



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 197-11 WAC
SEPA Rules

Summary of rule making and response to comments

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Concise Explanatory Statement

Chapter 197-11 WAC SEPA Rules

Shorelands and Environmental Assistance Program
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Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: SEPA Rules
WAC Chapter(s): 197-11
Adopted date: December 28, 2012
Effective date: January 28, 2013

To see more information related to this rule making or other Ecology rule makings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>

Reasons for Adopting the Rule

Ecology has been directed by Chapter 1, Laws of 2012 (2ESSB 6406) to update the SEPA rules to help streamline regulatory processes and achieve program efficiencies.

Ecology's goals for this rule making include:

- The SEPA process and documentation requirements can become more efficient with current technology and better aligned with current regulatory processes.
- New categorical exemptions will not reduce protection of natural and built environment.
- Public notice for projects exempted from SEPA will be maintained or improved.
The category of actions in the revision "shall be limited to those types which are not major actions significantly affecting the quality of the environment" (from RCW 43.21C.110).

Ecology's considerations for the rule making include:

The range and severity of environmental impacts of the activities covered by the proposed amendment, and the approximate number of actions of this type.

Existing tools that local governments can use to streamline project-level SEPA review, including:

- Infill exemption.
- Planned actions.
- Subarea planning for transit-oriented development.

The proposed rule amendments include:

- Increasing the flexible thresholds that local governments may adopt to exempt minor new construction projects from SEPA review.
- Establishing separate flexible exemption thresholds for local governments in counties fully planning under RCW 36.70A.040 and local governments in other counties.
- Revising the process that local governments follow in adopting flexible SEPA minor new construction exemption thresholds.
- Revising and clarifying language related to the “residential”, “parking lot” and “landfill and excavation” categories of minor new construction.
- Increasing the exemption threshold for SEPA review of electric facilities.
- Adding flexibility for all lead agencies to improve the efficiency of the environmental checklist. This includes allowing for electronic submittal of the environmental checklist, including electronic signature.

This initial rule making is to be completed by December 31, 2012 under a 2012 legislative directive (2ESSB 6406 Section 301). Ecology will follow this initial rule making with a more comprehensive update to the SEPA rule with amendments, to be completed by December 31, 2013.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on October 24, 2012 and the adopted rule filed on December 28, 2012. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology’s reasons for making them. We have summarized the changes; the text of the changes is shown in Appendix C.

- WAC 197-11-315(6): Edited for clarity.
- WAC 197-11-800(1)(b)(v): Edited section on landfill and excavation by eliminating reference to “stand-alone”; for clarity

- WAC 197-11-800(1)(c): Changed references from “table 1” to the WAC subsection; clarified language relating to the process for adopting a local ordinance; deleted reference to “comprehensive plans” in subsection (i); and other clarifications
- WAC 197-11-800(1)(d): Created new subsection for the table of project types, rather than referring to it as Table 1 in an earlier subsection; deleted stand-alone text references that are now included in the table; added clarifying language within the table
- WAC 197-11-800(23)(c): Added clarifying language regarding the upper limit of the exemption for overbuilding lines in response to comments and in consideration of the relationship of overbuilding to the added exempt electrical lines.
- WAC 197-11-960: Added clarifying language to the portion of the checklist that describes the new ability to exclude questions for non-project actions

Response to Comments

Description of comments:

Ecology has summarized and organized the comments by topic. If several comments made from multiple parties were related and on the same topic, one response was made. The tables below summarize those issues each party commented on. Responses are directly to the right of each comment.

All of the complete comments (and any attachments) in Appendix A were received by the agency during the formal comment period, and have not been edited in any way. Appendix A contains the written comments and Appendix B contains the transcripts, including comments from the public hearings.

Commenter identification:

Ecology accepted comments from October 24, 2012 until December 11, 2012. This section provides summarized comments that we received during the public comment period and our responses. (RCW 34.05.325(6)(a)(iii)). We have also provided an index to identify the specific comment each commenter made and the corresponding summary and response in the tables below (see page 18).

Comments and responses by topic

1. Flexible Thresholds

Comment	Response
A. Ecology has reached a reasonable balance with the flexible thresholds. We support retaining the current minimums as a default. We also support differentiating between fully planning under the	<i>Comment noted.</i>

Comment	Response
GMA and not fully planning	
B. Consider adding the number of trips generated in the new threshold levels, rather than just the number of parking stalls. Since this was not added, we request this be a topic in the phase 2 rulemaking.	<i>We will schedule this discussion for the phase 2 rulemaking.</i>
C. Some of the wording in Table 1 is confusing. In multi-family residential (MFR), does “60” refer to the number of units a MFR may have, or the number of MFR buildings?	<p><i>It refers to the number of individual dwelling units in an MFR, not to the number of MFR buildings. We will make the following changes to table 1:</i></p> <ul style="list-style-type: none"> • <i>Add the words “units” and “square feet/parking stalls” within each cell of the table, rather than just in the left-hand column</i> • <i>Better describe the reference in the table for commercial/office/school by reflecting the language used in the text</i> • <i>Refer to “project types” in the left column of the table instead of “levels”</i>
D. We recommend the exemptions for utilities, landfill, and excavation not apply to identified priority habitats and areas identified in sensitive area ordinances. There is the potential for impacts caused by utilities crossing sensitive areas and fill and excavation near sensitive areas.	<p><i>We believe these sensitive areas can be identified as critical areas at a local government’s discretion, and could make these exemptions not apply in critical area</i></p> <p><i>This and other exceptions to exemptions will be reviewed by the Advisory Committee in phase 2 of the rulemaking.</i></p>
E. It is imperative that higher threshold levels require a higher level of review and analysis for consistency with RCW 43.21C. Until data is provided that shows there will be no detrimental impact, we cannot support the proposed levels.	<i>The rule language requires a higher level of scrutiny by local governments, through the process of revising their local SEPA ordinance, if they choose to adopt higher levels.</i>
F. Mitigation sequencing is an important part of SEPA. If categorical exemptions are increased, then this may reduce the ability to use sequencing.	<i>We do not believe the rule changes affect the ability to use mitigation sequencing.</i>
G. Regarding the new exemption level for commercial/office/etc. -rather than the proposed 30,000 square feet and 90 parking spaces, lower that maximum upper threshold to 20,000 square feet and 60 parking spaces within urban growth areas. Evidence is cited that the trips per day for a 20,000 square foot office building would be	<i>Ecology understands this concern and also recognizes that the impacts associated with the 30,000 square foot maximum threshold level must be considered when local governments adopt a new threshold level. Traffic impacts (and others associated with this size of development) are often addressed</i>

Comment	Response
<p>231 average week day trips, whereas the number for a 30,000 square foot office building would be 347 average week day trips.</p> <p>(Note: several comments were received with these concerns)</p>	<p><i>through locally adopted impact fee regulations.</i></p>
<p>H. We propose several technical clarifications:</p> <ol style="list-style-type: none"> 1. Clarify that “requirements” as referenced in WAC 197-11-800(1)(c)(I) refers to policies and regulations adopted that apply to the exempt development 2. Remove all references to “land use plan” in subsection 315 (6) and 800. Land use plans are generally not regulatory. 3. Several changes to the language in 197-11-800(1)(b)(v) 4. Several changes to the language in 197-11-800(1)(c) 5. Several changes to the. language in 197-11-800(1)(c)(iii) 	<p><i>Thank you for the suggestions.</i></p> <ol style="list-style-type: none"> 1. <i>We have made this change.</i> 2. <i>It seems to us that in some cases, even though they are not regulatory, information in the land use plan might be useful in making the determinations called for in these sections. We are willing to re-visit this during phase 2.</i> 3. <i>We deleted “stand-alone” in 800(b)(v) because it seemed redundant.</i> 4. <i>We made some grammatical changes and clarified the reference to the new table with exemption levels.</i> 5. <i>We clarified reference to the table as a new subsection “d”, but did not change the reference from “exemptions” to “actions.” We thought that might cause confusion with the term “action” as defined elsewhere in the SEPA Rules.</i>
<p>I. The Department should not adopt the proposed changes, especially for jurisdictions that do not plan under the GMA. Jurisdictions planning under the GMA are required to protect quality and quantity of groundwater for public water supplies.</p>	<p><i>Please note that the minimum or “default” exemption levels have not been changed and therefore all agencies are subject to the same required standard. When using the optional flexible exemption levels, GMA counties and cities are better able to “adequately address” the impacts associated with the project types. They have plans, programs, infrastructure requirements zoning and other development regulations including impact fees.</i></p>
<p>J. We view the proposed streamlining and efficiency rulemaking as weakening environmental protection and further distancing the general population from the process. We have a number of specific comments:</p> <ol style="list-style-type: none"> 1. How will this affect local watersheds, communities? 2. How did Ecology determine what is “minor” and what is “major”? Neither a 30 unit multi-family building housing 	<ol style="list-style-type: none"> 1. <i>We believe, given new development regulations, that these higher threshold levels will not result in impacts that cannot be addressed through these other regulations.</i> 2. <i>See 1 above.</i> 3. <i>This exemption is not about sanitary landfills. It is about placing fill materials on a site.</i>

Comment	Response
<p>development nor a 30 single family housing development or minor, nor is a 10,000 to 40,000 square foot agriculture project minor.</p> <p>3. Increasing the landfill exemption is counterintuitive; stormwater and leachate in landfills have near and far distant impacts.</p>	
<p>K. Having two standards is in conflict with the nature of SEPA. And who is pushing to change the SEPA procedures?</p>	<p><i>We assume that the reference to having “two standards” is about the geographic difference specified for the flexible maximum exemption levels, based on whether a jurisdiction is planning under the GMA. Please note that the minimum or “default” exemption levels have not been changed and therefore all agencies are subject to the same required standard. When using the optional flexible exemption levels, GMA counties and cities are better able to “adequately address” the impacts associated with the exempt project types. They have plans, programs, infrastructure requirements zoning and other development regulations including impact fees.</i></p>
<p>L. We support dividing single-family and multi-family into separate exemptions. The Department may need to define “multi-family”. We also agree with landfill and excavation provisions.</p>	<p><i>We will consider the need for further definition in phase 2.</i></p>
<p>M. Please consider a wording change in 197-11-800(1)(b)(i) that clarifies what we are concerned about – the location or construction of single family dwelling units. We are also concerned that (b)(ii) isn’t clear that duplexes could be allowed. Also, please use similar terminology; the term “default” is used in some places but not others.</p>	<p><i>We are leaving the language as proposed. “Location” allows for the possibility of installing manufactured or mobile homes, which are not typically “constructed”. A duplex is a multi-family residence and will not likely get confused with the exemption for “single family” structures. Regarding the term “default”, we have made the recommended change to subsection (c).</i></p>
<p>N.</p> <ul style="list-style-type: none"> • If categorical exemptions are increased and fewer proposals are subject to SEPA review, it is likely that future cumulative impacts from permitted development will be greater. • Allowing local governments more flexibility in deciding critical environmental issues would seem to be a poor choice at this particular time. • By reducing development subject to SEPA review, you are reducing the public’s right to 	<p><i>The proposed rule change allows but does not require higher exemption levels to for cities and counties. Any newly proposed exemption threshold must be supported by findings of fact that existing regulations adequately avoid, minimize or compensate for impacts to all elements of the environment listed in WAC 197-11-444. This includes impacts to Puget Sound.</i></p>

Comment	Response
<p>meaningfully participate in local government. Public process is an important part of SEPA, but will be an unintended casualty if exemptions are increased.</p> <ul style="list-style-type: none"> • If we are to stop the degradation of Puget Sound we need more restrictive permitting not more exemptions. • I object to proposed changes in the SEPA Rules, which would increase the difficulty in adopting land use practices that could keep Puget Sound from becoming a dead zone. • I do not think we should raise the threshold levels for exempting projects from environmental review. • The enactment of other environmental regulations does not negate the need to rely on SEPA. <p>(Note: several comments were received with these concerns)</p>	

2. Local Government Ordinance Adoption

Comment	Response
<p>A. The comment period for review of local ordinances should be changed from 21 days to 60 days, as was suggested to the Advisory Committee. 21 days will not allow time for meaningful review and engagement with local governments. Evaluating the implications of code changes across larger geographic areas is more complex.</p>	<p><i>The length of the comment period is proposed to be at least 21 days so an agency with a longer review time would not have to change their procedures. Ecology staff, and those at other agencies, were concerned that local ordinances that propose a change to SEPA exemption thresholds require a longer review period than the typical 14-days for DNSs.</i></p>
<p>B. Could Ecology prescribe a standard notice process for local ordinances, so that local governments announce SEPA changes in an easily-identifiable manner?</p>	<p><i>We agree this would be helpful, but think this is an issue for guidance and training rather than rulemaking. We may discuss this as part of the phase 2 rulemaking.</i></p>
<p>C. Please delete the proposed new section in WAC 197-11-800(1)(c)(ii) that calls for a description of the public comment opportunities This effectively requires a project level review process for newly exempt projects. The more appropriate idea is in WAC 197-11-800(1)(c)(3), wherein there is a public notice requirement for adoption of the new SEPA ordinance that establishes new exemption level.</p>	<p><i>The proposed rule only requires local government to disclose the underlying project level public notice/comment opportunity without SEPA review. It does not require additional public notice for exempt projects.</i></p>

D. The idea of only having 21 days to review a new ordinance puts a burden on local citizen groups. This should be 6 weeks.	<i>See response to 2A above.</i>
E. We support the new procedural requirement for adopting an ordinance or resolution enacting higher optional thresholds.	<i>Comment noted.</i>
F. We support the 21-day review period for ordinances or resolutions adopting higher thresholds.	<i>Comment noted.</i>

3. Cultural/Historic Resources

Comment	Response
A. There will be decreased notice for potential impacts to cultural and historic resources posed by increasing the exemption levels. Unlike other impacts, there are generally not other regulations that provide the same level of notice and review for cultural resources. It is the project's location, rather than its scale, that is of concern. This omission could mean a "probable significant adverse environmental impact" under SEPA. The increased exemption levels should result in "no net loss and no harm" to significant cultural resources.	<i>We understand and appreciate the concerns raised in these comments. We have committed to addressing the topic of notification and cultural resources related to SEPA in the phase 2 rulemaking, which starts in January 2013.</i>
B. <ul style="list-style-type: none"> • The local ordinance adoption procedures hold promise but are currently too vague around the cultural resources issues • There is a proposal for requiring adopting of a specific set of findings that should be considered for inclusion in the rule, along with consistent standards • Ecology should consult with the Washington State Department of Archaeology and Historic Preservation in developing proposed findings • Any rule revision must result in no net loss or harm to significant cultural resources <p>(Note: several comments were received with these concerns)</p>	<i>These are useful suggestions and will be considered in the phase 2 rulemaking.</i>
C. The revisions outlining a process for new exemption levels also refer to mitigation if impacts are "adequately addressed". It should be made clear that "environmental analysis"	<i>The commenters are correct that the GMA does not require a local government to address cultural resources "...in the context of comprehensive planning..." This topic will</i>

<p>includes consideration of the full range of cultural resources as elements of the environment to be addressed. In addition, it should be noted that the GMA does not address or safeguard cultural resources in the context of comprehensive planning. It needs to be made clear that, as already noted, “adequately addressed” includes consideration of cultural resources.</p>	<p><i>be part of the considerations during the phase 2 rulemaking. Part of the consideration will be whether this issue requires modification to rule language, or whether it is best addressed by providing guidance in the SEPA handbook and in specific training.</i></p>
<p>D. SEPA is often the only notice received regarding potential impacts to cultural resources. Ecology’s proposal to require exempt projects to put notice in the SEPA register will not protect cultural resources.</p>	<p><i>This proposal for listing newly exempt projects in the SEPA Register was an early idea, but was not ultimately included in the rule proposal. Ecology will continue to work with the Advisory Committee to maintain or improve public notice for projects exempt from SEPA review.</i></p>
<p>E. We recommend the checklist include an electronic link to DAHP and the online WISAARD database (Washington Information System for Architectural and Archaeological Records Data)</p>	<p><i>Ecology has been working on updating our checklist guidance for the past year. It currently includes revised guidance related to cultural resources and a link to the DAHP database. Follow this link for more information:</i></p> <p style="text-align: center;"><u>SEPA Environmental Checklist with Guidance</u></p>
<p>F. Checklist is vital for tribal review of a project’s potential impacts. Question B13 (historic/archaeological/cultural resources) cannot be answered without a process that includes historic research, tribal consultation, data gathering and archaeological survey. A “no” answer is not adequate. We have several specific suggestions on improving question B13.</p>	<p><i>Ecology agrees and appreciates specific suggestions for changing both the wording of the questions and the guidance for answers to Question 13(a-c). The specific process suggestions will be addressed during phase 2 rulemaking.</i></p>
<p>G. We oppose the increases to optional maximum thresholds for certain minor construction because they are not accompanied by specific findings related to cultural resources.</p>	<p><i>See response to comment 3 (A) above.</i></p>
<p>H. Consider a new proposal for a set of findings necessary for a project to be SEPA-exempt:</p> <ul style="list-style-type: none"> a. Exempt for archaeology if: <ul style="list-style-type: none"> i. Prior negative survey on file ii. No ground disturbance proposed iii. Project in 100% culturally-sterile soil b. Exempt for built environment if both: 	<p><i>We will include this proposal in our phase 2 discussions about cultural resources and notifications. We appreciate the time you took to develop this approach.</i></p>

<ul style="list-style-type: none"> i. Less than 45 years old; and ii. Not eligible for or listed in any historic register or historic survey c. Exempt for archaeology and built environment if: <ul style="list-style-type: none"> i. Cultural resource management plan is incorporated into comp plan; or ii. Local ordinances or development regulations address pre-project review and standard inadvertent discovery language (SIDL); and iii. Data-sharing agreement in place. d. For all projects, exempt or not: <ul style="list-style-type: none"> i. Include standard inadvertent discovery language on all related permits to facilitate compliance with RCW 27.53 and 27.44 	
<p>I. Cultural resources findings necessary for a project to be SEPA-exempt for archeology should be when there has been prior negative survey information that includes the specific area of the current project and has been conducted within the past five years and is on file at DAHP.</p>	<p><i>Comment noted</i></p>

4. Environmental Checklist

Comment	Response
<p>A. We support the ability to waive the requirement to complete part B of the environmental checklist. This will simplify the process. We support the change to allow electronic signature</p>	<p><i>Comment noted.</i></p>
<p>B. Regarding WAC 197-11-315(d), there is often disagreement on what is “adequately covered”, therefore this is not a good WAC modifier.</p>	<p><i>We considered other terms to convey this requirement but this one is commonly used and therefore has familiarity along with being vague. We may be able to revisit this term in Phase 2 rulemaking or at a later date after seeing how it has been used by local governments.</i></p>
<p>C. What is an “irrelevant project checklist”?</p>	<p><i>In many instances it is not appropriate to fill out the project checklist portion for a nonproject action.</i></p>

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5. Electric Facilities

Comment	Response
A. Support the proposed change. New lines can generate considerable community interest and concern.	<i>Thank you for your comment.</i>
B. The current proposed language provides some flexibility and recognition of our desire to use existing corridors but not full recognition. Our transmission lines are typically 115kv or 230kv and both use similar pole configurations and require the same right of way corridors. The failure to recognize all existing corridors is a problem. We request the threshold be 230kv instead of 115kv, and the flexibility of right of way widths when upgrading from distribution to transmission lines.	<i>The intent of the proposed exemption increase is to update the rule language in response to the current industry standards for distribution lines. We did not consider an alternative for higher voltage transmission lines because of the potential for significant impacts in some locations and configurations.</i>
C. We recommend adding a new subsection that would apply in areas where electrical facilities already comprise part of the existing infrastructure, and in areas where future urban growth and associated infrastructure needs are addressed in GMA comprehensive plans. This proposal would extend, in a limited way, an existing exemption that has been in effect for over thirty years.	<i>This is a new exemption proposal and may warrant some additional discussion in Phase 2.</i>
D. The threshold exemption level for electrical facilities should not be raised, regardless of whether they are in existing rights of way or utility corridors. These designations do not ensure that proper environmental and cultural review has occurred.	<i>As noted above, the proposed increase from 55kv to 115kv is consistent with the current industry standards for local distribution of electricity - which is what the current exemption is intended to cover.</i>
E. We propose the following clarification in subsection 23: confirm that the exemption for transmission does have an upper limit by striking “more than 55,000 volts” and inserting “up to and including 115,000 volts”.	<i>We have made that change.</i>
F. What are the impacts to wildlife and adjoining communities by increasing the exemption level to 115,000 volts? Who will be measuring the radio frequency emissions?	<i>No information was provided that indicates there is any additional impact to wildlife and adjoining communities by increasing the exemption level. And, as far as we know, there are no requirements for any particular agency to measure radio frequency</i>

	<i>emissions.</i>
<p>G. Transmission line overbuilds should not be exempt, for these reasons:</p> <ul style="list-style-type: none"> a. A prior threshold determination should exist b. They have increased environmental impacts and increase the rate of bird kills. c. They can result in greater aesthetic impact d. They may require structural changes to poles and wiring configurations e. They may require digging new holes or enlarging road networks that would require cultural resource surveys if not previously done f. They can increase EMF exposure for workers and the public g. Exemptions can result in loss of oversight and missed opportunities for cost-savings through conductor replacements h. They have significant impacts by definition and result in cumulative impacts i. They can increase the risk of wildfires j. The term “overbuild” is vague and not defined <p>(Note: several comments were received with these concerns)</p>	<p><i>We consulted with utilities, state agencies, and our advisory committee in developing these revisions (as directed by the state legislature to consider). The information we have available to us does not indicate increased impacts as noted in this list. Regarding the comment about no definition for “overbuild”, we will consider that during the phase 2 rulemaking.</i></p>

6. Other Comments

Comment	Response
<p>A. We question some of the assumptions in the cost-benefit analysis. It fails to consider the potential costs of transferring cost from SEPA project proponent to the public. Commercial and residential project proponents should provide decision makers with information on trip generation and traffic impacts. This rule allows local governments to exclude projects from SEPA review; the c/b analysis is silent on the potential costs of impact of the lack of notice.</p>	<p><i>Ecology does not foresee a transfer of potential costs; the changes are predicated on local governments’ ability to address these impacts in existing ordinances, not using the SEPA process.</i></p>
<p>B. Amendments to SEPA need to consider jurisdictions that are so small they don’t have</p>	<p><i>The lower exemption levels are the default. If a jurisdiction is considering using the higher</i></p>

<p>staff with appropriate knowledge. Jurisdictions with the appropriate sophistication should be able to have SEPA flexibility; others should maintain the status quo.</p>	<p><i>exemption levels, they will need to explain their decisions through their findings in order to use the higher levels</i></p>
<p>C. We request that Ecology seek an interpretation from the AG’s office on the distinction between the categorical exemption for construction or location of residential structures (197-11-800(1)(b)(i)) and the exemption for short plats or short subdivisions (197-11-800(6)(a)). We will comment on this after reviewing the AG interpretation.</p>	<p><i>We have the understanding that these are two separate topics, and plan to consider this during the phase 2 rulemaking. During phase 2, we will consider whether this issue warrants a discuss with the AG’s office</i></p>
<p>D. Why was only one public hearing held, and only in Olympia?</p>	<p><i>We provided the opportunity for people anywhere in the state to call in and provide testimony via telephone, and listen in on the proceedings. We held two hearings on December 4, one in the afternoon and one in the evening. There were 13 people attending the afternoon hearing, and 8 on the phone. In the evening, there were 3 people attending and 2 on the phone.</i></p>
<p>E. The timeframe for the phase 1 rulemaking was accelerated by legislative direction. However, we think there are ways to improve the stakeholder process for phase 2. We encourage Ecology to prepare a record that reflects the issues and concerns raised by all participants.</p>	<p><i>We will confer with the Advisory Group and other stakeholders to improve the process for phase 2.</i></p>
<p>F. The Ocean Acidification Blue Ribbon Panel just issued its report. Ocean acidification is known to threaten Washington’s shellfish industry. Two principle causes of ocean acidification are atmospheric CO2 and excess nutrients. How do the current changes in SEPA reduce the causes of ocean acidification? Will future changes in SEPA address the causes of ocean acidification?</p>	<p><i>If a specific governmental “action” (including permit applications) is found to have adverse impacts related to ocean acidification, an agency with jurisdiction can condition or deny the proposal based on their SEPA supplemental authority and the identified impacts in the environmental review.</i></p>
<p>G. Increased environmental protection from GMA and SMA regulations are cited as a basis for increasing exemptions, yet the evidence is that “no net loss” standards and anti-degradation standards are not being met.</p>	<p><i>This comment indicates that the implementation and enforcement of GMA and SMA is inadequate and consequently SEPA authorities and responsibilities are still needed to compensate for this. There is broad agency discretion related to the substantive and procedural content of SEPA reviews. Consequently, there is no greater opportunity to achieve GMA and SMA environmental protection standards using SEPA review on a project by project basis.</i></p>

	<p><i>Nevertheless, Ecology recognizes the importance (and statutory requirement) of identifying circumstances when a specific exemption should not apply based on the potential for significant impacts -despite the existence of GMA and SMA. The 2013 SEPA rulemaking process will be looking at these issues in a bit more depth.</i></p>
<p>H. Reduce the complexity of the SEPA process:</p> <ul style="list-style-type: none"> • I am in favor of increasing the exemptions on more projects. Anything that would reduce the complexity and cost of things associated with living is welcome. • The requirements for SEPA review have always been redundant and a time burden. SEPA is a dinosaur and should be gotten rid of. • Please lessen the burden on local jurisdictions and applicants and loosen the current requirements of SEPA. 	<p><i>The proposed increase in the flexible exemption levels for minor construction projects as well as the less burdensome checklist for non-project proposals responds to these concerns.</i></p>
<p>I. We are concerned that the new exemptions may affect conservation practices funded by local conservation districts. The new exemptions should only be allowed for communities with demonstrated adequate regulatory capacity to protect natural resources.</p>	<p><i>The proposed rule change allows but does not require higher exemption levels to for cities and counties. Any newly proposed exemption threshold must be supported by findings of fact that existing regulations adequately avoid, minimize or compensate for impacts to all elements of the environment listed in WAC 197-11-444.</i></p>
<p>J. We removed and replaced tanks and piping at 2 sites, cleaned up both of them received nfa on one and waiting for an nfa on the other. The tanks and plumbing were replaced with all new dbl wall fiberglass, with all the bells and whistles to avoid pollution. We did not add any fueling positions, or increase our footprint. The other agencies said that we did not need a SEPA. But Northwest Air Pollution Authority said we did. I think that this is very unjust and is only done as an income source. They considered it a substantial development, to remove and replace piping. You need to get a handle on these other agencies.</p>	<p><i>Comment noted.</i></p>
<p>K. Dec 4 hearing – summarized comment</p> <ul style="list-style-type: none"> • Watering down SEPA is not helpful. As it is now, SEPA seems to have little effect on holding entities accountable for what projects 	<ul style="list-style-type: none"> • <i>The rule changes do not change the responsibility of an agency to deal with environmental impacts. Under state law and the SEPA Rules, local governments still have</i>

<p>they propose or how they implement them. It seems that the revisions are about making it easier for Counties, Cities, and ecology to rubber stamp and okay them without having to do too much to protect the environment.</p> <ul style="list-style-type: none"> • I wonder how you can apply requirements if you don't know where the critical areas are. • What stops counties or cities from breaking them up a larger project into three or four smaller projects to meet the minimum requirement and then after all the permits and everything are issued, suddenly decide that they're one cohesive plan? • The legislature should not worry about streamlining the SEPA process while gutting any power in it has of protecting the environment but to work to enforce the current SEPA rules. I also think that it's very wrong that they're trying to keep the public from having availability to go before the growth management board. 	<p><i>to review projects and identify potential impacts. The changes acknowledge that some impacts are already addressed in other more specific regulations, so agencies don't need to do it twice.</i></p> <ul style="list-style-type: none"> • <i>Generally, an agency knows the broad outlines of critical area locations, but sometimes relies on the specific information provided by a project applicant to finish identifying specific areas and locations.</i> • <i>The SEPA Rules require counties and cities to consider projects as a whole, not break them up for purposes of avoiding requirements. There are provisions for "phased review", which allows agencies and the public to focus on issues that are ready for decision and excludes from consideration issues already decided or not yet ready. WAC 197-11-060(5)(b)</i> • <i>Comment noted. These rules do not affect what is eligible for review by the Growth Management Hearings Board.</i>
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Commenter Index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s). The comments have been grouped together where possible. Commenters can find their comment and response by viewing the above tables and seeing the number/letter reference. These number/letter references can be found in the comment/response table above.

1. Mary Rossi, Mary Thompson, Chris Moore (SEPA Advisory Committee Members for Cultural Resources) - 3A, 3B, 3C, 3D, 3E, 3G, 3H
2. Allyson Brooks, Washington State Department of Archaeology and Historic Preservation (DAHP) – 3A, 3B, 3C, 3D, 3I
3. Philip Rigdon, Yakama Nation – 1E, 3A, 3D, 3F, 5D, 6B, 6C
4. Jennifer Kenny, City of Olympia Community Planning & Development – 3A, 3B
5. Claudia Newman, Ann Aagard, Gerald Steel (SEPA Advisory Committee Members for Environmental Community), Washington Environmental Council, Futurewise – 1G, 1H, 5D
6. Andronetta Douglass – 1N
7. Dan Polinder – 1N
8. Wendy Harris – 1F, 1N, 6B, 6G
9. Pat Collier – 1N
10. Peggy Bruton – 1N
11. Steve Marquardt, UFCW Local 21 – 1G
12. Glenn Hayman, Hayman Environmental LLC – 6F
13. George Pollow – 1N, 6B
14. Robert Ziegler, Washington Department of Fish and Wildlife (WDFW) – 1D
15. Laura Merrill, Washington State Association of Counties (WSAC) – 1A, 4A, 5A
16. Stephen Reinmuth, Washington State Department of Transportation (WSDOT) – 1B, 1C, 2A, 2B, 6A, 6E
17. David Osaki, City of Fife – 2C
18. Nancy Atwood, Puget Sound Energy – 5C
19. Gerald Steel (on behalf of himself and Washington Growthwatch) – 5E
20. Robin Bekkedahl, Avista (letter and oral comment at Dec 4, 1:30 PM hearing) – 5B
21. George Wooten, People for Alternatives, Conservation and Education (PACE) – 5F, 5G
22. Suzanne Skinner, Center for Environmental Law and Policy (CELP) – 1I
23. Darlene Schanfald, Olympic Environmental Council – 1J, 4B, 4C, 5E, 6D
24. Danna Del Porto – 1J, 1K
25. Bob Sextro – 1E, 1J, 6B
26. Al Bergstein – 1E, 2D
27. Isabelle Spohn, Methow Valley Citizens Council – 1I, 2A, 5F
28. Diane Sugimura, City of Seattle – 1A
29. David Kliegman, Okanogan Highlands Alliance – 1I
30. Brandon Houskeeper, Association of Washington Business (AWB) – 1A, 1L, 2E, 4A, 6E, 5B
31. Leslie Ann Rose, Citizens for a Healthy Bay (CHB) – 2F, 1G, 5E
32. Jeanette McKague, Washington Realtors – 1M, 4A
33. Craig T. Nelson, Okanogan Conservation District – 6B, 6I
34. Gordon Bearse – 6H

35. Raymond Tyas – 6H
36. Chuck Sundsmo – 6H
37. Barney Yorkston – 6J
38. Patricia Vandehay (oral comment at Dec 4, 1:30 PM hearing – see appendix B) – 6K

Appendix A: Written Comments Received

Comments on Ecology's Proposed Rule Amendments WAC 197-11 Published November 7, 2012

**Submitted by the Cultural Resources Interest Group Representatives
on Ecology's SEPA Rule Making Advisory Committee**

December 3, 2012

The three cultural resource representatives on Ecology's SEPA Rule Making Advisory Committee (Mary Rossi-Applied Preservation Technologies, Mary Thompson-Artifacts Consulting, Chris Moore-Washington Trust for Historic Preservation) would like to submit the following comments for Ecology's consideration.

First, we would like to thank the Department of Ecology and the SEPA Rule Making Advisory Committee for their hard work during this first round of rule making. We acknowledge the challenge of operating under a truncated timeframe and still meeting the Legislative mandate to put forth a rule update by year's end.

Regardless of the challenging situation, however, the proposed rule amendments fail to address a number of our concerns, as they remain silent on specific provisions for cultural resource protection. We look forward to more thoroughly addressing cultural resource issues in the 2013 process.

Background

SEPA explicitly includes cultural resources and is intended generally to "preserve important historic, cultural, and natural aspects of our national heritage" and prevent "probable significant adverse environmental impact." The purpose of the modernization called for in SB 6406 is to bring SEPA in line with current land-use planning and development regulations, including the Growth Management Act (GMA) and the Shoreline Management Act (SMA); however, not all local jurisdictions use the GMA or the SMA to plan for cultural resources, even though their protection is a stated goal of both Acts.

Therefore, the directive to increase the thresholds for SEPA review of minor construction projects will result in an increased number of projects that are not reviewed for impacts to cultural resources via the SEPA Environmental Checklist; the resulting impacts may well constitute a "probable significant adverse environmental impact" (RCW 43.21C.031) and could result in violation of State cultural resource law (RCW 27.53 and 27.44). Such a scenario is in direct conflict with the broad agreement Ecology reported was reached during the multi-year effort leading up to SB 6406: "Reform will not reduce protection of the natural and built environment."

Modernizing SEPA necessarily involves not only the proposed streamlining efforts but also a heightened recognition of cultural resource issues and the increased availability of relevant information that local jurisdictions should apply during planning and

development activities (e.g. DAHP's online WISAARD database). It is no longer acceptable to ignore a critical pre-project opportunity to determine if a hole is to be dug in a high probability zone for archaeology or if a new building will affect existing historic resources. Pre-project review like that conducted via SEPA can help prevent situations like the Port Angeles Graving Dock and the Blaine Wastewater Treatment Plant.

PROPOSED RULE AMENDMENTS

Increased Optional Maximum Thresholds [WAC 197-11-800(1)(c) and Table 1]

In terms of the proposed increases to the optional maximum thresholds for certain minor construction, we oppose them not on the basis that they are too permissive but on the basis that such increases are not accompanied by specific findings related to cultural resources. The issue is not the size of the hole in the ground but the location of the hole. Basing thresholds on variables such as units of housing and square footage is not appropriate to cultural resource concerns.

Threshold Adoption Requirements [WAC 197-11-800(1)(c)(i)]

The threshold adoption requirements hold promise, but they are too vague at this point. What are the necessary findings? How are they proven? Who approves/denies their adequacy? Are cultural resources and their locational (vs. size) sensitivity factored in? Clarification of these issues must occur before adopting such a provision.

The proposed rule amendments allow jurisdictions to adopt the new optional exempt level through ordinance or resolution provided the jurisdiction demonstrates it has adequately addressed "environmental analysis, protection and mitigation" in applicable and specific "adopted development regulations, comprehensive plans, and applicable state and federal regulations." This approach also holds some promise but, again, does not provide a consistent standard for jurisdictions to demonstrate that cultural resources have been adequately considered. As long as cultural resources remain an optional element under the GMA and, by extension, jurisdictional comprehensive planning, relying on such plans and regulations will not necessarily address cultural resource concerns.

SEPA explicitly includes "historic and cultural preservation" at WAC 197-11-444(2)(b)(vi). The rule amendments must require that cultural resources be addressed as part of the required documentation. We would be encouraged if jurisdictions either included cultural resources within their comprehensive plans or adopted development regulations that included proactive strategies to identify and protect cultural resources; however, the adequacy of development regulations pertaining to cultural resources is not defined. Without clear understanding of what "adequacy" means, we fear jurisdictions will default to the "applicable state and federal regulations" standard, which now addresses the treatment of cultural resources discovered after the fact (RCW 27.44 and 27.53) and results in no real improvement to the present situation.

We strongly recommend that Ecology consult with DAHP to determine what constitutes acceptable approaches within development regulations so that this issue can be resolved for the benefit of the jurisdictions seeking higher thresholds.

Notification [WAC 197-11-800(1)(c)(ii) and (iii)]

Although SEPA is the only regulatory process at the State level that requires consideration of impacts to cultural resources, applicants and SEPA Officials often overlook them; therefore, notification is a crucial element of the SEPA process and is often the only notice our peers receive. The proposed rule amendments include a provision for “locally established project-level public comment opportunities...for proposals included in these increased exemption levels.” They also include a provision for comment by parties including tribes, agencies, and the public on adoption of new exemption levels. It is unclear, however, how these provisions will be implemented and whether or not local governments will be responsive to cultural resource concerns.

Environmental Checklist [WAC 197-11-315]

If agreement can be reached on what constitutes adequate protection for cultural resources in comprehensive plans, ordinances, and development regulations (see Threshold Adoption Requirements section above), then our concerns regarding the proposed changes could be alleviated. We recommend that the Checklist include an electronic link to DAHP and the WISAARD database.

ALTERNATIVE APPROACH

In our experience, significant savings of time and money are achieved by considering impacts during pre-project review like SEPA rather than during an inadvertent discovery after project activities have commenced. The means for doing so are not inherently burdensome and do not require additional staff. With the increased availability of relevant information (e.g. DAHP’s online WISAARD database, data-sharing agreements), local jurisdictions can readily integrate specific cultural resource findings during planning and development activities.

We reiterate the types of cultural resources “findings” necessary for a project to be SEPA-exempt; again, they are not dependent on size but on locational information:

Exempt for archaeology if *any*:

- 1) Prior negative survey on file.
- 2) No ground disturbance proposed.
- 3) Project in 100% culturally-sterile fill.

Exempt for built environment if *both*:

- 1) Less than 45 years old; *and*
- 2) Not eligible for or listed in any historic register or historic survey.

Exempt for archaeology *and* built environment if:

- 1) Cultural resource management plan is incorporated into Comp Plan, *or*
- 1) Local ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL), *and*
- 2) Data-sharing agreement is in place.

For *all* projects, exempt or not:

Include standard inadvertent discovery language on all related permits to facilitate compliance with RCW 27.53 and 27.44.

Conclusion

We cannot support rule amendments that result in fewer notifications and/or increased exemptions granted without appropriate cultural resource findings, as this will only raise the potential for impacts to cultural resources. Again, such a scenario is in direct conflict with the broad agreement Ecology reported was reached: "Reform will be equal or better [than the current process]."

Cultural resource protection is not, as some have suggested, an "outlier" issue in terms of SEPA specifically or environmental protection generally. Cultural resources are the tangible evidence of our collective history. They are part of what makes communities unique, and they impart a sense of place critical to our individual and group identity.

Cultural resources enhance economic development pursuits and frequently represent a value-added component of successful projects. They are an integral part of sustainable development as measured from the "triple bottom line" perspective (i.e. people, planet, profit). It is no mistake that "people" (i.e. stakeholders) come first.

It *is* possible to include cultural resources in pre-project review of potential impacts if we are willing to do so, and the SEPA process represents an opportunity to do just that.



Allyson Brooks Ph.D., Director
State Historic Preservation Officer

December 4, 2012

Ms. Fran Sant
SEPA
Washington State Department of Ecology
P.O. Box 47703
Olympia, Washington 98504-7703

Re: Comments on SEPA Proposed WAC 197-11 Revisions

Dear Ms. Sant:

The Washington State Department of Archaeology and Historic Preservation (DAHP) is submitting comments and recommendations regarding final revisions to WAC 197-11 in fulfillment of SB 6406. Although we have commented previously, we take this opportunity to reiterate our concerns and recommendations, as follows:

- 1) The agency has been greatly concerned, since the beginning of SEPA reform discussions that any changes result in **no net loss and no harm** to significant cultural resources. With the introduction of threshold levels for exempted new construction, we see increased potential that loss and harm to these resources may occur. As we have stated before, from an historic preservation standpoint, it is a project's **location** rather than its scale, acreage, units, parking spaces, etc., that drives DAHP reviews and recommendations. Any threshold level raises a concern for DAHP if a commonly held goal of no net loss or harm is to be achieved.
- 2) Another overarching concern is notification. SEPA is a communication tool. We are concerned that proposed revisions significantly reduces opportunity for members of the public and affected Tribes to be notified and express concerns.
- 3) Revised language to WAC 197-11-800 (1) outlines a process for establishing new flexible exemption levels for environmental analysis. It also refers to mitigation for impacts to elements of the environment if impacts are "adequately addressed" in "specific adopted development regulations, and comprehensive plans and applicable state and federal regulations." DAHP strongly recommends that it be made clear in WAC 197-11-800, that "environmental analysis" is understood to include consideration of the *full range of cultural resources* as elements of our environment to be addressed.



- 4) In regard to the language discussed above, we remind you that the Growth Management Act (GMA) does **not** address or safeguard cultural resources in the context of local comprehensive planning. We do not believe that the added requirement that local governments must demonstrate that affected resources be "adequately addressed in specific adopted development regulations, and comprehensive plans and applicable state and federal regulations" will protect cultural resources. At minimum, this proposed text needs definition, clarification, and implementation particularly as it pertains to cultural resources. As in previous comments, DAHP recommends that "adequately addressed" is interpreted to mean locally **adopted plans, policies, regulations, ordinances, and agreements that have been approved by DAHP and interested Tribes.**
- 5) Finally, we want to clarify our previous comments that the types of cultural resource "findings" necessary for a project to be SEPA-exempt for archaeology is when there has been "prior negative survey information that includes the specific area of the current project and has been conducted within the past five years and is on file at DAHP."

Thank you for the opportunity to review and comment. Should you have any questions, please feel free to contact me at 360.586.3066 or Allyson.Brooks@dahp.wa.gov.

Sincerely,



Allyson Brooks, Ph.D.
Director, State Historic Preservation Officer

AB:bu

cc: Ann Aagaard, LWV
Brian Collins, Stillaguamish Tribe
Mike Groesch, WTHP
Pam Krueger, DNR
Scott Mannakee, Stillaguamish Tribe
Jennifer Meisner, WTHP
Kristin Michaud, Stillaguamish Tribe
Chris Moore, WTHP/Advisory Committee
Anne M. Ronan, Stillaguamish Tribe
Mary Rossi, Advisory Committee
Mary Thompson, Advisory Committee



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

October 4, 2012

Washington State Department of Ecology
c/o Tom Clingman
PO Box 47600
Olympia, WA, 98504

RE: State Environmental Policy Act Rule Making

Dear Mr. Clingman:

I appreciate the opportunity to provide comments on the proposed State Environmental Policy Act (SEPA) rule revisions.

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized Indian tribe under the Treaty of June 9, 1855 (12 Stat. 951). Under Article III of the Treaty, the Yakama Nation reserved rights to fish at all usual and accustomed places, together with the privilege of hunting and gathering roots and berries, both within and outside of its reservation. The Yakama Nation has a vested interest in any state rule making that has the potential to negatively affect any cultural resources or treaty reserved rights, including Yakama Nation water rights.

Please find attached correspondence to me from my staff. I concur with the findings of the report for cultural and natural resource protection.

Sincerely,

Philip Rigdon
Deputy Director of Natural Resources
Yakama Nation

CC File

MEMORANDUM

TO: Phil Rigdon, Deputy Director, DNR
THROUGH: Scott Nicolai, Yakima Subbasin Habitat Coordinator, YKFP
FROM: John Marvin, Habitat Biologist, YKFP
DATE: Tuesday, October 02, 2012
RE: State Environmental Policy Act Rule Making 2012

Background

Ecology is in the process of two rounds of updates to the State Environmental Policy Act (SEPA) rules (Chapter 197-11 WAC), as directed by the 2012 legislature. The legislature directed Ecology to modernize the rules that guide state and local agencies in conducting SEPA reviews, in light of the increased environmental protections in place under the Growth Management Act (RCW 36.70A), Shoreline Management Act (RCW 90.58) and other laws. This legislative direction is provided in Senate Bill 6406 (now codified as Chapter 1, Laws of 2012 1st Special Session), specifically in Section 301. The bill also revised certain aspects of SEPA procedures that took effect July 10, 2012.

The legislation sets up two rounds of rule updates: A narrowly focused initial round (targeted to be complete by the end of 2012) and a broader round of SEPA rule updates during 2013. As directed by Section 301 of the bill, the initial rule making will consider two specific topics:

- Increasing the thresholds for SEPA review of minor construction projects under Washington Administrative Code (WAC) 197-11-800(1) and (23)(c); and
- Improving the efficiency of the environmental checklist in WAC 197-11-960.

Senate Bill 6406 also directs Ecology to convene a SEPA Advisory Committee to assist Ecology in updating the SEPA exemption thresholds and the environmental checklist. I was placed on the advisory committee in July of this year. The advisory committee has met three times this year; 08/14/2012, 09/11/2012, and 10/02/2012.

Staff Recommendations

Staff's experience in the Yakama Nation Ceded lands is that SEPA is a necessary and vital tool to ensure that treaty reserved rights and cultural resources are protected. In addition, SEPA is often the only avenue for tribal participation in local land use processes. The levels of sophistication with regards to application of land use controls vary widely across the state, and it is staff's experience that the majority of local governments within the ceded lands do not have a firm grasp on the purpose of SEPA and environmental review; it is often seen as just another "permit" to issue. The justification of the legislature is that we now have GMA/SMA and the protection of critical areas; therefore, we can "relax" SEPA environmental review. There are local governments in the ceded lands that did not have a critical areas ordinance until 2010, or where staff's are so small that the fire chief is the SEPA responsible official. Any amendments to the SEPA administrative rules need to take this into consideration; where jurisdictions with the requisite level of sophistication and ability to implement its land use controls have SEPA flexibility, and those that do not should at least maintain the status quo.

The purpose of SEPA is “to declare a state policy which will encourage . . . harmony between humankind and the environment, . . . prevent or eliminate damage to the environment, . . . and enrich the understanding of the ecological systems and natural resources . . .” (RCW 43.21C.010).

The legislature . . . declares that it is the continuing policy of the state of Washington . . . to use all practicable means and measures, including financial and technical assistance, in a manner calculated to . . . fulfill the social, economic, and other requirements of present and future generations of Washington citizens. In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Washington and all agencies of the state to use all practicable means . . . **to improve and coordinate plans, functions, programs, and resources to the end that the state and citizens may . . . preserve important historic, cultural and natural aspects of our national heritage** (RCW 43.21C.020).

The legislature authorizes and directs that, to the fullest extent possible, the policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in the act, and that all branches of the government of this state, including state agencies . . . shall: utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man’s environment (RCW 43.21C.030).

Ecology submitted for review proposed draft rule making for increases in threshold exemptions, increases in threshold exemptions for electrical facilities, and efficiency changes to the environmental checklist on 09/25/2012.

In reminding the State of its responsibilities as set forth above, to improve, preserve and to administer its laws to prevent or eliminate damage to the environment, the Yakama Nation has participated in this Ecology Advisory Committee to assure that the Yakama Nation’s Treaty protected rights are recognized. With that in mind, these are the staff’s observations:

Threshold Exemptions

The threshold increases have two proposals; Proposal A with a general Tier 1 maximum and a Tier 2 of higher increases based on a higher level of scrutiny, with different levels inside and outside an Urban Growth Areas (UGA), and Proposal B limited to different thresholds inside and outside a UGA. In addition to proposed threshold increases, the proposal would require notice of SEPA exempt projects to the SEPA register.

At the beginning of the advisory group process, it was requested by numerous caucuses that any threshold increases be based on data; in an attempt to determine at what level does development not have a the potential for significant, adverse environmental impacts, and can therefore be exempted from SEPA review. No such data was ever provided. Each caucus submitted recommendations of new threshold levels. All of the recommendations appeared to be quite arbitrary, with no data or justification for the levels provided. The State caucus did however propose percentage increases based on a local review and analysis. The draft Ecology proposals also appear to be arbitrary with a lack of any data to base rule making on. While the state caucus proposal based on a percentage increase with a local review and analysis seems appropriate, it is probably too complex to address in the short time frame this year, in

addition to Ecology's Proposal A. If Ecology does put forth a proposal with tiered levels, it is imperative that the upper levels require a higher level of review and analysis for consistency with the act (RCW 43.21C). Until those that propose raising the threshold level for exemption from SEPA review, provide data to support that there will be no detrimental impact to the environment, Treaty protected natural and cultural resources, the Yakama Nation cannot agree to the levels presented in either Proposal A or B.

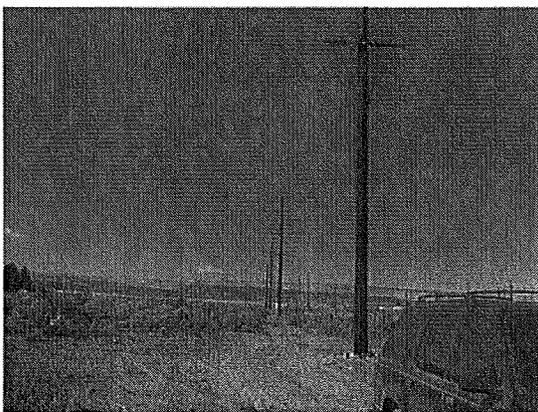
SEPA Notice

GMA does not require local governments to develop ordinances or regulations to protect cultural resources, and SEPA is often the only avenue for the tribe to provide comments on a proposals potential to disturb or destroy cultural resources. Ecology's proposal to require SEPA exempt projects to put notice in the SEPA register will not protect cultural resources. Notice without the opportunity to comment, or the ability to appeal a decision is useless.

Numerous jurisdictions in the ceded lands implement their CAO regulations at an administrative level, with no notice requirements unless SEPA is also required. Ecology's proposal to require SEPA exempt projects to put notice in the SEPA registrar will not protect treaty reserved rights. It appears tribes are lumped in with state agencies or other interested parties, which they should not. Additional notice to tribes will be on the agenda for the 2013 rule amendment.

Electrical Facilities

The SEPA threshold exemption for electrical facilities should not be raised, regardless if they are within existing rights-of-way or developed utility corridors. These designations do not ensure that proper environmental and cultural review has occurred. The proposed SEPA threshold exemption increase for electrical facilities from 55,000 volts to 115,000 volts could result in significant impacts to natural, cultural and archaeological resources (see photos of 115,000 volt transmission lines below). It is imperative that tribes, government agencies, the public, and decision makers are made fully aware of these potential impacts through the SEPA process prior to issuance of permits and commencement of construction.



Infrastructure for 115,000 volt transmission lines.

Please note, Yakama Nation expects that any new electrical facility that connects to the federal transmission system will go through the National Environmental Policy Act in addition to any local and state environmental and cultural review and permitting processes. This policy position has been communicated to the Bonneville Power Administration on several occasions.

SEPA Checklist

While many see the SEPA checklist as cumbersome or unnecessary, it is vital for tribal review of a proposal's potential effects to Treaty reserved rights and cultural resources. The majority of SEPA checklists reviewed within the Ceded lands are poorly prepared by the proponent and inadequately reviewed by local governments. The purpose of this process should not only be efficiency, but how to guide proponents to thoroughly prepare a SEPA checklist. For example, Question B13 of the SEPA checklist involves historic, archaeological and cultural resources. It has three parts:

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.
- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site?
- c. Proposed measures to reduce or control impacts, if any:

These questions are usually answered in ignorance: a) no, b) no, and c) not applicable.

The Yakama Nation has commented on proposals in SEPA to state agencies, counties and municipalities for years saying that this question cannot be answered in ignorance.

This question cannot be answered without a process that incorporates historic research, tribal consultation, data gathering and archaeological survey. SEPA rules require that decisions made during environmental review be based on sufficient information. Threshold determinations must be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal (WAC 197-11-335)." WAC 197-11-080(1) states that "(I)f information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents;" and "(W)hen there are gaps in relevant information or scientific uncertainty concerning significant impacts, agencies shall make clear that such information is lacking or that substantial uncertainty exists."

In addition to this, WAC 197-11-080(3) says that if information is not available or costs too much to obtain or if the means to obtain the information is speculative or unknown, the agency may proceed but it "shall generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed." Therefore, without a professionally reasoned archaeological investigation of a proposed project area, it must be assumed that the entire area contains an archaeological site of cultural significance.

The "help" button for the SEPA checklist for question B13b now includes really good information that comes straight from the Yakama Nation comments. B13a "Help" button is totally inadequate as it only talks about documenting structures over 50 years old. B13a should include the same "help" information as B13b. B13c is also good information on how to come up with measures to protect known sites.

If this is our opportunity to modify the questions, I would reverse part a. and b. The first part of the question should be to generally describe what historic, archaeological, scientific or cultural features and objects are on or adjacent to the proposed project. Proponents should be encouraged to do research of historic maps and records as well as consulting DAHP and Tribes. The not answering in ignorance should be the first information provided for the whole 3-part question. The second part should be to focus on what sites are on or adjacent to the proposal that may be eligible for inclusion in local, state or national registers of historic places. Then the third part is what measures are proposed to protect or mitigate affects to sites on or adjacent to the project.

Other Issues

Through the advisory committee meetings, a significant issue has arose concerning the distinction between the categorical exemption for construction or location of residential structures (WAC 197-11-800(1)(b)(i)) and the categorical exemption for short plats or short subdivisions (WAC 197-11-800(6)(a)). An interpretation on the difference from the State Attorney is requested. Yakama Nation will comment on this after reviewing the Attorney General's opinion.

cc: Office of Legal Counsel
file

Sant, Fran (ECY)

From: Jennifer Kenny [jkenny@ci.olympia.wa.us]
Sent: Wednesday, December 05, 2012 12:33 PM
To: ECY RE SEPA Rule Making
Subject: Proposed SEPA Rule Change

Follow Up Flag: Follow up
Flag Status: Completed

Good Afternoon,

As the City of Olympia Historic Preservation Officer I urge you to strengthen preservation of historic/cultural resource protections as you contemplate a change in SEPA. We need a consistent standard for municipalities to ensure that cultural resources are part any review. We also need precise language around how a jurisdiction can show due consideration of historic resources.

The best course would be to work with the Department of Archeology and Historic Preservation to develop the language in SEPA that will ensure consistent and clear protection of our state's historic and cultural resources. As with habitat and species, we need to be deeply thoughtful and knowledgeable about how our actions affect sensitive resources.

Thank you for the opportunity to comment.

Kind Regards,

Jennifer Kenny

Jennifer Kenny, Associate Planner
City of Olympia Community Planning & Development
601 4th Avenue East
PO Box 1967
Olympia WA 98507-1967
Tel: 360-753-8031
Fax: 360-753-8087
jkenny@ci.olympia.wa.us

This email and any responses may be subject to state public disclosure laws.

Sant, Fran (ECY)

From: April Putney [April@futurewise.org]
Sent: Tuesday, December 11, 2012 12:07 PM
To: ECY RE SEPA Rule Making
Cc: Claudia M. Newman Henry; Gerald Steel; Ann Aagaard; Tim@futurewise.org; darcy@wecprotects.org
Subject: comments on 2012 SEPA rulemaking
Attachments: ITE Traffic Generation 12000 Sq foot office.pdf; ITE Traffic Generation 30000 Sq foot office.pdf; ITE Traffic Generation 20000 Sq foot office.pdf; ITE Traffic Generation 20000 Sq foot single tenant office building.pdf; Environmental comments to SEPA rule 12.10.2012.docx

Hi,

Please find attached comments and supporting materials on the Department of Ecology's proposed 2012 SEPA rule that are being offered by the three environmental representatives of the Advisory Committee (Claudia Newman, Gerald Steel, Ann Aagaard), Washington Environmental Council, and Futurewise. Thank you for your consideration.

April



April Putney
Director of Policy & Advocacy

email: april@futurewise.org
web: www.futurewise.org

816 Second Avenue, Suite 200
Seattle, WA 98104-1530
o 206 343-0681 **Ext. 120**
c 206-450-3622

Our mission at Futurewise is to promote healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations.

****Please note our new address.****

12/19/12

Dear Department of Ecology:

On behalf of the environmental representatives on the SEPA Rules Advisory Committee (Committee), thank you for the opportunity to comment on your revised draft rule. As you know, we are committed to preserving the integrity of the State Environmental Policy Act by supporting transparency, ensuring accountability, and protecting our diverse environment from any significant impacts that may result from development projects.

Most of our comments are focused on why it is important to reduce the proposed categorical exemption for commercial development and to provide technical changes to clarify the rule language. None of the changes we propose would make the final rule substantially different than what was originally proposed in the draft, but by making these changes all Washingtonians will benefit from greater certainty and a healthy environment.

1. Categorical Exemptions – Commercial development

We urge the Department set the Commercial development exemption limit at or below 20,000 square feet and 60 parking spaces for urban growth areas. When adopting a rule that defines categorical exemptions, Ecology has a statutory obligation to include only those actions that are not major actions significantly affecting the quality of the environment. RCW 43.21C.110(1)(a). It is an inexact science to define actions as exempted based on their size. Size is relevant, but the use proposed and the location that it is proposed in also plays a large role in whether there will be significant adverse impacts. Commercial development incorporates a large number of different types of uses that could be proposed in a wide variety of different locations, with great variation in impacts. There is a high likelihood of significant adverse impacts caused by noise, traffic, air emissions, and lights and impacts to water quality, water quantity, critical areas, aesthetics, land use, and more with large commercial uses. We believe that SEPA plays a critical role in filling the gaps to disclose, analyze, and mitigate these impacts for any commercial use larger than 20,000 square feet.

We strongly urge Ecology to adopt 20,000 square feet as the new maximum flexible threshold exemption for offices, schools, and commercial buildings. This threshold will have much more modest environmental impacts. For example, a 20,000 square foot office building, according to the ITE traffic generation data, will only generate 231 average week day trips – compared to 347 average week day trips for a 30,000 square foot office building (copies of the worksheets for each of these building sizes are enclosed with this letter). Increasing the flexible threshold by 2.5 times will also result in other environmental impacts such as increased air pollution. The adverse impacts of 30,000 square foot office and retail uses results in a categorical exemption that violates RCW 43.21C.110(1)(a) which limits the types of actions included as categorical exemptions in the rules to those types which are not major actions significantly affecting the quality of the environment.

Adopting a 20,000 square foot maximum flexible threshold exemption for offices, schools, and commercial buildings is also consistent with standards for adopting rules in the Administrative Procedure Act. RCW 34.05.340 allows Ecology to adopt a modified rule if it is not “substantially different” from the proposed rule. Changing proposed WAC 197-11-800(1) Table 1 from a 30,000 square foot maximum flexible threshold exemption for offices, schools, and commercial buildings to a 20,000 square foot maximum is not substantially different. RCW 34.05.340(2) provides in full that

ENVIRONMENTAL COMMUNITY RESPONSE TO ECOLOGY SEPA RULE DRAFT

(2) The following factors shall be considered in determining whether an adopted rule is substantially different from the proposed rule on which it is based:

(a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;

(b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and

(c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

Changing to maximum flexible threshold from 30,000 to 20,000 square feet meets each of these standards. As to RCW 34.05.340(2)(a), a reasonable person would have understood that the proposed rule change would affect his or her interest with either maximum. The subject of the proposed and adopted rules is the same, raising the maximum flexible threshold. The effects of the proposed and final rules are similar; they substantially increase the maximum flexible threshold by thousands of square feet. The increase from 12,000 to 20,000 is a 67 percent increase. The one area where they do differ is that the environmental effects of the 30,000 square foot maximum flexible threshold are so great they violate RCW 43.21C.110(1)(a). Fortunately, an increase to 20,000 square feet would not share this legal defect.

The subject matter of the rule with our recommended threshold is the same general subject matter as the proposed rule and the anticipated effects, raising the maximum flexible threshold, are the same. So it complies with RCW 34.05.340(3) too.

2. Technical clarifications

Given that the following suggestions provide clarification to the proposed rule, we believe that these also meet each of the standards outlined in RCW 34.05.340(2). None of our proposed clarifications would affect a reasonable person's ability to have understood how his or her interests are affected; none alter the subject of the proposed rule; and the effects of the rules would be similar.

Please clarify that "requirements" WAC 197-11-800(1)(c)(i) refers to policies and regulations adopted that apply to the exempt development so it is consistent with the Advisory Committee's recommendation. In WAC 197-11-800(1)(c)(i) the word "requirements" may be ambiguous. The Advisory Committee recommendation was that the jurisdiction adopting the flexible threshold had adopted local requirements applicable to the exempt development or determines that the impact was covered by state or federal laws or regulations. This provision should be clarified to mean the jurisdiction adopting the flexible thresholds has development regulations and state [and federal] laws and regulations that address the impacts of the exempt development, as that was the intent of the working group who came up with the language for consideration. You can use the language recommended by the Advisory Committee or we offer the following alternative language with our additions double underlined and our deletions double struck through:

ENVIRONMENTAL COMMUNITY RESPONSE TO ECOLOGY SEPA RULE DRAFT

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. These requirements that apply to the exempt development can be addressed in specific adopted development regulations, comprehensive plans and applicable state and federal regulations.

Please clarify WAC 197-11-800(23) that the exemption for transmission lines does have limitations by striking “(more than 55,000 volts)” and replacing with “(up to and including 115,000 volts)”. The utilities subcommittee discussions led to an agreement that the changes would be limited to transmission lines up to 115,000 volts because going above 115,000 volts would be an illegal major impact to the environment. The intent of the overbuilding language (“more than 55,000 volts”) was really to allow (“up to and including 115,000 volts”) and so making this language change will not have a substantially different effect than the original draft – both languages will allow up to and including 115,000 volts which was the only anticipated effect discussed in the utilities subcommittee.

Please remove all references of “land use plan” in WAC 197-11-315(6) and WAC 197-11-800. It is not adequate if environmental protection is only addressed in a “land use plan” because a land use plan is generally not regulatory. For a land use plan or any functional plan to be regulatory, there must be a development regulation that implements the plan. Therefore, local requirements to protect the environment are only effective if they are in development regulations and the words “land use plan” should be deleted.

Please make the additional clarifications:

- In WAC 197-11-800(1)(b)(v) delete all proposed changes and add “, not exempted by subsection (2)(b),”:
Any stand-alone landfill or excavation, not exempted by subsection (2)(b), of 100 cubic yards throughout the total lifetime of the fill or excavation not associated with an exempt project in subsection (b)(i), (ii), (iii), or (iv); and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.
- In WAC 197-11-800(1)(c) add the word “up” in the first sentence, add the word “both” before the first use of the word “incorporated” and replace the phrase “establish a new flexible exemption level” with the phrase “raise the exempt levels”:
Cities, towns or counties may raise the exempt levels up to the maximum specified in Table 1 below by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904) ((and sent to the department of ecology. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations)). Separate maximum optional thresholds are established in Table 1 applying to both incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW 36.70A.040; other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the default and maximum level. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). At a minimum, the following process shall be met in order to raise the exempt levels establish a new flexible exemption level.
- After WAC 197-11-800(1)(c)(iii) and before the sentence starting with “The maximum”, add subsection label “(d)” and change word “exemptions” to “actions”.

ENVIRONMENTAL COMMUNITY RESPONSE TO ECOLOGY SEPA RULE DRAFT

Given the short timeline for the 2012 rule adoption, we appreciate that not all areas for consideration were able to be completed – most notably, improvements to public notice. We hope that the Department of Ecology will spend a substantial part of the beginning of the 2013 rulemaking process to improve a citizen's ability to utilize SEPA to ensure protections for the environment.

Thank you for consideration of our comments. If you have any questions, please contact Claudia Newman at newman@bnd-law.com or 206-790-5249 or April Putney at april@futurewise.org or 206-343-0681.

Sincerely,

Claudia Newman
Ann Aagard
Gerald Steel
Washington Environmental Council
Futurewise

Period Setting							
Analysis Name:	New Analysis						
Project Name:	New Project - 3			No:			
Date:	12/5/2012			City:			
State/Province:				Zip/Postal Code:			
Country:				Client Name:			
Analyst's Name:				Edition:	Demo		
Land Use	Independent Variable	Size	Time Period	Method	Entry	Exit	Total
715 - Single Tenant Office Building	1000 Sq. Feet Gross Floor Area	12 ⁽¹⁾	Weekday	Average	69	70	139
(1) indicates size out of range.							

Land Use	Entry Reduction	Adjusted Entry	Exit Reduction	Adjusted Exit
715 - Single Tenant Office Building	<input type="text" value="0"/> %	69	<input type="text" value="0"/> %	70

Land Use	External Trips	Pass-by%	Pass-by Trips	Non-pass-by Trips
715 - Single Tenant Office Building	139	<input type="text" value="0"/> %	0	139

ITE Deviation Details	
Weekday	
Landuse	No deviations from ITE.
Methods	No deviations from ITE.
External Trips	715 - Single Tenant Office Building ITE does not recommend a particular pass-by% for this case.

Summary	
Total Entering	69
Total Exiting	70
Total Entering Reduction	0
Total Exiting Reduction	0
Total Entering Internal Capture Reduction	0
Total Exiting Internal Capture Reduction	0
Total Entering Pass-by Reduction	0
Total Exiting Pass-by Reduction	0
Total Entering Non-Pass-by Trips	69

Total Exiting Non-Pass-by Trips	70
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Period Setting							
Analysis Name:	New Analysis						
Project Name:	New Project - 1			No:			
Date:	12/4/2012			City:			
State/Province:				Zip/Postal Code:			
Country:				Client Name:			
Analyst's Name:				Edition:	Demo		
Land Use	Independent Variable	Size	Time Period	Method	Entry	Exit	Total
715 - Single Tenant Office Building	1000 Sq. Feet Gross Floor Area	30	Weekday	Average	173	174	347

Traffic Reductions				
Land Use	Entry Reduction	Adjusted Entry	Exit Reduction	Adjusted Exit
715 - Single Tenant Office Building	0 %	173	0 %	174

External Trips				
Land Use	External Trips	Pass-by%	Pass-by Trips	Non-pass-by Trips
715 - Single Tenant Office Building	347	0 %	0	347

ITE Deviation Details	
Weekday	
Landuse	No deviations from ITE.
Methods	No deviations from ITE.
External Trips	715 - Single Tenant Office Building ITE does not recommend a particular pass-by% for this case.

Summary	
Total Entering	173
Total Exiting	174
Total Entering Reduction	0
Total Exiting Reduction	0
Total Entering Internal Capture Reduction	0
Total Exiting Internal Capture Reduction	0
Total Entering Pass-by Reduction	0
Total Exiting Pass-by Reduction	0
Total Entering Non-Pass-by Trips	173
Total Exiting Non-Pass-by Trips	174

Period Setting							
Analysis Name:	New Analysis						
Project Name:	New Project			No:			
Date:	12/4/2012			City:			
State/Province:				Zip/Postal Code:			
Country:				Client Name:			
Analyst's Name:				Edition:	Demo		
Land Use	Independent Variable	Size	Time Period	Method	Entry	Exit	Total
715 - Single Tenant Office Building	1000 Sq. Feet Gross Floor Area	20	Weekday	Average	115	116	231

Traffic Reductions					
Land Use	Entry Reduction	Adjusted Entry	Exit Reduction	Adjusted Exit	
715 - Single Tenant Office Building	0 %	115	0 %	116	

External Trips					
Land Use	External Trips	Pass-by%	Pass-by Trips	Non-pass-by Trips	
715 - Single Tenant Office Building	231	0 %	0	231	

ITE Deviation Details	
Weekday	
Landuse	No deviations from ITE.
Methods	No deviations from ITE.
External Trips	715 - Single Tenant Office Building ITE does not recommend a particular pass-by% for this case.

Summary	
Total Entering	115
Total Exiting	116
Total Entering Reduction	0
Total Exiting Reduction	0
Total Entering Internal Capture Reduction	0
Total Exiting Internal Capture Reduction	0
Total Entering Pass-by Reduction	0
Total Exiting Pass-by Reduction	0
Total Entering Non-Pass-by Trips	115
Total Exiting Non-Pass-by Trips	116

Period Setting							
Analysis Name:	New Analysis						
Project Name:	New Project			No:			
Date:	12/4/2012			City:			
State/Province:				Zip/Postal Code:			
Country:				Client Name:			
Analyst's Name:				Edition:	Demo		
Land Use	Independent Variable	Size	Time Period	Method	Entry	Exit	Total
715 - Single Tenant Office Building	1000 Sq. Feet Gross Floor Area	20	Weekday	Average	115	116	231

Traffic Reductions				
Land Use	Entry Reduction	Adjusted Entry	Exit Reduction	Adjusted Exit
715 - Single Tenant Office Building	0 %	115	0 %	116

External Trips				
Land Use	External Trips	Pass-by%	Pass-by Trips	Non-pass-by Trips
715 - Single Tenant Office Building	231	0 %	0	231

ITE Deviation Details	
Weekday	
Landuse	No deviations from ITE.
Methods	No deviations from ITE.
External Trips	715 - Single Tenant Office Building ITE does not recommend a particular pass-by% for this case.

Summary	
Total Entering	115
Total Exiting	116
Total Entering Reduction	0
Total Exiting Reduction	0
Total Entering Internal Capture Reduction	0
Total Exiting Internal Capture Reduction	0
Total Entering Pass-by Reduction	0
Total Exiting Pass-by Reduction	0
Total Entering Non-Pass-by Trips	115
Total Exiting Non-Pass-by Trips	116

Sant, Fran (ECY)

From: Andronetta Douglass [andronetta@douglass.com]
Sent: Tuesday, November 27, 2012 9:52 AM
To: ECY RE SEPA Rule Making
Subject: SEPA proposal to exempt more construction projects from environmental review

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comment opposed to changes

I do not think we should increase the size thresholds for exempting a project from environmental review. I go to various political meetings in my county. I am generally horrified by the attitudes about protecting the environment in the building industry meetings. Environment is a bad word to them. Our area is full of wetlands and breeding grounds for fish. Our water quality is borderline. The coal terminal is a good example. Many people have no idea of the enormous impact of the coal terminal on our water supply.

Please do not raise the size thresholds for exempting projects.

Thank you,
Andi D
andronetta@douglass.com

Sant, Fran (ECY)

From: Nikolai Hel [shibumi@theriver.com]
Sent: Wednesday, November 21, 2012 6:47 AM
To: ECY RE SEPA Rule Making
Subject: RE: Exemption for more Construction projects

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comment opposed to changes

Dear Fran Sant,

Thank you for your timely and informative response. I do have an additional comment...

Allowing local governments more flexibility in deciding critical environmental issues would seem to be a poor choice at this particular time. The influence of outside financial interests in local environmental issues has become too great already, and allowing local governments more latitude will only lead to a lessening of any and all regulations. Most environmental decision has consequences outside the zone on political influence of a particular local government, therefore the decisions should be based on how any project effects the long term health of the statewide environment, not just the financial wellbeing of the local government.

Thank you again, no need to respond.

Dan Polinder
Custer, WA

From: ECY RE SEPA Rule Making [mailto:separulemaking@ECY.WA.GOV]
Sent: Tuesday, November 20, 2012 3:32 PM
To: Nikolai Hel
Subject: RE: Exemption for more Construction projects

Dear Mr. Poliner,

Thank you for contacting the Dept. of Ecology about the SEPA rulemaking process.

The 2012 legislature directed the Dept. of Ecology (in ESSB 6404) to form an advisory group consisting of Environmental, Cultural Resources, Agriculture, Business, Cities, Counties and Tribal Interests to amend the current rules for the State Environmental Policy Act (SEPA) under Washington Administrative Code (WAC 197-11). The Dept of Ecology formed the advisory group and started holding public meetings in August of 2012 and have been holding one meeting a month since then. Notification about these meetings and the agendas is posted online (see links below) before each meeting. In addition email notifications are also sent out to hundreds of SEPA listserv members. We have worked hard to make this rule making an open and inclusive process.

SEPA review is done at the local level and was created before other environmental protections were in place. Since the creation of SEPA, there has been the Growth Management Act, the Shoreline Master Program and other environmental protections that have come into place. The intent of the legislation and the proposed rules are to maintain the current level of environmental protection if a local government can demonstrate through a public process that they have other protections in place and consider the impact of their decision on the natural and built environment. Currently, local governments have flexibility under SEPA. These proposed rules allow for maximum flexibility, if, a local government can demonstrate that they have considered the all the elements of the environment in their decision making. The proposed

rule creates a higher level of "findings" in order for a local government to move towards the highest level of flexibility under SEPA. Individual cities and counties would still have to show findings and allow for public comment.

Here is a link to the SEPA Rulemaking Advisory Committee homepage:

<http://www.ecy.wa.gov/programs/sea/sepa/rulemaking/AdvisoryCommittee.html>

Here is the official rule making page: <http://www.ecy.wa.gov/programs/sea/sepa/rulemaking2012.html>

General information about SEPA can be found here: <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

All comments received by Ecology become part of the formal rule making file and will be considered before the final rule is issued. If you are interested in participating in the public hearing on December 4, 2012 here is the information:

<https://fortress.wa.gov/ecy/publications/publications/1206009.pdf> - This document also gives a high overview of the rule proposal.

Please let me know if you have any additional questions or comments. I would be happy to speak with you and tell you more about the process.

Thank you,

Fran Sant
SEPA Rule Coordinator
Dept. of Ecology
360.407.9032

From: Nikolai Hel [shibumi@theriver.com]
Sent: Tuesday, November 20, 2012 1:22 PM
To: ECY RE SEPA Rule Making
Subject: Exemption for more Construction projects

Dear Sir or Ma'am,

I noticed a rather small article in my local newspaper on the 19th of November, regarding a proposal to lessen the environmental review process for more projects. First, I'm surprised that a proposal of this magnitude would be announced with such small fanfare, almost as if the interests behind this proposal wouldn't want it to receive undue attention. Shouldn't this type of issue be on a statewide ballot as opposed to an almost silent and behind doors decision?

Second, I personally am opposed to any lessening of the review process, and in fact would like to see both the review process and enforcement of violations increased. There is no question we are facing a global issue regarding the climate, and whether part or most of it is man caused is open to debate. At this time, it would seem more prudent to err on the side of protecting what environment we do have left, rather than cede more authority to interests who serve only personal gain.

Third, I wonder just how seriously an individual email for a citizen of the State will be taken. Is part of this proposal a count of the emails both for and against the proposal, and if so, why hasn't this proposal received more attention? I would like a response to this question, preferably before a decision is made regarding this proposal.

Thank you,

Daniel Polinder
Custer, WA. 98240

Sant, Fran (ECY)

From: w.harris2007@comcast.net
Sent: Friday, November 23, 2012 9:38 PM
To: ECY RE SEPA Rule Making
Subject: Opposed to increased categorical exemptions

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comment opposed to changes

As a concerned citizen who participates in the local SEPA process, I oppose increased SEPA categorical exemptions for the following reasons:

1. By reducing development subject to SEPA review, you are also reducing the public's right to meaningfully participate in local government. Throughout the permitting process, the Planning Staff works with, and negotiates with developers. This is a one-sided process. SEPA creates more balance by providing opportunity for the public to review these negotiations, and submit comment and testimony on issues that might have remained unaddressed. In municipalities with a small and/or overworked Planning Staff, public comment supplements the Planning Staff's information, and can be an important component of environmental protection. SEPA is often the first, and earliest, opportunity for public input, making it the most effective. Planning Staff (and the developer) have greater flexibility earlier in the permitting process. Public process is an important part of SEPA, but will be an unintended causality if categorical exemptions are increased.
2. Increased environmental protection from Growth Management Act and Shoreline Management Act regulations are cited as a basis for increasing the categorical exemption. The relevant inquiry is not "how many" environmental laws exist, but rather, how effective these laws are. Scientific evidence indicates that "no net loss" and anti-degradation standards are not being met and state natural resources are suffering increasing loss of ecological functions. While this establishes the need for greater environmental review and oversight, the categorical exemption proposal achieves exactly the opposite.
3. SEPA is intended to impose a site specific review for development proposals, notwithstanding existing regulations. Local GMA and SMP regulations are drafted and applied broadly. SEPA recognizes that in some cases, municipal regulations may not be adequate at an individual site based on the specific proposal submitted. SEPA provides municipalities with substantive authority to impose higher standards than otherwise required under local regulations. Thus, the enactment of other environmental regulations does not negate the need to rely upon SEPA. In fact, SEPA allows municipal regulations to be drafted for typical project impacts instead of imposing higher standards to cover development with greater than average impacts.
4. Mitigation sequencing is an important part of SEPA, and requires that a proposal first avoid unnecessary impacts. Scientific study has increasingly emphasized the importance of "avoidance" requirements. Avoiding unnecessary impacts has a greater ecological value than the most protective mitigation requirement under the GMA and SMA. If the categorical exemption is increased, then as a practical matter, this may reduce avoidance requirements/enforcement at the local level.
5. Finally, almost every development has impacts, however small. It is the cumulative sum of these incremental impacts that, over time, cause the greatest environmental harm. The Department of Ecology SMP Handbook notes that unmitigated cumulative impacts may be the

primary reason that "no net loss" standards are not met. If categorical exemptions are increased and fewer proposals are subject to SEPA review, it is likely that future cumulative impacts from permitted development will be greater.

Thank you for the opportunity for public comment.

Sincerely,
Wendy Harris,
3925 E. Connecticut Street, Bellingham, WA 98226

Sant, Fran (ECY)

From: Pat Collier [pcollier000@centurytel.net]
Sent: Monday, December 10, 2012 9:11 AM
To: ECY RE SEPA Rule Making
Subject: draft SEPA rule changes

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comment opposed to changes

"Under Ecology's draft rule, local governments will have a broader ability to deem more minor projects exempt from requiring SEPA review."
(Washington Department of Ecology news
FOR IMMEDIATE RELEASE - Nov. 27, 2012
12-383-R)

If we are to stop the continued decline of the health of Puget Sound ecosystem we need more restrictive permitting conditions not more exemptions.

Loss of biodiversity is a major threat to human security. Decisions made now will affect the well being and even the survival of our grandchildren and their grandchildren.
Stop continued incremental degradation - death by a thousand cuts

"In our every deliberation, we must consider the impact of our decisions on the next seven generations." (From the Great Law of the Iroquois Confederacy) Do not allow broader ability to grant exemptions.

Pat Collier
POB 574
Vashon Island, WA 98070
206 463 3552
pcollier000@centurytel.net

Sant, Fran (ECY)

From: peggy bruton [gimleteye@comcast.net]
Sent: Monday, December 10, 2012 11:38 AM
To: ECY RE SEPA Rule Making
Subject: Proposed changes to WAC 197-11-800(1)

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comment opposed to changes

I write to express my objections to proposed changes in the SEPA rules, which would increase the difficulty of initiating land use practices that could still preserve the option of keeping Puget Sound from becoming a dead zone.

Thank you for adding my comment to the record.

Peggy Bruton
gimleteye@comcast.net

Sant, Fran (ECY)

From: Steve Marquardt [smarquardt@ufcw21.org]
Sent: Monday, December 10, 2012 1:49 PM
To: ECY RE SEPA Rule Making
Cc: Sarah Cherin
Subject: UFCW 21 Comments on SEPA rulemaking 2012

Follow Up Flag: Follow up
Flag Status: Completed

Dear Department of Ecology

Thank you for the opportunity to comment on the Department of Ecology's proposed State Environmental Policy Act Rulemaking for 2012. Please accept the following comments on behalf of over 40,000 members of United Food and Commercial Workers Local 21. Our members are keenly interested ensuring transparency, accountability, and protection of a healthy environment for themselves and their communities.

Our comments are directed toward WAC 197-11-800 Categorical exemptions, and specifically to the proposed threshold changes in categorical exemptions from SEPA analysis for fully planning jurisdictions. We suggest changes that would not make the final rule substantially different than what was originally proposed in the draft, but would give residents of our state greater certainty and protection from environmental harm.

We respectfully request that Ecology set the Commercial development exemption limit at or below 20,000 square feet and 60 parking spaces.

30,000 square feet is too high a threshold: We believe that the draft rule's proposed maximum threshold of 30,000 square feet in Table 1 represents an increase greater than is called for or appropriate in response to SB 6406. When adopting a rule that defines categorical exemptions, Ecology has a statutory obligation under RCW 43.21C.110(1)(a) to include only those actions that are not major actions significantly affecting the quality of the environment.

By increasing the threshold square footage for these jurisdictions 250% from the prior threshold size of 12,000 square feet, the proposed rule risks opening the door to outsized environmental impacts which affected parties will have no opportunity to question or challenge through the SEPA process. Depending upon use, design, and location, a 30,000 square foot commercial project may have noise, traffic, air emissions, and lights and impacts to water quality, water quantity, critical areas, and aesthetics that warrant environmental scrutiny and protection, yet all such projects may be categorically exempt under the proposed rule. For example, a 20,000 square foot office building will only generate two thirds of the average weekday trips that a 30,000 square foot office building would create. Increasing the flexible threshold by 2.5 times, as in the proposed draft will also result in other environmental impacts such as increased air pollution.

It is also important to note that the capacity for planning and oversight in "fully planning jurisdictions" varies a great deal throughout the State of Washington, and the jurisdictions where planning capacity is lowest may be those most eager to take advantage of the maximum permitted threshold.

For these reasons we strongly urge Ecology to adopt 20,000 square feet as the new maximum flexible threshold exemption for commercial buildings.

A change to 20,000 square feet is not substantially different from the proposed rule: RCW 34.05.340 allows Ecology to adopt a modified rule if it is not "substantially different" from the proposed rule. We do not propose a substantial change to the proposed threshold. Changing proposed WAC 197-11-800(1) Table 1 from a 30,000 square foot maximum flexible threshold exemption for commercial buildings to a 20,000 square foot maximum is not substantially different.

- A reasonable person would have understood that the proposed rule change would affect his or her interest with either maximum.
- The subject of the proposed and adopted rules is the same, raising the maximum flexible threshold.
- The effects of the proposed and final rules are similar; they significantly increase the maximum flexible threshold by thousands of square feet. The increase from 12,000 to 20,000 remains significant: a 67 percent increase. This change meets all the standards of RCW 34.05.340 (2) (a).

Thank you for consideration of our comments. If you have any questions, please contact Steve Marquardt smarquardt@ufcw21.org or (206) 972-3830 or Sarah Cherin, UFCW Local 21 Political Director, sarahc@ufcw21.org (206) 436-6807.

Sincerely



Steve Marquardt
UFCW 21 Research
cell: (206) 972-3830

Sant, Fran (ECY)

From: Glenn Hayman [glenn@haymanenvironmental.com]
Sent: Friday, December 07, 2012 5:40 PM
To: ECY RE SEPA Rule Making
Subject: Comment

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Not Applicable/"Comment Noted"

On November 27th the Governor received the Ocean Acidification Blue Ribbon Panel report. This report and the accompanying technical document, identify two principle causes of acidification, atmospheric CO2 and excess nutrients. Ocean acidification is known to threaten Washington's shellfish industry and has already forced growers to move some of their business out of the state. How do the current changes in SEPA reduce the causes of ocean acidification? Will future changes in SEPA address the causes of ocean acidification?

Glenn A. Hayman, LHg.
Hayman Environmental, LLC
18425 NE 95th Street, Suite 201
Redmond, WA 98052

206-235-0589
www.HaymanEnvironmental.com

Sant, Fran (ECY)

From: pollow@q.com
Sent: Tuesday, December 11, 2012 8:13 PM
To: ECY RE SEPA Rule Making
Subject: Environmental rule change

Dear sir/madam,

I do not agree with letting cities establish environmental rules. Cities do not have the funds to hire environmental experts. The Washington Department of Ecology is qualified to establish these rules and should be the only agency doing so. These rules should be uniform across the state.

George Pollow
4120 248th CT SE
Issaquah, WA 98029

Sant, Fran (ECY)

From: Zeigler, Robert C (DFW)
Sent: Friday, December 07, 2012 10:22 AM
To: ECY RE SEPA Rule Making
Subject: SEPA Rule Revision

Thank you for your work to develop rules to implement the SEPA reform legislation that passed last session. This is a large and complex undertaking. We do recommend some areas where some proposed exemptions do not apply.

Washington Department of Fish and Wildlife is still concerned with potential for significant impacts to occur to fish, wildlife and habitat when utility lines cross sensitive areas such as identified in critical area ordinances or identified priority habitats [**WAC 197-11-800(23)**]. There could also be potential for significant impacts to not be mitigated when landfill and excavation occurs within or adjacent (within 200 feet) to lands identified as critical areas or identified priority habitats. Subsection (1)(vi) – Landfill and excavation.

Exemption of some fill and excavation of 1,000 cubic feet (100 dump truck loads) located near streams where heavy rains could wash sediments into the stream could have severe consequences. This risk would increase when streams fall below shoreline threshold (20 cfs) or have small riparian buffers in critical area ordinances. Risk could also occur when large fill or excavation occurs on or adjacent to steep slopes or other critical areas. Activities near eagle and other raptor nests could be impacting, for example. We recommend the exemptions for utilities and landfill and excavation not apply to areas identified in sensitive area ordinances or identified priority habitats.

We hope these comments assist you in developing rules that expand exemptions but not to the point where potential significant impacts would not be evaluated.

Thank you very much,

Bob
Bob Zeigler
SEPA Responsible Official
360/ 902-2578
Habitat Program
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
Robert.Zeigler@dfw.wa.gov



December 4, 2012

TO: Department of Ecology
FROM: WSAC
RE: Ecology Proposed Rules Concerning SEPA Categorical Exemptions
(WSR 12-21-125)

WSAC appreciates the time and effort Ecology has devoted to updating the SEPA Categorical Exemptions. It also appreciates the collegiality and willingness of members of the SEPA Advisory Committee to listen to the issues raised by committee members and to search for creative solutions that will address committee members concerns.

WSAC recognizes that the proposed revisions are relatively modest in their scope, in part due to the limited amount of time Ecology and its advisory committee had to review and develop the proposals. However, the progress the advisory committee made in reaching a consensus on the proposals provides momentum that should allow the committee to reach further agreements on recommendations for Ecology's consideration.

The following comments focus on the proposed revisions to WAC 197-11 published in WSR 12-21-125.

Environmental Checklist (WAC 197-11-315 and WAC 197-11-960)

WSAC supports the changes to the checklist. As local governments that have to complete the checklist for non-project actions, the revisions that allow the local government to waive the requirement to complete Part B will simplify the process without any loss of meaningful information to assist in environmental review.

WSAC also appreciates the provision that allows for electronic signatures. That, combined with provisions allowing local governments to identify questions that are adequately covered by local regulations, will simplify the process for applicants while maintaining environmental standards.

Categorical Exemptions (WAC 197-11-800)

Minor New Construction.

Counties in Washington state have a wide range of expertise and resources. In recognition of this fact, WSAC has emphasized the need to ensure that changes to the exemption levels must be sensitive to these differences and should allow counties to establish exemption levels that make sense given the context of local circumstances.



WSAC believes that Ecology has achieved a reasonable balance in the proposed amendments to the categorical exemptions found in WAC-11-800. We support the proposed rule's approach of retaining the current minimum thresholds as a default and giving counties and cities the flexibility to increase the thresholds beyond the minimums.

WSAC also support the different maximum thresholds proposed for local governments that are fully planning under the GMA and those that are not. Fully planning jurisdictions have a number of additional responsibilities under the GMA that support higher SEPA thresholds. Although non-planning jurisdictions are required to protect critical areas and natural resource lands, these are only a small subset of the issues fully planning jurisdictions are required to address through the comprehensive planning process. In addition, this approach will provide an additional benefit to those counties that are fully planning under GMA. Particularly for those that have opted into GMA planning, the benefits have been sometimes hard to demonstrate.

Electrical Utilities

WSAC supports the proposed changes to the categorical exemption for electric facilities. New transmission lines can generate considerable community interest and concern. By limiting the exemption to facilities within existing improved rights-of-way and developed utility corridors, the proposed change allows an opportunity for public review of the impacts of new facilities and provides an incentive for upgrading existing facilities.



**Washington State
Department of Transportation**
Paula J. Hammond, P.E.
Secretary of Transportation

Transportation Building
310 Maple Park Avenue SE
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

December 5, 2012

Ms. Polly Zehm
Department of Ecology
PO Box 47600
Olympia, WA 98504

Subject: SEPA Rulemaking 2012

Dear ^{Polly} Ms. Zehm:

As you know, the 2012 Legislature directed a targeted reform of the State Environmental Policy Act (SEPA) with the passage of Senate Bill 6406. The legislation set up two rounds of rule updates: 1) a narrowly-focused initial round (by the end of 2012); and 2) a broader round of SEPA rule updates during 2013. The legislation also directed Ecology to conduct a stakeholder process. WSDOT thanks you and your team for the stakeholder work so far and appreciates the opportunity to offer some more thoughts.

Senate Bill 6406 asked Ecology to update two specific SEPA rule topics by December 31, 2012:

- Increasing the maximum thresholds for SEPA review of minor construction projects under Washington Administrative Code (WAC) 197-11-800(1) and (23)(c); and
- Improving the efficiency of the environmental checklist in WAC 197-11-960.

These topics are the subject of Ecology's Round 1 rulemaking.

Washington State Department of Transportation (WSDOT) staff with SEPA expertise participated in the stakeholder advisory group. Our active participation was guided by the Legislative intent: That SEPA rulemaking reduce the burden of duplicative documentation and eliminate unnecessary or irrelevant analysis, while still protecting the resources of Washington State (including state transportation infrastructure, cultural and historic resources, natural resources).

WSDOT provided specific comments during the Round 1 rulemaking stakeholder process that were not incorporated into the draft rule. This letter includes a short summary of our comments. Please consider these comments in finalizing the rule.

- A. WSDOT, like other state agencies, did not have alternate numbers to suggest for increased maximum thresholds. However, WSDOT requested that Ecology consider adding the **number of trips generated** in the new "maximum minor construction" thresholds, not just the number of parking stalls.ⁱ This idea came late in the process and Ecology was not able to incorporate it. WSDOT is hopeful that this concept will be discussed and incorporated into the rule during the 2013 rulemaking process. Until then, WSDOT will work with the local agencies during code change environmental reviews to

find ways to assess the potential traffic impacts associated with the increased development thresholds.

- B. Because of the potential for unintended consequences to state transportation facilities and operations from the increased maximum thresholds, WSDOT requested a 60-calendar day review period for local ordinances.ⁱⁱ Ecology's proposed rule provides for 21-day review. This will probably not allow time for a meaningful substantive review and engagement with local governments. Unlike project level reviews where WSDOT is able to work with local governments with site specific data, evaluating the implications of code changes that apply across larger geographic areas is more complex. In order to provide the most meaningful comments, WSDOT needs sufficient time to identify how local code changes might impact transportation levels of service within respective jurisdictions.
- C. Could Ecology prescribe a standard notice process for proposed ordinances, so that local agencies announce SEPA code changes in an easily- identifiable manner? Such an effort will make it easier for all stakeholders to recognize that the notice is attached to the SEPA reform effort.

We also request that Ecology consider the following additional comments:

First, some of the wording in Table 1 is confusing. For example, 30 Single Family Residential units (in Table 1) would mean 30 houses containing 30 families, which would be SEPA exempt. However, looking at the second line in Table 1; does the number 60 refer to the limit of apartments (units) a Multifamily Residential may have? Or, does it mean there can be 60 Multifamily Residential buildings, each of which each may contain as many apartments as desired? It would help to clarify this in the final rule.

Second, WSDOT questions some of the conclusions of the "Preliminary Cost-Benefit and Least Burdensome Alternative Analysis" (prepared and circulated with the proposed rule amendments, November 2012).

The report concludes that the proposed rule amendments are a benefit, and that the revised rule will generate no additional costs. It fails to acknowledge the potential to transfer the burden of cost from the SEPA project proponent to the public. In the case of traffic impacts, the burden for the remedy will be on the local government and the state.

The preservation of the state's transportation system requires that local agencies and the state work together to ensure sound decision making. Commercial and residential development proponents should provide the decision maker with traffic impacts and trip generation information. This will allow the decision maker to confirm there will be adequate capacity to serve the traveling public into the future.

As a direct result of this rulemaking, local lead agencies will be excluding projects from SEPA review. The public, state agencies, tribes and other interested parties that currently have notice of these actions via SEPA will no longer have that notice. The report is silent on the potential cost or impact of this change in notice. The notice issue came up repeated in the stakeholder

Ms. Polly Zehm
December 10, 2012
Page 3

process, and we understand that mechanisms to improve notice by SEPA and by means other than SEPA will be seriously considered in Round 2 rulemaking.

Finally, while we recognize that this rulemaking timeframe was accelerated to meet the legislatively-mandated schedule, we think that there are ways to improve the stakeholder process in Round 2 rulemaking. Along these lines, we encourage Ecology to prepare a record that reflects the issues and concerns raised by all participants. That action could help us all demonstrate that current levels of protection of the state resources are maintained.

Thank you for considering these comments, Polly. If you have any questions, please call me or Carol Lee Roalkvam at (360) 705-7126.

Have a great holiday season.

Sincerely,



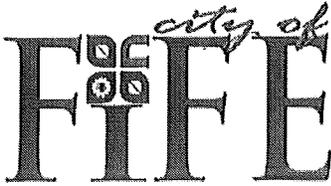
Stephen T. Reinmuth
Chief of Staff

STR: mw/lsh

ⁱ The best way to evaluate traffic generation is to use the Institute of Transportation Engineers (ITE) "Trip Generation Handbook." The handbook identifies national standard trips associated with different kinds of development. This method would not require a traffic impact analysis, and could fairly easily apply a national standard to various developments. Looking at daily trips produced is a much more accurate way to measure potential traffic impacts than by counting parking stalls. WSDOT has provided examples of how to apply this standard in the past and can suggest rule language for future consideration. (Stakeholder input from P. Krueger (on behalf of state agencies) to F. Sant 10/9/12.)

ⁱⁱ WSDOT agrees that "the proposed language for WAC 197-11-800 (1) (c) also specify that the city, town or county's demonstration / findings be done specifically for each element of the environment. And, that notice be provided to agencies with expertise and tribes (and the public) when a local government is considering a resolution or ordinance to raise the exemption levels." Could Ecology consider a 60-day review and comment period, in keeping with 36.70A requirements for GMA development regulations, so that substantive concerns can be voiced and addressed during local decision making on local code amendments? (Stakeholder input from C. Roalkvam to F. Sant. 10/05/12)

cc: <mailto:separulemaking@ecy.wa.gov>



Fife City Hall
www.cityoffife.org
5411 23rd Street East, Fife, WA 98424
Tel (253) 922-2489 Fax (253) 922-5355

December 10, 2012

Washington State Department of Ecology
Attention: Ms. Fran Sant
PO Box 47703
Olympia, Washington 98504-7703

SENT VIA EMAIL ONLY: separulemaking@ecy.wa.gov

SUBJECT: SEPA Rulemaking

Dear Ms. Sant:

Thank you for the opportunity to comment on the latest draft of the proposed WAC 197-11 Phase I rule making revisions.

As indicated on the Department of Ecology SEPA Rulemaking website, the SEPA Rules exemption and environmental checklist update effort is appropriate given that many laws and procedures for environmental protection, land use planning and infrastructure provision have been implemented since SEPA was first adopted. It is also appropriate given that exemptions and other sections of the Rules have not been updated with substantial revision in almost twenty years.

The City of Fife previously provided comment on an earlier draft document entitled "September 25, 2012 SEPA Rule Making Round 1: Preliminary Draft proposed WAC 197-11 revisions". We appreciate your consideration of those comments. The comments in this letter supplement those prior comments.

Our main comment at this time is with respect to proposed amendments to WAC 197-11-800(c). These amendments set forth a minimum process to be met for a lead agency to establish new flexible exemption levels. As part of this process, proposed WAC 197-11-800 (1)(c)(ii) requires that an ordinance or resolution increasing exemption levels include a description of project level public comment provided through other local planning processes for those proposals included in the increased exemption levels. Specifically, proposed WAC 197-11-800 (1)(c)(ii) states,

"(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established project level public comment opportunities that are provided for proposals included in these increased exemption levels."

This provision should be deleted. What WAC 197-11-800 (1)(c)(ii) effectively requires is documentation of a project level public process for newly exempted projects in place of the SEPA process. This is not warranted. A local jurisdiction that, for example, has adopted

development regulations pertaining to zoning, critical areas, concurrency management, infrastructure, design standards (reviewed with the building permit), impact fees, etc., all consistent with the comprehensive plan, may not have a public process associated with proposals included in the increased exemptions levels.

The requirement to document a project level public process to substitute for the SEPA process runs counter to the objective of the rulemaking effort. The rulemaking effort acknowledges that modernizing the rules that guide state and local agencies in conducting SEPA review is justified since environmental protections offered under the Growth Management Act, Shoreline Management Act (as updated) and other laws afford appropriate environmental protection sufficient to justify increases in the SEPA exemption thresholds.

Given this, adding a public process requirement contributes no additional environmental protection. In fact, it is almost misleading because a project level design review process (using design review as an example) is typically not going to address the full range of environmental elements afforded under the SEPA anyway.

It is important to keep in mind that the GMA places a high degree of importance on public process at the plan policy and development regulation stage (*see RCW 36.70A.035 and 140 as examples,*) in order that project level permits may be processed efficiently in keeping with regulatory reform requirements. Requiring project level process to justify a higher SEPA exemption level runs counter to this.

The more appropriate course of action is reflected in proposed subsection WAC 197-11-800 (1)(c)(iii), giving the public and other parties the opportunity to comment on a proposed ordinance or resolution increasing SEPA exemption levels prior to its adoption. WAC 197-11-800 (1)(c)(iii) states,

“(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the local government shall provide a minimum of 21 days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, the public and provide opportunity for comment.”

This proposed provision provides those parties who might normally be engaged in the SEPA review process the opportunity to comment on any proposed change in exemption levels. Issues about increasing exemption levels can be discussed and addressed at the legislative stage rather than at the project permit level.

Thank you again for the opportunity to comment. Please contact me at (253) 896-8633 should you require clarification or have questions.

Sincerely,



David Osaki, AICP
Director, Community Development/SEPA Responsible Official



Puget Sound Energy
P.O. Box 97034
Bellevue, WA 98009-9734
PSE.com

December 10, 2012

Fran Sant
Department of Ecology
PO BOX 47703
Olympia, WA 98504

VIA e-mail: separulemaking@ecy.wa.gov

RE: WSR 12-12-125, proposed amendments to WAC 197-11

Dear Ms. Sant,

Puget Sound Energy (PSE) appreciates the opportunity to comment on the proposed changes to Washington Administrative Code 197-11 (the "SEPA Rules"). Our comments are limited to a proposed change to WAC 197-11-800 (23)(c) that, as advanced by the Department of Ecology ("DOE"), falls short of the clear direction provided by the legislature in April of this year to "increase the existing maximum threshold levels" established by the existing exemption. Consistent with the plain meaning of this legislative mandate, PSE recommends adding a new section to the SEPA Rules that would apply in areas where electrical facilities already comprise part of the existing infrastructure, and in areas where future urban growth and associated infrastructure needs are addressed in comprehensive plans required by the Growth Management Act. PSE therefore requests that the following subparagraph be added to WAC 197-11-800 (23):

(d) In any incorporated city or town and in urban growth areas designated pursuant to RCW 36.70A.110, and in all other areas in existing rights-of-way and in designated utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the overbuilding of existing distribution lines; and the undergrounding of all electric facilities, lines, equipment or appurtenances;

This proposal extends, in limited areas and under limited circumstances, an existing categorical exemption that has been in effect for more than thirty years. See WAC 197-11-800 (23)(c); previously WAC 179-10-170 (18)(c)). In PSE's experience, projects that would qualify for this exemption have minimal impact to the environment and are not determined by local jurisdictions to require mitigating conditions or detailed environmental review.

The proposed new rule is also necessary to keep pace with the improved technology that PSE deploys to provide its customers with cost effective and reliable electric service. In recent years the standard for electrical infrastructure that was previously compromised of 55 kilovolt (kV) facilities has changed to 115kV facilities, yet remain materially similar. This change provides increased capacity for power delivery, reduces energy loss in transit, and improves reliability.

These 115kV facilities are typically indistinguishable from the older 55kV facilities and are already common place in jurisdictions covered by the proposed exemption. Within the limitations set forth by the proposed exemption the record clearly shows that these projects do not cause significant environmental impacts. A DOE provided document in the rulemaking process shows 29 previously constructed projects that had the possibility to fall under an expanded version of the electrical facilities categorical exemption. None of these projects required extensive SEPA analysis or mitigation.

Local governments are experiencing decreased financial resources and staff reductions have occurred in many permitting offices across the state. At the suggestion of Governor Gregoire, PSE has worked collaboratively with local government and other stakeholders to find opportunities to streamline permitting requirements and reduce duplicative practices. The construction of electrical facilities that would qualify for the exemption proposed by PSE go through a number of mandatory planning and permitting processes, most of which have been added since the implementation of SEPA. Decreasing the time permitting agencies are tied up with evaluating projects that have insignificant environmental impacts allow those agencies to better consider and address other projects of greater environmental significance to Washington land and its citizens.

PSE is the largest investor-owned utility in Washington State, serving more than 1.1 million electric customers and approximately 750,000 natural gas customers in 11 counties. PSE meets the energy needs of its customers, in part, through cost-effective energy efficiency, procurement of sustainable energy resources, and far-sighted investment in energy-delivery infrastructure. We are dedicated to providing great customer service that is safe, dependable and efficient. Additionally, PSE fully values and practices environmental stewardship. Construction projects are approached from a multifaceted viewpoint to take into account efficiency, safe construction practices, community impact, and environmental impact among various factors. We are confident an adoption of PSE's proposed language would maintain these values.

Unfortunately, DOE's proposal in the draft rule will have no streamlining effect on permitting. The propose rule at best duplicates the current categorical exemption that allows utilities to overbuild existing infrastructure with 115kV lines. No meaningful streaming of regulatory requirements will occur as a result of this proposal. Nor does the proposed rule satisfy the legislative mandate of 2ESSB 6406 § 301, which requires:

(2) By December 31, 2012, the department of ecology shall increase the rule-based categorical exemptions to chapter 43.21C RCW found in WAC 197-11-800 and update the environmental checklist found in WAC 197- 13 11-960. In updating the categorical exemptions, ***the department of ecology must:***

(a) ***At a minimum, increase the existing maximum threshold levels*** for the following project types:

(vi) The installation of ***an electric facility, lines, equipment, or appurtenances***, other than substations.

PSE also expresses its disappointment over the lack of opportunity as subject matter experts to work more fully with DOE to formulate a reasonable proposal. The timeline, while tight due to the legislative language, was not utilized to its maximum advantage and resulted in DOE writing a proposal of no practical effect, falling well short of its legislative mandate. Additionally, the lack of transparency of interested parties' comments made it difficult for the utility community to understand and address concerns on proposed language.

Therefore, we ask the DOE to adopt the proposed categorical exemption language suggested above and in so doing, fulfill the responsibility that it was given by the legislature this year.

If you have questions please do not hesitate to contact me at 425-462-3139.

Sincerely,

A handwritten signature in black ink that reads "Nancy L. Atwood". The signature is written in a cursive style with a large, looped "N" and "A".

Nancy Atwood
Sr. State Government Representative

Cc: Rep Joe Fitzgibbon, Washington State House of Representatives
Rep. Dave Upthegrove, Washington State House of Representatives
Brenden McFarland, Department of Ecology
Tom Clingman, Department of Ecology

Sant, Fran (ECY)

From: Gerald Steel [geraldsteel@yahoo.com]
Sent: Tuesday, December 11, 2012 5:09 PM
To: ECY RE SEPA Rule Making; Sant, Fran (ECY)
Subject: Edit to SEPA Rule-Making 2012 Comments by Gerald Steel

Fran,

There is a typo that I would like to correct in the comment letter that I submitted earlier today. On page 2, in the second paragraph, I cite to RCW 34.05.340(2)(a) twice. The second cite needs to be changed to RCW 34.05.340(3). Thank you.

Gerald Steel PE
Attorney at Law
7303 Young Road NW
Olympia WA 98502
Tel/Fax (360) 867-1166

GERALD STEEL, PE

ATTORNEY-AT-LAW

7303 YOUNG ROAD NW

OLYMPIA, WA 98502

Tel/fax (360) 867-1166

December 11, 2012

Washington State Department of Ecology
SEPA

Attention: Fran Sant

PO Box 47703

Olympia, Washington 98504-7703

Re: Comments on SEPA proposed rules for 2012

Dear Ecology Staff:

I am writing this letter on behalf of myself and Washington Growthwatch, a statewide organization that protects people and the environment from inappropriate laws and regulations affecting development and growth. I strongly request that Ecology make a non-substantial clarification in the published version of WAC 197-11-800(23)(c) in the manner proposed by the Environmental Representatives on the SEPA Rule Making Advisory Committee in their comment letter on the proposed rules dated 12-11-12.

We propose an additional amendment to WAC 197-11-800(23)(c) as shown below in underline/strikeout format assuming that the changes in the proposed rule are made:

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (~~more than 55,000~~ up to and including 115,000 volts); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

This language change was discussed in Ecology's ad hoc utilities subcommittee ("subcommittee") meeting on September 18, 2011 and a preliminary draft was issued on 9/25/12 that included this revision changing "(more than 55,000 volts)" to "(up to 115,000 volts)". This change was removed in the version submitted for the proposed rule-making. I contacted Brenden McFarland by email on November 23, 2012 (and again on November 27, 2012) and asked for the contact information for all of the people who communicated with Brenden or Tom Clingman who opposed the change identified above. Brenden responded on November 27, 2012 and said that he did not recall "that overbuilding was a primary concern for the utilities." He emailed me the October 1, 2012 joint comment letter from the interested utilities (letter attached hereto) and that letter proposed changing the subject "(more than 55,000 volts)" to "(up to and including 115,000 volts)". This change, as proposed by the interested utilities, is the change proposed by the Environmental Community in its letter to Ecology dated 12-11-12.

All of the discussion on this topic in the utility subcommittee and in the Committee was about the desire of the utilities to be able to upgrade their 55,000 volt distribution lines to 115,000 volt distribution/transmission lines with minimal review by local government. There was no discussion in the subcommittee or Committee of a need to install lines of more than 115,000 volts using a SEPA categorical exemption.

Therefore, the change proposed in this letter is a non-substantial change that does not require supplemental notice and an additional opportunity for public comment. *See* RCW 34.05.340(1). The utilities interpreted the intent of the "(more than 55,000 volts)" language was just to meet their need for "(up to and including 115,000 volts)." Addressing RCW 34.05.340(2)(a), a reasonable person with knowledge of utility operations would see these languages as equivalent from a practical point of view. Addressing RCW 34.05.340(2)(b), there is no change in subject matter. Addressing RCW 34.05.340(2)(c), the practical effects of the modified language are the same as for the proposed language. Pursuant to RCW 34.05.340(3), we do not believe anyone will argue that the anticipated effects of a rule adopted with the change proposed herein will differ from those of the proposed rule. This means that it is very unlikely that anyone will petition the agency pursuant to RCW 34.05.340(2)(a) with a claim that the adopted rule is substantially different from the proposed rule. However, if anyone does petition and makes a valid case that there is a substantial difference, this will just mean that the proposed change goes back into rule-making in 2013.

On the other hand, if the change proposed in this letter is not made, it is highly likely that this issue will be taken to rule-making in 2013. This is because the literal interpretation of the existing language "(more than 55,000 volts)" allows unlimited voltage lines without any opportunity for SEPA review. Currently the highest voltage transmission lines are 865,000 volts. The current language would allow multiple 865,000 volt lines to overbuild existing 110 volt lines either to connect an existing power supply to other existing 865,000 lines or to interconnect two or more sets of 865,000 volt lines when there is an existing low voltage line on the selected route. Any new 865,000 volt lines must be considered a major action pursuant to RCW 43.21C.110(1)(a). It is not in Ecology's authority to adopt rules that would allow such major actions and so if this change is not made in a rule-making proceeding, the utility exemption is likely to be found void in full by the courts. The rule as written does not even limit such overbuilding to 865,000 volts. Untested systems intended to operate at 10,000,000 volts would be allowed to be put in any neighborhood without SEPA review under the existing overbuild exemption. Such systems are major actions and the rule as written is not legal.

Brenden McFarland, in his November 27, 2012 email, responded to my request and identified the four people who had personally commented to him regarding the utility exemption. I sent them all an email on November 30, 2012 asking them that if they believed that the anticipated effect of the "(more than 55,000 volts)" language is not just to allow "(up to and including 115,000 volts)" but instead is to allow significantly higher voltages, then they should tell me what anticipated higher voltages the "(more than 55,000 volts) language would allow and to tell me why they believe that such higher voltage lines would not be a major action. I asked for a response by December 7 and told them I would discuss this issue in my SEPA comments. None of the four utility representatives identified any voltages higher than 115,000 volts or identified any anticipated projects that have more than 115,000 volts.

Therefore, because the utilities have agreed in the attached letter to the overbuilding language of "(up to and including 115,000 volts)" replacing the language "(more than 55,000 volts)" with the same anticipated effects and because the utilities did not identify even a single

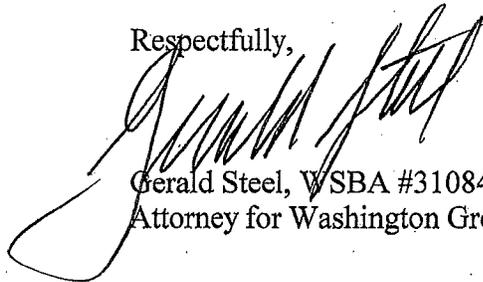
Washington State Department of Ecology
SEPA Attention: Fran Sant
December 11, 2012
Page 3

anticipated project that would use the existing exemption that would be more than 115,000 volts, this proposed change should be made by Ecology as not being substantially different from the rule proposed in the published notice. This would avoid a challenge in court that the "(more than 55,000 volts)" language is a major action prohibited from receiving a categorical exemption by Ecology adopted rules pursuant to RCW 43.21C.110(1)(a).

We hope you will give serious consideration and then adopt this non-substantial change to the proposed rule.

Thank you, in advance.

Respectfully,



Gerald Steel, WSBA #31084
Attorney for Washington Growthwatch

Attachment: 10-1-12 Utility Joint Letter



November 29, 2012

Department of Ecology
c/o Ms. Bari Schreiner
300 Desmond Drive
Lacey, WA 98503

RE: Amendment to Chapter 197-11 Washington Administrative Code

Dear Ms. Schreiner:

Thank you for the opportunity to submit written and oral testimony for CR-102 Proposed Rule Making. This proposal would increase the flexible thresholds that local governments may adopt to exempt minor new construction projects from SEPA review. Avista's testimony will focus on WAC 197-11-315 (23) (C) under the section entitled "Utilities". This is an important section for utilities and the ability to do the appropriate upgrades and necessary improvements to ensure reliability for our systems.

Electric utilities are expected to be reliable and face constant pressures to provide adequate service. Several federal and regional organizations emphasize and enforce this expectation on the industry. Some of the entities to ensure reliability are the North American Electrical Reliability Corporation (NERC), Federal Energy Regulatory Commission (FERC), Western Electricity Coordinating Council (WECC) and the state of Washington. It is noteworthy that electric utilities that fail to meet reliability standards are subject to penalties and possible liability.

Chapter 36.70A RCW, also known as the Growth Management Act (GMA), mandates orderly growth. Pursuant to RCW 36.70A.210 Countywide Planning Policies (CWPP) were developed and RCW 36.70A.070 outlines the mandatory elements of the Comprehensive Plans. Local government jurisdictions have developed these plans and regulations, which have included sections named Capital Facilities and Utilities. Many utility companies provided the corridors to the various local jurisdictions for the Regional Utility Corridor Plan. Some of the corridors have been incorporated into the comprehensive plan maps, while others have not. Decisions made to include utility corridors are made solely by local governments; utilities have no authority to impose utility corridors on local governments.

The CWPPs, comprehensive plans and regulations each had similar themes regarding utilities. These themes included language or similar language:

- To the maximum extent possible, existing corridors will be used for upgrades and improvements. If new linear corridors were required, analysis of alternatives would be required to show justification.
- All utilities needed to provide enough room or space for collocation. Collocation is allowing other utilities space on the structures.
- Utilities are an important component of growth. Undergrounding is preferred.
- Maintenance can be exempt depending on the project scope or category.
- Utility corridors, to the extent possible, should be located within or near transportation corridors.

Within the GMA process, WAC 197-11-210 SEPA/GMA integration was adopted. WAC 197-11-210 (3) was intended to avoid duplication and paperwork in project level environmental analysis and narrow the scope of environmental review and mitigation under SEPA at the project level. Avista believes that somehow in the GMA process the utilities were never afforded this type of consideration.

The same SEPA process that existed before GMA never really changed and duplicated efforts of paperwork are still submitted and the timeline for review is still in existence. The current proposed language under WAC 197-11-315 (23)(C) provides some flexibility and recognition of our desire to use existing corridors but not full recognition. Avista typically has transmission lines consisting of 115kv or 230kv, and both use similar pole configurations and require the same right of way width corridors. The failure to recognize all existing corridors creates a concern for utility companies. At a time when infrastructure is antiquated and obsolete and needing replacement, all utility companies are obligated and mandated to use existing corridors by the GMA planning.

Typically, electric distribution and transmission differ in pole sizes and sometimes use different rights of way. For example, distribution line can be rebuilt with a transmission line, with the existing distribution line, fiber, and telecommunication on the same structure. These type of practices need to be encouraged by agencies. Another example includes utility corridors that are within public right of way and railroad rights of way. Rebuilding existing lines in these types of rights of way should be allowed and exempt under SEPA, regardless of whether or not it is a distribution line with a transmission line rebuild needing additional right of way or if it is above the 115kv threshold. The current proposed language creates the threshold at 115kv, but there are many lines that need to be reinforced or upgraded to 230kv from 115kv. The current proposed language would be open to interpretation if this action is exempt from SEPA.

Utility facilities are upgraded or constructed based on need, which is determined by demand. With demand increasing, facilities becoming obsolete, and regulations changing, there will be more need and requests to rebuild existing lines or construct more corridors. Avista is requesting the threshold to 230kv and also flexibility of rights of way widths when upgrading from distribution to transmission lines using the same corridor.

If you have any questions, please feel free to contact me at (509) 495-8657, or via email at robin.bekkedahl@avistacorp.com.

Sincerely,



Robin Bekkedahl
Sr. Environmental Scientist/Land Use Planner

Cc: Fran Sant
Collin Sprague
Christine Brewer

People for Alternatives, Conservation and Education

Date: December 11, 2012

To: Washington State Department of Ecology
SEPA
Attention: Fran Sant
PO Box 47703
Olympia, Washington 98504-7703
separulemaking@ecy.wa.gov

Subject: Proposed rulemaking amendments to the SEPA rules Chapter 197-11 WAC

Dear Sirs:

Please accept the following comments on the proposed SEPA rule change from People For Alternatives, Conservation & Education (PACE). We are familiar with the issue of transmission line overbuilds and electric facility siting from being appellants in the case of Daniel Gebbers, PACE, and Methow Valley Citizens' Council, vs. Okanogan County Public Utility District No. 1 in Superior Court of Washington, Case No. No. 06-2-00168-2.

We are commenting on the proposed exemption under (23)(c) for "overbuilding" transmission lines with an associated voltage of 55,000 volts or less.

There may be cases where transmission line overbuilds deserve to be exempt, but as written, the rule does not differentiate reasonable circumstances from ones that could cause significant impacts.

In general, transmission line overbuilds should not be exempt unless they are planned within an existing Utility Corridor with a prior Threshold Determination that already incorporates equal or more protective review standards of a standalone new transmission line, regardless of voltage. Otherwise transmission line overbuilds should not be exempt for the following reasons:

- (1) Transmission line overbuilds should not be exempt if they result in a greater esthetic impact, characterized by increased public visibility.
- (2) Transmission line overbuilds should not be exempt if they require structural changes to poles and wiring configurations that would change the conditions for a threshold determination of environmental impact - these structural changes include:
 - (a) Heavier line weight that requires pole replacement and digging of new pole holes;
 - (b) Heavier line weight that may require heavier duty, e.g., steel poles that have greater hole depth requirements, greater cost to deliver and install, greater weight, longer lengths or increased need for road building to allow access of longer poles and wider switchbacks.
- (3) Transmission line overbuilds should not be exempt if they will require digging new pole holes or enlarging road networks that would require cultural resource surveys that were not undertaken during prior installations.
- (4) Transmission line overbuilds can increase EMF exposures to workers and the public.
- (5) Categorical exclusions result in loss of oversight and missed opportunities for cost-savings through conductor replacements that upgrade to more modern conductor designs with greater load capability at lower line weights.
- (6) Transmission line overbuilds increase the rate of bird kills, and they require a biological assessment that may include an incidental take permit for threatened and endangered species and other species of concern.

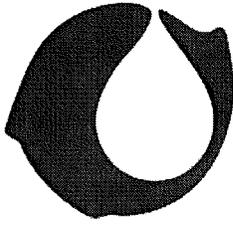
- (7) Transmission line overbuilds should not be exempt because they have significant impacts by definition, they redistribute electric load over large areas that almost without exception, cross county lines and affect large numbers of people. Therefore:
 - (a) transmission line overbuilds have a significant impact that should not be exempt from full SEPA review;
 - (b) and transmission line overbuilds should not be exempt because doing so would exclude large numbers of people who would be affected by the change.
- (8) Transmission lines overbuilds result in cumulative impacts.
- (9) Transmission line overbuilds can increase the risk of wildfires.
- (10) Transmission line overbuilds that depend on a second transmission line to carry part of the electric load should not be exempt if the other transmission line will require significant system changes in order to continue operation.
- (11) The proposed rulemaking for transmission line overbuilds should not be approved because the term overbuild is vague and not legally defined.

Thank you for your consideration.

Sincerely yours,



George Wooten, PACE
226 West Second Ave.
Twisp, WA 98856



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

By electronic mail

December 10, 2012

Department of Ecology
P.O. Box 47703
Olympia, WA 98504-760
Email separulemaking@ecy.wa.gov
Fax: 360-407-6904

RE: Comments of the Center for Environmental Law and Policy on Department of Ecology's Proposed Rule Change to Increase the Thresholds for Exemption from Environmental Review under the State Environmental Policy Act (SEPA).

The Center for Environmental Law and Policy (CELP) is a public interest group focused on the protection and restoration of water resources throughout Washington State. CELP thanks the Department of Ecology for the opportunity to comment on the proposed changes to WAC 197-11-800(c)(iii) pertaining to the thresholds for categorical exemptions. CELP urges the Department not to adopt the proposed rule change to SEPA—especially for jurisdictions that do not plan under the Growth Management Act (GMA).

The GMA is very clear in requiring counties that fall within its jurisdiction to protect the quantity and quality of groundwater for public water supplies. RCW 36.70.330. The Supreme Court affirmed and clarified the duties of counties under the GMA in *Kittitas County v. Eastern Washington Growth Management Hearings Act*, 256 P.3d 1193 (Wash. 2011). *Kittitas* made clear that counties planning under the GMA are required to consider both the legal and physical availability of water before issuing land development permits. Local jurisdictions must act to protect existing water rights, including private users and instream flow rights held by the public under state law, before approving new development.

Of course, the Water Code, which gives priority to existing water rights holders over new uses, applies with equal force in both GMA and non-GMA jurisdictions. However, in non-GMA jurisdictions, the absence of the GMA planning process puts the rights of existing water right users at risk—especially where water is in short supply. In non-GMA counties, SEPA is a critical tool, and sometimes the only tool, to protect the environment, as well as instream flows and private existing water rights.

Okanogan County is a case in point: its current draft comprehensive plan calls for one-acre development throughout much of the County based upon permit exempt wells—irrespective of the impact on current water supplies. That proposed zoning applies to the Tunk Creek basin in Okanogan County. Development of course requires water—and in Tunk Creek—water comes from permit exempt wells. But there is no more water to spare: Tunk Creek can run dry in late summer. Mean low stream flow is 0.02-0.2 cubic feet per second. Sumioka, S.S., and Dinicola, R.S., 2009, [Groundwater/Surface-water Interactions in the Tunk, Bonaparte, Antoine, and Tonasket Creek Subbasins, Okanogan River Basin, North-central Washington, 2008](#): U.S. Geological Survey Scientific Investigations Report 2009-

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911 Western Ave. #305 Seattle, WA 98104 / contact@celp.org / 206-456-3828 / www.celp.org

5143, @ 16. Water in Tunk Creek is disappearing from increased consumptive uses. Between 1974 and 2008, Tunk Creek added about 75 new permit exempt wells—all at increasingly deeper depths. *Id.* at 19. That on-going decline in available water does not factor in climate change which is already causing hotter, drier and more wildfire prone summers.

Tunk Creek cannot support more permit exempt wells. Yet, the County's current draft comprehensive plan proposes to increase Tunk Creek's allowable density to one house per acre in the Tunk Creek basin based upon new permit exempt wells. If Ecology adopts the proposed changes to SEPA's categorical exemptions, Okanogan County could allow even higher density for residential structures, increase the size of agricultural structures and allow more permissive excavation and fills in water-short basins like Tunk Creek.

In sum, CELP urges Ecology not to change WAC 197-11-800(c)(iii). Categorical exemptions, once adopted, require no notice and cannot be appealed. Categorical exemptions effectively operate to preclude the public from learning about proposed changes their communities—they should only be adopted with the greatest caution—and only where other protections for wise planning and public review are in place, such as the GMA. To protect the environmental resources and the residents of non-GMA counties, the current categorical exemptions should not be changed for non-GMA counties.

Very truly yours,

A handwritten signature in cursive script that reads "Suzanne Skinner".

Suzanne Skinner
Executive Director

Sant, Fran (ECY)

From: Darlene Schanfald [darlenes@olympus.net]
Sent: Monday, December 10, 2012 4:00 PM
To: ECY RE SEPA Rule Making
Subject: Comments on draft SEPA rulemaking proposed language

The Olympic Environmental Council takes this opportunity to comment on Ecology's proposed "streamlining" and "efficiency" rule making changes to SEPA. We view the he proposed "streamline" and "efficiency" language weakens environmental protection and at the same time further distances the general population from the process.

How will this rule change affect rural communities, their watersheds and other natural resources?

How did Ecology arrive at what is "minor" and what is "major?"

Neither a 60 unit multi-family building housing development nor a 30 single-family housing development are minor. A 10,000 to 40,000 square feet agriculture project is not minor. All the above will have significant impacts on water and sewage and runoff.

The possible increasing/tripling of the number of exemptions for multiple family dwellings and the size of a landfill 500 cyds to 1000 cyds is counterintuitive and wrong. Indeed, these would demand more public review and tighter restrictions. As to landfills, the public must know where the landfills are sited and what is in them as many have been sited in residential neighborhoods over the years and contain hazardous materials. Stormwater and leachate have near and far distant impacts.

What are the impacts to wildlife and adjoining communities by expansion of the exemption threshold for electrical utilities from 55,000 to 115,000 volts in existing rights-of-way and developed utility corridors? Who will be measuring the radio frequency emissions?

WAC 197-11-315 (d) Projects where questions on the checklist are adequately covered by existing legal authorities ...

There is often disagreement between citizens and governments on what is adequately covered; therefore, this is not a good WAC modifier.

What is an "irrelevant project checklist?"

Why only one public hearing? And why only in Olympia when the impacts are statewide?

Your proposed streamlined language is intended to be adopted in a few weeks is cause for suspicion as to intent.

We need careful growth. Growth brings many human health and natural resource problems. Weakening SEPA is an irresponsible approach. The call is for tighter control.

Respectfully submitted,
Darlene Schanfald for the Olympic Environmental Council

Sant, Fran (ECY)

From: Danna Dal Porto [dkdp44@gmail.com]
Sent: Monday, December 10, 2012 7:48 PM
To: ECY RE SEPA Rule Making
Subject: SEPA rule changes

This is a public comment on the proposed SEPA changes for Washington State.

My name is Danna Dal Porto and I am a resident of Quincy, Washington. Over the past few years I have been involved with Ecology air quality permits. I have read pages of documents and attended public hearings and Pollution Control Hearings Board sessions. I have communicated with Ecology personnel in Olympia and Spokane. It is my belief that Ecology works well for the cities and large municipalities but does not always work well to protect the citizens of rural Washington, especially Eastern Washington.

Based on my experience with Ecology air quality permits in Quincy, I believe, strongly, that all protections must remain in place to properly protect rural residents. In looking through the details presented in the email notice, I see that small (minor) scale projects would be exempt from the SEPA paperwork. I will say that a 60 unit housing development might be minor in Everett or Vancouver but a 60 housing unit would be a major factor in a small community like Kittitas or Colville. The SEPA guidelines were made to be a one size fits all because the SEPA might be the only rules that can be used to protect rural communities. The protections must go all the way down into the small communities otherwise the small, rural communities might have no protections at all.

The guidelines also would exempt "minor" agricultural construction projects between 10,000 to 40,000 square feet. Actually, those are pretty big structures because it is not just the structure, it is the location of the structure such as near a school or on an already impacted arterial county road. The building itself is not the entire issue. What is the water use in that building? Is there a proper wastewater plan? What affect does this facility have on archeological deposits? The SEPA covers these any many more issues and to do away with the SEPA for "minor" projects leaves local citizens no protections.

The State Environmental Policy Act (SEPA) was developed and adopted to protect the environment of Washington communities. And in protecting the environment, the citizens are protected as well. The documents produced by municipalities is one step in proper, orderly community development. Right now all areas of the state are subject to the same guidelines and procedures and it has worked well. To change the SEPA will be to have two standards for development. I believe that having two standards is in conflict with the nature and purpose of the State Environmental Policy Act. I argue that the small rural communities will be without protections and that is not fair and possibly not legal to "exempt" citizens from those protections.

I want to ask why this adjustment is being requested. Who is seeking to change the current SEPA guidelines? The email notification indicates that the legislature passed a law requesting changes in the thresholds for exemptions. I will have to contact my legislators to see what they know about these changes. I have read the document with the proposed exemptions and I still do not see the benefit to Washington residents in changing this SEPA document. I do see the benefit to the utility districts to exempt the transmission line development from the guidelines but I still think residents in close proximity to these power lines should have the option of having a voice in those upgrades. The SEPA guidelines gives them the option of a voice.

Unless I find out otherwise, I am opposed to changing the SEPA guidelines. Changing the SEPA will allow for local governments to approve projects without close adherence to environmental factors and protecting the

environment is one of the roles of government. Loosening the guidelines does not protect me and my neighbors so I oppose these changes.

Sincerely,

Danna Dal Porto
16651 Road 3 NW
Quincy, WA 98848
(509)785-2380

Sant, Fran (ECY)

From: Sextro, Bob [robert.sextro@noblis.org]
Sent: Monday, December 10, 2012 8:05 PM
To: ECY RE SEPA Rule Making
Cc: Sextro, Bob; darlenes@olympus.net
Subject: comments on SEPA modernization?

I have the following comments and concerns:

eventhough the 2012 legislature directed DOE to update SEPA rules to "streamline" and achieve "efficiencies" while maintaining the current levels of natural resource protection. what is presented in the proposed rule amendments, chapter 197-11-800 WAC simply does not present the case and falls far short of "maintaining" any leverage the citizenry has in the SEPA process. the idea that these changes are also still protect of citizens concerns and rights to review and prevent unwanted and/or unsound (resources, environmental, public health) is just simply not presented. if, in fact, the growth management rules in RCW 36.70A really increases environmental protections in all the project categories listed in Table 1, then I request that the specific section(s) in RCW 36.70A be provided with a detailed explanation of how it is more protective.

just because the legislature asks for an update to SEPA, does not mean that the ones presented or even others to be considered are needed or wanted by the public. please explain why the public should favor increasing the exemptions multiple family dwellings from 20 to 60 or the landfill size from 500 cyds to 1000 cyds? why should the aware citizenry give up their right to review and "approve" through local processes just because the idea of streamlining is on the legislature's mind? if these new exempt limits would to go into effect, the citizenry would have less leverage to make sure these projects are in their best interests. there is no case presented as to how/why any of the proposed changes should be supported by the public nor is there any enhancement to environmental protections discussed. without these presented the public should not support these ad hoc changes.

even the DOE staff report from October 2012 indicates in the table on page 3 that 27 out of 86 multifamily developments would not be SEPA evaluated with the new higher exempt level and that there are "no data" on landfills. There simply has to be data made available for landfills on the effect of increasing the exempt from 500 to 1000. landfills are a very serious business and can have severe environmental/public health consequences and the public must know how many landfills would not be evaluated using SEPA if the exempt level goes up to 1000 cyds.

in short, these proposed updates/changes must not be accepted as currently written. there are simply no advantages to the public presented and data must be made available in all project categories in the page 3 table. a final question is, why cannot DOE simply reply back to the legislature "there is no streamlining that can be achieved to the SEPA exempt levels that also remains protective both of the environment and of the citizens right to a full and honest SEPA project evaluation?"

thank you for your consideration to these comments, Bob

Bob Sextro

Principal Engineer

Sequim WA

(360) 808-2672 (cell)

(360) 582-1422 (office)

Bob Sextro

Principal Engineer

Sequim WA

(360) 808-2672 (cell)

(360) 582-1422 (office)

Sant, Fran (ECY)

From: Al Bergstein [abergstein@live.com]
Sent: Monday, December 10, 2012 8:30 PM
To: ECY RE SEPA Rule Making
Cc: abergstein@live.com
Subject: SEPA October 2012 Rule Changes COMMENTS

December 10, 2012

Department of Ecology
ATTN: Fran Sant
PO Box 44703
Olympia, WA 98504-7600

To Whom It May Concern:

I am writing to comment on the proposed SEPA rule changes, as documented in October 2012.

I am writing to strongly object to the proposed changes to the SEPA rules, as they pertain to the following sections:

- Proposed changes to WAC 197-11-800(1)
 - I strongly oppose establishing separate flexible thresholds for local governments as laid out in the following sections.
 - Section 1 b i and ii
 - COMMENT: This change appears to significantly weaken environmental protections by exempting local counties for projects of what is arbitrarily determined by Ecology to be 'significant'. There is no supporting information about how these sizes of projects were scientifically formulated, nor any basis for believing they will be beneficial to the environment or not.
 - Section iii of same
 - COMMENT: Additionally, this seems to be an arbitrary size, that does not scientifically establish whether a single project may do significant harm to a local environment.
 - Section iv of same
 - COMMENT: Again, these sizes of projects being exempted do not seem to have any supporting scientific backing to establish why these exemptions are deemed appropriate.
 - Section C level iii
 - COMMENT: The idea of 21 days to challenge significant changes to the rules changes on a local basis puts too high a burden on what are usually underfunded local citizens, their governments and interested organizations. Often these groups meet monthly, and establishing a 6 week timeframe seems to be more in tune with allowing citizens to have adequate time to prepare a challenge to a rule.
 - COMMENT: These rule changes in the table could just as easily be substantially larger or smaller, as there is no scientific understanding why these numbers were chosen.

As a bureaucracy that is charged with bringing a scientific point of view to the process of protecting our common environment, we of the public rely on the Department of Ecology to use Best Available Science (BAS) in making these decisions. By not substantiating these rules changes by using BAS, the Department puts themselves, and the taxpayers

that fund them, at substantial risk of a challenging (and costly) lawsuit. Courts have ruled over and over again in the last decade that BAS is a standard as a credible method of making environmental rules, especially in supporting challenges to the State's Shoreline Master Program and Critical Areas Ordinances.

As a person who is working on a variety of issues, including currently being a member of the Jefferson County Marine Resource Committee, edit the Olympic Peninsula Environmental News, and have been a working member of the Jefferson County Shoreline Management Program, Citizen Advisory Group, I support holding off making these changes (while going ahead with the others in this rules change), in order to produce credible evidence that these changes will not harm the environment.

Sincerely,

Al Bergstein
Member - Jefferson County Marine Resource Committee
Member – Strait ERN – Puget Sound Partnership
Jefferson County
1607 Admiralty Ave.
Port Townsend, WA 98368

*Methow Valley Citizens' Council
PO Box 774
Twisp, Wa. 98856*

Department of Ecology
P.O. Box 47703
Olympia, WA 98504-760
Email separulemaking@ecy.wa.gov
Fax: 360-407-6904

December 10, 2012

RE: Proposed rule change to increase the flexible thresholds local governments can adopt to exempt minor new construction projects from review under the State Environmental Policy Act (SEPA).

1) Methow Valley Citizens' Council is a nonprofit organization concerned with land use and environmental issues in Okanogan County. **Our organization opposes any SEPA rule change affecting threshold limits for counties and cities not planning under the Growth Management Act. Any increase in thresholds approved by DOE should apply only in jurisdictions where compliance with the Growth Management Act is required, and where jurisdictions are in full compliance with Growth Management Act.**

Okanogan County is not required to plan under the Growth Management Act. Consequently, SEPA has been an important tool, among the few we have, for ensuring that the County considers environmental impacts. Okanogan County has historically shown resistance to complying with state-mandated planning and environmental regulations. It has been delinquent in complying with the Shoreline Management Act¹ and has alarmed DOE staff² with its negligence in addressing serious environmental issues in its comprehensive plan. For example, the County persists in supporting a draft comprehensive plan that would allow one-acre development throughout much of the County—regardless of information (provided through the DOE-sponsored Methow Valley Watershed Council³) that planned development would far

¹ For more information contact Clynda Case, Department of Ecology, Shoreline Management 509, 457-7125

² For more information contact Greg Shular, Department of Ecology, Watershed Planning 509-454-3619

³ For more information contact Lee Hatcher, Methow Valley Watershed Council, Coordinator, 509-997-0640 ext 266

exceed future water resources. In a recent and significant road construction requiring dynamiting in fragile soils on French Creek (Methow Valley), concerned residents were told by the county planner that in the absence of a clearing and grading ordinance, the SEPA Checklist was the only tool he was able to use to force the developers to do erosion control and install bigger culverts. We offer this chart to demonstrate significant differences between the proposed thresholds and what is currently allowed in the Methow Valley and the rest of Okanogan County:

SEPA Thresholds for Categorical Exemptions	Okanogan SEPA: Methow Review District	Okanogan SEPA: Rest of the County	DOE Proposed SEPA Revisions
Residential Dwelling	4	20	20 Single Family 25 multifamily
Agricultural Structures	10,000 sq ft	30,000 sq ft	40,000 sq ft
Office, school, commercial, recreational, service, storage buildings	4,000 sq ft with 20 parking spaces	12,000 sq ft with 40 parking spaces	12,000 sq ft with 40 parking spaces
Parking lots	20 spaces	40 spaces	40 spaces
Excavations and fills	100 cu yards	500 cu yards	1000 cu yards

2) We strongly recommend that the 21 day time frame for public notice for local government adoption of new exemption levels be maintained or extended. As residents of the largest county in Washington State, some citizens must travel over 120 miles (round-trip) on rural roads to attend county hearings; newspapers within the county are produced on a weekly basis rather than daily. A time frame shorter than 21 days would effectively dampen public response to a proposal that has the potential for significant impacts to our rural environment.

3) Transmission lines: Transmission line overbuilds should not be exempt because (1) They require structural changes to poles and wiring configurations that would cause increased environmental impacts and lead to cumulative impacts. (2) They increase the rate of bird kills and they require a biological assessment that may include an incidental take permit for threatened and endangered species and other species of concern.

Thank you for the opportunity to respond to this significant proposal.

Sincerely yours,

Isabelle Spohn
Methow Valley Citizens' Council



City of Seattle

Department of Planning and Development

Diane M. Sugimura, Director

December 11, 2012

Washington State Department of Ecology

SEPA

Attention: Fran Sant

PO Box 47703

Olympia, WA 98504-7703

separulemaking@ecy.wa.gov

Dear Fran Sant:

I am pleased to express support for the proposed rule amendments that were produced as part of the State Environmental Policy Act (SEPA) rule making process of 2012. The ability for local jurisdictions in the state to align these review thresholds, if they choose, with their comprehensive plan growth policies, will better support smart growth opportunities including affordable housing production and small businesses' ability to grow.

Since these environmental review thresholds were last evaluated, many jurisdictions in the state, including Seattle, have transformed growth policies and development review processes. Many comprehensive and other plans, encourage growth patterns that aid neighborhood vitality and provide other benefits. Cities and counties have improved protection of environmentally critical areas and stormwater and grading controls with the adoption of specific regulations. This diminishes the need for environmental review, particularly for small-scale development. It is now appropriate to adjust the environmental review thresholds, consistent with state growth management law, so they do not continue to create barriers where growth is encouraged.

Thank you for the opportunity to participate in the SEPA rulemaking process as part of the advisory committee. In cooperation with the Association of Washington Cities and other jurisdictions I appreciated the chance to provide information and analysis, listen and interact with other participants in how SEPA is implemented throughout the state, and collaborate on new thresholds and other provisions that will continue to protect the environment while minimizing unnecessary process.

As part of the advisory committee process we provided input as the rule amendments were being developed and offered rationale for threshold increases. While the levels in the new rule are not as high as we believe they should be, we recognize that the result is a product of compromise and balance. We also



City of Seattle, Department of Planning and Development

700 Fifth Avenue, Suite 2000

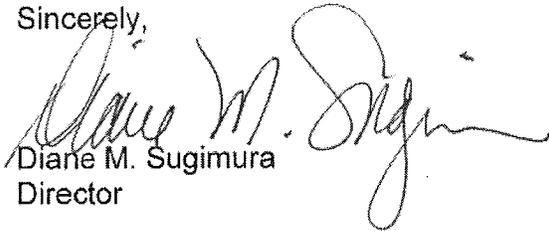
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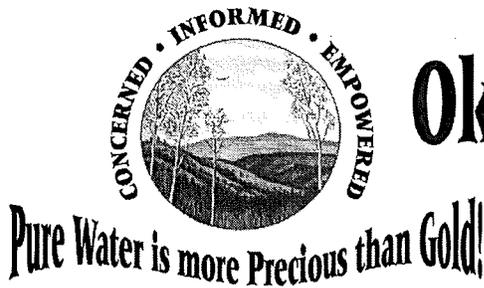
appreciate that other participants in the process recognize that this rulemaking reflects a multi-interest update to the rules.

We look forward to participating in future phases of rule making. If you have questions please contact Mike Podowski, Land Use Policy Manager, of my staff at mike.podowski@seattle.gov or 206-353-8949.

Sincerely,



Diane M. Sugimura
Director



Okanogan Highlands Alliance

P.O. Box 163 Tonasket WA 98855

david@okanoganhighlands.org

www.okanoganhighlands.org

December 10, 2012

Department of Ecology
P.O. Box 47703
Olympia, WA 98504-760
Email separulemaking@ecy.wa.gov
Fax: 360-407-6904

RE: Proposed Rule Change to Increase the Threshold for Exemption from Environmental Review Under the State Environmental Policy Act (SEPA).

The Okanogan Highlands Alliance (OHA) is a place-based nonprofit organization that works to educate the public in order to increase protection of the environment. Please consider these comments on the proposed changes to WAC 197-11-800(c)(iii) pertaining to the thresholds for categorical exemptions. OHA urges the Department of Ecology *not* to adopt the proposed rule change to SEPA—especially for jurisdictions that do not plan under the Growth Management Act (GMA).

The GMA is very clear in requiring counties that fall within its jurisdiction to protect the quantity and quality of groundwater for public water supplies. Counties planning under the GMA are required to consider both the legal and physical availability of water before issuing land development permits. Local jurisdictions must act to protect existing water rights, including private users and instream flow rights held by the public under state law, before approving new development.

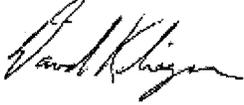
Okanogan County is not required to plan under the Growth Management Act. Consequently, SEPA has been an important tool, among the few we have, for ensuring that the County considers environmental impacts. Okanogan County's current draft comprehensive plan calls for one-acre development throughout much of the County, based upon permit exempt wells—irrespective of the impact on current water supplies. Development requires water, but there is no more water to spare. Yet, the County's current draft comprehensive plan proposes to increase allowable density to one house per acre, based upon new permit exempt wells. If Ecology adopts the proposed changes to SEPA's categorical exemptions, Okanogan County could allow even higher density for residential structures, increase the size of agricultural structures and allow more permissive excavation and fills in water-short basins.

Okanogan County has historically shown resistance to complying with state-mandated planning and environmental regulations. It has been delinquent in complying with the Shoreline Management Act and is negligent in addressing serious environmental issues in its comprehensive planning such as allowing one-acre development throughout much of the

County—regardless of information that planned development would far exceed future water resources.

OHA urges Ecology not to change WAC 197-11-800(c)(iii). Categorical exemptions, once adopted, require no notice and cannot be appealed. Categorical exemptions effectively operate to preclude the public from learning about proposed changes to their communities and they should only be adopted with the greatest caution—and only where other protections for wise planning and public review are in place.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Kliegman".

David Kliegman,
Executive Director



Association
of Washington
Business

Washington State's Chamber of Commerce

December 11, 2012

Washington State Department of Ecology

SEPA
Tom Clingman
C/O Fran Sant
PO Box 47703
Olympia WA 98504-7703

RE: State Environmental Policy Act comments – Rule proposal

Mr. Clingman:

On behalf of the Association of Washington Business (AWB), I would like to thank you for the opportunity to comment on the SEPA rule proposal put forward by the state's Department of Ecology.

AWB is the state's oldest and largest statewide business association, representing more than 8,000 member companies as the state's chamber of commerce, as well as the manufacturing and technology Association. While our membership includes well-known, larger employers in the state, more than 90 percent of AWB members employ fewer than 100 people and more than half of our members employ fewer than 10.

We recognize the extraordinary efforts made by Ecology, as well as other participants, to pull together such a broad group of stakeholders to discuss much needed reforms within SEPA, especially given the time restraints.

AWB is supportive of the categorical exemption increases, and changes to the environmental checklist, being proposed. In particular, we support the following concepts contained within the proposed rule:

- Establishing exemptions by area: We support the concept of applying various levels of exemptions dependent on the location of a proposed project;

ASSOCIATION OF WASHINGTON BUSINESS
Membership Government Affairs Member Services AWB Institute

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- Dividing single family and multi-family into separate exemptions. We believe that “multi-family” may need to be defined, as this classification currently doesn’t exist under WAC 197-11;
- Harmonizing landfill and excavation provisions: We agree with Ecology that there was need to harmonize the landfill and excavation exemption within the exemptions for minor new construction, to ensure the intent of the exemptions for minor new construction are realized;
- Checklist efficiency: We support the addition of subsection (6) to 197-11-315, which allows the local government to identify questions that are “adequately covered by a locally adopted ordinance....,” and allows for the electronic submittal of the checklist.

In addition, we support provisions that establish new procedural requirements for adopting an ordinance or resolution enacting the optional higher SEPA thresholds for exempt minor construction.

While we appreciate of the process provided by Ecology, and agree with several of the proposed provisions, we do have a few concerns that we believe Ecology should consider.

First, while we are pleased to see the proposed rule increases thresholds for categorical exemptions, Ecology has yet to explain how they arrived at the proposed thresholds.

As we previously pointed out to Ecology during the SEPA Advisory Committee process, local governments recommend higher thresholds than those in the Ecology proposal. It is our understanding, however, that local governments arrived at the threshold levels by reviewing data on completed SEPA documents that resulted in either a DNS or mitigated DNS. In short, the local government thresholds were based on a “test” that would seem to be defensible, showing no significant adverse environmental impact would result by adopting higher threshold levels.

Our question is what “test” did Ecology develop to generate defensible exemption numbers? As Ecology acknowledged, the intent of Legislature in section 1 of E2SSB 6406 stated, “the legislature finds that significant opportunities exist to modify programs that provide for management and protection of the state’s natural resources...in order to streamline regulatory processes and achieve program efficiencies....” This would seem to indicate the Legislature would have expected Ecology to review the overlay of environmental policies, to determine what the level of exemptions could be.

During the upcoming 2013 SEPA rule process we encourage Ecology to establish, and explain, the criteria used to evaluate additional SEPA modifications.

Second, SEPA checklist reforms being proposed in 2012 are expected to produce some needed efficiencies, but feedback suggests there are more opportunities to broaden the review. The hope is to eliminate what is perceived as a paper-pushing exercise. We look forward to working with Ecology during the 2013 rule process to identify additional changes to the checklist.

Finally, as you are aware, E2SSB 6406 states that Ecology must, "at a minimum, increase the existing maximum threshold levels for...the installation of an electric facility, lines and equipment, or appurtenances, other than substations."

Based on our conversations with our member companies, Ecology's proposed rule does not provide an increase to the existing electrical facilities' threshold level. In fact, it is our understanding the language being proposed by Ecology would actually weaken the current exemption threshold in current rule.

We encourage the Department to adopt the language provided by the utility providers in a letter sent to Ecology on Monday, October 1, 2012.

Again, thank you for the opportunity to review and comment on the rule proposal. AWB looks forward, with our member companies, to continuing our partnership with the Department to update the State Environmental Policy Act in 2013.

If you have any questions regarding our comments, or if we can be of any other assistance in the SEPA rule process, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Houskeeper". The signature is fluid and cursive, with the first name being more prominent.

Brandon Houskeeper
Association of Washington Business
Director, Government Affairs



CITIZENS FOR A HEALTHY BAY

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December 11, 2012

Washington State Department of Ecology
P.O. Box 47703
Olympia, WA 98504-7600
separulemaking@ecy.wa.gov

Re: Proposed SEPA Rule Changes

Ladies and Gentlemen:

The purpose of this letter is to provide comments by Citizens for a Healthy Bay (CHB) to Ecology's proposed rule changes under the State Environmental Policy Act (SEPA).

Executive Director

Bill Anderson

CHB is a community based, non-profit environmental organization representing the community stakeholders in the Commencement Bay Nearshore/Tideflats Superfund problem area and the surrounding area. Our membership includes citizens of the greater Commencement Bay, the Puyallup River Watershed and South Central Puget Sound.

Board of Directors

Bonnie Becker

Cheryl Greengrove

Kathleen Hasselblad

Bruce Kilen

Melissa Braisted Nordquist

Bill Pugh

Lee Roussel

Robert Stivers

Angie Thomson

Sheri Tonn

Allen Zulauf

CHB supports the 21-day public review and comment period as under WAC

197.800(c)(iii). Once adopted, categorical exemptions require no notice and cannot be appealed. Although some local governments have expressed concern regarding the 21-day public review and comment period requirement, it affords a reasonable time period to allow community and citizen stakeholders a meaningful opportunity to respond.

Exemption Levels under WAC 197.800(c)(iii) TABLE 1 to be amended to 20,000 square feet and 60 parking spaces. CHB strongly opposes the proposed categorical exemption of 30,000 square feet and 90 parking spaces. A project of that size represents an acre or more of land, generates additional traffic and additional potential impacts that need to be examined closely with opportunities for citizen and community stakeholders to participate in the process.

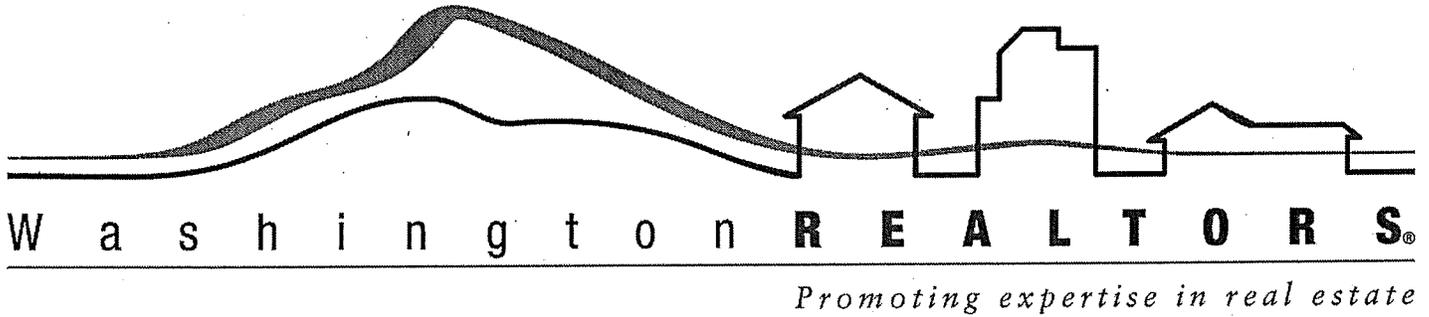
End any exemption under WAC 197-11-800(23)(c) for transmission lines over 115,000 volts. The term "overbuilding" is a very vague one and could allow transmission lines of up to 875,00 to be placed next to low voltage lines.

Thank you for your consideration of our remarks and for adding them into the public record.

Sincerely:

Leslie Ann Rose
Senior Policy Analyst

A tax-exempt
501(c)(3) Washington
nonprofit corporation



December 11, 2012

Tom Clingman
SEPA Policy Manager
Department of Ecology
P.O. Box 47703
Olympia, Washington 98504-7703

RE: Comments on 2012 SEPA Rule-Making

Dear Mr. Clingman:

On behalf of the Washington REALTORS®, I wish to extend our thanks and appreciation to Ecology for the established review process for updating the rules to WAC 197-11 as part of the 2012 update. After twenty years it is time to update the Rule, especially the exemptions section, given the many federal, state, and local policies and regulations passed over this time period which address potential impacts on the environment. Today more is known regarding the location and impacts of development on the built and natural environment. The proposed streamlining with this update makes the process more efficient while continuing to ensure protection of the environment.

In reviewing the October 24th draft Rules, we have some minor wording changes for consideration and concerns to pass on to you.

First, in WAC 197-11-800(1)(b)(i) regarding single family projects, the proposed wording should either be left as is or a rewritten such as:

- (i) The construction or location of four detached single family residential structures. or*
- (i) The construction or location of four detached single family residential structures or four dwelling units*

The question is what are we concerned about, the structure location or the units?

Similarly, in WAC 197-11-800(1)(b)(ii), regarding the new multi-family the language is awkward. Consider the following language:

(ii) The construction or location of a multi-family structure or structures consisting of four dwelling units.

This would account for two duplexes or one building with four units. The language needs to be clear and also consider the fact that duplexes could become a more popular product as more infill is done.

Third, there should be consistency between WAC 197-11-800(1)(b) and (c). In subsection (c) the term "default" in line 12 is an added but not defined term and not found in subsection (b). These sections should be consistent in either using the term "default" or calling the exemptions under (b) as the base level exemptions or some other language. Whatever is used to describe the exemptions in (b) should be used in (c) when allowing jurisdictions"... to adopt the maximum level or a level between the "default" and the maximum level."

Finally, we appreciate the changes to the environmental checklist in WAC 197-11-315, 197-11-906 and 197-11-960. These changes will simplify the environmental review process and modernize it with the provision for allowing checklists to be submitted electronically. The only concern is to ensure that clear guidance is provided to jurisdictions regarding when determining their policies, regulations, plans, etc. sufficiently cover checklist questions.

Thank you for the opportunity to comment on the first phase of the SEPA Rule update.

Sincerely,

Jeanette McKague

Jeanette McKague
Ass't Director of Land Use/Planning
504 14th Ave S.E.
Olympia, WA 98501
jeanette.mckague@wareator.org
(360) 259-9910



1251 2ND AVENUE SOUTH – ROOM 101, OKANOGAN, WA 98840
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December 11, 2012

Washington State Department of Ecology
PO Box 47703
Olympia, WA 98504-7600

Re: Draft SEPA rule comments.

To Whom it May Concern:

The Okanogan Conservation District Board of Supervisors discussed the proposed SEPA rule changes at their regular December Board meeting on December 6, 2012. The Board has directed that the following comments be submitted on behalf of the Okanogan Conservation District regarding the proposed rule changes.

1. We believe the SEPA Checklist has served as a critical backstop to protect natural resources in counties and municipalities that lack the regulatory framework to address activities such as grading, filling, construction, and other disturbances to natural resources. Exempting more activities from the SEPA checklist in communities with inadequate regulatory tools for project review will increase pressure on, and ultimately degradation of, natural resources.
2. The proposed extension of SEPA exemptions is not a concern in communities with functional regulations, review processes, and permitting requirements that protect natural resources.
3. We are concerned that an opportunity exists within the framework of the proposed changes to exempt activities that, when implemented, could damage previously installed Conservation Practices and projects on adjacent properties. Exempting review of activities such as grading and filling in communities that lack the tools to address these activities can also lead to situations where property owners request financial assistance to repair resource degradation caused by the inadequately planned and regulated projects. With private and often significant public resources invested in the design, permitting, and installation of Conservation Practices and projects, we believe that the Department should choose a path that protects these investments, and does not incur unnecessary and preventable future costs.

4. We feel the best route for the Department is to apply a filter that allows the proposed exemptions to be implemented only in localities with demonstrated adequate regulatory capacity to protect natural resources and existing and subsequent Conservation investments.

We thank you for the opportunity to provide input into your decision on this rule making process. Should you have questions regarding these comments please contact me at (509) 422-0855 ext. 5.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig T. Nelson". The signature is written in a cursive, flowing style.

Craig T. Nelson
District Manager

Sant, Fran (ECY)

From: Gordon and Debbie Bearse [debngord@comcast.net]
Sent: Tuesday, December 04, 2012 7:21 PM
To: ECY RE SEPA Rule Making
Subject: Relax SEPA requirements

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comments in favor of rule proposal

Please lessen the burden on the local jurisdictions and applicants and loosen the current requirements of SEPA. A simpler, more intuitive application process is a great idea as well.

Thank you for your consideration.

Gordon Bearse
Olympia, WA

Sant, Fran (ECY)

From: tyas1@juno.com
Sent: Tuesday, November 20, 2012 7:38 PM
To: ECY RE SEPA Rule Making
Subject: project exemptions

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comments in favor of rule proposal

To whom it may concern:

I am in favor of increasing the exemptions from environmental review on more projects as outlined in your latest draft proposal. Anything that would reduce the complexity and cost of things associated with living would be welcome.

Respectfully,
Raymond Tyas
Everson, Wa.

Sant, Fran (ECY)

From: chuck Sundsmo [chucksundsmo@msn.com]
Sent: Monday, December 03, 2012 10:09 PM
To: ECY RE SEPA Rule Making
Subject: SEPA REVIEW REQUIREMENT

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comments in favor of rule proposal

Dear DOE:

The requirement for SEPA review has always been ridiculous, redundant and a time burden to the reviewing agency and the applicant. Each question could be legitimately answered with "I don't know."

Nearly all reviewing agencies inside the urban growth boundary have critical areas maps that indicate if a project could be within an environmentally sensitive area. Reviewing agencies, regardless of SEPA, status nearly all departments when a project of any scope is submitted for review. SEPA review causes most of these agencies to perform double reviews. Once for SEPA, the other for project requirements.

Large projects, that exceed SEPA thresholds, require an environmental impact statement/review anyway.

Our new Governor has said a lot about streamlining regulation. He sure could show that it was more than just political speak by getting rid of this outdated regulation!

SEPA is a dinosaur and it's extinction is long overdue!

Chuck Sundsmo
253-224-4406

Sant, Fran (ECY)

From: BARNEY YORKSTON [barney@yorkstonoil.com]
Sent: Monday, November 19, 2012 2:58 PM
To: ECY RE SEPA Rule Making
Subject: Comments

Categories: Not Applicable/"Comment Noted"

SEPA Unit.

We removed and replaced tanks and piping at 2 sites, cleaned up both of them received nfa on one and waiting for an nfa on the other. The tanks and plumbing were replace with all new dbl wall fiberglass, with all the bells and whistles to avoid pollution. We did not add any fueling positions, or increase our footprint. The other agencies said that we did not need a SEPA. But Northwest Air Pollution Authority said we did. I think that this is very unjust and is only done as a income source. They considered it a substantial development, to remove and replace piping. You need to get a handle on these other agencies.

Barney Yorkston
Yorkston Oil Company
360-734-2201

Appendix B: Transcripts from Public Hearings

Olympia, Washington – 1:30 December 4, 2012

Washington Department of Ecology
Transcript of Public Hearing for Proposed Amendments Chapter 197-11
December 4th, 2012, 2:13 PM

FEMALE ON INTERCOM: This conference is being recorded.

BARI SCHREINER: I'm Bari Schreiner hearing officer for this hearing today we are to conduct a hearing on the proposed amendments for chapter 197-11 Washington Administrative Code, SEPA rules state environmental policy act. Let the record show that it is 2:13pm on December 4th 2012 and this hearing is being held at the Department of Ecology 300 Desmond Drive, Lacey Washington, 98504. Participants are also able to call in using 1-800-704-9804, pin number 543362#. Legal notices of this hearing were published in the Washington State Register November 7th 2012. Washington State Register Number 12-21-125. In addition notices of the hearing were emailed to approximately...um...two thousand interested people and a news release was issued on November 6th 2012 and November 27th 2012. I'll be calling people now to provide testimony based on the order that they um, either signed in here in the room or that their name appears on the phone call-in list. Once everyone who's indicated they want to provide testimony, I'll check again to see if there's anyone that changed their mind. Umm, right now we only have two people signed up, um, so we're going to ask everyone to please, you know, talk about five minutes and then begin summarizing your comments please remember that um, written comments are given the same consideration as oral testimony received here today and written comments again need to be submitted by December 11th 2012. Let's see, umm...okay...so the per--, the first person, we're gonna start here in the room is, Patricia, and I'm sorry I can't read your last name.

PATRICIA VANDEHAY: Vandehay.

BARI SCHREINER: Okay if you'll please come up here, if you could state your name for the record if you, and if you have any...um...affiliation to an organization.

PATRICIA VANDEHAY: Uh, my name is Patricia Vandehay, uh, I'm just a resident, citizen of Mason county. Uh, I suppose you're wondering why this old lady is up here talking about SEPA, um, I had my first...uh...acquaintance with SEPA when the, uh, Adage Project was trying to be brought into Mason County and I found out that it was going to be over a class one CARA...umm...I'd been reading SEPAs ever since from all these different projects that had been, been going on in Mason County, and I don't feel that, uh, uh, watering down, uh, what the rules and regulations are, are gonna be very helpful because it seems that even now the SEPAs have gone through and DNS has almost immediately given no matter what it seems to, uh, you know, have possible problems with. Umm...the pro-comments that I read, I read through all the information that we, we had received, and I read the pros and cons, and it seemed that the pros...umm...all seemed to be making it easier for projects to be greased through and for

Counties, Cities, and ecology to rubber stamp and okay without having to do too much to protect the environment, which is the original purpose of the SEPA. As it is now, the SEPA seems to have little effect on holding entities accountable for what projects they propose or how they implement them. I'd been reading the SEPA checklist for about three years it's not a very long time but it's efficient to notice a trend, uh, starting with that adage monstrosity, which consisted of two very large binders I found out, and then they had to re-do it again so there was another two to go through and I spent most of the time reading it, marking it, and making notes on it. Uhh...after a great deal of, of uh, numbing rhetoric and hair splitting over the use of the word debris as a fuel, the prosecuting attorney office in Shelton declared debris as not a fuel. So along with this information and many other questionable answers in the SEPA check list, plus the cost to get wood and to bring it to the site and the recommendation for an EIS, the dragon was slayed and the promoters left town. But there's been a lot of other different projects that have come up. Uhh...there's one right now in the works that are going to be decided on next week, in fact there's three of them, at a commissioners meetings. Uh, some things that just seem to jump out that there should be a more in-detailed investigation is: a project for a resort area to be put in, which has a fifty percent slope on it and they say they're only gonna use like a thousand gallons of water out from the well. Uh, there's, uh, a two story lodge, there's two campsites, cabins, a paddock, and an administrative building. And I don't know how this could be possible but this is what's in the SEPA report. It never even had in it, uh, what the number of acreage was that they were going to be building on. Uh, there's another project that's still in the going the Bellfair one, uh, they, they're took out over four thousand cubic yards of uh, contaminated soil, no information of where it was being dumped...uh...they, uh, I've seen the SEPA report, it's been quite, it was done quite a while ago, where the information was actually not true, and yet it was still permitted. Uh, one of the things that I find very difficult in finding out how they can even process any of this, is that the city of Shelton and Mason County do not know where CARAS one and two are located. The Shelton, uh, city of Shelton has one map, the County has another map, what, they show the, uh, one and two in exactly opposite directions and they both receive the information from the same source, it's a mystery. And, I brought this up I don't know how many times in front of the Commissioners and they just disregard it. So, you know, how can you uh, apply uh, the um, requirements for critical areas if you don't even know where they are, and I believe that's mandated by the uh, Brook Management Act. Uh, I noticed one of the quotes from con side, the bill does not provide fiscal relief and is not about reform, the fee will not cover the cost of the programs the bill will have short term costs and long term environmental impacts. Uh, the other thing I was wondering about is talking about the small size of the small projects that are going to be exempt. What stops counties or cities from breaking them up a larger project into three or four smaller projects to meet the minimum requirement and then after all the permits and everything are issued, suddenly decide that they're one cohesive plan? Uh, another thing that I think is putting the cart before the horse which is already in, is this, uh, non-project tacked on to uh...uh...uh, rezoning, we have that in the process right now too...uh, Green Diamond Timber is requesting a rezone of some of their, uh, two pieces of property, from, uh, long term, uh, commercial timber to RR5 and vice versa...uh...with a non-project. So, in order to even re-...um...conform to the rules of RR5...uh...you have to have some information. Growth management act requires that you do not have urban sprawl, uh, that all the infrastructure is in before the development is put in, this all seems to be just, you know, ignored, so, uh, I'm sure they're going to, uh, approve that because Green Diamond sent a letter to the planning commission and put in there specifically how they wanted it worded and that's how the wording is in the, uh, the rezone amendment. Umm...I

believe that the legislature should not worry about streamlining the SEPA process while gutting any power in it has of protecting the environment but to work to enforce the current SEPA checklist in a more stringent manner. I also think that it's very wrong that they're trying to keep the public from having, uh, availability to go before the growth management board. Uh, to me this is a blatant attack on our first amendment right of freedom of speech, thank you.

FEMALE: Thank you.

PATRICIA VANDEHAY: Oh and I have a copy I want to submit.

BARI SCHREINER: I'll take that from you, thank you.

PATRICIA VANDEHAY: Mhm, thank you.

BARI SCHREINER: K, the um, the next person that we have that's gonna provide testimony is on the phone. Please remember when you're--

FEMALE ON INTERCOM: (inaudible)...participant line unmuted.

BARI SCHREINER: Hold on one second. Sorry. Um, please remember to state your name and remember that we don't have contact information for people on the phone so you can either provide it as a part of your testimony or email it to separulemaking, all one word, @ecy.wa.gov. All right please go ahead, on the phone.

ROBIN BEKKEDAHL: Umm, hi, my name is Robin Bekkedahl I'm from Avista and I've finally figured out some of the technical difficulties. I'm going to provide my testimony. Umm, (inaudible) Avista (inaudible) proposed rule-making (inaudible) election portion of (inaudible) we think (inaudible) cook management act and many of the different county wide(inaudible)--

BARI SCHREINER: Okay, Excuse me, sorry one minute, I'm going to have to ask you to speak up a little, I think we're having a hard time hearing you here.

ROBIN BEKKEDAHL: Okay.

BARI SCHREINER: Sorry about that.

ROBIN BEKKEDAHL: Excuse me I'm sorry. So, my name is Robin Bekkedahl, I'm a representative for Avista, and we are in support of the proposed rule-making under (inaudible) 197-11-15 subtitled 23C titled Utilities or the Exemption. It's more that this exemption better aligned with the current growth management, the goals and the policies and various countywide planning policies and regulations that were written, and with the, we are allowed now, if this is approved, to actually use existing corridors and use the utility corridors and other existing corridors for basically rebuilding and upgrades. So I did write a letter and it was on November the 29th and I submitted that to DOE and if they have any questions on that I can answer those too. Thank you.

BARI SCHREINER: Thank you, k, umm, please remember if you're on the phone, press Star 1 if you'd like to provide comments, is there anybody in the room who has changed their mind who would like to come up now? Okay...is anybody...okay.

FEMALE ON INTERCOM: There are no more questions.

BARI SCHREINER: K please remember if you'd like to send ecology written comments they are due by December 11th 2012, you need to, umm, send them to Fran Sant at Department of Ecology, P.O. Box 47703 Olympia, Washington, 98504 or you can email them to separulemaking@ecy.wa.gov or they can be faxed to 360-407-6904 and this information is also available on the department of ecology's website. Umm, all testimony received at this hearing as well as the hearing we're holding, um, later tonight along with all written comments received, um, by December 11th will be part of the official hearing record for this proposal. Ecology will send notice about the Concise Explanatory Statement or CES publication to everyone that provided written comments or oral, oral testimony at this, um, hearing and submitted contact information to us, um, everyone that attended today's hearings that also provided us an email umm, contact information, email address, sorry, and any other interested parties that are on the agency's mailing list that we use for this rule-making. The, um, CES contains among other things the agency's response to questions and issues of concern raised during the comment period. Umm, if you would like to receive a copy and you didn't give us that contact information please let one of the staff here today know and we could write that down or you could, um, email it to Fran and we can get you added, um, to those mailing lists. The next step is to review the comments and make a determination about whether to move forward with the adoption of this rule. The Ecology, the Ecology director will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for no earlier than December 28th 2012, if the proposed rule should be adopted on that day and filed with the code reviser on that day it becomes effective 31 days later. So if we could be of any further help to you today please don't hesitate to ask. Umm, I appreciate your cooperation. Let the record show that this hearing is adjourned at 2:28 pm. Thank you very much.

Olympia, Washington – 6:30 December 4, 2012

**Washington Department of Ecology
Transcript of Public Hearing for Proposed Amendments Chapter 197-11
December 4th, 2012, 7:01 PM**

BARI SCHREINER: Starting to record now. I'm Bari Schreiner hearing officer for this hearing. Today we are to conduct a public hearing on the proposed amendments for Chapter 197-11 Washington administrative code, SEPA Rules, State Environmental Policy Act. Let the record show that it is now 7:01 PM on December 4th 2012 and this hearing is being held at the Department of Ecology, 300 Desmond Drive, Lacey, Washington 98504. Participants are also able to call in using 1-800-704-9804 with Participant Pin number 543362#. Legal notices of this hearing were published in the Washington State Register, November 7th 2012, Washington State register number 12-21-125. In addition, notices of the hearing were emailed to approximately, um, two thousand people and a news release was issued on November 6, 2012 and November 27th

2012. So now we're gonna move into the formal, um, hearing. If you're on the phone and you'd like to provide formal comments please press Star 1. At, um, this time I have nobody signed up in the room has anyone changed their mind? K, I see a 'no' from the audience, has anybody on the phone?

FEMALE: No.

BARI SCHREINER: Okay, I'll, I'll continue and I'll check one more time, um, in a second. So again...umm...oh um, I'm sorry, wrong way...umm...if you'd like to send ecology written comments please remember they are due by December 11th 2012. You need to send them to Fran Sant Department of Ecology, P.O. Box 47703, Olympia, Washington 98504. Or you could email them to seeparulemaking, all one word, @ecy.wa.gov or you could fax them to 360-407-6904. I'm going to check one more time, if there's anybody on the phone that wants to provide testimony please press Star 1, anybody in the room changed their mind, no. No? All right, um, let the record show that we had, um, four participants at this hearing and no one indicated that they wanted to provide oral testimony. Umm, so in closing, all testimony received at the hearing held earlier today along with all written comments received by December 11th will become part of the official hearing record, or the off--, I'm sorry, official public record for this proposal. Ecology sends out notice, um, about the Concise Explanatory Statement or CES publication, um, to everyone that provided written comments or oral testimony on the rule proposal and submitted contact information, everyone that attended today's hearing that provided an email address and if you're on the phone and you'd like us to send you updates please remember to send your contact information to seeparulemaking, one word, @ecy.wa.gov and we'll get you added to this list and then we also will send out notice to our other interested parties list that the agency, um, uses for this rule making. And the Concise Explanatory Statement contains the agency's response to issues and comments um, that we received during the public hearing, among other issues, um, that we, other, other documentation that we include in there, um, and then we send out notice when it's available, um, to our mailing list at the, um, after the comment period, is over. So the next step is to review the comments and make a determination whether to adopt the rule. Ecology's director will consider the rule documentation, staff recommendations and we'll make that decision about adopting the proposal. Adoption is currently scheduled for no earlier than December 28th 2012 and if the proposed rule should be adopted that day and filed with the code reviser it will go into effect thirty-one days later. So if we can be of any further help please let us know or you can contact Fran and her contact information is also available on Ecology's website, um, on the SEPA rule making pages. On behalf of the department of Ecology thank you very much for coming. Let the record show that this hearing is adjourned at 7:05 PM. Thank you.

MALE: Yeah thanks for coming --