

**IMPLEMENTING THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE WASHINGTON STATE DEPARTMENT OF ECOLOGY
AND THE BRITISH COLUMBIA ENVIRONMENTAL ASSESSMENT OFFICE**

The State of Washington (WA) and the Province of British Columbia (BC) recognize each other's authority and responsibilities to conduct or require an environmental assessment/environmental review (EA/ER) of project proposals within their jurisdiction. WA and BC each have established processes for the EA/ER of certain projects within their respective jurisdictions. In late 1999, the Environmental Cooperation Council (ECC) agreed to develop a Memorandum of Understanding (MOU) to develop and formalize notice and information exchanges regarding the EA/ER of major projects.

The WA Department of Ecology (Ecology) and the BC Environmental Assessment Office (EAO) were assigned the lead and have worked cooperatively to develop an MOU. A draft framework outlining the proposed approach to and content of the MOU was developed and presented at the November 2000 ECC meeting. The MOU was developed based on this framework and signed on June 20, 2001 at the ECC meeting in Bellingham, Washington.

The purpose of the MOU is to facilitate information sharing and mutual understanding of the EA/ER laws, policies and processes of each jurisdiction and facilitate notification and information exchange regarding major project proposals that are in the vicinity of the other jurisdiction. It promotes strong communication between WA and BC regarding major project proposals and complements existing bilateral notification arrangements between BC and WA agencies. There are differences in the approaches to EA/ER taken by the two jurisdictions and in the processes used to conduct EAs/ERs of major projects. These differences were taken into consideration in developing the MOU.

This document supports the MOU by outlining the EA processes in each jurisdiction and providing a scenario/description illustrating how the MOU would be implemented for a project in each jurisdiction. This document is for illustrative purposes only and should not be relied on for legal interpretation. For more information about the EA/ER processes in British Columbia and Washington State, contact the WA Department of Ecology or the BC Environmental Assessment Office (see pages 3 and 10 of this document for contact information).

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A BRIEF DESCRIPTION OF THE BRITISH COLUMBIA ENVIRONMENTAL ASSESSMENT PROCESS

The British Columbia *Environmental Assessment Act* (the Act) came into force in June, 1995, establishing a process for assessing the environmental, economic, social, cultural, heritage, and health effects of major development proposals in BC. The Environmental Assessment Office (EAO) is a neutral agency responsible for administering the Act.

Only larger-scale projects with associated potential for significant impacts are subject to the legislated EA process. The types and sizes of projects that are automatically subject to review are specified in the Reviewable Projects Regulation. The Act also includes the opportunity for projects not named in the regulation to be classed as reviewable, on a case-by-case basis.

The process is staged, moving from application review (Stage 1) to a project report (Stage 2) to a public hearing (Stage 3) as outlined in Figure 1. Not all stages are necessarily required; a project decision may be made at the end of any of these stages. A decision on project approval is made by two ministers after Stage 1 or Stage 2, or by Cabinet after Stage 3. Time limits for government controlled activities are set by regulation to increase certainty of the EA process.

A project committee is formed for each project review to review the information about the project, assess the potential for effects, and provide advice and recommendations to the EAO and Ministers. Project committees are chaired by the EAO and may include representatives from provincial, federal and local governments, First Nations whose traditional territory includes the site of the project or is in the vicinity of the project, and British Columbia's neighbouring jurisdictions in the vicinity of the project. Agencies who choose not to become project committee members may still submit comments on project impacts during designated comment periods at each stage of a review.

The process allows extensive opportunity for public participation, providing the public with project notification, information and an opportunity to comment on project proposals. Proponents are required to undertake early and ongoing consultation to identify and resolve public issues and the EAO undertakes additional public consultation where appropriate. All public input must be considered by the project committee in completing its review and making recommendations. Project-related documentation can be viewed at the Project Registry in Victoria and on the EAO's website (see below for details). Key documents may also be housed regionally at satellite repositories located near the proposed project.

First Nations whose traditional territory includes the project site, or is near a proposed project, are invited to sit on the project committee and are consulted by the proponent and the EAO during the assessment process. Project reviews include an assessment of any potential impacts on First Nations' interests.

The legislated EA process provides for a strategic-level evaluation of projects which concentrates on the significant issues that need to be addressed as a basis for a political approval-in-principle decision. In addition to EA project approval, most reviewable projects require statutory permit approvals associated with detailed project design, construction, operation and/or access to Crown land and resources. However, efforts are made during the EA review to ensure that permit information and consultation requirements are identified and satisfied to the greatest extent possible during the EA review, and that any post-EA reviews for statutory permit approvals are coordinated. In addition, proponents have the option of requesting that certain permit applications be reviewed concurrently with the EA review.

When a project triggers both a federal and provincial EA review, federal legal requirements are covered-off during the provincial EA process. Each government makes a separate project decision at the end of a joint review.

Additional Information

Additional information on the BC *Environmental Assessment Act* and review process, as well as projects in review, is available on the EAO website at: www.eao.gov.bc.ca. For assistance, please contact the Environmental Assessment Office at:

Location: 1st Floor, 836 Yates Street, Victoria, BC, V8V 1X4

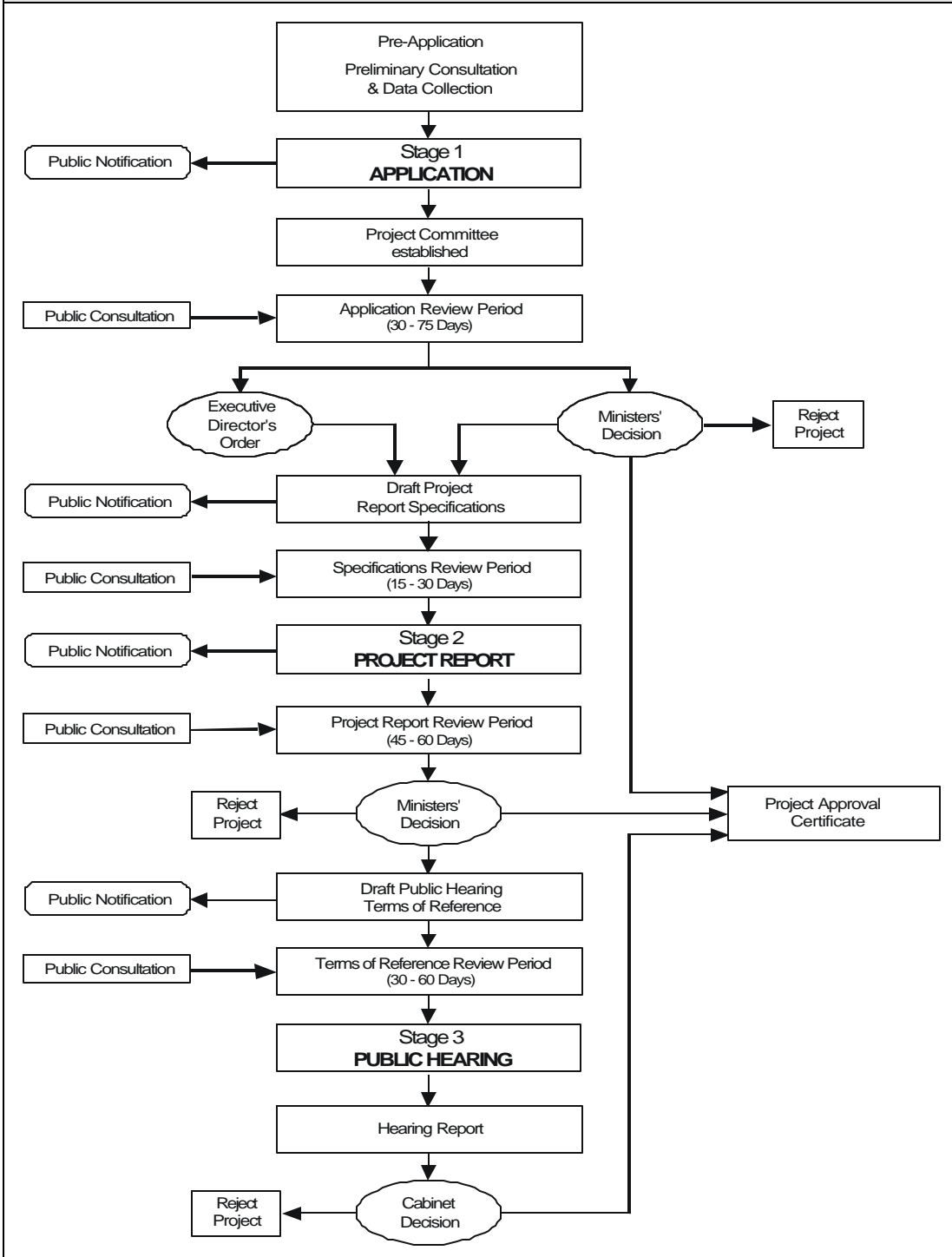
Mail: PO Box 9426 Stn Prov Govt, Victoria BC, V8W 9V1

Phone: (250) 356-7441 (Victoria). Toll-free calls through Enquiry BC at 1-800-663-7867 or (604) 660-2421 (Vancouver)

Fax: (250) 356-7440

Email: eaoinfo@gems5.gov.bc.ca

Figure 1: Overview of the British Columbia EA Process



EXAMPLE SCENARIO FOR A PROJECT LOCATED IN BRITISH COLUMBIA

INTRODUCTION

The British Columbia Environmental Assessment Office (EAO) and the Washington State Department of Ecology (Ecology) have developed a Memorandum of Understanding (MOU) to share information about environmental assessment/environmental review (EA/ER) practices in each jurisdiction, and to provide notice and information to the other jurisdiction about proposed major projects in the vicinity of the other jurisdiction.

In order to illustrate how this MOU would be implemented, the following scenario has been developed to describe the procedures that the EAO would use to notify and inform Ecology about a major project in the vicinity of Washington State. It must be noted that the project described is fictitious, developed for illustrative purposes.

STEPS FOLLOWED TO IMPLEMENT THE MOU

Description of Example Project

A private developer is proposing to construct and operate a run-of-river type hydroelectric facility to be located approximately 20 km north of the border between British Columbia (BC) and Washington State (WA). The project is comprised of the headworks, tunnel, penstock, powerhouse, and transmission line. The headworks are located in the Border Creek watershed¹ and will consist of an intake, weir, and headpond. The proposed project also includes 10 km of new transmission line and 500m of new access road. The project is expected to produce 55 MW annually.

1. Determine if the MOU Applies to the Project Proposal

a) Determine if the project is a “major project” as defined in the MOU

Pursuant to section 30(1) of the Reviewable Projects Regulation, the proposed project will be considered a “reviewable project” subject to the *Environmental Assessment Act* (Act) as the facility is a hydroelectric powerplant which will have a rated capacity of 50 MW or more of electricity. The project is therefore a “major project” as defined in the MOU. The proponent will be required to submit an application for a Project Approval Certificate to the EAO, and the project will be subject to the environmental assessment review process set out in the Act.

b) Determine if the project is in the vicinity of WA

The proposed project is to be located within 100 km of the BC-WA border. Therefore it is considered to be in the vicinity of WA, as defined in the MOU.

Since the project is a major project in the vicinity of WA, the MOU will apply.

¹ The Border Creek watershed is a fictitious name used for illustrative purposes.

2. Notification of the Major Project Proposal and Information Exchange

EAO will provide written notice to Ecology about the proposed project in the form of a memo from the Project Assessment Director responsible for the EA review of the project to the NEPA Coordinator, Department of Ecology. The memo will contain a brief description of the project, information about any preliminary discussions relative to the EA/ER of the project that are being scheduled, and the name of a contact person at the EAO who can provide further information if requested.

The EAO will send the memo to Ecology as early in the review process as practicable, most likely during the pre-application stage, shortly after the proponent has initiated preliminary discussions with EAO about the project and before the proponent has submitted its application for a project approval certificate. However, the notice will be provided no later than seven days after the EAO receives copies of the application after it has been accepted for review². Upon receipt of the notice, Ecology will notify potentially affected Ecology programs, state resource agencies, and the potentially affected counties of the proposed project and will advise those entities to contact the EAO directly if they have an interest in the project.

Under the *BC Environmental Assessment Act*, when a proposed project is in the vicinity of a neighbouring jurisdiction, the EAO is required to invite that jurisdiction to sit on the project committee set up to steer the EA review. Accordingly, the EAO will send a letter to Ecology, or other WA agencies who identify they have an interest in the proposal, inviting them to participate in the review, either through membership on the project committee, or as a “review agency”³.

The EAO will ensure all pertinent project-related documentation, including the application and notices regarding public comment periods, are made available on the EAO Project Registry and the EAO website: www.eao.gov.bc.ca. Key documents will also be made available at local information outlets (called satellite repositories) in communities near the proposed project⁴.

² This time corresponds to the time by which the EAO must provide official notice to the public in British Columbia about the proposed project and the associated EA/ER.

³ Agencies typically participate in reviews as project committee members where a project raises significant policy, regulatory or other programming implications affecting their agency mandate. As a member of the project committee, an agency would participate in all proceedings and committee decisions. Project committee members:

- assess the adequacy of the public consultation activities of the proponent;
- provide technical analysis and policy advice to the review process (for example, by reviewing the application and the comments received);
- provide details on information requirements for permit-level reviews; and
- provide an indication of support for project committee reports and recommendations.

Agencies who choose to participate as reviewing agency will have an opportunity to provide written comments on project materials as the review proceeds. Reviewing agencies do not approve or sign-off on project committee reports and recommendations, but are provided with copies of minutes of meetings and general project committee correspondence.

⁴ Information outlets might include government agents, libraries, or municipal or First Nations’ offices.

3. Consideration of Comments

Regardless of whether Ecology (or another agency in WA) chooses to participate as a project committee member, Ecology or other agencies in WA may submit comments on the project and the potential effects of the project. Comments received by the EAO during specified comment periods will be provided to the project committee and the proponent, and will be taken into consideration by the project committee in formulating its recommendations to ministers in relation to a decision on project approval. There will be the following specified comment periods⁵:

- to comment on the application (30-75 days);
- to comment on the draft project report specifications, if required (15-30 days);
- to comment on the project report, if required (45-60 days);
- to comment on the draft public hearing terms of reference, if required (30-60 days).

It will be the responsibility of Ecology and/or other agencies with an interest in the proposal to ensure their comments are received by EAO within the specified time period.

4. Coordination with Other Agreements

The EAO will consult with other agencies as appropriate to assist in ensuring that existing bilateral agreements related to joint management of the shared environment are considered, and to support coordination and consistency with those other agreements.

5. Public Consultation

EAO will work with Ecology to develop mechanisms for notifying and consulting with members of the public who may have an interest in the project. Public comments received by the EAO during prescribed comment periods will be taken into consideration by the project committee in formulating its recommendations to ministers in relation to a decision on project approval.

6. Project Committee Report and Recommendations

At the end of the EA review, the project committee established to steer the review will prepare a report and recommendations which will be provided to two ministers of the provincial government who will be responsible for making a decision on project approval: the Minister of Sustainable Resource Management and the minister designated as the “responsible minister” for that type of project. If Ecology or another agency in WA has elected to be a member of the project committee, that agency will have direct input into the development of the project committee report and recommendations. If Ecology or another agency in WA has elected not to be a project committee member, any comments from Ecology or another agency which are received by the EAO during prescribed comment periods will be considered by the project committee in preparing its report and recommendations.

⁵ Please refer to the attached Summary of the British Columbia Environmental Assessment Process.

7. Project Approval Decision

The decision on whether to issue a project approval certificate, or to require further study, is made by the Minister of Sustainable Resource Management and the responsible minister.

8. Permits

Any permits or other authorizations required for the project to proceed will be issued by the responsible agencies following completion of the EA review and issuance of a project approval certificate.

A BRIEF DESCRIPTION OF THE STATE ENVIRONMENTAL POLICY ACT (SEPA) PROCESS

The State of Washington's State Environmental Policy Act (SEPA) was adopted to provide a comprehensive environmental review process for agency decisions. SEPA review looks at the potential impacts to the environment from decisions made by all Washington state and local agencies related to:

- ◆ Construction of public facilities;
- ◆ Adoption of plans, policies, or regulations; and/or
- ◆ Issuing permits or other approvals for private proposals.

SEPA review is intended to reduce likely adverse environmental impacts of a proposal. The applicant may make changes to their proposal, or agency decision-makers may condition or deny permits or other approvals based on identified adverse environmental impacts.

Another important aspect of the SEPA process is public involvement prior to final agency decisions on projects with significant environmental concerns. Comments received on SEPA documents contribute to the environmental analysis of the proposal.

Who does SEPA review?

SEPA applies to decisions made by every state and local agency within Washington State, including cities, counties, ports, special districts (such as a school or water district) and state agencies. One agency is usually identified as the "lead agency" for a specific proposal. The lead agency for most private projects will be the city or county where the project is located. For public projects, the lead agency will be the agency proposing the project.

The lead agency is responsible for identifying and evaluating the potential adverse environmental impacts of a proposal. The analysis is included in the SEPA document and if a comment period is required, public notice is made and the SEPA document is distributed to interested agencies and affected tribes. Commenting on the SEPA document allows agencies and the public to participate in the environmental review process.

What is the SEPA review process?

SEPA environmental review usually starts when an application is received for a private project; or an agency is considering construction of a public project, such as a new school or road; or when an agency is developing a regulation, policy, or plan. The agency will then determine if SEPA review is required.

Some proposals do not require environmental review because they are "categorically exempt." The categorical exemptions identify those types of proposals that because of size, type, and/or location will not have a significant impact. If a proposal is categorically exempt, no further review under SEPA is required.

If SEPA review is required, the applicant is usually asked to fill out an "environmental checklist". This checklist asks questions about the proposal and its potential impacts on various elements of the environment, including earth, air, water, plants, animals, energy, land use, transportation, utilities, public services, and even aesthetics.

After the checklist has been completed, the lead agency reviews the checklist and any other information available about the proposal. If the lead agency needs additional information to evaluate the proposal, additional studies may be required, such as a traffic study or a study to determine if there are wetlands on the project site, and/or may consult with other agencies.

During the environmental review process the lead agency may also identify mitigation for any adverse impacts. Mitigation is anything that will reduce or eliminate the identified impact, and may involve leaving a native vegetation buffer around streams or wetlands, changing the location of construction on the site, or paying impact fees to offset impacts to schools or parks. The lead agency and applicant may also work together to change the proposal to reduce or eliminate likely impacts.

If the lead agency has enough information to determine that the proposal is unlikely to have a significant adverse environmental impact, the agency will issue a determination of nonsignificance (DNS), which may or may not have a comment period. If the proposal appears likely to have a significant adverse environmental impact (even after identified mitigation is applied), an environmental impact statement (EIS) is required. The EIS will include an evaluation of the proposal, reasonable alternatives, and mitigation measures that would eliminate or reduce the likely environmental impacts of the proposal. The public and other agencies have an opportunity to comment on what should be included in the EIS (during the “scoping” process), and later on the analysis and alternatives contained in the draft EIS. The lead agency is responsible for the content of the EIS, but must respond to all comments on the draft EIS within the final EIS.

How is SEPA used in decision making?

The environmental information in the DNS or EIS is considered by agency decision-makers along with information, such as technical considerations, economics, etc., as they decide whether or not to issue permits and/or other approvals for the proposal. SEPA supplemental authority allows agencies to apply mitigation to a proposal or deny permits based on specific adverse environmental impacts identified in the SEPA document.

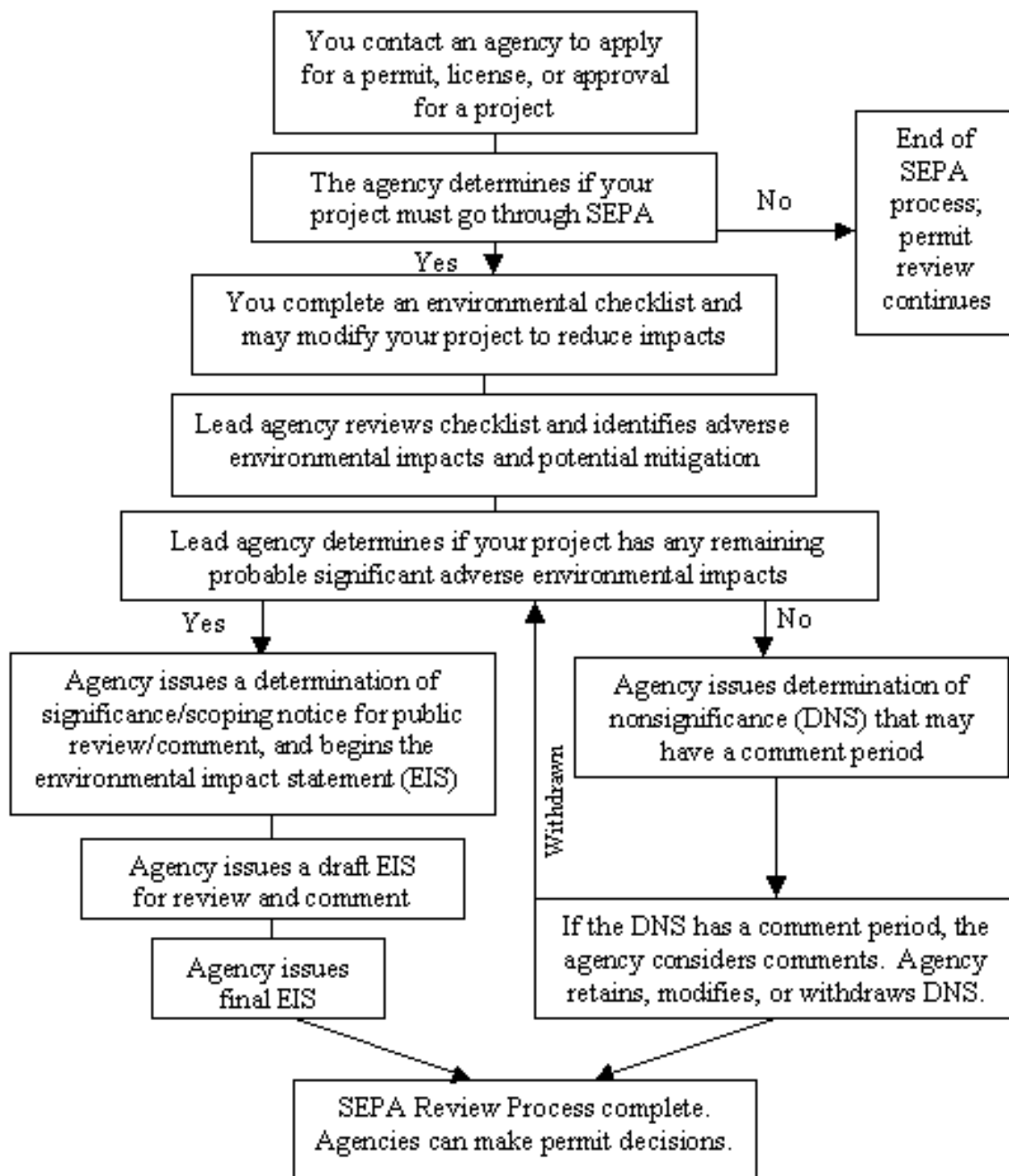
Additional Information:

For additional information about the purpose and procedural requirements of SEPA, refer to SEPA, chapter 43.21C RCW; the SEPA Rules, chapter 197-11 WAC (implementing rules); and the SEPA Handbook. These documents and additional information about SEPA are available on the Internet at: <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

For assistance contact:

Environmental Coordination Section
Department of Ecology
PO Box 47703
Olympia WA 98504-7703
E-mail: sepaunit@ecy.wa.gov
Phone: (360) 407-6922
Fax: (360) 407-6904

Figure 2: Overview of SEPA Process



EXAMPLE SCENARIO FOR A PROJECT LOCATED IN WASHINGTON STATE

INTRODUCTION

The British Columbia Environmental Assessment Office (EAO) and the Washington State Department of Ecology (Ecology) have developed a Memorandum of Understanding (MOU) to share information about environmental assessment/environmental review (EA/ER) practices in each jurisdiction, and to provide notice and information to the other jurisdiction about proposed major projects in the vicinity of the other jurisdiction.

In order to illustrate how this MOU will be implemented, the following scenarios have been developed to describe the procedures that will be used to notify and inform the EAO about a major project proposal in the vicinity of British Columbia. Since Ecology may not be the lead agency under the State Environmental Policy Act (SEPA) for some major projects, two examples are provided below. The first example is a large reservoir where Ecology is the lead agency for environmental review. The second example is a large gravel mining operation in a bordering county where Whatcom County is the lead agency.

STEPS FOLLOWED TO IMPLEMENT THE MOU

A. Steps Followed when Ecology is the SEPA Lead Agency

Description of Example A

The proposed project is a 50 acre reservoir on Merlin Creek in Okanogan County proposed by an irrigation district. Under SEPA Rules, Ecology is automatically the lead agency for this proposal.

1. Determine if the MOU Applies to the Project

a) Determine if the project is a “major project” as defined in the MOU

A major project in Washington State (WA) is defined in the MOU as one for which a Determination of Significance (DS) has been made thereby requiring an environmental impact statement (EIS). The environmental review process will start with the completion of an environmental checklist by the irrigation district. In this scenario the program responsible for review will be the Water Resources Program in the Central Regional Office, Yakima. This Water Resources Program will be tasked with determining if the project is a major project under this agreement.

The Water Resources Program will coordinate the review of the checklist and other information amongst other Ecology programs. They may also consult with other state and local agencies, such as State Fish and Wildlife, and Okanogan County. This consultation will assist Ecology in determining whether an EIS is needed. If a DS is made and an EIS will be required, the project will meet the definition of a major project under the MOU.

b) Determine if the project is in the vicinity of British Columbia (BC)

The proposed project is located in Okanogan County, which is one of the 11 counties specified in the MOU as being in the vicinity of BC⁶.

Since the project is a major project in the vicinity of BC, the MOU will apply.

2. Notification of the Major Project Proposal and Information Exchange

Ecology will provide written notice to EAO about the proposed project in the form of a Determination of Significance (DS)/Scoping Notice⁷. The notice will be sent to the Director responsible for intergovernmental relations at the EAO. This notice will include information on the comment period for the DS/Scoping Notice, which will be at least 21 days. The project will also be included in the list of projects to be provided to the EAO on a weekly basis, and will be posted on the SEPA Register in the listing which specifically identifies projects that are in the vicinity of BC.

Upon receipt of the notice, EAO will notify other agencies in BC as appropriate. EAO will advise other agencies to contact the Water Resources Program directly if they have an interest in the project.

Upon request, the Water Resources Program will provide BC agencies who have an interest in the proposal with further information about the EA/ER. An interested agency in BC and the Water Resources Program may informally agree upon the level of involvement at this stage in the environmental review process. For example, the BC agency may want to be included in development and/or review of draft studies, preliminary analyses, and other information used to prepare the draft EIS.

If an agency in BC has expressed an interest in the proposed project, a copy of the draft EIS will be sent to that agency. Comments may be provided to the Water Resources Program, Central Regional Office, Yakima, within the 30 day comment period. When the final EIS is issued, a copy will be sent to the BC agency. There will be no further comment period on the final EIS.

It is the responsibility of EAO or other agencies in BC to ensure their comments are received by the Water Resources Program within the time period specified in the environmental document.

All SEPA documents issued by Ecology will be listed on the SEPA Register on the SEPA website at: <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

⁶ Counties include Clallam, Jefferson, San Juan, Island, Whatcom, Skagit, Chelan, Okanogan, Ferry, Stevens and Pend Oreille.

⁷ The Determination of Significance/Scoping Notice is a standard form contained in WAC 197-11-980 and used by all agencies when an environmental impact statement is needed.

3. Consideration of Comments

Any comments submitted to the Water Resources Program during the comment period identified in the DS/Scoping Notice will be considered and may be addressed in the scope (outline) for the EIS. All comments submitted during the comment period on the draft EIS will be addressed in the final EIS along with Ecology's response. If there are any conflicts or outstanding issues, Ecology will consult with BC before finalizing the EIS to make a good faith effort to resolve the issues before the EIS is final.

4. Coordination with Other Agreements

Ecology will consult with other agencies as appropriate to assist in ensuring that existing bilateral agreements related to joint management of the shared environment are considered, and to support coordination and consistency with those other agreements.

5. Public Consultation

Ecology will work with EAO to develop mechanisms for notifying and consulting with members of the public who may have an interest in the project. Public comments received by Ecology during the comment period identified in the DS/Scoping Notice will be considered and may be addressed in the scope (outline) for the EIS. All comments submitted during the comment period on the draft EIS will be addressed in the final EIS along with Ecology's response.

6. Permits

Any permits or other authorizations required for the project to proceed will be issued by the responsible agencies following completion of the final EIS.

B. Steps Followed when Ecology is the NOT the Lead Agency

Description of Example B

The proposed project is a 500 acre gravel extraction and crushing operation, and an asphalt batch plant proposed by a private applicant in Whatcom County. The project is located adjacent to a river, five miles from the Canadian border. Under the SEPA Rules, Whatcom County is the lead agency for environmental review of this project.

1. Determine if the MOU Applies to the Project

a) Determine if the project is a “major project” as defined in the MOU

Whatcom County will be responsible for determining if a DS/Scoping Notice will be issued and an EIS required. The procedure used will be similar to that described in the previous scenario. If a DS is made and an EIS will be required, the project will meet the definition of a major project under the MOU.

b) Determine if the project is in the vicinity of British Columbia (BC)

The proposed project is located in Whatcom County, which is one of the 11 counties specified in the MOU as being in the vicinity of BC.

Since the project is a major project in the vicinity of BC, the MOU will apply.

2. Notification of the Major Project Proposal and Information Exchange

If Whatcom County determines that an EIS is needed, a Determination of Significance (DS)/Scoping Notice will be issued by the County. A copy of the DS/Scoping Notice will be sent to Ecology for listing on the SEPA Register.

EAO will receive notification about the project in the listing of projects which will be sent by Ecology to the EAO's Director responsible for intergovernmental relations on a weekly basis. This list will include all projects in the counties specified in the MOU for which a DS/Scoping Notice has been issued and for which an EIS is required.

In addition, notification will be by posting information about the project on the SEPA Register website, which is updated daily.

Upon receipt of the notice, EAO will notify other agencies in BC as appropriate. EAO will advise other agencies to contact Whatcom County directly if they have an interest in the project.

Ecology will not normally be involved in coordinating the involvement of BC agencies in EAs/ERs led by another agency. Upon request, Whatcom County will be responsible for providing BC agencies who have an interest in the proposal with further information about the EA/ER. An interested agency in BC and Whatcom County may informally agree upon the level of involvement at this stage in the environmental review process.

If an agency in BC has expressed an interest in the proposed project, Whatcom County will be responsible for providing a copy of the draft EIS to that agency. Comments may be provided to Whatcom County within the 30 day comment period. When the final EIS is issued, a copy will be sent to the BC agency. There will be no further comment period on the final EIS.

It is the responsibility of EAO or other agencies in BC to ensure their comments are received by Whatcom County within the time period specified in the environmental document.

3. Consideration of Comments

It will be the responsibility of Whatcom County to ensure comments submitted during the comment period identified in the DS/Scoping Notice are considered and addressed in the scope (outline) for the EIS as appropriate. All comments submitted during the comment period on the draft EIS will be addressed in the final EIS along with the County's response. Ecology is not responsible for the preparation of the draft and final EIS when it is not the lead agency for the review.

4. Public Consultation

EAO will work with Whatcom County, if requested, to develop mechanisms for notifying and consulting with members of the public who may have an interest in the project. It will be the responsibility of the County to ensure public comments received by the County during the comment period identified in the DS/Scoping Notice are considered and addressed in the scope (outline) for the EIS as appropriate. Comments submitted during the comment period on the draft EIS will be addressed in the final EIS along with the County's response.

5. Permits

Any permits or other authorizations required for the project to proceed will be issued by the responsible agencies following completion of the final EIS.