

HOW LOCAL UPGRADE APPROVALS & VARIANCES ARE HANDLED UNDER TITLE 5

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MEHA

On-site Wastewater for Local Environmental Health Officials

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DISCUSSION POINTS

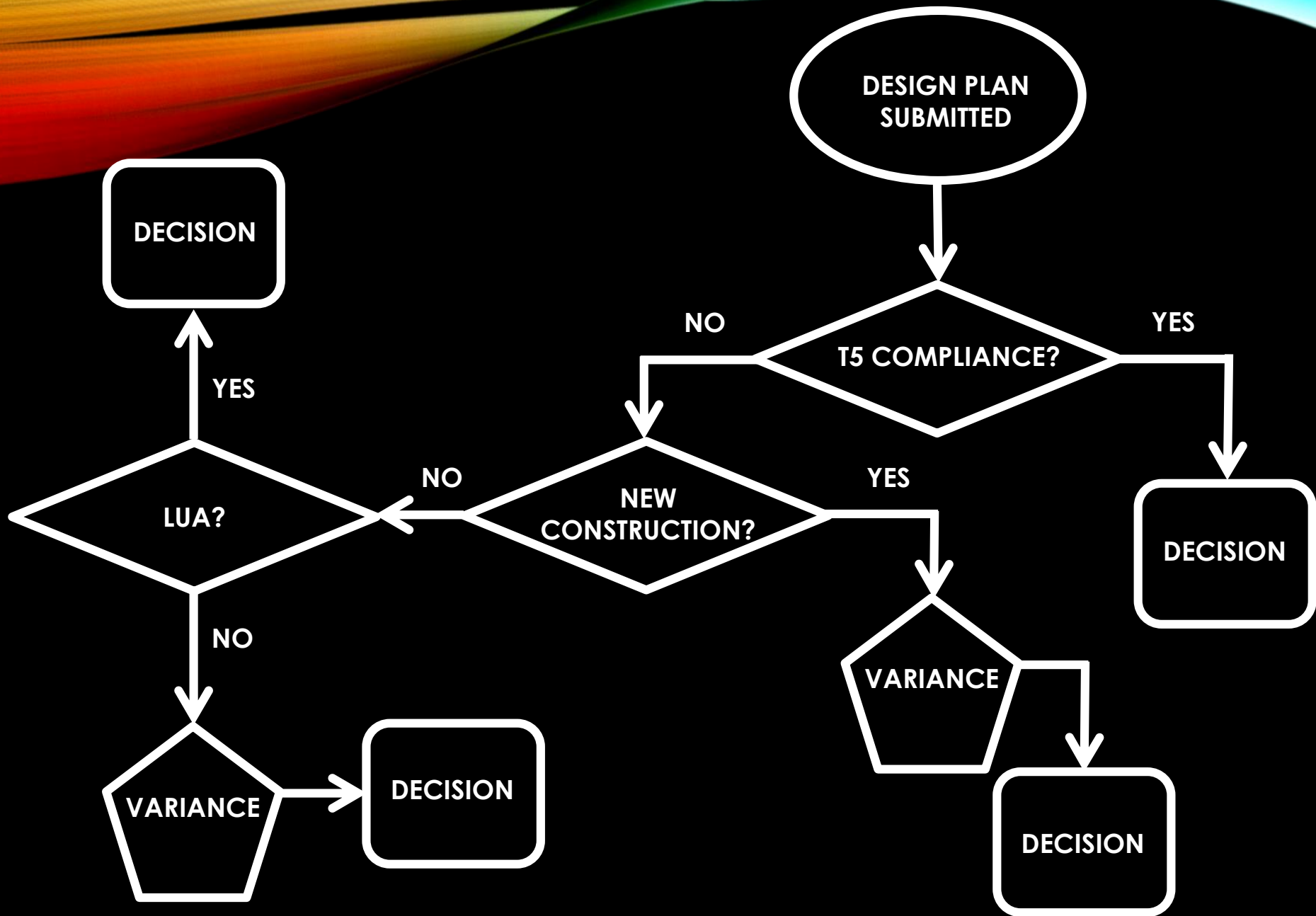
- Regulations
- Process
- Title 5 Compliance
- Maximum Feasible Compliance & Local Upgrade Approvals
- Variances
- Appeals
- Closing Remarks

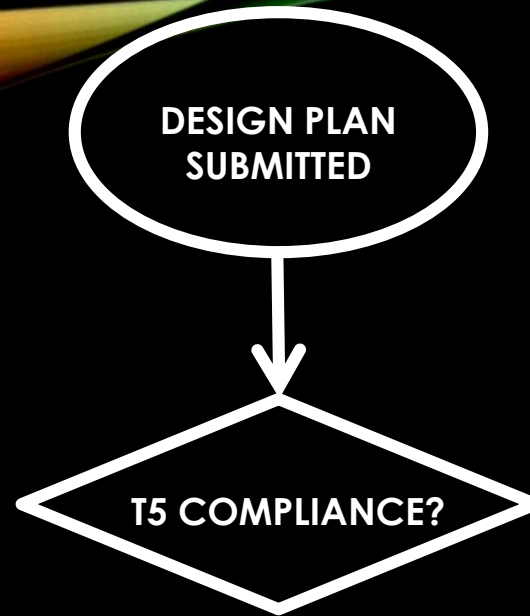
REGULATIONS

SUBPART E: PROCEDURES
FOR SEEKING AND
RECEIVING LOCAL
UPGRADE APPROVALS
AND VARIANCES FROM
THE PROVISIONS OF
SUBPARTS B AND C OF
310 CMR 15.00

310 CMR 15.401 - 310
CMR 1.5422

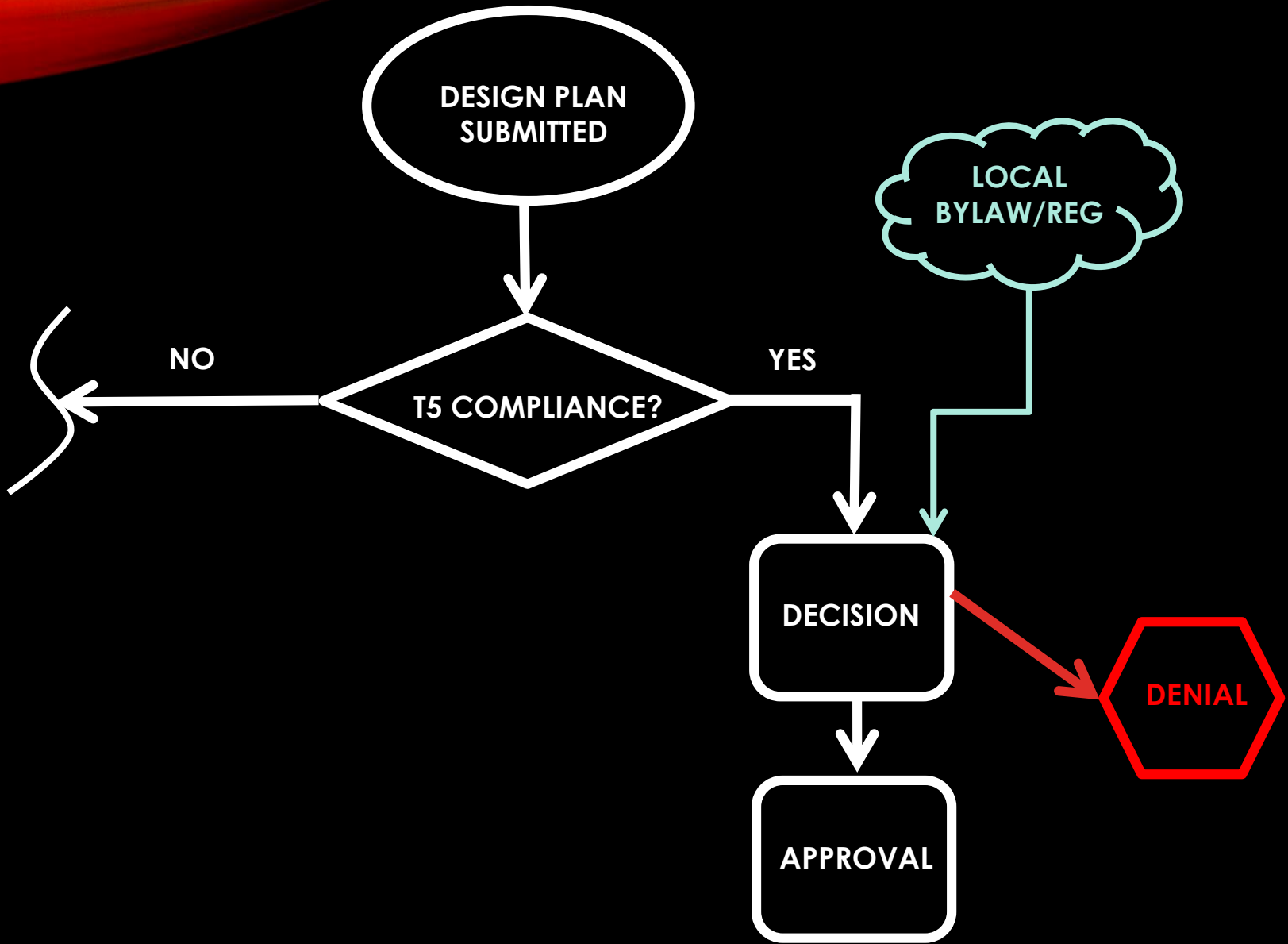
- Provides the framework for how to review/process LUA and variances
- Specifically eliminates new construction (including increased in flow) from LUA and requires variance (see 310 CRM 15.402(2))
- Maximum feasible compliance
- Contents of LUA

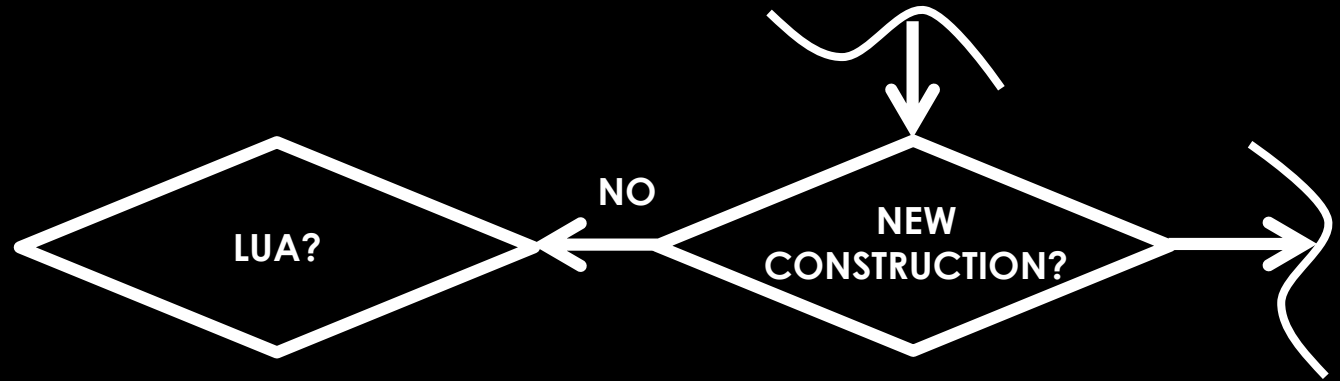




FULLY COMPLYING SYSTEM

- 100% SAS – exceptions re: I/As
 - 4 or 5 feet to gw
 - 4 feet NOPM
- Reserve area, if new construction
- Meets nitrogen loading, if applicable





MFC & LUA

- Goal is full compliance for upgrades
 - Fully complying system
 - I/A
 - Shared system
 - Connection to municipal sewer
- If SI failure caused by one component, upgrade component
- If full compliance is not possible, LUA

LUA

Compliance must not be feasible [310 CMR 15.404(1) and 15.405(1)].

Best feasible upgrade.

Protection of water resources and treatment of the sewage should be emphasized.

Reductions are in the order they are to be considered.

1. Property line setback*
2. Foundation, slab, swimming pool setback
3. 25% SAS area reduction;
4. If in Zone II or 100 feet of private well, relocation of the well
5. BVW setback
6. Various wetland resource areas
7. Water supply setback (line, well and surface WS/tributary)
8. Depth to groundwater**

* Notification to affected abutter(s), if applicable, is required.

** Pre-conditions must be met.

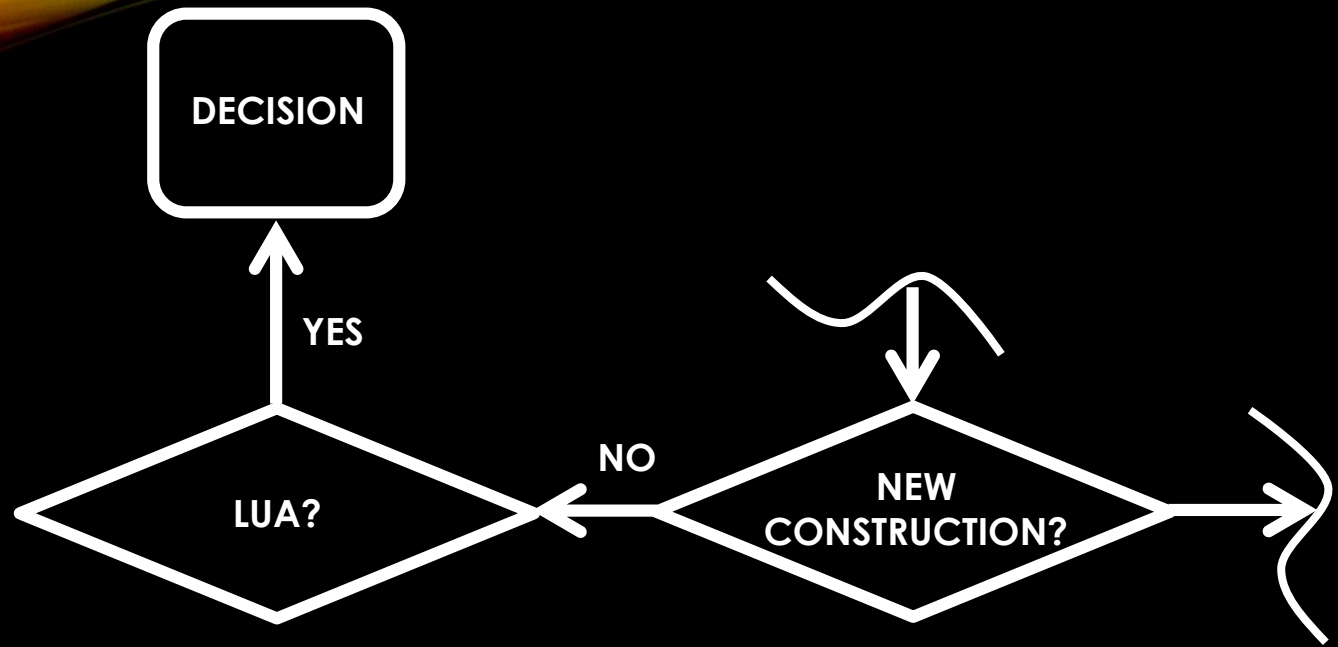
DEPTH TO GW LUA

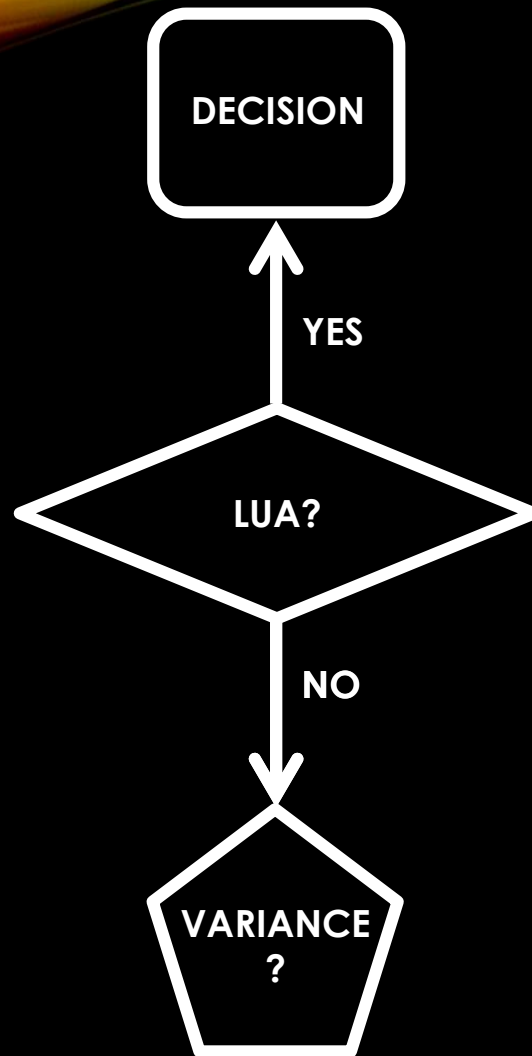
ALLOWANCES

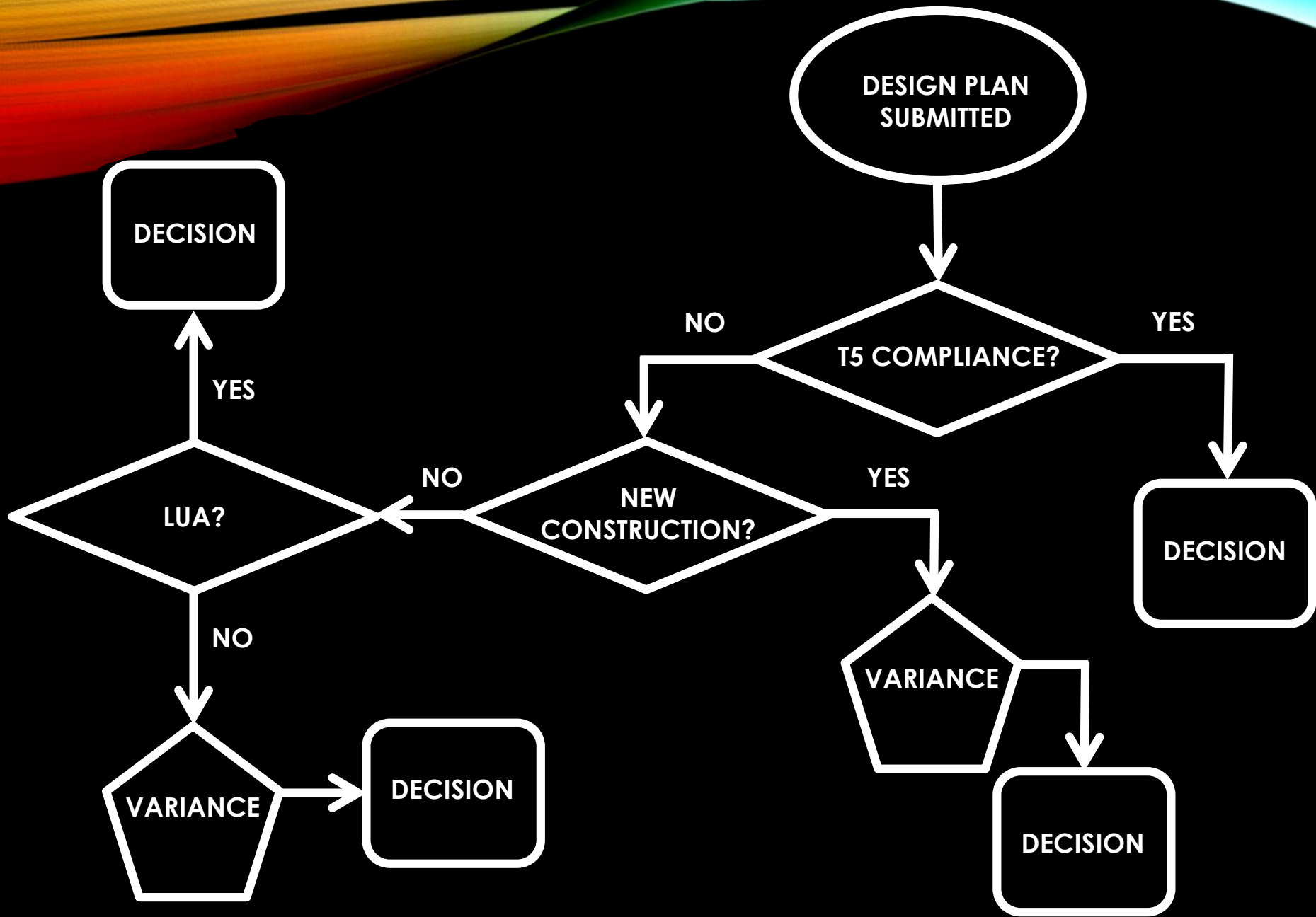
- For slower than 2 mpi soils, gw separation may be reduced from 4 feet to 5 feet provided....
- For faster than 2 mpi soils, gw separation may be reduced from 5 feet to 4 feet provided....

CONDITIONS

- A SE who is a member or agent of BOH determines ESHWL.
- The allowances are maintained.
- Existing system is failed or non-conforming with design flow < 2,000 gpd.
- No increase in design flow.
- No reduction in SAS area, setbacks to wells, BVS, wetland resource areas, PWS, surface water supplies, etc.







VARIANCES

- Standards of Review:
 - Upgrades/Repairs
 - New Construction
 - Schools – still handled by MassDEP
- Process
- Conditioning of Variances
- Variance Prohibition – 4 feet NOPM
 - Prohibited for new construction
 - Permitted for upgrades/repairs with conditions

STANDARDS OF REVIEW

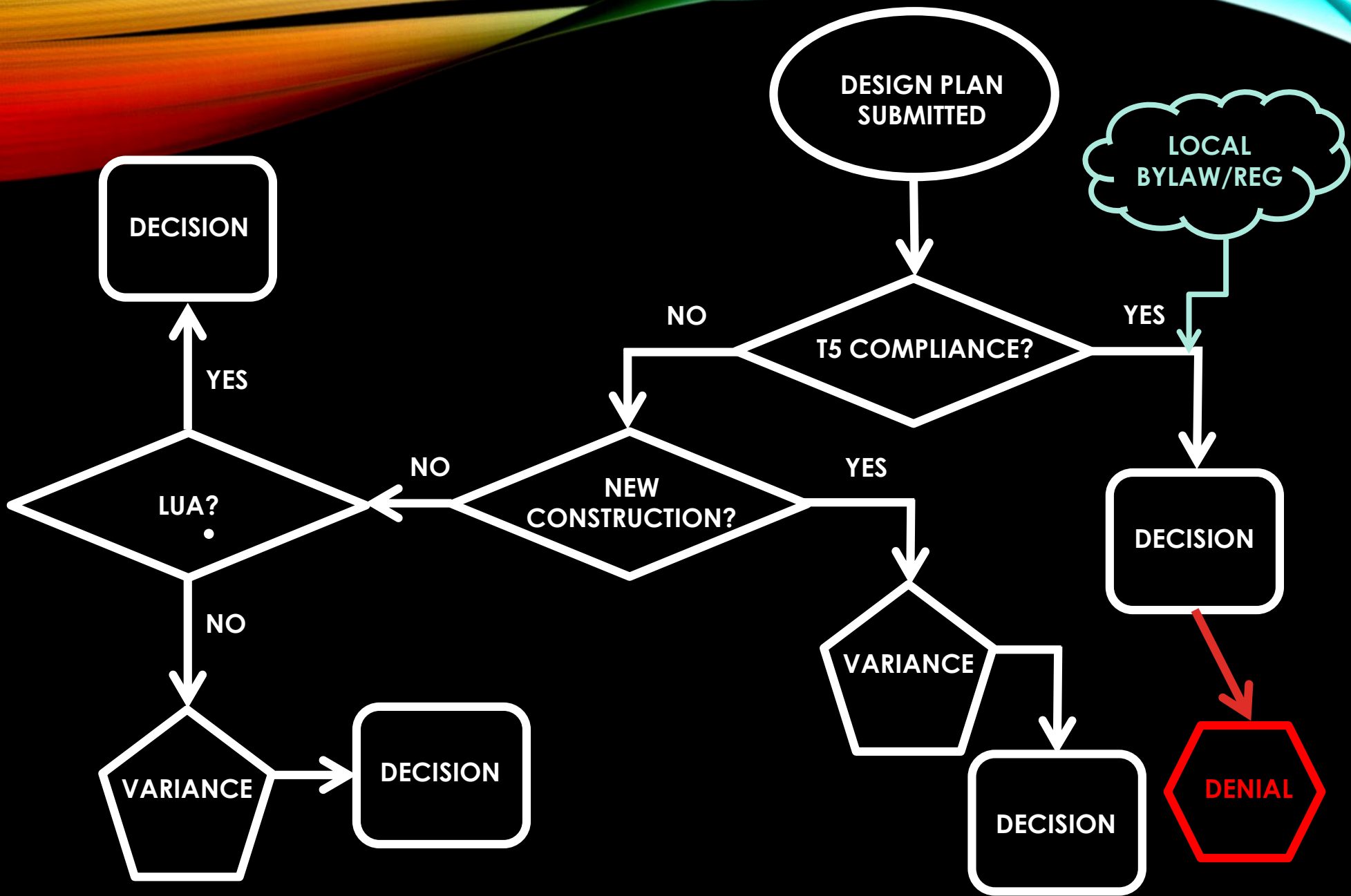
- Upgrades/Repairs [310 CMR 15.410(1)]
 - Proponent establishes that enforcement of the provision from which variance is sought would be **manifestly unjust**;
 - **Equivalent environmental protection** is provided without strict enforcement of the provision from which variance is sought.
- New Construction [310 CMR 15.410(2)]
 - Same as for upgrades/repairs **PLUS**
 - Manifest unjust proof must include a demonstration that enforcement of the provision from which variance is sought would deny the proponent of **substantially all beneficial use** of the property
- Schools – still handled by MassDEP [310 MCR 15.416]

PROCESS AND CONDITIONS

- Process
 - Notification to abutters
 - Public hearing
 - Decision
 - Approval
 - Denial
- Conditions
 - Monitoring and reporting
 - Deed recording
 - Financial assurances
 - Anything else necessary to protect public health safety and the environment

VARIANCE PROHIBITION

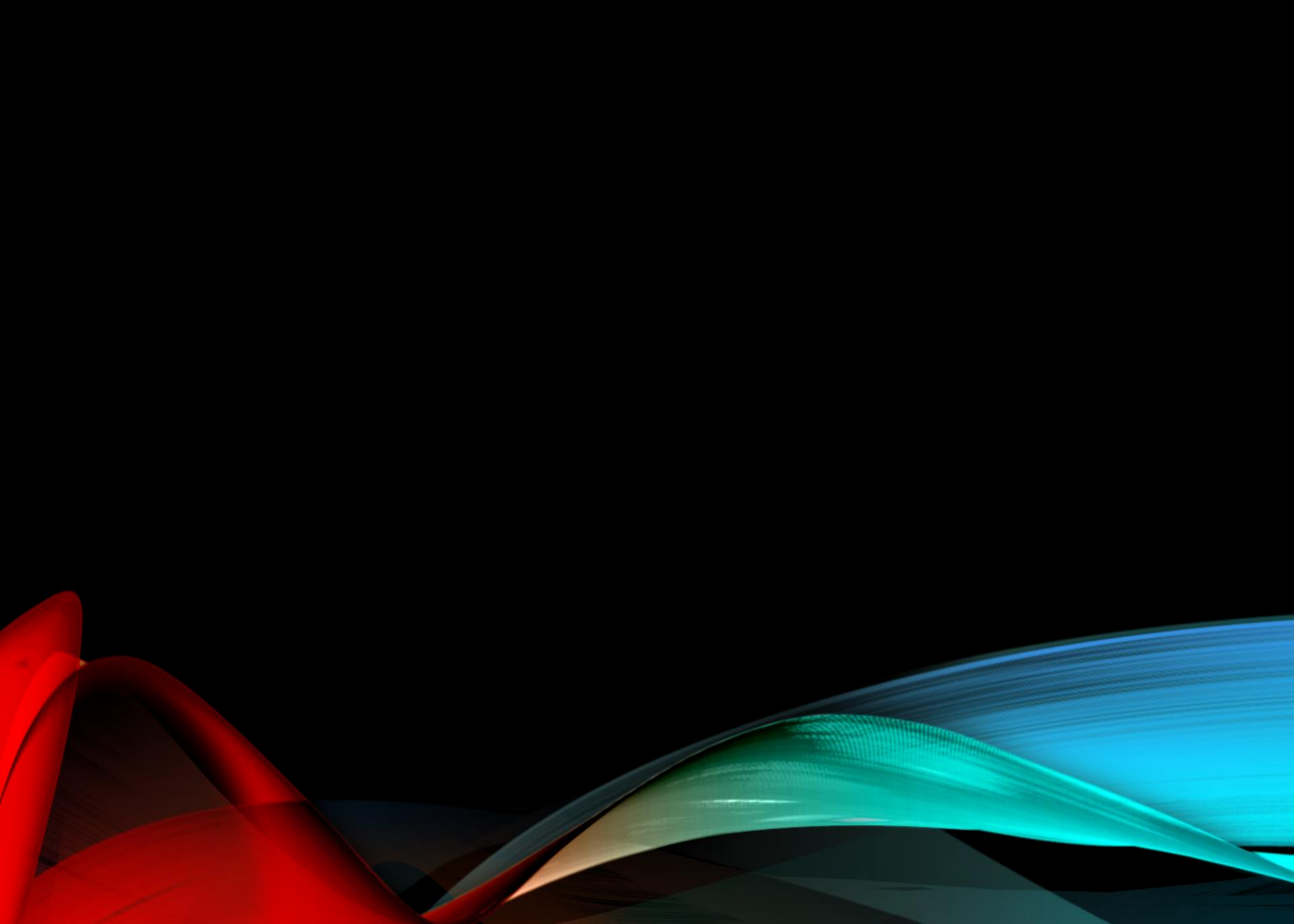
- Variance Prohibition – 4 feet NOPM
- Prohibited for new construction
- Permitted for upgrades/repairs with conditions



APPEALS

310 CMR 15.421

Any person aggrieved by any order, variance, issuance or denial of a Disposal System Construction Permit, Local upgrade approval or Certificate of compliance may appeal to a court of competent jurisdiction as provided for by the laws of the Commonwealth.



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THANK YOU

