

Low Carbon Energy Project Siting Improvement Study

Advisory Board Meeting
September 14, 2022



Today's Topic: Appeals Process and Recommendations Development



Objectives:

- Provide understanding of appeals process for recommendation development
- Discuss and develop potential ideas for recommendations

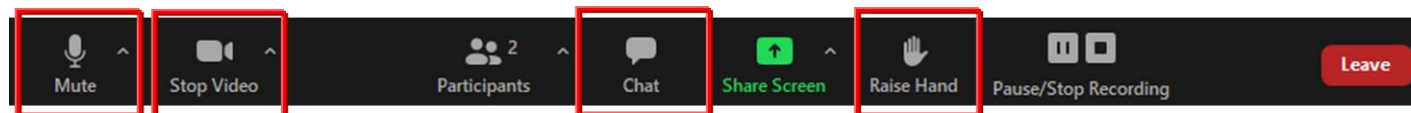
Please note this meeting is being recorded; the recording and all slides will be posted to Ecology's project website

Agenda

- Update on Planned Clean Energy Actions Concept
- Appeals Process: Overview and Discussion
- *Break (2:15)*
- Potential Ideas for Recommendations
- Review Schedule for Legislative Report and Sections
- Public Comment (4:15)
- Wrap up and Next Steps

Participating Effectively via Zoom

- To reduce background noise, please mute yourself when you are not speaking
- Advisory Board members please show your video
- If you have questions or ideas to share during presentations, please chat them to the group, and we can address them during the Q&A and discussion time
- During discussions, please let us know you'd like to jump in by “raising your hand”



Public Participation

- This meeting will be recorded and posted on the Ecology website: <https://ecology.wa.gov/Air-Climate/Climate-change/Greenhouse-gases/Reducing-greenhouse-gases/Clean-Fuel-Standard/Low-carbon-energy-siting>
- Members of the public will be muted, off video, and off chat until public comment
- Members of the public may observe breakout discussions
- There will be an opportunity for 2-minute public comments at the end of the meeting. At that time, members of the public who would like to comment should raise their hands if they would like time to speak
- You may also submit comments at the e-comment site: <https://sea.ecology.commentinput.com/?id=tiufU>

Appeals Process Insights from Advisory Board Scoping

- Appeals process length is unknown and adds additional time and cost to businesses desiring to locate or expand in Washington
- Uncertain and numerous appeals opportunities
- Strengthen project challengers' standing threshold
- “Raise it or waive it” approach for application challenges

Quick Icebreaker

- What are you most excited about squeezing into September before we head into the fall?

Please use Zoom chat to respond



Update on Planned Clean Energy Actions Concept

Adam Maxwell, Audubon

Low Carbon Energy Project Siting Improvement Study

Advisory Board

Environmental Review and Permitting
Appeal Processes Overview



Introduction & Disclaimer

- The intent of this presentation is to provide a general overview of appeal processes for the State Environmental Policy Act (SEPA), Energy Facility Siting Evaluation Council (EFSEC), and permitting
- It is NOT intended to serve as legal advice, act as agency guidance, nor does it include all aspects of appeals or processes
- Appeals are reviewed on a case-by-case basis, so the process may vary depending on the appeal
- This presentation includes information for appeals at the local and state level, not federal



Who may be involved

- Person appealing (applicant or public citizen)
- Local, state, or federal agency leading environmental review
- Local, state, or federal agency making a permit decision for a project (i.e., approval, denial)
- Courts
- Hearing boards
- Hearing examiners



Type of Appeal Actions

The court, hearing board, or hearing officer may:

- Affirm a decision
- Reverse (overrule) a decision
- Remand (send back)
- Modify a decision



What can be appealed

The subject of the appeal may be limited by law, regulation, or permit, but generally:

- Approval or denial decision
- Permit conditions
- Analysis used for decision
 - Sources of information
 - Adequacy of analysis
 - Findings
- Procedure



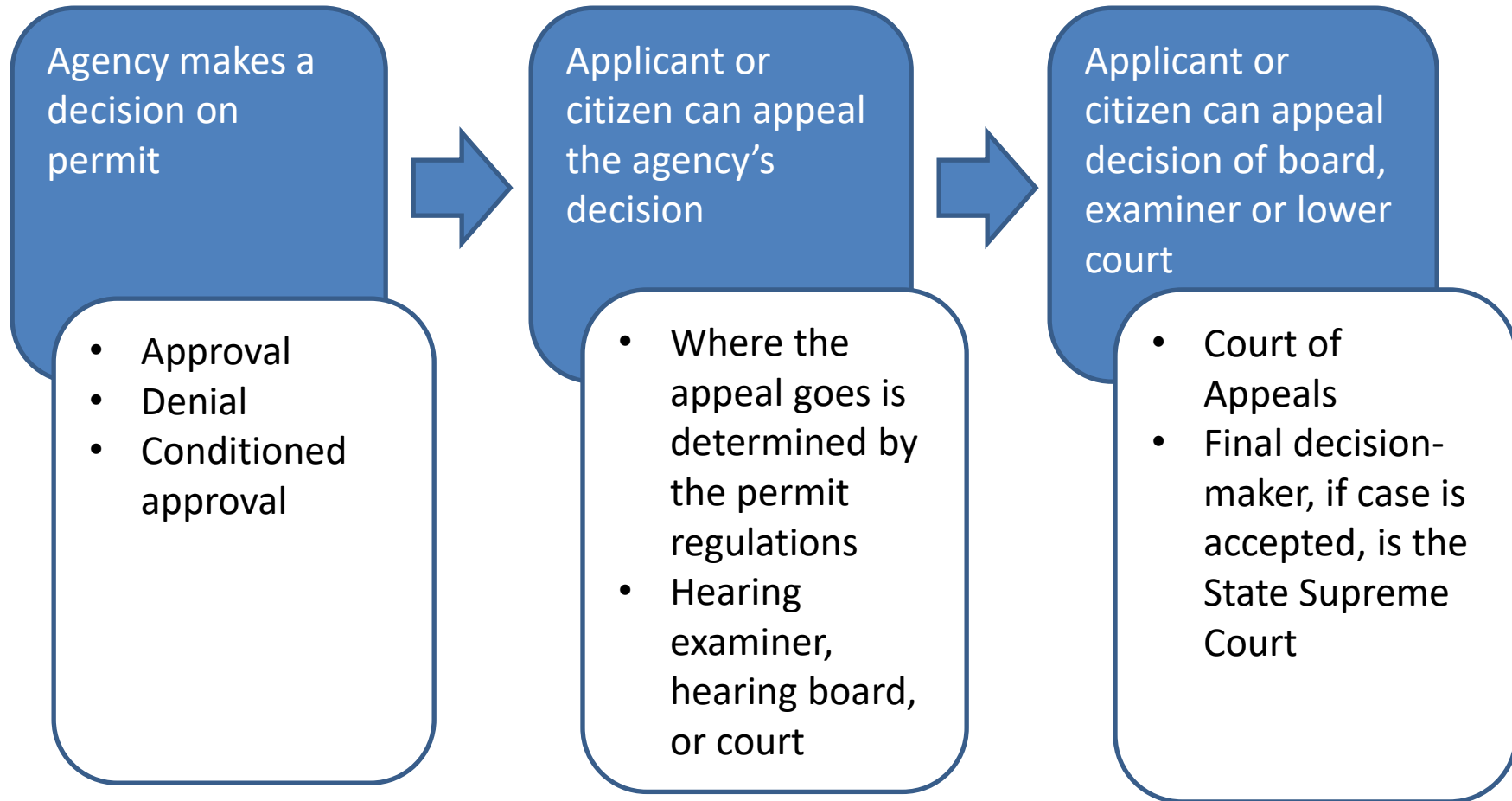
Courts

- Superior Courts
 - Multiple court districts in WA
- Washington Court of Appeals
 - Most cases appealed from superior courts go to Court of Appeals
 - All appeals filed are accepted
- Washington Supreme Court
 - Final rule-making authority for all of the state courts
 - Not all cases accepted

[Washington Courts](#)



General Process



SEPA Appeals

- Includes process for:
 - Procedural appeals
 - Substantive appeals
- Appeals may be heard at:
 - Administrative appeals, heard by agencies
 - Judicial appeals, heard by courts

[SEPA guidance](#)

[WAC 197-11-680](#)



SEPA Administrative Appeals

- For threshold determination, environmental impact study determination, or SEPA substantive decisions
- Single appeal
- Administrative appeals usually occur before judicial appeals
 - Must be included in ordinance, resolution, or rule
 - Not all agencies provide this process. If not provided, the first appeal is a judicial appeal.



SEPA Appeals

- Heard by hearing examiner, hearing boards, or courts
- Procedural and substantive SEPA appeals in most instances are combined with a hearing/appeal on the governmental action (such as approval or denial of a permit)



SEPA Appeals Timelines

- The permit appeal timeline applies
- If there is no time limit for the permit:
 - Can use a Notice of Action that establishes a 21-day appeal period
 - If no Notice of Action used, then there is no set time limit for judicial appeals



EFSEC Appeal Process

- Petition for Review filed in Thurston County Superior Court
- Thurston County Superior Court certifies the petition for review to the State Supreme Court
- Upon certification, the State Supreme Court assigns review at the earliest possible date

[RCW 80.50.140](#)



Permit Appeals

- Each permit uses its own regulatory authority
- Appeals use the permit's regulatory timeline and processes
- Information about permits and appeals is on [ORIA's permitting webpage](#) and on the permitting agency webpage



Hearing Examiner

- Counties and cities have statutory authority to establish hearing examiners
 - Determine qualifications for examiner and types of issues authorized to hear
 - Often for land use decisions and permits
 - Not all cities and counties have
- Hearing examiners are hired or contracted to conduct quasi-judicial hearings
 - Usually in place of planning commission, board of county commissioners, or city council
 - Professionally trained or qualified



Hearing Boards

Independent, quasi-judicial agencies that hear appeals:

- [Pollution Control Hearing Board \(PCHB\)](#)
- [Shorelines Hearing Board \(SHB\)](#)



General Appeal Timelines

Time to appeal a permit decision:

- Hearing examiner - varies
- PCHB – 30 days
- SHB – 21 days



Examples: Permits and First Appeal Authorities

	PCHB	EPA	SHB	Hearing Examiner	Superior Court
Air Operating Permit	X	X			
Air Notice of Construction Permit	X				
Hydraulic Project Approval	X				
Land Use Decision				If available	X
NPDES Industrial Stormwater Permit	X				
Prevention of Significant Deterioration Air Quality Permit	X				
Shoreline Conditional Use Permit			X	If available	
Shoreline Substantial Development Permit			X	If available	
Wastewater Discharge Permit	X				
Water Right Permit	X				





Thank you!

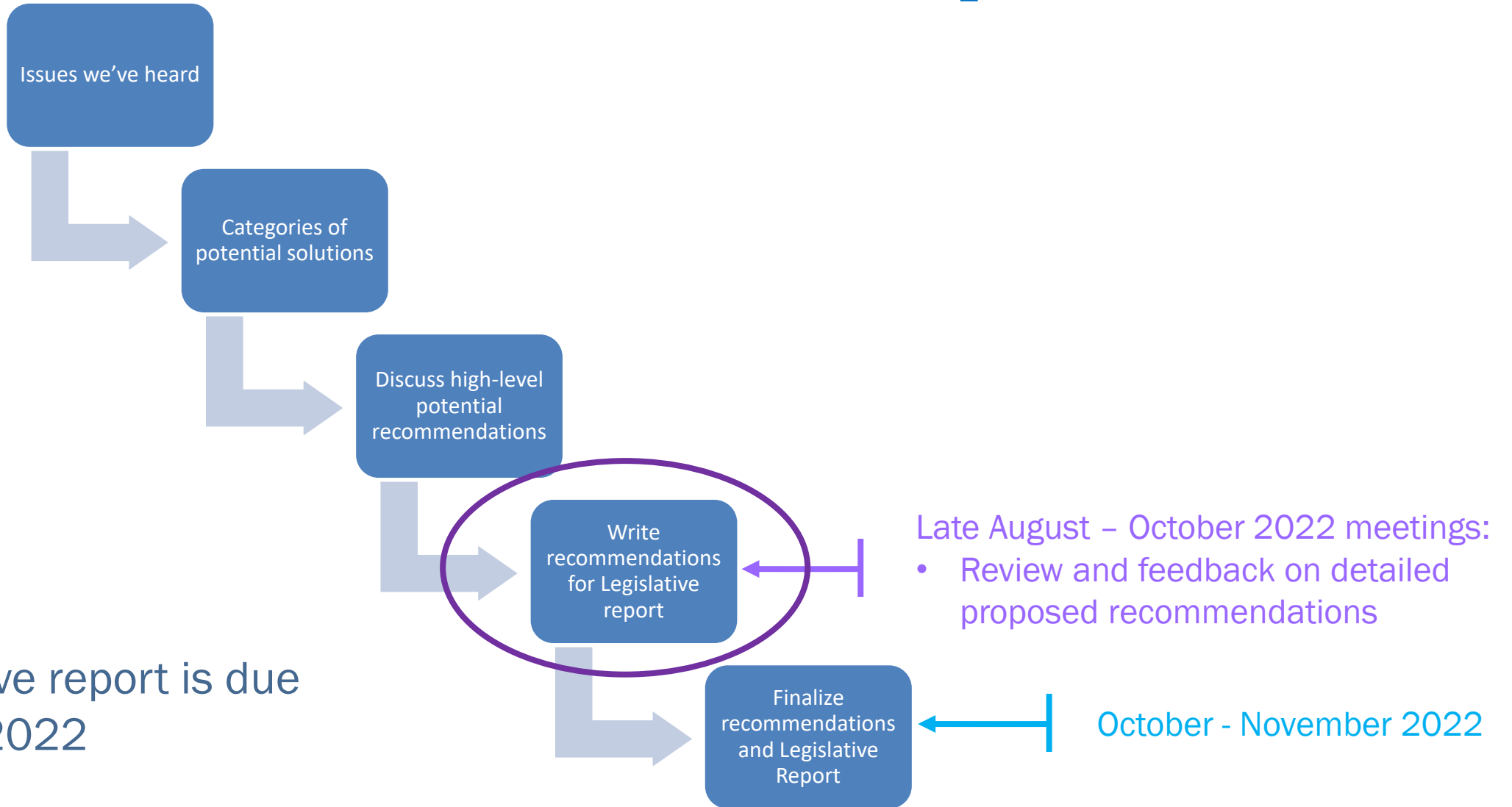


Break: Will Return at 2:15



Recommendations Input via Virtual White Board (Mural)

Where we are in the process



★ Legislative report is due
Dec. 1, 2022



Conduct upfront planning to make siting and permitting projects more efficient and ensure protection of communities, natural resources, and Tribal treaty rights

Improve consultation, engagement, and information sharing with Tribes
(Based on input to date; will be further developed through ongoing discussions with Tribes)

Improve community engagement and ensure overburdened communities are not disproportionately impacted

Assist local government involved to support coordinated clean energy and economic development

Improve guidance, training, and tools

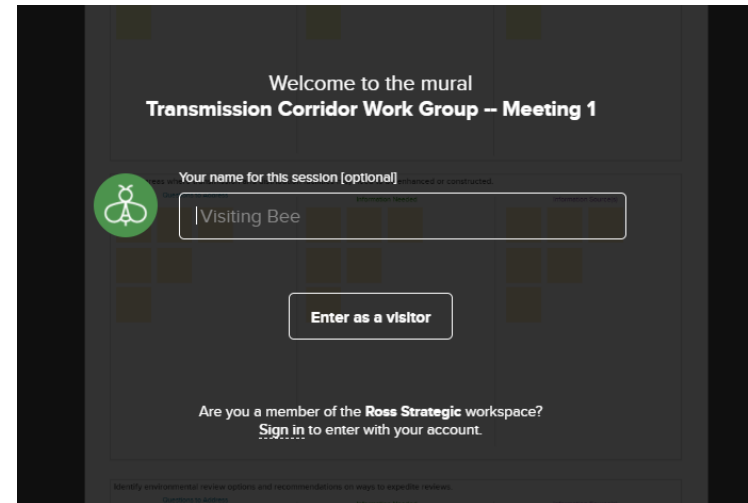
Coordinate federal, state, and local planning efforts when siting low-carbon energy projects

Build state organizational structure to implement recommendations and coordinate efforts

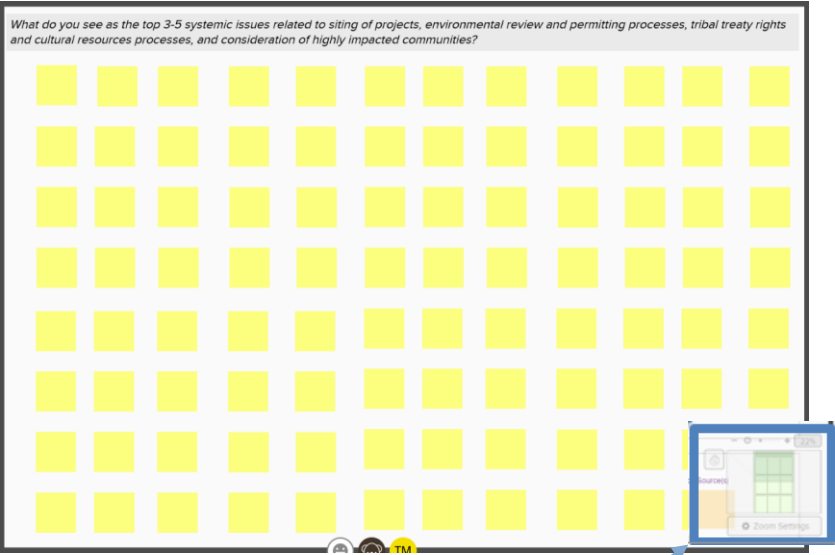


Intro to Mural Virtual Whiteboard

- Copy-paste link from Zoom chat box into an internet browser
- Keep Teams and Mural open simultaneously
- Add your name & click “Enter as a visitor”



Intro to Mural Virtual Whiteboard: Navigation

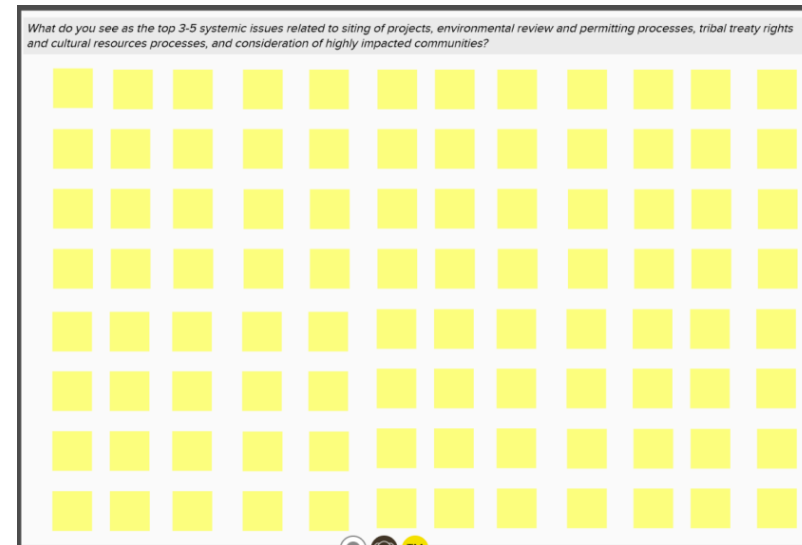


Zoom in/out with your mouse scroll-wheel or using this pane

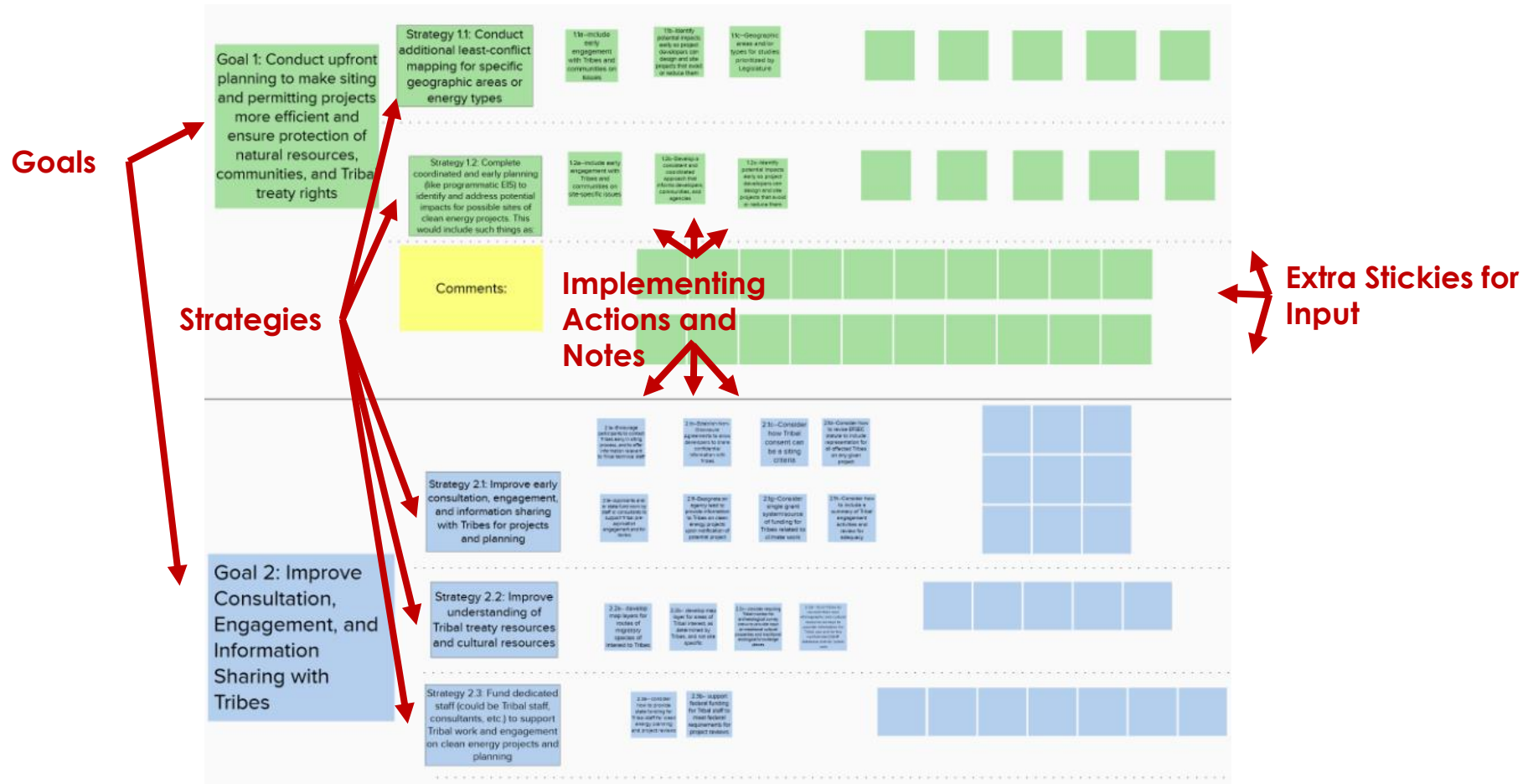
Intro to Mural Virtual Whiteboard: Using “Sticky Notes”



- To add thoughts in a sticky note, **click once** and begin typing
- **Click outside** of the sticky when you're done typing. You can then move it, resize it, go back to edit it, or delete it.
- To add a new sticky note, **double click** in the area

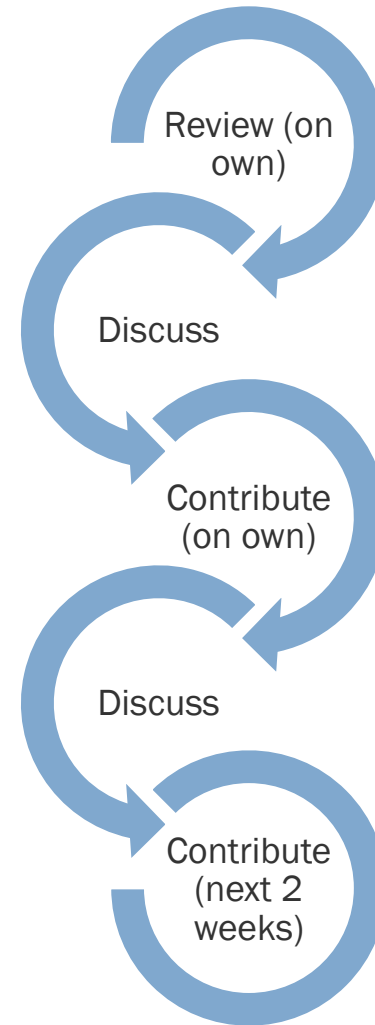


Today's Mural



Mural Questions and Process

- Additional strategies?
- Additional implementation actions or notes for current strategies?
- Suggested revisions?
- Add “+1” where you think something is really important





Mural Working Time



Review Schedule for Legislative Report and Sections

Recommendations and Legislative Report Advisory Board Reviews



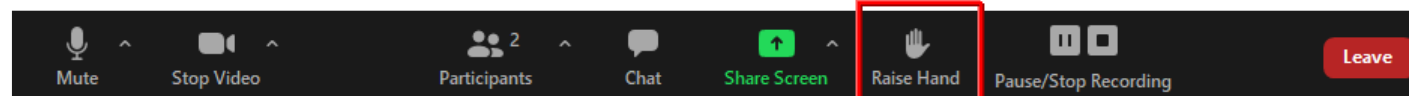
Dates	Action	Who	Notes
Now – Oct 12	Ongoing development of recommendations Includes input and feedback on issues, high-level recommendations and detailed recommendations	Advisory Board	Iterative and ongoing discussion with Advisory Board, Tribes and Interagency Team Changes shared throughout at meetings
Aug 31 – Sep 21	Review sections for: siting study overview, other related state work, glossary	Advisory Board	These sections are also being offered to Tribes and the Interagency Team for review.
Sep 12 - 30	Review sections for: regulatory context, clean energy facility types	Advisory Board	These sections are also being offered to Tribes and the Interagency Team for review.
Sep 14 – Oct 5	Review section for: issues	Advisory Board	This section is also being offered to Tribes and the Interagency Team for review.
Oct 17 – Nov 4	Review of entire draft legislative report	Advisory Board	All the report sections were provided earlier for review, except for the summary and recommendation section. Information from the recommendations development discussions will be used to develop the recommendation section. This draft is also being offered to Tribes and the Interagency Team for review.
Dec 1	Legislative report due to Legislature		



Public Comment

Instructions for Public Comment

- Members of the public that are interested in making 2-minute statements are invited to do so
- Please use Zoom to raise your hand if you would like to make a statement, and you will be unmuted
- Please introduce yourself
- To the extent possible, please frame remarks as comments rather than questions
- Written statements can be sent to the e-comment site:
<https://sea.ecology.commentinput.com/?id=tiufU>





Wrap Up & Next Steps

Wrap Up and Next Steps

- Follow-up from today
- Next Meeting (September 13): *Recommendations development*