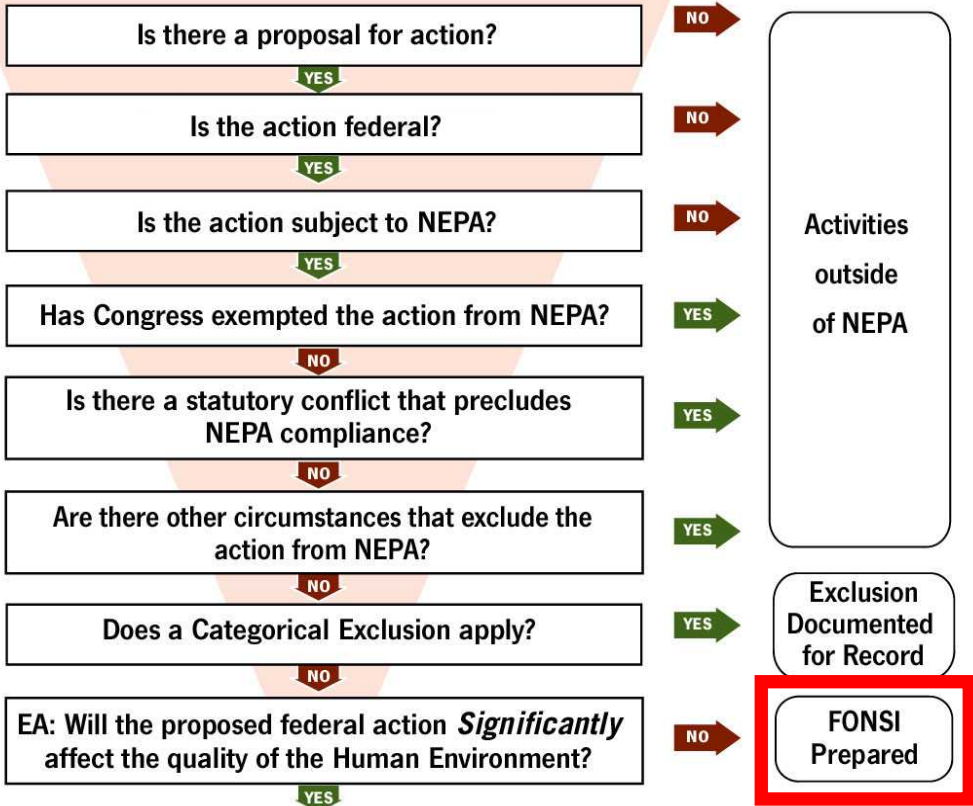
NEPA Process

Determining whether NEPA Applies to the Proposed Action



NEPA Process

Determining whether NEPA Applies to the Proposed Action



EIS prepared

FONSI

▼ Finding of No Significant Impact (FONSI)

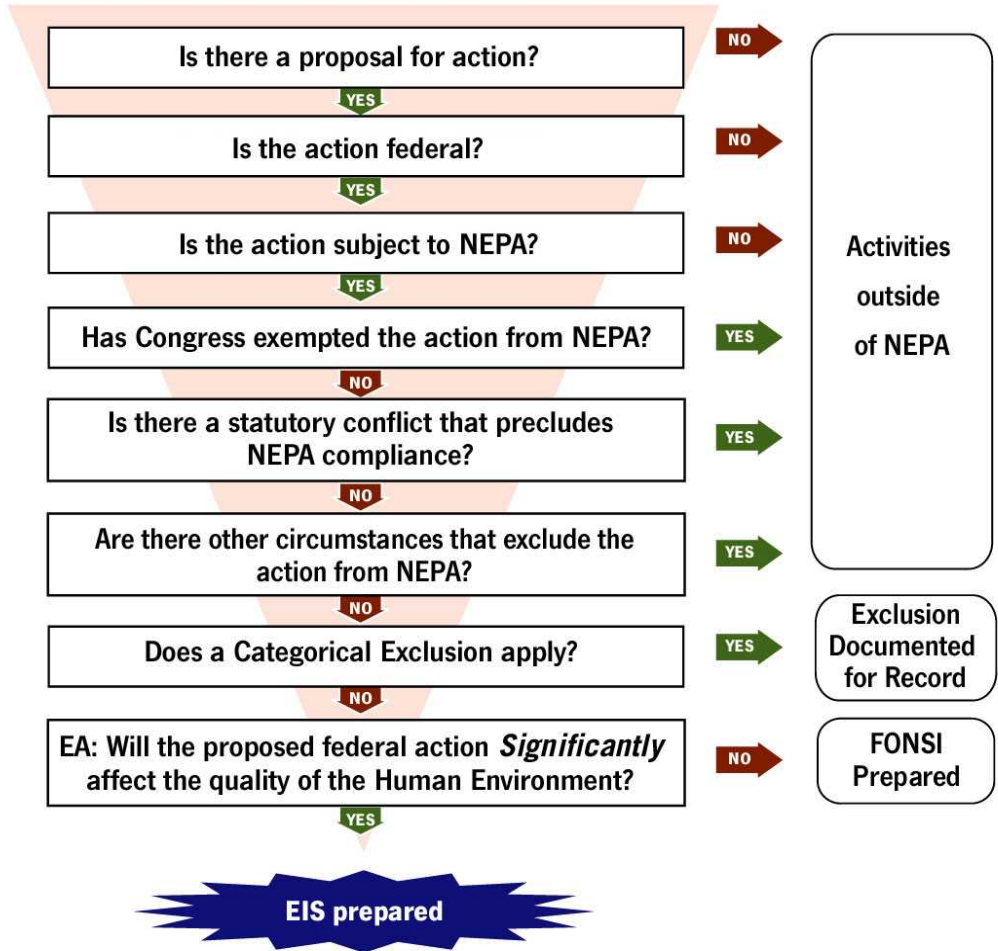
- Legal finding of decision not to prepare an EIS
- Includes:
 - Statement why proposed action will not have significant effect on human environment
 - Attached EA
 - Reference to related environmental documents

Criteria for Legal Adequacy in a FONSI

- ✔ Agency must demonstrate it has taken a **hard look** at environmental consequences
- ✔ Agency must show mitigation measures will reduce impacts to less-than-significant levels
- ✔ Mitigation on which FONSI is based is specific and project related
- ✔ Agency or applicant committed to implementing mitigation
- ✔ FONSI supported by adequate EA

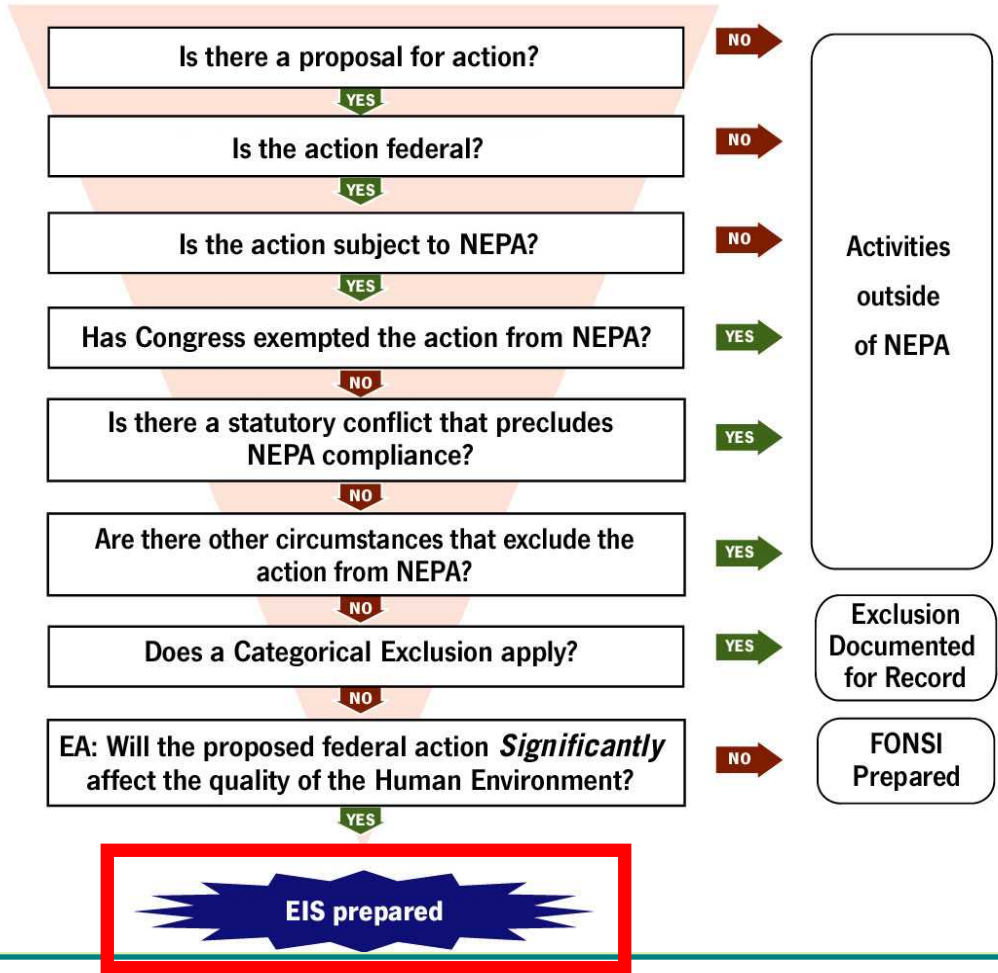
NEPA Process

Determining whether NEPA Applies to the Proposed Action



NEPA Process

Determining whether NEPA Applies to the Proposed Action



Purpose of an EIS

- ✔ **Action-forcing mechanism**
- ✔ **Inform decision makers and public**
- ✔ **Solve environmental problems**
- ✔ **Build consensus among stakeholders**
- ✔ **Information source for nonfederal planning**

Typical Components in DEIS Preparation

- ✔ Determine the lead agency
- ✔ Prepare EA
- ✔ Publish Notice of Intent
- ✔ Conduct Scoping
- ✔ Prepare Draft EIS
- ✔ Circulate DEIS for Review
- ✔ File DEIS with EPA

Scoping

- **Required for EIS, not required for EA; may be required through other implementing agencies**
- **Use to identify issues, clarify alternatives**
- **Supports NEPA's requirement for involvement of federal environmental resource agencies, project applicants, and the public whenever possible (40 C.F.R. 1501.4(b))**

Scoping

The purposes of EIS scoping are:

- ✔ **To present the project purpose and need and alternatives considered so far.**
- ✔ **To consider unquantified environmental amenities and values in decision making, along with economic and technical issues.**
- ✔ **To make a diligent effort to invite and solicit comments from affected and interested citizens, businesses, and agencies.**
- ✔ **To identify potential environmental impacts of proposed actions and begin documenting the rationale for subsequent decisions.**

Scoping Report

- ✓ Documents comments provided during the scoping period
- ✓ Responses to comments:
 - Acknowledge that issue raised will be addressed in the environmental analysis, or
 - Explain why issue raised is outside the scope of the environmental evaluation

SEPA Overview

Purpose and Intent of SEPA

- ✔ To declare a state policy which will encourage productive and enjoyable harmony between man and his environment;
- ✔ to promote efforts which will prevent or eliminate damage to the environment and biosphere;
- ✔ and stimulate the health and welfare of man; and
- ✔ to enrich the understanding of the ecological systems and natural resources important to the state and nation.

RCW 43.21C.010

Regulatory Authority

✔ Washington Department of Ecology

- Responsible for overall SEPA regulations and procedures
- Maintains SEPA Register
- However...

✔ Each local agency may have its own regulations or procedures that govern the specifics of its SEPA process

Agency Actions

- ✔ **SEPA environmental review is required for any state or local agency decision that meets the definition of an “action” is not categorically exempt**
- ✔ **Project Actions**
 - Construction of public buildings
 - Public facilities such as water and sewer lines, electrical lines, and roads
 - Private construction projects
- ✔ **Nonproject Actions**
 - Rules, ordinances or regulations that will regulate future projects
 - Comprehensive plans and zoning codes
 - Road and highway plans

Lead Agency

- ✔ **Responsible for compliance with SEPA procedural requirements**
- ✔ **Responsible for compiling and assessing information on all the environmental aspects of the proposal for all agencies with jurisdiction**
- ✔ **The agency responsible for the threshold determination and for the preparation and content of an environmental impact statement when one is required**

Responsible Official

- ✓ **Represents the lead agency**
- ✓ **Is responsible for ensuring adequate environmental analysis done and SEPA procedural requirements are met**

Levels of Environmental Documents

✔ **Categorical Exemption**

- Some types of projects and agency actions have been exempted from requirements of SEPA by the legislature (specified in RCW 43.21C)
- Some level of documentation may be required

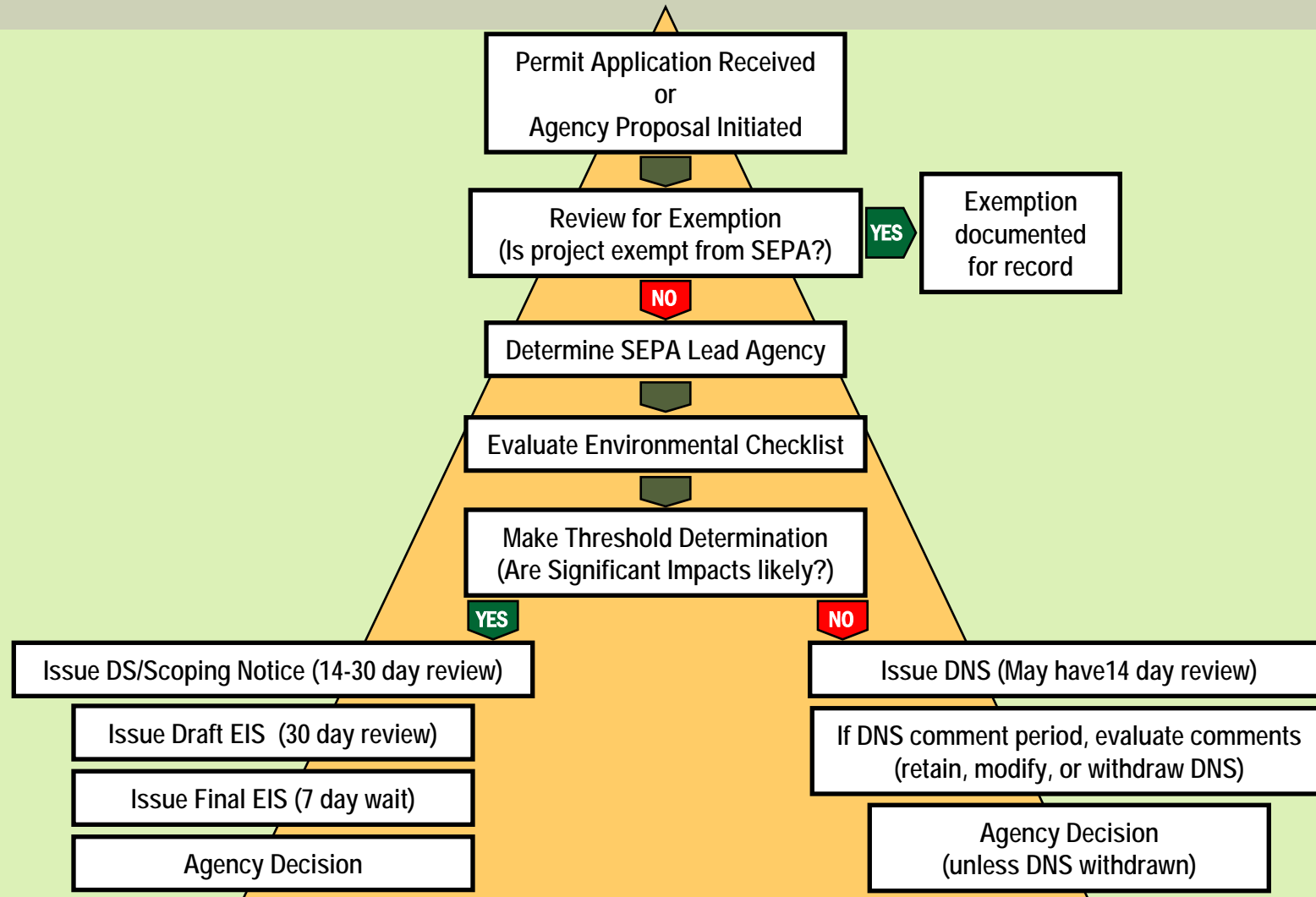
✔ **Environmental Checklist**

- Prepared when the significance of environmental impacts is not clearly established

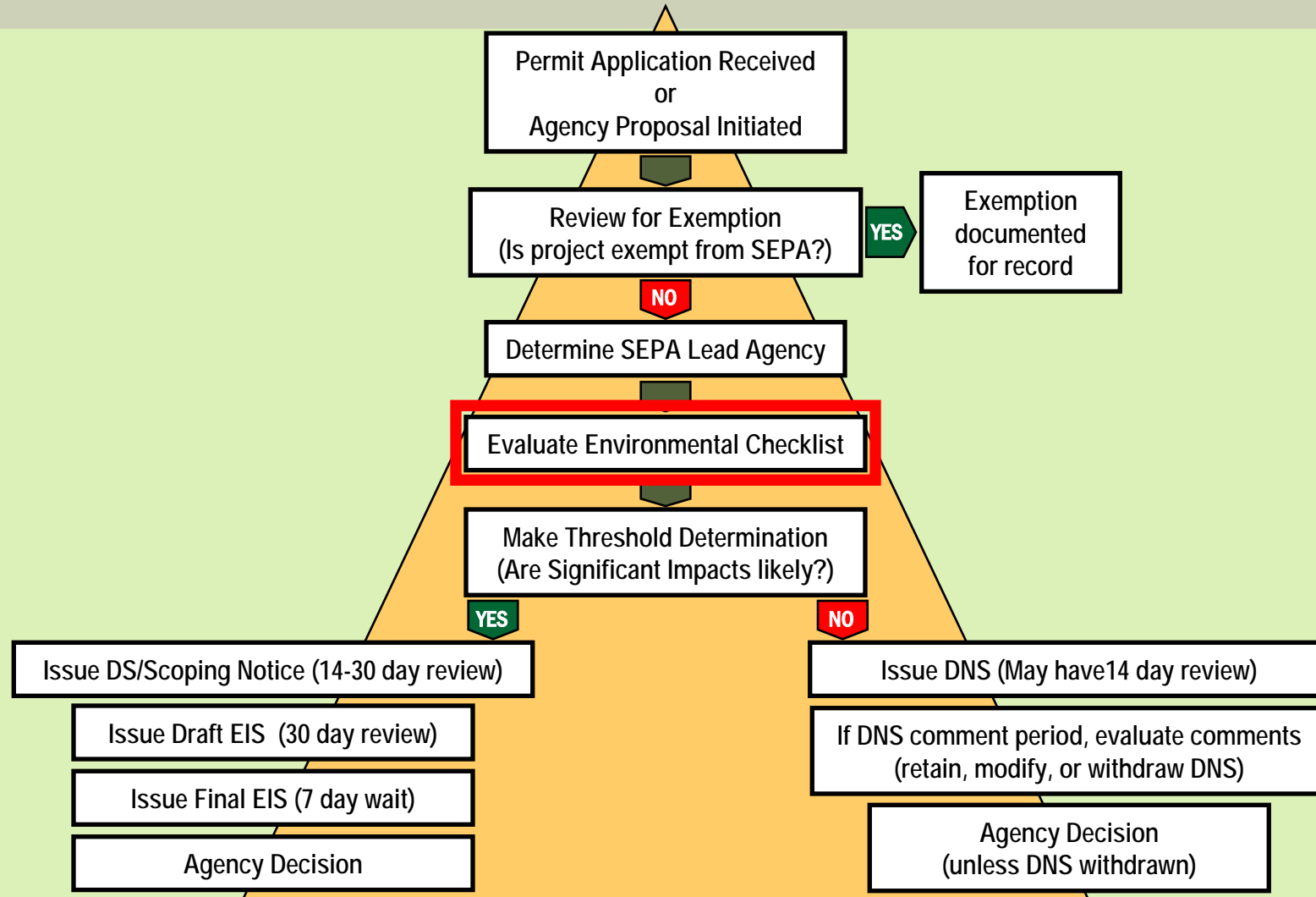
✔ **Environmental Impact Statement (EIS)**

- Prepared when it is known that the action will have a significant effect on the environment

SEPA Process



SEPA Process



SEPA Environmental Checklist

- ✔ **Standard form used by all agencies to obtain information about a proposal**
- ✔ **May be completed by applicant or lead agency**
- ✔ **One form applicable to all types of non-exempt proposals**
- ✔ **Used to reach threshold determination of significance or non-significance**

SEPA Environmental Checklist

✔ Standard Checklist

- Completed form

✔ Expanded Checklist

- Completed form with attached technical memorandums that provide more detailed analysis about environmental issues of particular concern

SEPA Threshold Determination

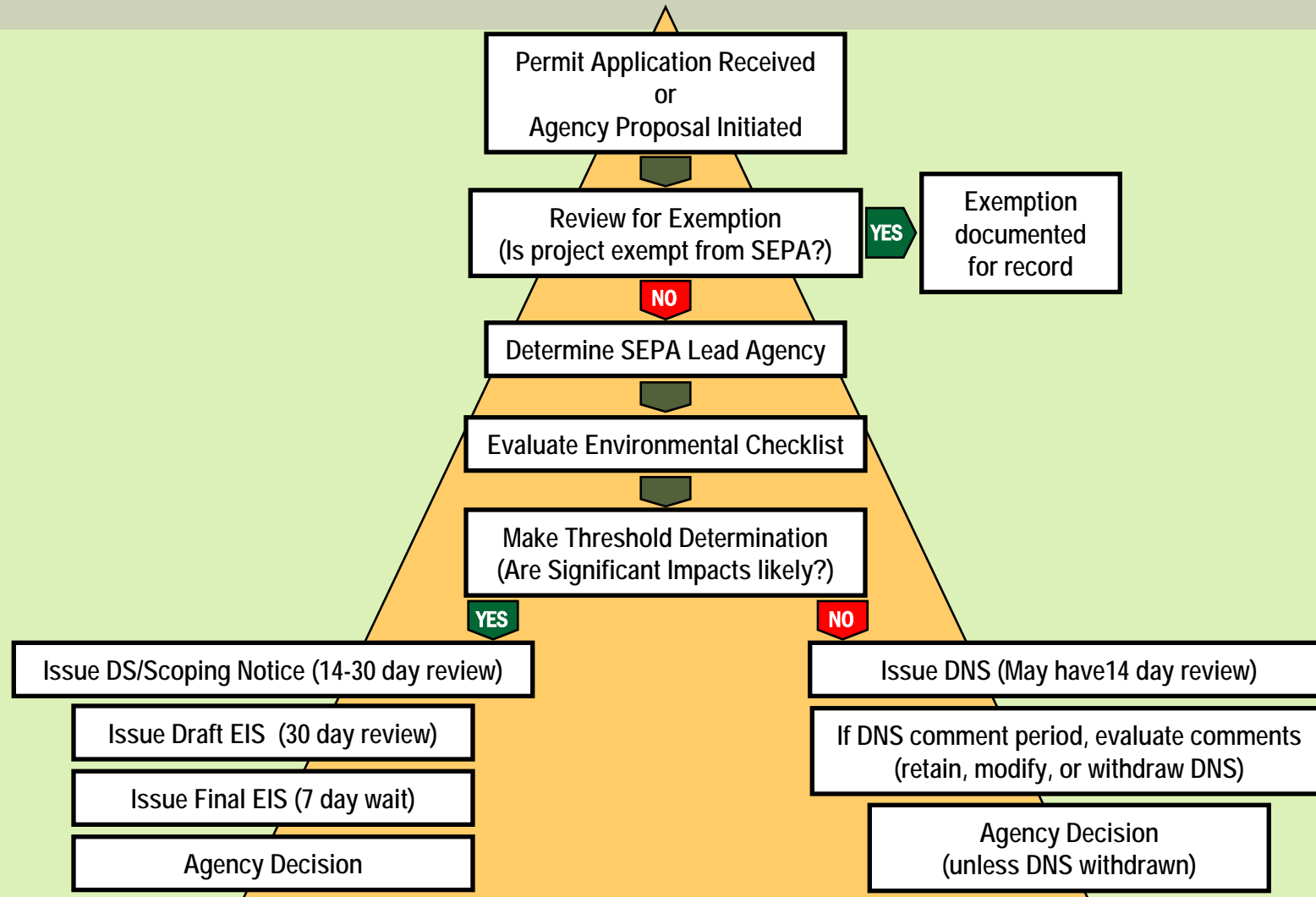
- ✔ **Formal decision potential for significant adverse environmental impacts which cannot be readily mitigated.**
- ✔ **Significant is defined as having a “reasonable likelihood of more than a moderate adverse impact on environmental quality”**

WAC 197-11-794(1)

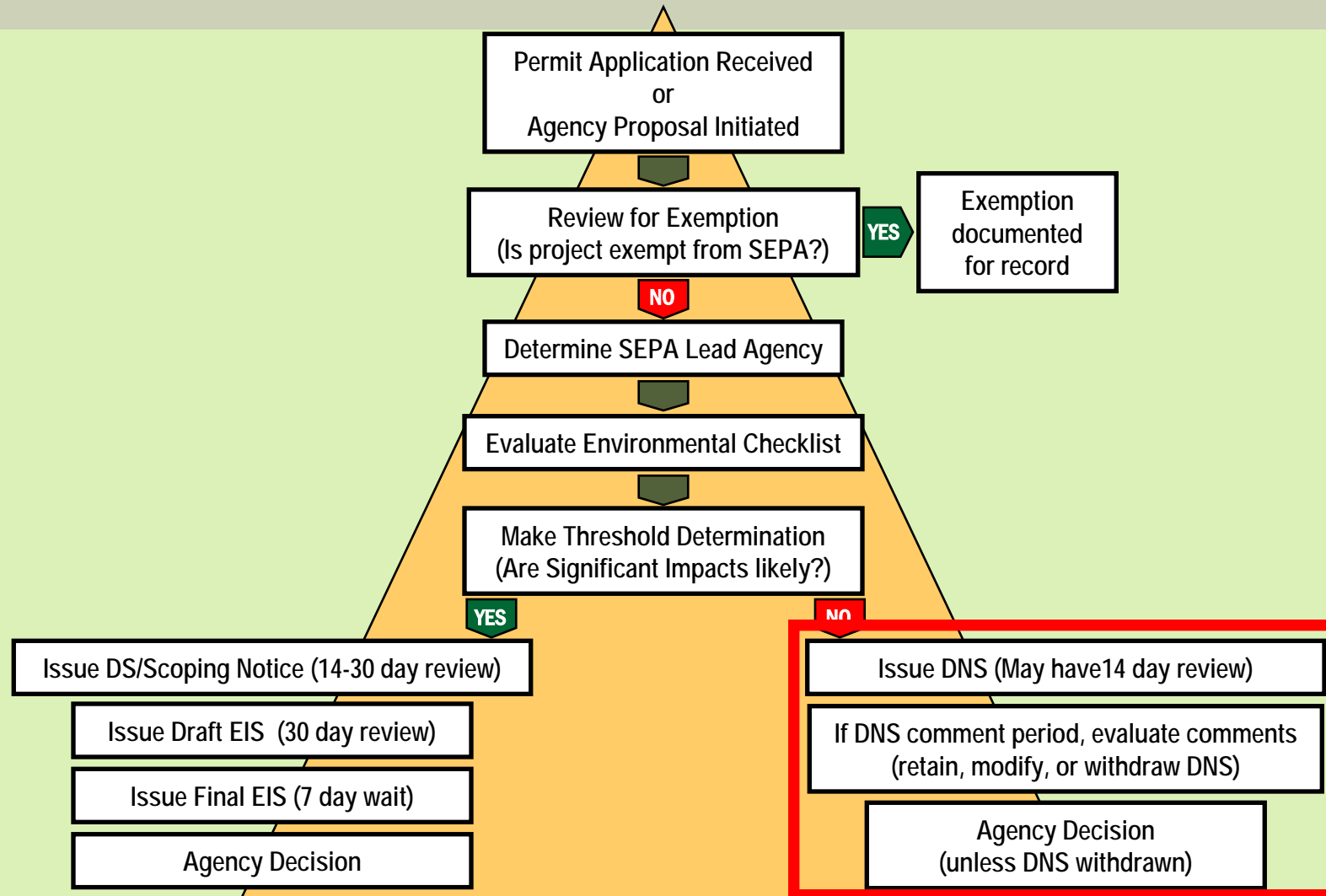
DS or DNS?

- ✔ **Determination of Significance (DS) is issued if**
 - the threshold determination is that significant impacts are likely to occur
- ✔ **Determination of non-significance (DNS) is issued if**
 - the threshold determination is that significant impacts are not likely to occur

SEPA Process



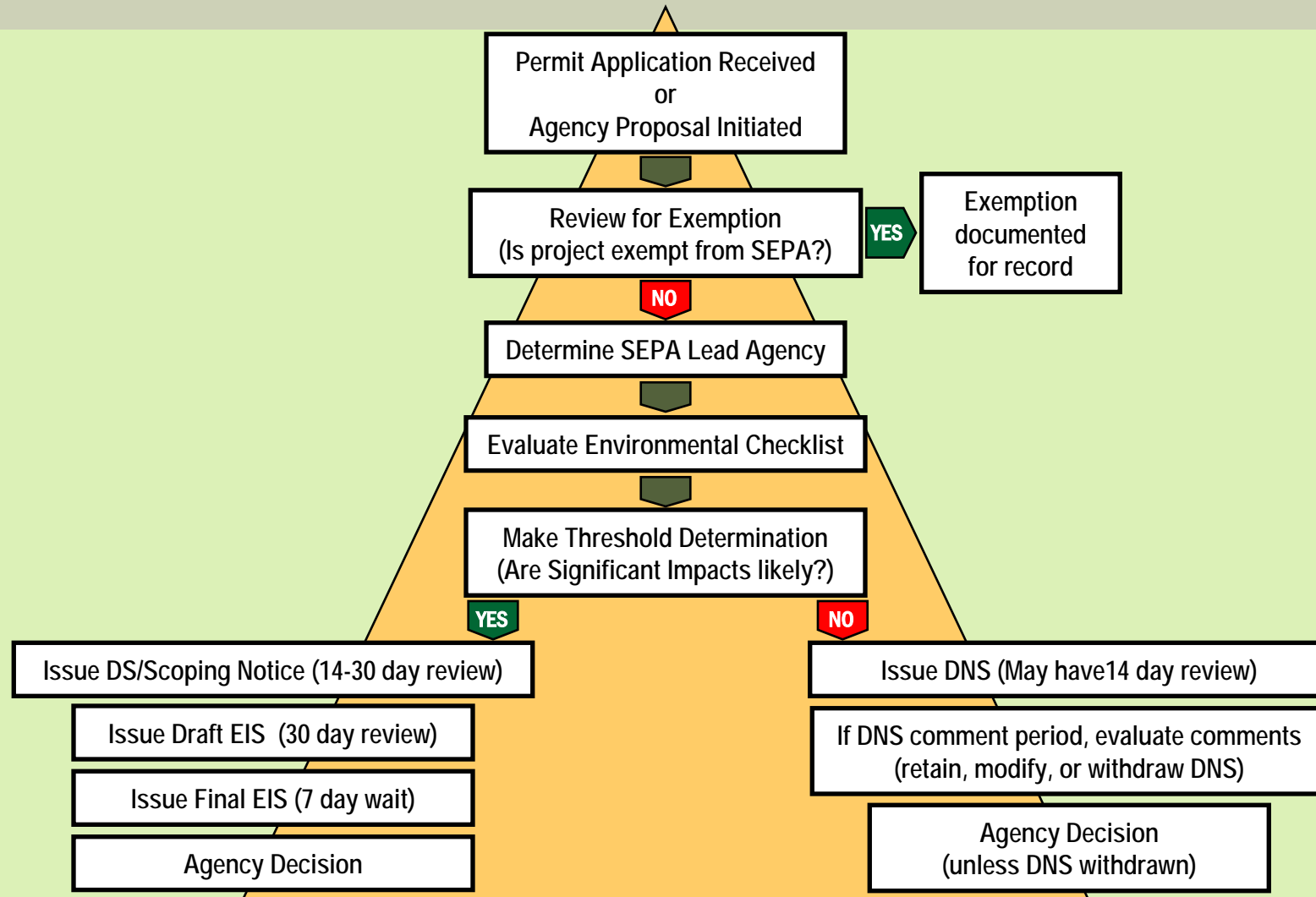
SEPA Process



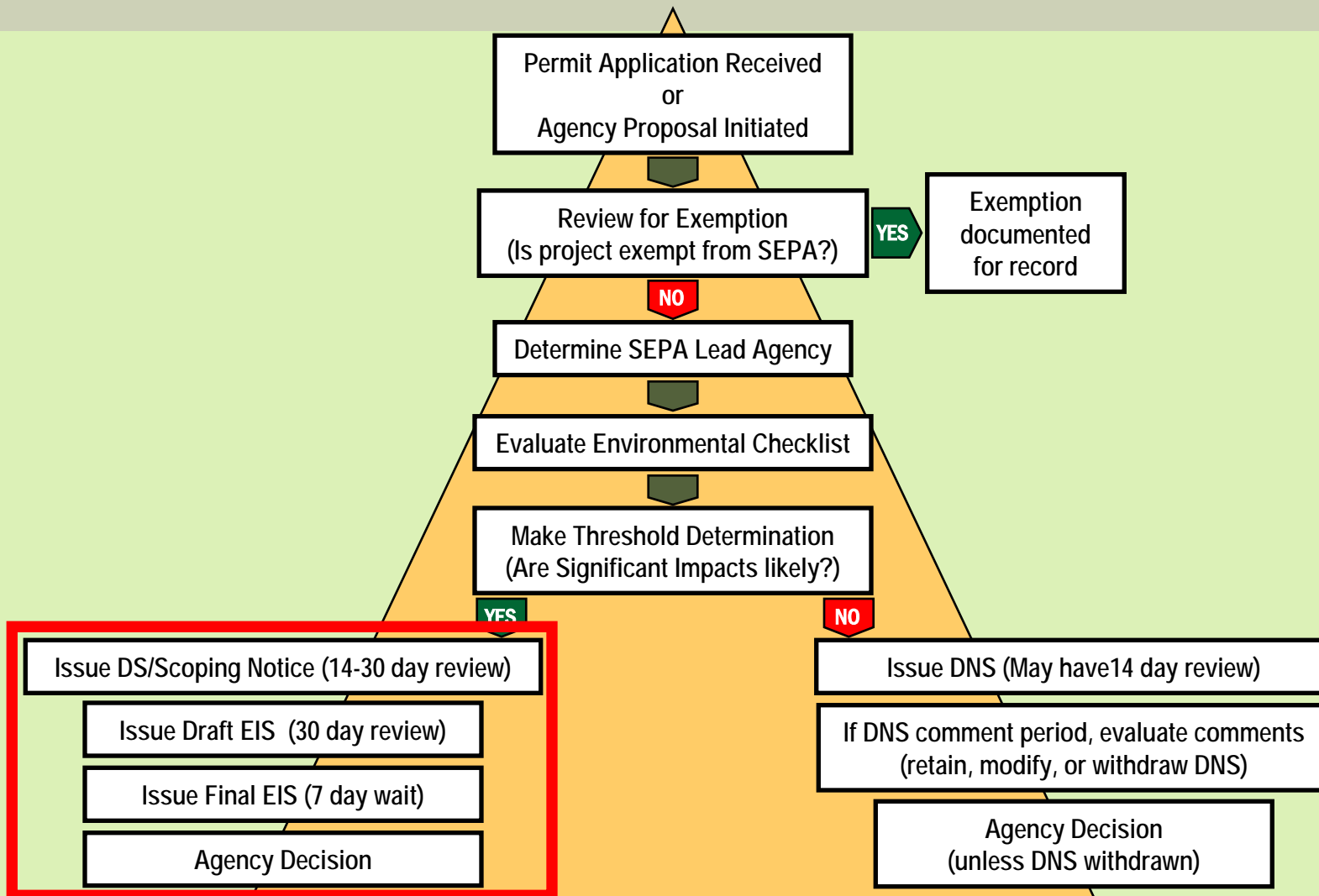
SEPA DNS

- ✔ Issued when the responsible official has determined that the proposal is unlikely to have significant adverse impacts
- ✔ Can be “Mitigated DNS”

SEPA Process



SEPA Process



SEPA EIS Process

- ✔ **Scoping**
- ✔ **Prepare Draft EIS (DEIS)**
- ✔ **Issue DEIS**
- ✔ **Prepare Final EIS (FEIS)**
- ✔ **Issue FEIS**
- ✔ **Use the EIS information in decision making**

Scoping

- ✔ No specific process required
- ✔ No response to scoping comments required
- ✔ Agencies may choose to
 - Summarize and/or respond to comments received
 - Issue final determination of elements of the environment and alternatives to be analyzed

SEPA DEIS Contents

- ✓ **Cover letter**
- ✓ **Fact sheet**
- ✓ **Table of contents**
- ✓ **Summary**
- ✓ **Alternatives including proposed action**
- ✓ **Affected environment, significant impacts, and mitigation measures**
- ✓ **Distribution list**
- ✓ **Appendices, if applicable**

FEIS

- ✔ Explains how the alternatives, including the proposed action, were modified
- ✔ Identifies new alternatives that were created
- ✔ Explains how the analysis was supplemented, improved, or modified
- ✔ Makes factual corrections
- ✔ Explains why a comment does not warrant further agency response

NEPA/SEPA Integration

- ✔ **Impacts and Mitigation**
- ✔ **Integrated Processes**

NEPA/SEPA Integration

▼ Impacts and Mitigation

NEPA/SEPA

Impacts = Effects



WSDOT Reader Friendly

Documentation of Environmental Effects

Environmental Issue**	Level of Potential Impact			Explanation
	No Effect	Less Than Significant Effect	Significant Effect	
Aesthetics and Urban Design				
Agricultural Resources				
Air Quality				
Biological Impacts (including wetlands and special-status species)				
Cultural and Historical Resources				
Geology and Soils				
Hazardous and Toxic Materials				
Hydrology and Water Quality				
Land Use Planning				
Mineral Resources				
Noise				
Population Growth and Housing				
Public Health and Hazards				
Public Services (e.g., water, sewer waste)				
Recreation				
Transportation and Traffic				
<p>* For each environmental issue, a federal agency must determine whether direct effects, indirect effects, and cumulative effects would be significant.</p> <p>** Issues listed are for illustrative purposes only and differ from agency to agency. In practice, such a list of issues is generally more detailed.</p>				

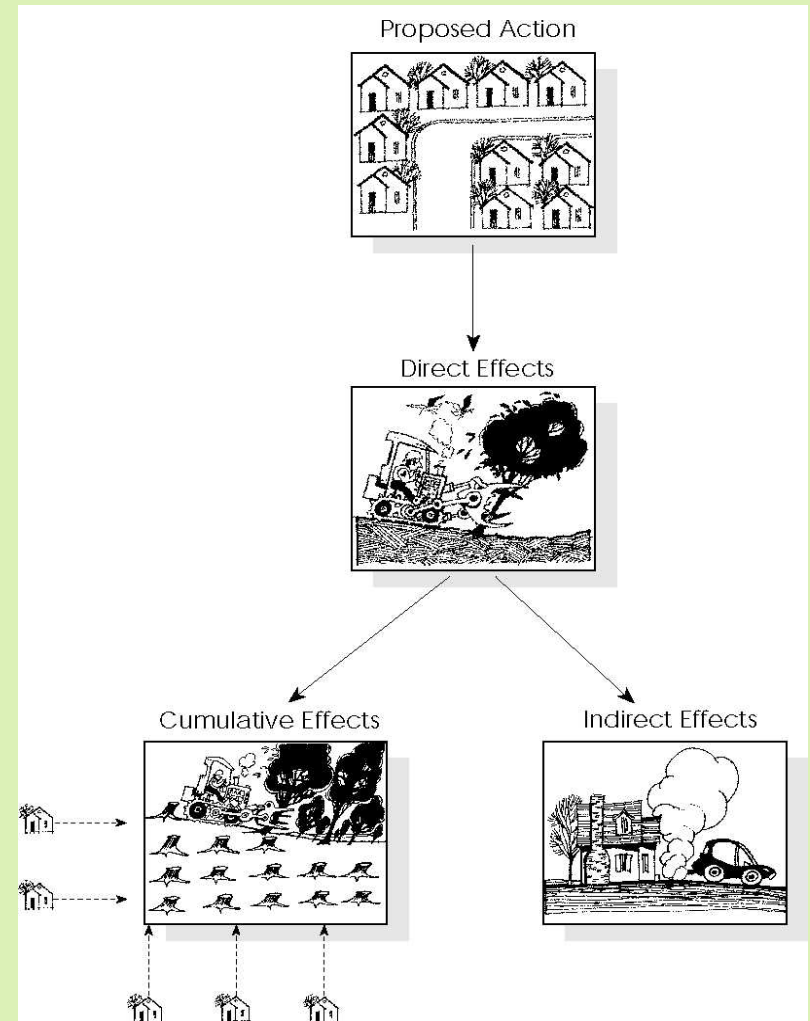
Resource Areas - Environmental Effects

- ✓ Earth (Geology and Soils)
- ✓ Air
- ✓ Water Quality/Surface Water
- ✓ Floodplain
- ✓ Groundwater
- ✓ Wildlife, Fish, and Vegetation
- ✓ Wetlands
- ✓ Energy
- ✓ Noise
- ✓ Hazardous Materials
- ✓ Land Use, Land Use Plans, and Growth Management
- ✓ Coastal Areas and Shorelines
- ✓ Wild and Scenic Rivers
- ✓ Farmland and Agriculture
- ✓ Public Lands (Section 4(f), 6(f) and Forests)
- ✓ Historic, Cultural, and Archeological Resources
- ✓ Social, Economic, and Relocation
- ✓ Environmental Justice
- ✓ Visual Impacts
- ✓ Transportation
- ✓ Public Services and Utilities

Listed from WSDOT Environmental Procedures Manual (M31-11)

Types of Environmental Effects

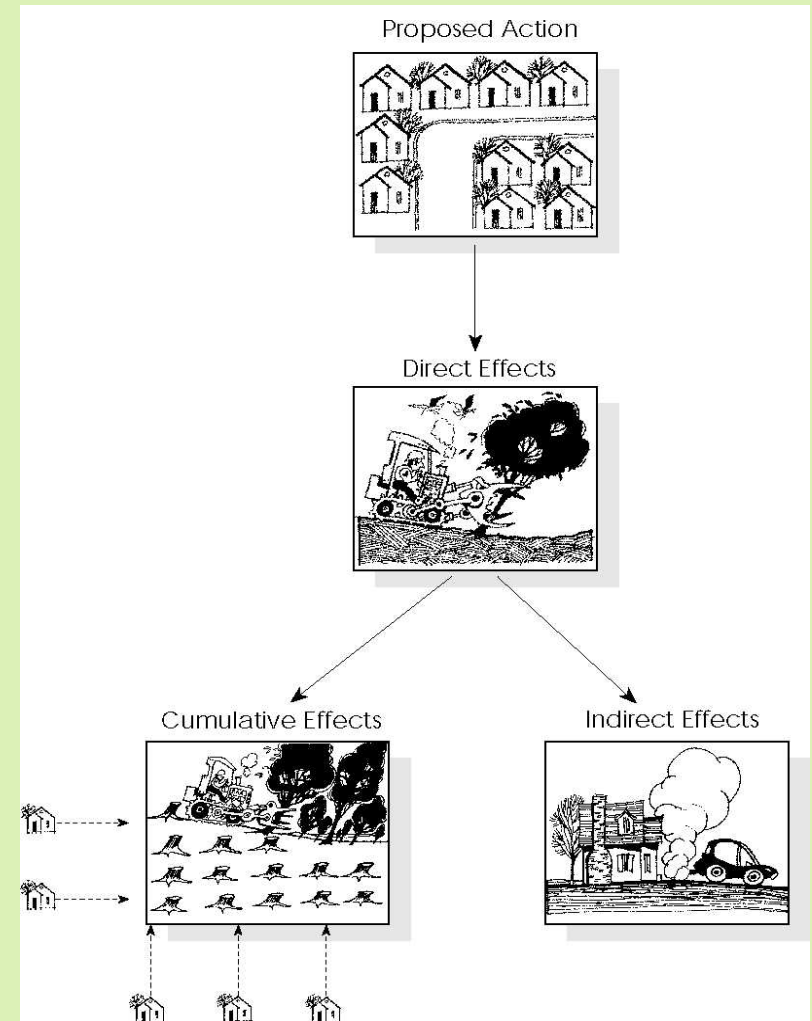
- ✔ Direct Effects
- ✔ Cumulative Effects
- ✔ Indirect Effects



Types of Environmental Effects

Direct Effects

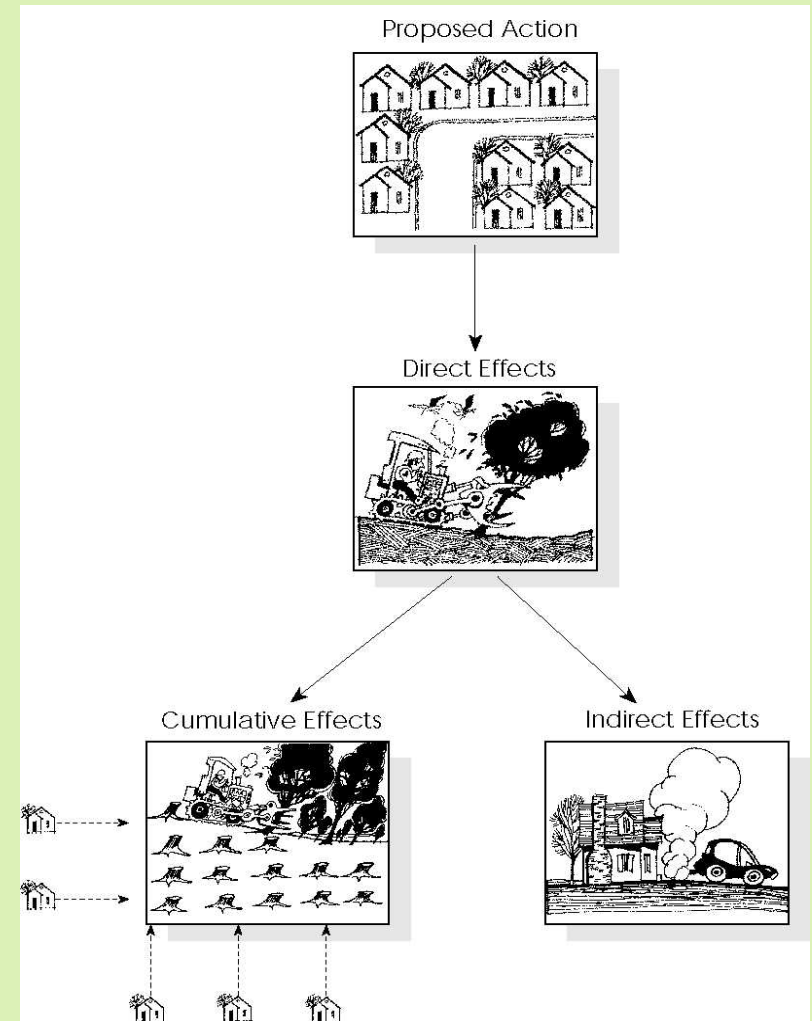
- Caused by the proposed action at the same time and place as the action



Types of Environmental Effects

▼ Indirect Effects

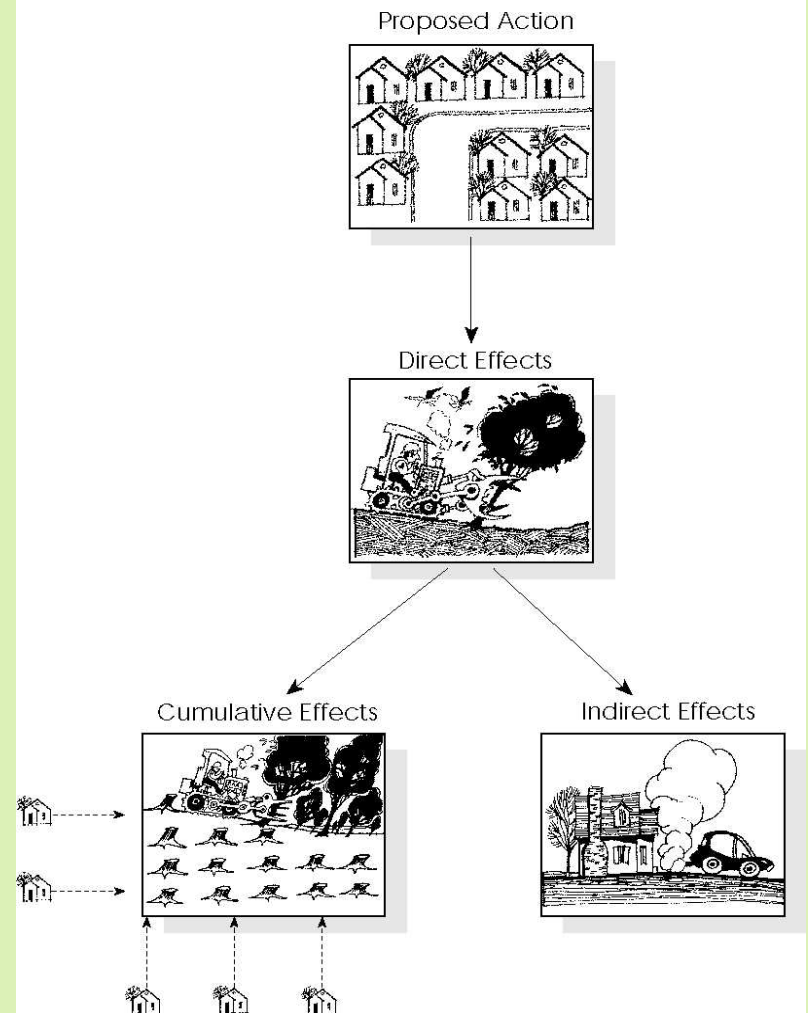
- Reasonable and foreseeable effects caused by the proposed action, but occurring later in time or further removed from the project site than direct effects



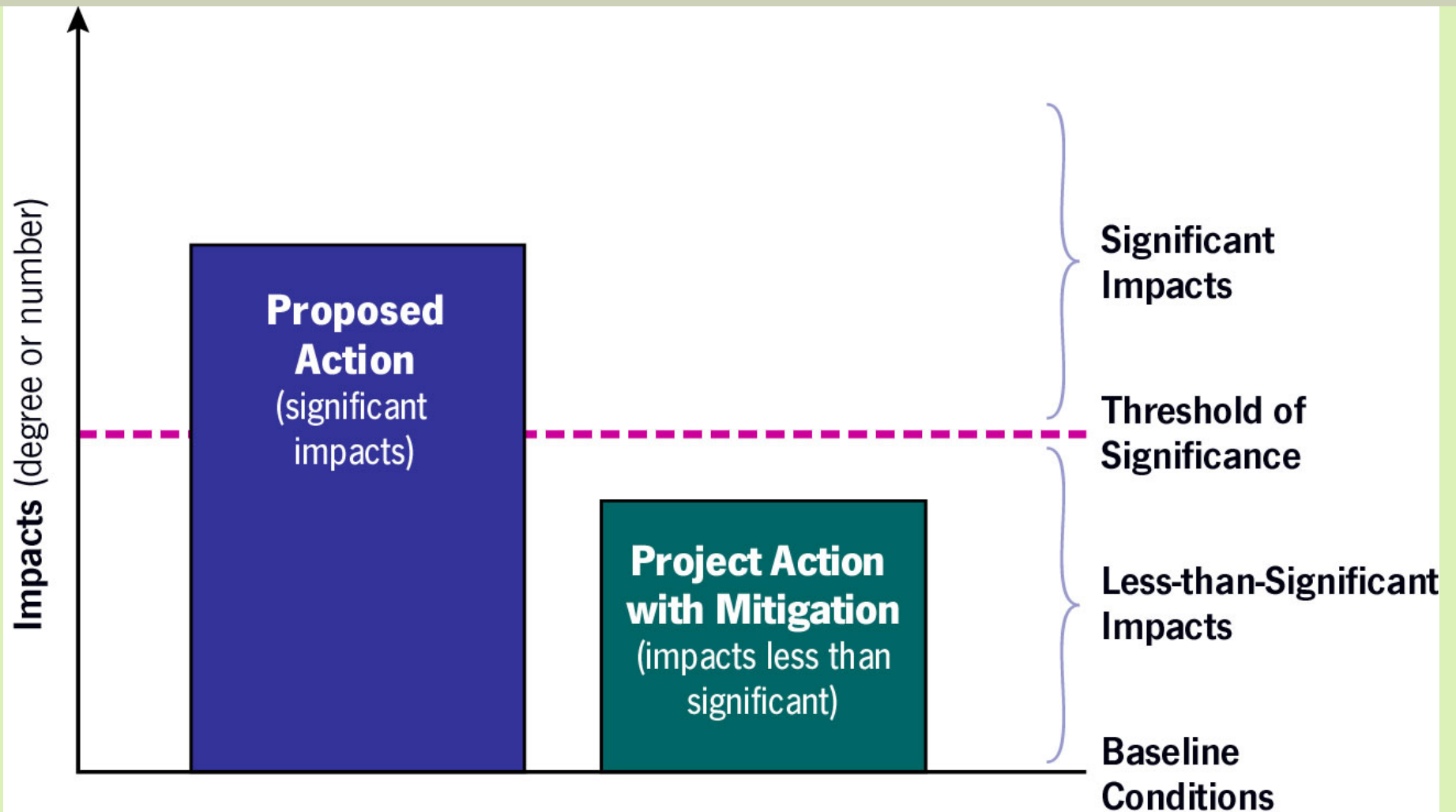
Types of Environmental Effects

✓ Cumulative Effects

- Results from incremental impact of the action
- Added to other past, present, and reasonably foreseeable future actions
- Regardless of what agency (federal or nonfederal) or person undertakes such other actions
- Can result from individually minor, but collectively significant, actions over time



Significance of Effects



Significance Thresholds

- ✔ Can be based on local guidelines
(e.g. roadway level of service standards)
- ✔ Can be based on federal guidelines
(e.g. air quality emissions standards)
- ✔ Should be quantitative whenever possible
- ✔ Should always be clearly defined in environmental document

Beneficial Impacts

- ✔ **Do not weigh in when making a threshold determination**

Mitigation

- ✔ **Mitigation is the avoidance, minimization, rectification, compensation, reduction, or elimination of adverse impacts to the the built and natural environment**
- ✔ **May include monitoring and plans for correction**
- ✔ **Must be included in the permit or approval to allow enforcement**

Five Categories of Mitigation

- **Avoiding impact**—not taking certain action, parts of an action
- **Minimizing impact**—limiting degree, magnitude, implementation of action
- **Rectifying impact**—repairing, rehabilitating, restoring affected environment
- **Reducing or eliminating impact over time**—preserving and maintaining during life of the action
- **Compensating for impact**—replacing, providing substitute resources or environments

Mitigation

- ✔ **Must be tied to impacts**
- ✔ **Must be tied to substantive authority**
- ✔ **Must not create new impacts
(without further environmental review)**
- ✔ **Must be reasonable**
- ✔ **EIS can look at impacts outside of authority of Lead Agency**
- ✔ **Mitigation requirements not be outside of authority—but can be added by others**

Five Questions for Effective Mitigation

- ✔ **Why?** - State objective of the measure and why it is recommended
- ✔ **What?** - Explain specifics
 - Design, implementation features
 - Measurable performance standards
 - Success criteria
 - Contingency plans
- ✔ **Who?**
 - Identify agency, organization, individual responsible for implementation
- ✔ **Where?** - Identify specific location
- ✔ **When?** - Develop implementation schedule

NEPA/SEPA Integration

▼ Integrated Processes

NEPA and SEPA

ELEMENT	NEPA	SEPA
Pre-EIS Stage	EA or Cat. Ex.	Checklist
No EIS	FONSI (mitigated)	DNS (mitigated)
Public Notice (EIS)	Yes, Tribes and Federal Agencies	Yes
Scoping	Yes	Yes
Scoping Meeting	Optional	Optional
Scoping Review Process	NOI	21-Day (written) Variable
Cooperating Agencies?	Yes	(Consulted) Nominal Lead
Lead Agency	One	Shared (nominal lead)
Alternatives	Rigorous	Yes
Private Party Alternatives	Yes	No—with exceptions
Adopt NEPA EA	Yes	Yes—as EIS
Adopt SEPA EIS	No	Yes—as EIS
Adopt NEPA EIS	Yes	Yes—as EIS
DEIS Review	45/60/75 (max)	30/45 days
Responsibility to Comment	Yes	Required
EIS Time Limit	No	Local Policies (1 year comments)
EIS Page Limit	150/300	75/150
Supplement ?	Yes	Yes

NEPA and SEPA: Combined Review

- ✓ Combined review permitted to reduce duplication and paperwork and improve decision making.
- ✓ For joint state-federal EISs prepared under both SEPA and NEPA, NEPA page restrictions (40 CFR 1502.7) shall apply.

WAC 197-11-640

NEPA and SEPA: Combined Review

✓ Adoption of NEPA Documents Under SEPA Rules...

- A NEPA EA may be adopted to satisfy requirements of a SEPA DNS or an EIS
- A NEPA EIS may be adopted as a substitute for a SEPA EIS.
- Federal documents may also be incorporated by reference as support for issuance of a SEPA document (WAC 97-11-635)

NEPA and SEPA: Combined Review

- ✓ **Adoption of NEPA Documents Under SEPA Rules...**
 - Agencies may adopt NEPA documents if the document meets the adopting agency's environmental review standards and needs for the proposal.

NEPA/SEPA Strategy for Aurora Project

NEPA/SEPA Strategy for Aurora Project

- ✓ **Substantial public review/opportunity for input**
 - Public scoping period
 - Scoping report completed prior to initiation of DRs
 - Opportunity for public review and comment at each key milestone

- Public involvement for this project is at/above that required for an EIS

NEPA/SEPA Strategy for Aurora Project

- ✔ **Strict adherence to established guidelines**
 - **No presumptions!**
 - **Follow WSDOT Environmental Policies Manual and Local Area Guidelines**
 - **Obtain agency buyoff at each key milestone, prior to initiating next steps**
 - **Maintain administrative record that includes documentation of all agency decisions**

NEPA/SEPA Strategy for Aurora Project

- ✓ **Develop NEPA document to comply with all SEPA requirements**
 - So NEPA document may be adopted under SEPA
 - Savings in time and expense

Potential for schedule hang-ups...

- ✓ **Agency review time/turnaround is not in our control. However, process can be expedited by**
 - **Early/frequent coordination with WSDOT**
 - **Submittal of high quality, easily understood, technically sound documents**

Potential for schedule hang-ups...

- ✓ **Key City decisions will need to be made expeditiously. To help facilitate decisions...**
 - **City staff will keep decision makers informed of process and schedule**
 - **Keep times of key decision points on decision makers' radars**

The End!

▼ Questions????