



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 197-11 WAC

State Environmental Policy Act (SEPA)

Rules

Repeal of chapters:

Chapter 173-806 WAC Model Ordinance

Chapter 197-06 WAC Public Records

Summary of rule making and response to comments

April 2014

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Concise Explanatory Statement

Chapter 197-11 WAC State Environmental Policy Act (SEPA) Rules

**Repeal of chapters:
Chapter 173-806 WAC Model Ordinance
and
Chapter 197-06 WAC Public Records**

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

Title: State Environmental Policy Act (SEPA) Rules

WAC Chapter(s): 197-11

Adopted date: April 9, 2014

Effective date: May 10, 2014

Repeal of Chapters: Chapter 173-806 WAC Model Ordinance and Chapter 197-06 WAC Public Records

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

This rule making is specifically mandated by 2012 2ESSB 6406(Chapter 1, 2012 Laws 1st Special Session). This is the second round of rule updates under this bill. The legislature directed ecology to:

- Update, but not decrease, the thresholds for all other project actions in Chapter 197-11-800 WAC that were not previously updated under the first round of updates completed 12-31-2012.
- Propose methods for intergrating SEPA with provisions of the Growth Management Act.
- Create categorical exemptions for minor code amendments that do not lessen environmental protection.
- Review the updates resulting from rulemaking in 2012.

The proposed rule amendments include:

- Expanded use of NEPA documentation by lead agencies.
- Update of definition for “lands covered by water”.
- For adoption of increased flexible thresholds for minor new construction, more specific requirements regarding cultural resources and an increase in notice to 60 days.
- Expanded minor new construction exemptions for installation or removal of tanks and solar energy projects.
- New exemption for small maintenance dredging projects.
- Update of exemption for land use decisions to provide that most land use decisions will be exempt for otherwise exempt projects, with some limited exceptions.
- New exemption for formation of special districts.
- New exemption for text amendments of ordinances or codes that do not change environmental standards.
- Update of utility exemption for water pipe size to align with industry standards.
- Allow Department of Natural Resource (DNR) Rock sales on state owned land.
- Clarified and expanded Washington State Department of Transportation (WSDOT) maintenance exemptions.
- Environmental checklist updates.
- Other minor updates, clarifications and technical corrections.

Ecology is repealing **Chapter 173-806 WAC Model Ordinance** in response to changes being made in Chapter 197-11 WAC and will make the model ordinance available as guidance rather than rule.

Ecology is repealing **Chapter 197-06 WAC Public Records**. This rule is being repealed because (1) a number of the provisions are specific to the Council on Environmental Policy that was established in the 1970’s and no longer exists; (2) The sections of the rule related to public records have been superseded by Chapter 173-03 WAC.

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 December 16, 2013 and the adopted rule filed on April 9, 2014.

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. Where a change was made solely for editing or clarification purposes, we did not include it in this section.

WAC Section	Description of change
197-11-610	Added a clarification that a National Environmental Policy Act (NEPA) Environmental Assessment is to support a determination not replace it.
197-11-800 (1)(c)(ii)	Provided clarification that notice is to include public, affected tribes and agencies.
197-11-800 (1)(c)(iii)	For clarification - identified "agency" instead of "local government".
197-11-800 (1)(c)(iv)	Section has been reworded and clarification added to address Cultural Resource concerns, the intent remains the same.
197-11-800 (2)(a)(i-iv)	Re-organized the beginning of 800 (2) and corrected a typographical error – intent is the same.
197-11-800 (26)	Section was moved from 197-11-860 to 197-11-800 (26). If left in 860 the exemption would not be applicable to the permits issued by other agencies for Washington State Department of Transportation (WSDOT) repair, replace or retrofit projects. This was moved to clarify intent - certain WSDOT projects are intended to be exempt from SEPA.
197-11-800 (2)(h)	Added “total” to capacity for clarity.
197-11-800 (5)	Improved clarity of section in response to comments. The intent of this section is to exempt the sale of public property from SEPA only if the property is not specifically designated and authorized for public use.
197-11-800 (6)	There was confusion from stakeholders about Ecology's intent. Changes have been made in response to add clarity and also identify that boundary line adjustments are exempt from SEPA.
197-11-830	Clarified in response to comments – the intent is to exempt the sale of rock from Washington Department of Natural Resources (DNR) rock pits regulated under a forest practices permit.
197-11-860	Moved language in this section to 197-11-800(26).
197-11-875 (19)	Technical correction - added in the” Pollution Control Hearings Board” which replaced the” Forest Practices Appeals Board”.
197-11-936	Clarified section and inserted "local agency" instead of "county/city" as

	other types of local government's (ports, special districts, etc...) can be lead agency.
197-11-938 (12)	Technical Correction – section should refer to Department of Health for uranium milling, not Department of Social and Health Services.
197-11-960	Provided corrections and clarifications to questions on the checklist in response to comments. No new questions or topics have been added.

Response to Comments

Description of comments:

Ecology has summarized and organized the comments by rule section. If several comments made from multiple parties were related and on the same topic, one response was made. The tables below summarize the comment on each rule section and the party or parties that provided comment. 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 between December 16, 2013 until February 5, 2014.

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.

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).

Number assigned	Commenter	Letter dated
1	Association of Washington Cities/Washington State Association of Counties	2/4/2014
2	Association of Washington Business	2/5/2014
3	Avista Corp	2/5/2014
4	Building Industry Association of Washington	2/5/2014
5	Cherry Point Aquatic Reserve Citizen Stewardship Committee	2/5/2014
6	Clark, Adonais - Pierce County	2/4/2014
7	Conferated Tribes and Bands of the Yakama Nation	2/4/2014
8	Cultural Resources Representatives	2/3/2014
9	Davis, Troy - City of Arlington	1/27/2014
10	Dringman, Dixie	1/15/2014
11	Environmental Interests	2/5/2014
12	Everett, City of	2/4/2014
13	Fidalgo Bay Aquatic Reserve Citizen Stewardship Committee	2/4/2014
14	Fife, City of	1/28/2014
15	Greetham, David - Kitsap County	2/4/2014

16	Hanford Site/Mission Support Alliance	2/5/2014
17	Kent, City of	1/27/2014
18	Kester, Jennifer - City of Gig Harbor	2/5/2014
19	King County	2/5/2014
20	Nisqually Reach Aquatic Reserve Citizen Stewardship Committee	2/5/2014
21	Redmond, City of	1/13/2014
22	Repar, Mary	2/4/2014
23	Rinck, Brandy ET AL	2/5/2014
24	Schanfald, Darlene	1/27/2014
25	Seattle, City Light	2/5/2014
26	Sharley-Habbard, Ann	2/5/2014
27	Skagitonians to Preserve Farmland	1/28/2014
28	Smith and Minor Islands Aquatic Reserve Citizen Stewardship Committee	2/4/2014
29	Stanton, Lita - City of Gig Harbor	2/5/2014
30	Steel, Gerald	2/5/2014
31	Stevens County	2/3/2014
32	Stillaguamish Tribe of Indians	2/5/2014
33	Suquamish Tribe, The	2/4/2014
34	Walter, Karen (Muckleshoot Tribe)	2/4/2014
35	Washington State Dept. of Archeology and Historic Preservation	2/5/2014
36	Washington State Dept. of Natural Resources	2/4/2014
37	Washington State Dept. of Transportation	2/5/2014
38	Washington Water Utilities Council	10/2/2013 & 2/2/14
39	Weeks, Regan	1/29/2014
40	Weis, Gathia	2/4/2014

Comments and responses by WAC section

WAC Section	Comment Summary	Response to comments
197-11-238	Cumulative impacts should be tracked by all Washington municipalities. There should be a mandatory process and policy in place to track cumulative impacts and effects and update this information on a regular basis. (22a)	22a: This section of the rules provides implementation guidance for a statutory provision (RCW 43.21C.240) which provides an <u>optional</u> process for fully-planning GMA jurisdictions to integrate project-level SEPA review with land-use planning and the applicable development regulations. Changes to requirements under GMA would need to occur with the legislature or the implementing rules.

197-11-508	We believe that the SEPA register should also include links to the SEPA documents. (11a)	11a: Ecology agrees and is currently planning for upgrades to the database that will eventually provide this service. Implementation will depend upon available funding.
	SEPA register should include site location data that can be accurately mapped. (30e)	30e: Ecology agrees and is currently planning for database upgrades that will allow for links to location maps. Implementation will depend upon available funding.
	Ecology considered requiring cities and counties to submit all Notices of Application (NOAs) under RCW 36.70B (or equivalent notice) to the SEPA register (or some other statewide listing). This would be useful as NOAs are often the first time reviewers learn about a project. (34a)	34a: Ecology concluded the SEPA rules are not the correct place to require this type of notice submittal because SEPA review is not a part of the notice. An amendment to RCW 36.70b may be needed. Ecology will explore whether these non-SEPA notices can be listed when they are voluntarily sent to the Register.
197-11-510	The public notice section options are too limited in scope and not mandatory. Notification is a crucial element of the SEPA process, and it is often the only notice we receive. The current rule does not require notification for projects that fall within the new maximums. (8j)	8j: This revision proposes the addition of one more method of public notice to the existing list of potential methods. Overall the rule amendments do reflect the importance of maintaining and improving public involvement in projects that are both exempt and non-exempt from SEPA. This issue will continue to be an important component of ongoing rule discussions in addition to upcoming guidance and training related to the new rules.
197-11-610	A NEPA EIS should still be able to be adopted when issuing a SEPA Determination of Non-Significance (DNS). (12a)	12a: Ecology removed the EIS option when issuing DNSs because it is confusing to have significant impacts addressed in an EIS when the SEPA agency has determined that there are <u>no</u> significant effects.
	SEPA Rules should clarify the circumstances in which SEPA would apply when there is federal agency involvement. Delete adoption requirements when an adequate (per the NEPA regulations) NEPA document has been prepared, unless the purpose for adopting the NEPA document is for a state or local proposal (a project different from the federal proposal). (16a-d)	16a-d: SEPA review applies to the governmental decisions of state or local public agencies regardless of whether and how a federal agency is involved. They each have independent responsibilities with separate requirements. They have similar processes and consequently some types of NEPA documents can be adopted in lieu of preparing separate SEPA EISs or checklists.

		<p>The adoption requirement under SEPA is necessary because there are different requirements under SEPA and the lead agency must disclose findings regarding the sufficiency of the NEPA document to fulfill the required analysis under SEPA.</p>
	<p>The term “DCE” should be federal CX or CatEx, which would avoid a SEPA Lead Agency expecting to see a federal document that has the title “DCE.” Revise the text so that an action that is a CX under NEPA is the equivalent of a CE under SEPA. (16e)</p>	<p>16e: “DCE” is distinct from the federal CX or CatEx because it is a documentation that the exemption rules (of the applicable federal agency) apply and further NEPA review is not required. This document can be similar to the Environmental Checklist under SEPA and therefore it may provide adequate background for the issuance of a DNS.</p> <p>NEPA exemptions applicable to specific federal agencies are not equivalent to SEPA exemptions so a NEPA CX is not the same as a SEPA exemption.</p>
	<p>If the federal action is on federal land, it maybe appropriate that all of the SEPA elements of the environment are not evaluated. If the SEPA lead agency feels a need to address additional elements, the SEPA lead agency may decide to provide it, but not determine the NEPA documentation is incomplete and require the federal agency to provide it. (16f)</p> <p>There is no reference to the statutory exemption in RCW 43.21c.150 regarding use of NEPA documents. Also, NEPA is not otherwise referenced in RCW 43.21C, so WAC 197-11-610 as proposed is insufficient. (16g)</p> <p>The statement by Ecology that a State/SEPA lead agency must make a determination of adequacy and formally adopt a NEPA document in order to be compliant with SEPA is insufficiently supported by both SEPA statute and rule. (16h)</p> <p>WAC 197-11-340 should not be added to section 610 as a new requirement. WAC 197-</p>	<p>16f-j: If SEPA review is required for projects also undergoing NEPA review then all of the elements of the environment (as listed in 197-11-444) must be addressed (pursuant to WAC 197 11-060) regardless of whether the proponent is a federal agency or private party.</p> <p>The federal agency is tasked with deciding if NEPA documentation is sufficient, but the SEPA lead agency is tasked with determining the scope and content of the SEPA documents as well as the “adequacy” of a NEPA EIS for use in lieu of a SEPA EIS. Additional information may be requested of the proponent in order to make an informed SEPA threshold determination or an adequate SEPA EIS.</p> <p>The SEPA rules provide for an adequacy determination under WAC 197-11-600 through section 610 and the SEPA statute under RCW 43.21C.150 provides that an adequate NEPA EIS “may be utilized” in</p>

	<p>11-444 should not be added to section 610 as a new requirement. (16i, j)</p>	<p>lieu of preparing a SEPA EIS. WAC 197-11-610 provides the procedures for the SEPA lead agency to do so.</p> <p>The issuance of a DNS pursuant to WAC 197-11-340(1) is currently required when adopting a NEPA document and the SEPA determines the impacts to be nonsignificant. Ecology is clarifying this requirement by repeating it in 197-11-610</p>
	<p>Add a citation to statutory exemption RCW 43.21C.0384 to all appropriate sections in WAC 197-11. (16k)</p>	<p>16k: In general, the statutory exemptions in RCW 43.21c are not repeated in the rule. However, RCW 43.21C.0384 also includes a requirement to create a matching rule exemption. The rule exemption is WAC 197-11-800(25).</p>
	<p>Why is the federal Clean Air Act referenced in this section of rule and not the federal Clean Water Act? (22k)</p>	<p>22k: Regarding the reference to the clean air act and clean water act, this subsection (related to inadequate NEPA documents) is not proposed for change and this reference to a federal statute is the provision for EPA’s responsibility to review and comment on all NEPA EISs. NEPA EISs that are found “inadequate” by EPA are not allowed to be adopted to fulfill SEPA review requirements.</p>
	<p>Please consider explicit guidance to allow lead agencies to issue MDNSs and adopt NEPA documents. (25a)</p>	<p>25a: Ecology has clarified that MDNSs may also be issued and further amended this subsection to include: “<u>(and WAC 197-11-350 and 197-11-355 as applicable).</u>”</p>
	<p>The Staff report notes, on page 8, that there will be a comment period required for the DNS/DCE adoption. WAC 197-11-340 does not allow for sufficient time to review the NEPA documents being adopted, particularly if it is an EA with appendices. This WAC provision only allows a 14-day review period. Also, if anyone has concerns regarding the adequacy of the NEPA documents being adopted under SEPA, would they use the SEPA appeal procedures? (34b)</p>	<p>34b: The current rule language requires compliance with 197-11-340 when issuing a DNS with an adoption of a NEPA document. Under 197-11-340(2), a 14-day comment period is required for DNSs. Ecology’s proposed amendment only adds NEPA DCEs to the list of documents that can be adopted in lieu of preparing a SEPA checklist. Ecology agrees that the NEPA documents (DCE, EA or EIS) might not have been reviewed prior to the proposed SEPA adoption, and this is why there is at least the 14-day notice with DNS/adoptions. Any longer</p>

		<p>comment period for DNSs with adoption of an EA would be inconsistent and potentially confusing for SEPA lead agencies.</p> <p>Appeals of SEPA reviews that use NEPA documents (via adoption) would follow the procedures offered by the SEPA lead agency. The rules attempt to make it clear that SEPA review is still required even if a NEPA document is being adopted.</p>
	We support allowing use of NEPA documentation. (37a, 39b)	37a and 39b: – Thank you for the comments.
197-11-756	There are many permits and regulations covering activities on lands covered by water, some not in place when SEPA was passed, and question the value of SEPA on the activities. We support the clarification that buffers and adjacent lands are not lands covered by water. (1b)	1b: We agree that there have been many advances in the regulation and permitting of projects in the aquatic environment since the rules were adopted in 1984. However, the sensitivity of the aquatic environment and the wide variability of local regulations combine to warrant continued review of lands covered by water in SEPA. Thank you for the comment regarding buffers and adjacent lands clarification.
	Support the revised lands covered by water language. (2b, 4b)	2b, 4d: Thank you for the comment
	There are many permits and regulations covering activities on lands covered by water. Consider projects exempt if NEPA applies. (3a)	3a: See comment 1b. When NEPA applies to a project that is also subject to SEPA, the review can be combined for efficiency or NEPA documents may be adopted to fulfill SEPA. Due to variations in NEPA review at different federal agencies (due in part to differing NEPA regulations at each federal agency), the decision to combine review or adopt should remain with SEPA lead agency.
	Several commenters expressed concern regarding the clarification that buffers and adjacent lands are not lands covered by water (5c, 24a, 34c. 40a)	5c, 24a, 34c. 40a: While we agree that buffers and lands adjacent to lands covered by water are sensitive environments, the new rule language simply clarifies what we interpret to be in the current rule.
	Support continued lands covered by water exception to exemption. (7a, 36a)	7a, 36a: Thank you for the comment

	Concerns regarding updated definition of wetlands. (12b, 12c, 19a)	12b, 12c, 19a: The intent of the rule change was to update the definition of wetlands to be consistent with the Growth Management Act.
	No issues with revised lands covered by water language. (25b)	25b: Thank you for the comment
197-11-800 (1)(a)	Licenses required. New section 197-11-800(1)(a)(iv) should be deleted because subsection 1(a) states the exemptions already apply to “all licenses required to undertake the construction in question...” (12g)	12g: The cross-reference in subsection (iv) is important because if a project would otherwise be exempt, but a necessary land use decision listed in subsection (6) is not exempt, then the entire project is not exempt. For example, if a rezone is required for an otherwise exempt project, and the rezone does not meet the exemptions for rezone listed in (6), then the project is not exempt. Without the cross-reference, a lead agency may not realize that subsection (6) may apply.
	Delete (a)(ii) through (iv) related to exception when there is issuance of air and waste discharge permits, and certain land-use decisions are already exempted by 197-11-800(1)(a). (12d-h)	12d-h: These exceptions to exemptions are currently included in the rules and are an <u>exception</u> to the inclusion of all licenses as part of the overall exempt project type.
	The first sentence without the recommended deletions reads that the entire section would not be exempt except for 2(a)(i). (12h)	12h: This section was awkwardly worded and is being revised to clarify. The cross-reference to land use decisions in subsection (6) is added for the same reasons as outlined in the response to comment 12(g) above.
	Minor new construction – thresholds should not be flexible. Also, regarding the provision “If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control”, the higher standards and not the lower standards should apply. (22m)	22m: The “lower threshold” means that the SEPA exemption does <u>not</u> apply to smaller size projects. If one jurisdiction has a building size threshold of 12,000 sq feet and the other jurisdiction has 4,000 sq feet – then a proposed project with 5,000 sq feet would be subject to SEPA review.
	Delete (a)(i) because there is no longer a need for an exception when a proposal affects land covered by water. (31a)	31a: The rulemaking Advisory Committee discussed the removal of this exception but Ecology decided to retain it with a modification of the definition. Despite the development of other regulations, there is still a need for environmental review to avoid a regulatory gap.
	197-11-800 (1)(b)	These exemptions related to fill or excavation should be deleted . . . How was 100 cubic

	yards of fill or excavation determined to be the appropriate amount? (22n)	projects that are not associated with a construction or landscaping project. This number was established during the 2012 SEPA rulemaking process.
	We support these revisions providing clarifications to this section. (36b)	36b: Thank you for the comments.
197-11-800 (1) (c)	Several commenters support the changes to the rule related to mixed use. (1f, 2b, 4b)	1f, 2b and 4b: Thank you for the comments.
	Several commenter's expressed concerns about the changes to the rule related to mixed use and oppose this rule change. (5d and 11c)	5d and 11c: Ecology intends to keep the proposed rule language. We believe it provides a necessary clarification of what the rule currently allows.
197-11-800 (1)(c) (iv)	It is important to provide adequate notice for decisions that would be newly exempt from SEPA, but also important to consider how these notice requirements would be administered. We appreciate that the approach put forth by Ecology is sensitive to these concerns about ease of administration and support the proposal. (1a, 2b, 4b)	1a, 2b, 4b : Thank you for the comment.
	Some of the solutions to the issue of notice for cultural and historic resources may lie outside of the SEPA statute and the SEPA Rules. (1a)	1a: We agree. It is our understanding that conversations on this point are continuing among stakeholders, and Ecology stands ready to participate in whatever venue is appropriate.
	Projects that involve potential impacts to cultural resources are adequately addressed through existing requirements; any additional SEPA review could be duplicative and set up conflicts between different authorities. We also oppose additional planning level requirements, which would only serve to cause unnecessary delays and costs. (3d, 3f)	3d, 3f Ecology heard very clearly through the Advisory Committee and public process that potential impacts to cultural resources are <u>not</u> adequately and consistently addressed in all jurisdictions. We found this viewpoint and information compelling and are not inclined to change this proposal. We also believe the planning level requirements are needed to provide some way to address these concerns.
	We agree with the agency's decision to not include exceptions to the exemption on cultural resources. (3g)	3g: Thank you for the comment.
	We support the requirement for findings, but believe the rules need to be more explicit. For example, new Shoreline Master Programs will plan for and protect cultural resources, but this is not yet required under the Growth	7b, 7c, 35b: We agree that some additional language is needed to address the notice concern, and have amended the findings requirement accordingly.

	<p>Management Act. This means cultural resources remain vulnerable with new exemptions. The proposed rules do not address the provisions in SB 6406 that require Ecology to ensure that tribes receive adequate notice through SEPA and other means. (7b, 7c, 35b)</p>	
	<p>Local governments should be required to have a memorandum of consultation with local tribes. (7d)</p>	<p>7d: We heard during the Advisory Committee process that this would not be acceptable to local government as a requirement. We continue to encourage local governments to explore this opportunity with their local tribes.</p>
	<p>All lead agencies that permit ground disturbing activities should be required to have a data-sharing agreement with DAHP, and all projects with known archaeological sites should not be exempt from SEPA unless a cultural resources management plan approved by DAHP and the affected tribes is in place. The predictive model developed by DAHP should be used. (7f, 7g, 7h)</p>	<p>7f, 7g, 7h: This comment goes beyond the SEPA framework; see response to comment 6 above. Ecology is working with other stakeholders to reduce impediments to using information from DAHP. Ecology also encourages local governments to consider these procedures</p>
	<p>Several terms need to be defined, and it should be clear that a “pre-project cultural resources review” should be done by DAHP or an affected tribe. (7i)</p>	<p>7i: SEPA rules are generally not the place to define technical terms and methodologies used to address specific topics related to the built and natural environment – whether the issue is traffic impact analysis or cultural resources protection. Overall, it is better to leave these details to the entities that develop these issue-specific frameworks. Additional guidance and linkage to other sources of information on “pre-project cultural resources review” will be provided in the SEPA Handbook.</p>
	<p>The language “are in place” should be inserted to ensure that requirements exist prior to adopting new SEPA thresholds. (7j)</p>	<p>7j: Ecology believes the existing language already provides that requirement.</p>
	<p>Not all jurisdictions fully plan under the GMA or are in line with present SMA regulations, which means the increase in threshold levels will result in increased number of projects not reviewed for impacts to cultural resources. (8a, 32c, 35a)</p>	<p>8a, 32c, 35a: Jurisdictions not fully planning under the GMA have smaller levels of thresholds they are allowed to adopt (see the table in WAC 197-11-800(1)(d). In addition, they are subject to the same requirement to adopt findings as are GMA jurisdictions. Ecology has revised the language about required</p>

	findings to add specificity.
There are a number of problems with the way impacts to cultural resources are (or are not) considered prior to project implementation that were highlighted by the rule making process. It may be that new legislation and/or rule amendments will be required. (8b)	8b: See response to comment #1a above. HB 2724 was adopted in 2014 to address a specific impediment identified during the rule update process: overly narrow exemptions from public disclosure leading some cities to avoid using the DAHP resources. We look forward to working with the stakeholders on future proposals.
We strongly support the new findings requirements. We also continue to offer the “decision tree” model for pre-project cultural resource review. (8c, 33a)	8c, 33a: Thank you for the comment of support on the findings provisions. Ecology continues to believe the “decision tree” model has details that go beyond what can be done with the SEPA Rules at the present time.
The proposed language only applies to jurisdictions raising their exempt levels after the current round of rulemaking. This underscores the need to commit to addressing these problems. (8d)	8d: As with response 1a and 8b above, we look forward to working with the stakeholders on future proposals.
We suggest Ecology consider the approach suggested by DNR in their October 4 letter that would establish “reasonably sufficient information” required of applicants. (8e)	8e: We elected not to provide additional detail in this section, either generally or applying to just cultural resources.
I support the extension of the notice period from 21 to 60 days. (10a, 32a, 37b)	10a, 32a, 37b: Thank you for the comment.
This extension of the notice period from 21 to 60 days should also apply to all SEPA comment periods. (22q)	22q: Applying the extended time to all SEPA comment periods is not appropriate. There are different needs for different comment periods. Raising thresholds for SEPA review – a decision that will apply to all subsequent projects in the jurisdiction - is a major decision that warrants a longer comment period.
Changing the comment period from 21 to 60 days is against the notion of “streamlining” required by the bill. (12q)	12q: Ecology does not agree. The end result of additional time to review a proposed ordinance will be more streamlined review of subsequent permits, which is in line with streamlining.
I’m glad that Ecology is addressing shortcomings in the protection of cultural resources, even though SEPA may not be the best place to address them. (10b)	10b: Thank you for the comment.
Some of the changes proposed regarding cultural/historic resources places too much authority to address issues in the hands of local governments. (10c, 10e)	10c, 10e Under the planning framework established in Washington state law, local governments are given the responsibility to develop and administer these types of

		regulations.
	Some of the amendments appear to conflict with existing protection laws. (10d)	10d: Ecology is not aware of any specific conflicts of the type generally mentioned in the comment.
	The language for new findings requirements is overly specific; this should simply be a note that documentation must show environmental analysis, protection and mitigation have been adequately addressed. (14b)	14b: Ecology believes the specificity of the rule language is needed to adequately address the issues related to cultural/historic resources in that section.
	The term “likely” should be removed from 197-11-800(1)(c)(iv). There needs to be clear guidance for making the determination of “likely”. (17a)	17a: Ecology believes this reference to “likely” resources must remain in the rule. We will discuss this issue in the revisions to the SEPA Handbook..
	We have concerns about deciding when pre-project cultural resource review is “warranted”. (17b)	17b: Information on when such review is warranted may be determined in consultation with DAHP and affected tribes. Tools and techniques for addressing this question will continue to be developed by agencies, tribes and experts in the field. One example is the DAHP predictive model.
	There should be minimal exemptions for any development. The requirement for local governments to demonstrate, in their findings that impacts are adequately addressed is not specific enough. (22o)	22o: We believe the proposed language provides the appropriate amount of specificity. We will provide supportive information in guidance, such as web links and good examples of local ordinances.
	The language in subsection (ii) on page 9, about public notice opportunities, is hard to understand. (22p)	22p: We have revised this subsection for greater clarity.
	We support the comment letter sent in by the cultural and historic resources representatives from the Advisory Committee. (23a, 26a)	23a, 26a: Thank you for the comment. See above for our responses to the comments made in that other letter.
	We support the changes to the SEPA Rules related to the requirement to adopt findings when choosing to increase the threshold levels. (32b)	32b: Thank you for the comment.
	In earlier discussions, WSDOT encouraged specifying number of trips generated, not parking stalls, as the method of identifying traffic impacts. Although this was not included, we encourage local governments to consider traffic impacts on the state system as	37g: Thank you for your comment. We may reference this issue when revising the SEPA Handbook.

	part of local development review and when deciding whether a project is exempt. (37g)	
197-11-800 (2)(a)(i-iv)	Re-organize the beginning of 800(2) to be clear that exceptions apply to the entire section of exemptions. (12i)	12i: A change was made to clarify this section in response to this concern.
	There is a typo related to misplaced “or” in list (30a)	30a: This typo has been corrected.
197-11-800 (2)(d)(i-ix)	Concern about exempting culverts on fish-bearing streams. (34d)	34d: The exemption in 800(2)(d) does not apply to culverts on lands covered by water.
197-11-800 (2)(f)	Several amendments were requested by commenters: <ul style="list-style-type: none"> Define the current phrase “recognized historical significance” as a structure or facility that is “listed in or eligible for listing in an historic register.” (8f) Include “determined to be eligible” for listing (25c, 35c) 	8f, 25c, 35c: There was concern about these suggested clarifications discussed in the Advisory Committee. Ecology agreed that this explicit exception language would be perceived as difficult to determine.
197-11-800 (2)(h)	Suggest striking “total” tank volume to allow for multiple tanks in excess of 60,000 gallons in agricultural and industrial areas. (1i, 17c)	1i, 17c: The intent of the rule language is to limit the total volume to 60,000 gallons in agricultural and industrial areas. While we believe contemporary tank installation and maintenance regulations address many potential impacts of new tanks, many other commenters expressed concern that 60,000 gallons in agricultural and industrial areas was too high.
	Several commenters did not support threshold for tanks in agricultural and industrial areas. Examples of events in other state (e.g. West Virginia spill, Texas Fertilizer Plant explosion) were cited as examples of impacts. Concerns about adjacent uses were also referenced. (5e, 11e, 24c, 30d, 30d, 40c)	5e, 11e, 24c, 30d, 30d, 40c: We agree that aging tanks without proper oversight are a concern. However, the exemption addresses new tanks. We believe contemporary tank installation and maintenance regulations address the potential impacts of new tanks. In addition, limiting the larger tank volume to 60,000 gallons and only allowing the larger tank volume in agricultural and industrial areas reduces the potential for issues with adjacent uses.
	Supports the rule amendment for application of the exemption to above ground tanks and	14a: Thank you for the comment.

	removal of tanks. (14a)	
	Do not support any exemption for tanks due to potential for tanks to leak. (22r)	22r: We agree that aging tanks without proper oversight are a concern. However, the exemption addresses new tanks. We believe contemporary tank installation and maintenance regulations address the potential impacts of new tanks.
197-11-800 (2)(l)	Consider additional language to allow “net metered” solar installations. (25d)	25d: Ecology interprets the proposed language to include “net metered” installations as long as they are an accessory to an exempt building.
	Comment supports this additional exemption. (39a)	39a: Thank you for the comment.
197-11-800 (3)	In-water maintenance, dredging, and bulkheads should be exempt. There are many permits and regulations covering activities on lands covered by water. (3b)	3b: While we agree that there have been many advances in the regulation and permitting of projects in the aquatic environment since the rules were adopted in 1984, the sensitivity of the aquatic environment warrants continued review in SEPA. In general, maintenance activity review can be expedited if it is included as part of the original SEPA review of a proposal. In that case, SEPA would already be completed if the work was anticipated and reviewed in the prior SEPA document.
	Support the exemption for small maintenance dredging projects. However, the exemption should be larger. (3c)	3c: Thank you for the comment. See response to comment for 3b above.
	Several commenters do not support the maintenance dredging exemption. (7l, 11f, 24d, 34e, 40e)	7l, 11f, 24d, 34e, 40e: The exemption is limited to maintenance dredging only. Therefore, most projects will have been subject to some prior review, either SEPA or permitting. In addition, in-water work such as dredging will require other local, state, or federal permits. Those aquatic permits include added protections and provide other notice and comment opportunities.
	Request for clarification language on application of exemption to bulkheads. (15a)	15a: Ecology was not able to resolve this issue through work with the Advisory Committee and other parties. The language will remain as proposed.
	Does the 50 cubic yard exemption for	17d: The answer depends on whether or

	<p>maintenance dredging apply to multiple culverts? (17d)</p>	<p>not the multiple culverts would be considered part of the same proposal. See WAC 197-11-060(3) for how to define proposals.</p>
	<p>Two commenters support language regarding “recreation facilities”. (36c, 37e)</p>	<p>36c, 37e: Thank you for the comment.</p>
197-11-800 (5)	<p>Two commenters had concerns about clarity and the intent of the section on sale of public property. (17e and 25d)</p>	<p>17e and 25d: In response to comments Ecology has modified this section for clarity. The intent of this section is to exempt the sale of public property from SEPA only if the property is not specifically designated and authorized for public use.</p>
	<p>Supports clarification of “authorized public use” the change. (36d)</p>	<p>36d: Thank you for the comment.</p>
197-11-800(6)	<p>A change has been proposed to 197-11-800(1)(a)(iv) and (2)(a)(iv) to clarify that, if a non-exempt rezone is required, the exemption does not apply. These two sections provide a cross-reference to 197-11-800(6)(a). However, subsection (6)(a) includes land use decisions in addition to rezones, which is confusing. We suggest changing the references to 800(6)(c) in 800(1)(a)(iv) and (2)(a)(iv). This will affirm that the clarifying language applies only to rezones. (1c)</p>	<p>1c: Ecology agrees with this suggestion and has made that change.</p>
	<p>Under the language as proposed, boundary line adjustments are not listed as exempt. Several commenters asked that the rule language be modified to clarify these specific types of land use decisions are exempt. One commenter suggested making all land divisions exempt. (1d, 21b)</p>	<p>1d, 21b: The exemption for boundary line adjustments was inadvertently left out of the proposed rule. This has now been added to 800(6) as a specific exemption. Ecology does not believe all land divisions should be exempt, as subdivisions tend to be a key factor in determining development patterns.</p>
	<p>Several commenters object to making the exemption for “minor land use decisions” more broadly applicable to “land use decisions”, stating this adds exemptions for rezones, conditional use permits, and shoreline conditional uses. Commenters believe these permits can have significant adverse effects. (11g, h, i)</p>	<p>11g,h,i: Ecology considered the comments, both pro and con, related to the land use decision changes and elected to keep the language as written. The type of land use permit should not be the basis for determining exemption from SEPA requirements (except for several specified types of land use decisions); rather, it should be the specific activity proposed that will be the basis. Under the previous adopted language, many proposed</p>

		<p>activities were captured just because one jurisdiction required a conditional or special use permit, whereas if another jurisdiction allowed them without one of these discretionary permits then the activity could be exempt. Ecology believes this allows the determination to be made on the actual basis of potential environmental impacts, rather than the type of permit, and retains the requirement for environmental review when necessary</p>
	<p>Other commenters supported these changes, believing they advance the cause of streamlining and achieving program efficiencies. (1, 14a)</p>	<p>1, 14a: Thank you for the comments.</p>
	<p>Several comments were received specific to the proposed exemptions for a subset of rezones:</p> <ul style="list-style-type: none"> • Those opposed believed rezones may not have had adequate review at the plan level, and all rezones should be subject to review. • The requirement to determine that environmental impacts were adequately addressed in a previous EIS is amorphous. • All rezones should be exempt if they do not require a comprehensive plan amendment. Another commenter suggested that whether the EIS “adequately addressed” impacts should be determined by agencies with expertise. (31b, 35d) 	<p>31b, 35d: Regarding rezones, Ecology is retaining the proposed language which exempts, under certain conditions, several categories of rezones for jurisdictions required to plan under the growth management act, and within an urban growth area (UGA). The growth management act requirements for these jurisdictions and within UGAs provide a higher level of review than for jurisdictions not required to fully plan. The language relating to impacts being “adequately addressed” already exists in the SEPA Rules related to planned actions (see WAC 197-11-168(2)). Regarding the suggestion that agencies with expertise determine whether impacts are “adequately addressed”, the SEPA rules generally provide that the responsibility for these types of qualitative determinations lie with lead agencies.</p>
	<p>Another comment found it confusing that three sections(800(1)(d), 800(6)(c), and 800(6)(d)) cover similar topics, and as an example wondered whether short plats (9 lots or less) wouldn’t already be exempt under the 30 units exempted in (17f)</p>	<p>17f: This commenter noted a confusion about the exemption for short plats (800)(6)) and the exemption for residential development ((800)(1)). The exemption for short plats applies to the approval of a short subdivision. The exemption for residential development applies to the issuance of permits for construction of residential units.</p>

	Several commenters expressed concern about the exemption for variances in (800)(6). (24b, 40d)	24b, 40d: The exemption for variances is an existing exemption. It is being moved to a different number. Ecology does not intend to change that existing exemption.
197-11-800 (10)	Commenter believes the state legislature should not be exempt from SEPA. (22u)	22u: Activities of the state legislature have always been exempt from SEPA. Ecology has not proposed any changes to this exemption.
197-11-800 (14)(k)	Commenter is referring to grading as work on the ground and stating concerns about the impacts. (34f)	34f: Grading in the context of this section refers to classifying and grading forest lands, not earth moving and grading on land. This is not a new section of rule rather one that is being moved to this section.
197-11-800 (19)	What does this mean in practice - what would a “substantive” standard be? (22v)	22v: An example of a substantive standard would be changing the required buffer width in a critical areas ordinance. An example of a procedural amendment would be an amendment to a zoning ordinance that does not change the standards for reviewing a proposed project.
197-11-800 (23)	Concerns about clarity and if this section is applicable or not to water tanks (6a, 6b)	6a & 6B your comments are noted. This section of rule is applicable to lines relating to the types of facilities described Ecology will clarify the intent of this section in guidance.
	One commenter recommended additional rule amendments on electric facilities in 197-11-800 (23)(c). (3d)	3d - We recently addressed the 115 kilovolt line utility exemption in the 2012 rulemaking by adding an exemption for 115 kilovolt lines in existing rights-of-way and developed utility corridors. There was concern that establishing new corridors for 115 kilovolt lines could result in significant impacts. In general, the utility exemptions in 197-11-800(23) provide exemptions for distribution infrastructure, while maintaining SEPA review for the larger transmission infrastructure proposals. The fact that 115 kilovolt appears to be used for both transmission or distribution and the concerns of some stakeholders resulted

		in Ecology including the more specific requirement for exempting 115 kilovolt lines.
	Supports proposed change to utilities provisions in 197-11-800 (23)(b). (14a & 38b)	14a and 38b – Thank you for the comments.
	Concern was expressed by one commenter about the use of pesticides, and signage and notice procedures. (22w)	22w – Your comments are addressing the requirements in WAC 248-54-660, which are not a topic of this rulemaking.
197-11-830	Archaeological field investigations are needed to ensure no impacts to glyphic records. “Rock pits” should be defined. Tribes should be consulted before any rock pits are disturbed. (7n)	7n: The Forest Practices Act rules (WAC 222) provide that regulated practices that affect cultural resources becomes re-classified as a class IV special practice, and a checklist and SEPA review is required. An exception is made if approved cultural resources management strategies are applied, or a management plan is agreed to between DNR and the affected Tribe, among others. A definition of “rock pit” does not exist in the FPA rule, and Ecology does not want to adopt anything that could conflict with DNR procedures.
	One commenter noted that the reference in WAC 197-11-830(9) to 197-11-800(1)(v) should be to 197-11-800(1)(b)(v). (11j)	11j: Thank you for pointing out the correct reference. We have made that change.
	One commenter asked, related to section 197-1830(7), who decides what a substantive impact is and why isn’t a cost-benefit analysis done for sales of timber? (22aa)	22aa: These procedures are adopted by DNR under their authority to promulgate their own SEPA procedures. WAC 197-11-830 does not provide additional oversight.
	Sales of any public resources should not be exempt from environmental review and cost/benefit analyses. (22b)	22b: Thank you for the comment. We understand your perspective.
	If the excavation of a rock pit is more than 100 cubic yards, it should not be exempt. This would be consistent with the exemption for excavation less than 100 cubic yards found in WAC 197-11-800(1)(b)(v). (30c)	30c: Ecology agrees with DNR that the exemption for rock pits up to 3 acres is appropriate, given these are addressed by the FPA Rules.
	DNR thanks Ecology for exempting rock sales from pits less than 3 acres, and also asks for the ability to adopt their own rules for those sales that don’t fall under this exemption. As part of this, we also suggest deleting the last portion of proposed 830(9) that provided for exempting sales of rock for	36e, 39d: We concur with the deletion of the last portion of (9) as outlined. We do not at this time propose a process for state agencies to adopt their own exemptions.

	uses not associated with timber management. [The same deletion was suggested by commenter 39.] (36e, 39d)	
	It is surprising that there are no exemptions for environmentally protective work being done involving marine habitat, in tidelands and marine waters. (39c)	39c: No such exemptions were proposed in the authorizing legislation, nor did they come up during the advisory committee process. These may be considered in future rule amendment proceedings
197-11-835	Comments on style and organization in the section on Department of Fisheries (now Fish and Wildlife). (22cc)	22c: Agency naming protocol is dictated by the Administrative Procedures Act (APA) and the Office of the Code Revisers. Ecology has prepared this rule is and names agencies in accordance with the APA and code revisers requirements.
	The Department of Natural Resources commented that this section is obsolete. (36f)	36f: Ecology has updated the rule in response to comment.
197-11-845	Comment supports proposed change in section related to DSHS. (30b)	30b: Thank you for the comment.
197-11-850	Comment noted regarding capitalization of agency names in section on Department of Agriculture. (22d)	22d: The protocol for drafting agency names is dictated by the Administrative Procedures Act (APA) and the Office of the Code Reviser. Ecology has prepared this rule and named agencies in accordance with the APA and code revisers requirements.
197-11-860	Do not support exemption for WSDOT bridge reconstruction or replacement. Tribal notice and comment necessary. Most bridges based on past engineering practices did not take into account wood debris, ice, and migration of aquatic life. (7m)	7m: Nothing in the SEPA exemption language provides an exemption from the requirements of other regulations. WSDOT's environmental compliance procedures are detailed in their Environmental Procedures Manual. For a list of federal & state permits, please see http://www.wsdot.wa.gov/Environment/Permitting/permitfsl.htm SEPA does not negate Treaty rights. WSDOT has agency policies and procedures in place to ensure comprehensive consultation with tribes. For details on Tribal approvals see http://www.wsdot.wa.gov/publications/manuals/fulltext/M31-11/530.pdf

		<p>Many of the WSDOT projects will provide notice and comment opportunities via other processes (including NEPA and federal Section 106). As noted in WSDOT’s comment letter, they are committed to fulfilling the intent of SB 6406 to provide notice opportunities including means other than SEPA.</p> <p>Regarding WSDOT bridge replacement projects, these are designed to meet the federal standards, local agency flood ordinances and state WDFW RCW 77.55 standards for bridge construction. Existing criteria for bridge design address the environmental concerns expressed in the comment (wood debris, ice, and migration of aquatic life).</p> <p>Regarding past engineering practices, the exemption specifically includes language to allow for beneficial changes based modern engineering practices or permitting requirements.</p>
	<p>The exemption lacks safeguards. Concerns were expressed about development outside the right-of-way and potential impacts to cultural and archeological resources, rivers, streams, marine waters, and wetlands. Concerns about inconsistency with other regulatory requirements. (11k)</p>	<p>11k: As noted in the comment response above, the language regarding the flexibility to construct outside the existing footprint was included specifically to allow for more environmentally beneficial options if warranted by modern engineering standards or environmental permit requirement.</p> <p>Nothing in the SEPA exemption language provides an exemption from the requirements of other regulations.</p> <p>Ecology considered the commenter’s suggested edits to delete the language that allows for beneficial changes based on modern engineering or permitting. We elected to retain the language in the final rule.</p>
	<p>Clarify that exemption applies to permit decisions of other agencies. May require moving exemption language to different section of the rule. (37g)</p>	<p>37g: The intent of the exemption in the draft rule was to apply to other agency permit decisions as well as WSDOT’s decisions as the project proponent.</p>

		Instead of clarifying the intent by adding language in the WAC 197-11-860, it is more appropriate to include the exemption within the general exemptions in WAC 197-11-800.
197-11-875	In section on “other agencies”, need to add Pollution Control Hearings Board (PCHB) to this section to replace the Forest Practices Appeals Board. (36g)	Ecology has updated the proposed rule in response to comment 36g .
197-11-920	In section on “agencies with environmental expertise” suggested changing “regional air pollution control authority or agency” to Southwest Clean Air Agency. (22ee)	22ee: There are 9 different clean air agencies in the state along with the Dept. of Ecology. The rule provides a correct general reference to all the air agencies in the state and no change is proposed.
	Suggested a correction to state agency names. (22ff)	22ff: Ecology will make the necessary corrections in response to comment.
197-11-936	“When none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency that has the largest biennial appropriation.” This should be changed to “The agency with the best and most current expertise should be the lead agency.” (22gg)	22gg: Unfortunately the measurement of “expertise” is ambiguous and subjective. Size of the agency’s appropriation is an objective indicator of environmental review capability. This fall-back provision has rarely (if ever) been necessary to use.
197-11-938	Strike <i>is</i> and replace with <i>are</i> . (22hh)	22hh and 31d: The grammatical suggestion and substantive request will be considered during a future rulemaking effort focused on substantive changes to lead agency sections of WAC 197-11.
	In 4(c) clarify when the local government is lead agency for proposals requiring a forest practices permit. (31d)	
197-11-960	“Eligible for listing” should be deleted in the cultural resource questions. (1g, 1h, 17a, 17h)	1g, 1h, 17a, 17h: Ecology believes it is important to identify the potential historical significance of structures affected by a proposal, especially since the project is already subject to SEPA review.
	The rules should specify 1000 feet instead of referring to “near”. (7e, 32)	7e: Thank you for the comment. We believe the proposed draft language is more appropriate.
	Commenter proposed changes to questions 4c and 5b. (11l, 11m)	11l, 11m: Ecology has modified the questions in response to comment to include both Endangered and

		Threatened species and deleted the word “or”. Ecology will not add sensitive or candidate species to the questions.
	Supports Groundwater, withdrawal and changes to the checklist agricultural questions (17g)	17g: Thank you for the comment.
	Concern about the questions asking about peak trips and trucks. (17i)	17i: The combined environmental impact of the proposal together with current and future activities is a type of cumulative analysis considered for the purpose of identifying significant impacts.
	<p>Requests a white paper from Ecology on what “probable adverse impact means” and more detailed explanation on the checklist. (22ii)</p> <p>Proposes expanding the requirements to answer each question of the checklist to “accurately, fully and completely”.(22jj)</p> <p>Proposes expanding the question regarding soil type.(22ll)</p> <p>Commenter identifies an overall concern about well water being tested annually. (22mm)</p> <p>Proposes an addition to the question regarding animal migration.(22nn)</p> <p>22oo – Proposes adding “Geothermal” energy to the types of energy a project will need.(22oo)</p> <p>Proposes identifying what types of energy conservation measures are included in the proposal. (22pp)</p> <p>Proposes adding “environmentally sensitive” as a type of land classification. (22qq)</p> <p>Proposes expanding forest lands of long term commercial significance by adding nearby state and federally owned lands. (22rr)</p> <p>Proposes adding “mitigate” to section 9, question c.(22ss)</p> <p>Proposes changes to section 10, question b.(22tt)</p> <p>Proposes a section on “Dark Sky” technology in SEPA. (22vv)</p> <p>Proposes striking “additional” on section 14, question c.(22yy)</p> <p>Style and drafting comment suggesting commas in section 14. (22zz and 22bbb)</p>	<p>22ii, 22jj, 22ll, 22mm, 22nn, 22oo, 22pp, 22qq,22rr, 22ss, 22tt, 22uu, 22vv, 22yy,22zz, 22aaa, 22bbb, 22ccc, 22ddd, 22eee: Thank you for providing these comments on the Environmental Checklist. Ecology is adopting a small subset of changes in response to the variety of comments heard during the Advisory Committee Process. More detailed work on the checklist may occur sometime in the future. In addition, after the final rule is adopted Ecology will be updating its guidance material for completing the SEPA checklist and will also be able to take into account many of your recommendations as guidance for the checklist.</p>

	<p>Proposes more question in section 14. (22aaa) Request Ecology to re-write this section in real English. (22ccc) Proposes an additional question on how a non-project action would affect wildlife habitat. (22ddd) Proposes adding “and/or” to Part D – questions 3. (22eee)</p>	
	<p>Concerns about draft and readability. (22kk)</p>	<p>22k: Ecology apologizes for the challenges with drafting and reading this section. The Office of the Code Reviser makes all drafting and format changes. The original checklist was prepared using tables and was in a narrow column. In order to have it look like the rest of the rule and be re-formatted it was required to be drafted as presented.</p>
	<p>Proposed changes to section 14, question b. (22xx)</p>	<p>22xx: Thank you for your suggestions we have made the recommended change.</p>
	<p>Supports all changes in checklist related to Agriculture. (27a)</p> <p>Supports the changes to cultural resource questions in the checklist. (29a and 33b)</p>	<p>27a, 29a, 33b: Thank you for the comments.</p>
	<p>Proposed additional questions to the checklist under section 13. (35e)</p>	<p>35e: Thank you for the comments. Ecology worked with the Advisory Committee and members of the cultural resource community on the proposed changes to the checklist. More detailed work on the checklist may occur sometime in the future. In addition, after the final rule is adopted Ecology will be updating its guidance material for completing the SEPA checklist and will also be able to take into account many of your recommendations as guidance for the checklist.</p>
	<p>Concerned about "or be affected by" (36h)</p>	<p>36h: The combined environmental impact of the proposal together with current and future activities is a type of cumulative analysis considered for the purpose of identifying significant impacts.</p>
	<p>Typographical error in 14b (37h)</p>	<p>37h: Ecology has corrected this typographical error.</p>
General Comments in	<p>These comments are general in nature and support changes proposed by this rulemaking</p>	<p>14a, 18a, 21a: Thank you for the comments.</p>

support of rule changes	proposal. (14a, 18a, 21a)	
General Support of Cultural Resources comment letter/issues	We support the comments made by the cultural and historic resources members of the advisory committee in their comment letter. (23a, 26a)	23a, 26a: Thank you for the comments. You attached a copy of comment letter 8 ; please see responses to the comments contained in that letter above.
General Comments opposed to rule proposals	The proposed rule changes will allow projects to circumvent procedures and increase likelihood that projects with unforeseen impacts might impact environmental resources. (5b, 13a, 20a)	5b, 13a, 20a: The bill that directed Ecology to undertake rule changes, SB 6406, states that the rules need to be updated to reflect that other laws and regulations provide adequate review. Thus, the proposed rule changes will result in fewer actions being subject to SEPA review. This was only done where it was determined that other laws and regulations provided adequate review, and thus review under SEPA was not necessary to protect the environment.
	We are specifically concerned about exemptions for mixed use, rezones, catch basins and culverts, and air and water discharge permits. (13b, 20b, 28b)	13b, 20b, 28b: See the sections earlier in this document that discuss those specific exemptions.
	The proposed rule assumes that if another permitting process is in place, environmental impacts are addressed. This assumption is wrong. (13c, 20c, 28c)	13b, 20b, 28b: Ecology understands your perspective but does not agree with your conclusion.
	SEPA is important to ensure that projects receive adequate environmental review, a cumulative impact analysis is done, and public notice occurs. (28a)	28a: Ecology believes that with these changes, adequate environmental review and public notice will still occur, and these changes do not affect cumulative impacts analyses.
Future Improvements	Suggest incorporation of the cultural resources “synthesis” at the planning and project level and they would welcome opportunities to share this information with local jurisdictions. (8k)	8k - Thank you for the comment and your willingness to share information with jurisdictions seeking to meet the findings requirement for raising minor new construction thresholds.
	Observes a problem area in state law highlighted by the SEPA rulemaking – a lack of an avenue for requiring a project proponent to conduct a pre-project review if one appears	8l – Ecology understands your perspective on this issue.

	necessary. (8l)	
Comments not germane to the proposed rules	A number of comments were received that were either general commentary, or not directly relevant to this current rule amendment process. It's not an onerous process to fill out an environmental checklist nor difficult for an agency to issue a DNS. (5a)	5a: Thank you for the comment.
	The DNR Natural Heritage Program should be utilized for protection of endangered plants. (7k)	7k: This reference may be included in revisions to the SEPA Handbook.
	Is there a rule that says all projects not exempt are subject to SEPA review? (9b)	9b: The definition of “action” is found in WAC 197-11-704. The definition of “categorical exemption” in WAC 197-11-305 explains what is exempt. These two sections together define what is subject to SEPA review.
	I disagree with the number of transportation actions to be exempt from review. (10f)	10f: Ecology believes the proposed language should remain.
	Several comments were received asking for existing exemptions to be deleted: In 197-11-610(5), the requirement for at least 50 people to request a hearing is onerous and should be deleted. (22l) Exemption in 197-11-800(4) for certain water rights should be removed. (22s) The exemption in 800(6) for granting certain variances under the Clean Air Act should be removed. (22t) The exemption for cattle grazing in 800(24) should be removed. (22x) The exemption for agricultural leases of less than 160 acres in 800(24)(c) should be removed. (22y) The exemption for use of fuse on public lands in 830(3) may be dangerous and should be removed. (22z)	22l, 22s, 22t, 22x, 22y, 22z, 40b: These exemptions are all sections where the language is existing and no changes have been proposed in this draft rule. We have no new data that these exemptions are a problem. Changes may be considered in future rule amendment processes.

	All new culverts should require SEPA review. (40b)	
	Installation of private marine bulkheads should not be exempt. (39e, 40f)	39e, 40f: Private marine bulkheads are only exempt if an “action” as defined by SEPA (197-11-704) is not required by the lead agency (typically a city or county), otherwise SEPA review is required.
Questions & Observations	<p>The changes should have gone further in streamlining due to the protections in additional laws and regulations provided over the years. (4a)</p> <p>Stated concerns about conflict with existing environmental protection laws but provides no specific information to respond to. (10d)</p> <p>States concerns about the penalties for violations of cultural resource regulation and apathy by local government. (10g)</p>	4a, 10d, and 10g: Thank you for the comments. Ecology understands your perspectives on these issues.

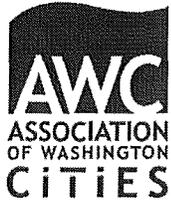
Commenter Index

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).

Number assigned	Commenter	Letter dated
1	Association of Washington Cities/Washington State Association of Counties	2/4/2014
2	Association of Washington Business	2/5/2014
3	Avista Corp	2/5/2014
4	Building Industry Association of Washington	2/5/2014
5	Cherry Point Aquatic Reserve Citizen Stewardship Committee	2/5/2014
6	Clark, Adonais - Pierce County	2/4/2014
7	Conferated Tribes and Bands of the Yakama Nation	2/4/2014
8	Cultural Resources Representatives	2/3/2014
9	Davis, Troy - City of Arlington	1/27/2014
10	Dringman, Dixie	1/15/2014
11	Environmental Interests	2/5/2014
12	Everett, City of	2/4/2014
13	Fidalgo Bay Aquatic Reserve Citizen Stewardship Committee	2/4/2014
14	Fife, City of	1/28/2014
15	Greetham, David - Kitsap County	2/4/2014
16	Hanford Site/Mission Support Alliance	2/5/2014
17	Kent, City of	1/27/2014
18	Kester, Jennifer - City of Gig Harbor	2/5/2014
19	King County	2/5/2014
20	Nisqually Reach Aquatic Reserve Citizen Stewardship Committee	2/5/2014
21	Redmond, City of	1/13/2014
22	Repar, Mary	2/4/2014
23	Rinck, Brandy ET AL	2/5/2014
24	Schanfald, Darlene	1/27/2014
25	Seattle, City Light	2/5/2014
26	Sharley-Habbard, Ann	2/5/2014
27	Skagitonians to Preserve Farmland	1/28/2014
28	Smith and Minor Islands Aquatic Reserve Citizen Stewardship Committee	2/4/2014
29	Stanton, Lita - City of Gig Harbor	2/5/2014
30	Steel, Gerald	2/5/2014
31	Stevens County	2/3/2014
32	Stillaguamish Tribe of Indians	2/5/2014

33	Suquamish Tribe, The	2/4/2014
34	Walter, Karen (Muckleshoot Tribe)	2/4/2014
35	Washington State Dept. of Archeology and Historic Preservation	2/5/2014
36	Washington State Dept. of Natural Resources	2/4/2014
37	Washington State Dept. of Transportation	2/5/2014
38	Washington Water Utilities Council	10/2/2013 & 2/2/14
39	Weeks, Regan	1/29/2014
40	Weis, Gathia	2/4/2014

Appendix A: Copies of all written comments



Washington State
Association of Counties

February 4, 2014

Fran Sant
Department of Ecology
PO Box 47703
Olympia WA 98504-7703

We appreciate the work that the Department has done towards meeting the requirements of legislation (SB 6406) and update the State Environmental Policy Act (SEPA) rules over the last two years. The Association of Washington Cities and Washington State Association of Counties participated in the stakeholder process facilitated by the Department and following are our comments on the current draft rules.

The original legislation was intended to streamline SEPA in areas that were duplicative of other environmental regulations such as the Growth Management Act, Critical Areas Ordinances and the Shoreline Management Act. Our associations are appreciative of progress made while believing more efficiencies could have been obtained. However, we recognize that a significant amount of stakeholder outreach and discussions have occurred and are thankful for the time and energy that the Department and others have put in to get to where we are today.

1. Cultural and Historic Resources:

A Ever since the SEPA reform effort started and concerns about the impact that increased exemptions from SEPA review may have on historic and cultural resources began to be raised, we've had a consistent position. We recognize the importance of providing adequate notice so parties interested in the impact of decisions that would be newly exempt from SEPA can retain that notice. We've supported ensuring that there is an opportunity to comment so parties that have unique information can provide that to local decision makers. And we've supported ensuring that local governments retain authority to condition projects and utilize the comments that might come in.

We have argued that SEPA does not need to be the only tool to achieve these goals, and often times is not the best tool. We have brought many examples forward where SEPA notification is provided and only pro-forma responses are received. We have also brought forward examples of existing notification systems that are currently underutilized and could serve this function (such as those in RCW 36.70B.070 and 36.70B.110).

We have asked that any solutions to this problem be easily administered by local governments who are increasingly short staffed. We have asked for flexibility because not every local government will address these issues the same way. We appreciate that the Department has put forward an approach that is sensitive to many of these concerns.

2. Lands covered by water:

B One of the major areas of dispute in this rulemaking process has been how to deal with the exception to SEPA exemptions that applies to projects or activities occurring on "lands covered by water." For local governments this issue goes straight to the core of why the legislature enacted SB 6406 and directed this rulemaking effort. Many layers of regulatory systems have been placed over these lands since the adoption of SEPA and now these activities are governed by local critical areas codes under GMA, local SMPs under the SMA, hydraulic project approval permits, and often federal permits from the Corps of Engineers or Coast Guard. We continue to question the value of SEPA on these activities.

We appreciate the clarification that "lands covered by water" does not include buffers or adjacent lands above the ordinary high water line.

3. Land Use Decisions:

We continue to believe that the uses authorized by land use decisions are the appropriate way to determine whether SEPA applies to land use actions, rather than the process an individual local government uses to make that land use decision. We appreciate that the proposal from the Department provides clear exemptions for land use decisions associated with exempted projects, and that there is attempted flexibility for other land use decisions in certain circumstances.

With that, we have some requests for additional clarification on these topics:

Clarification on provisions exempting certain rezones:

In the proposed rule both WAC 197-11-800(1)(a)(iv) on page 8 and WAC 197-11-800(2)(a)(iv) on page 10 provide an exception to the SEPA exemptions which states that the exemption do not apply if the construction activity "Requires a land use decision that is not exempt under WAC 197-11-800(6)"; however, WAC 197-11-800(6)(a) states "Land use decisions for exempt projects, except that rezones must comply with (c) of this subsection." The way these sections are currently drafted there is no clear way of identifying which construction activity and land use permits are exempt as both require you to look at the other and does not specify which is the controlling section.

C It was our understanding that the goal of the change was to specify that land use permits for construction activities exempted from SEPA are also exempt except for certain rezones. The current language does not make this clear. The current language seems to indicate that only construction activities that are associated with land use permits that exempt from SEPA are also exempt, but then states that only land use permits for exempted construction activities are exempt. This is very circular language.

The 2013 Rulemaking for Chapter 197-11 WAC, SEPA Rules Staff Report seems to indicated that the proposed addition of the reference to WAC 197-11-800(6) in WAC 197-11-800(1)(a)(iv) and WAC 197-11-800(2)(a)(iv) was done to replace the term "rezones." (pg. 9). Therefore, to make sure that it is clear, I would recommend that both WAC 197-11-800(1)(a)(iv) on page 8 and WAC 197-11-800(2)(a)(iv) on page 10 be revised to read "Requires a land use decision that is not exempt under WAX 197-11-800(6)(c)"

Boundary and Lot Line Adjustments:

D We reiterate our request that boundary and lot line adjustments be exempted as minor land use actions (Page 11, 197-11-800(6)d) . Some of our members are now unclear whether those are meant to be exempted under the new language. We suggest either directly naming those two land use actions, or providing an exemption for all land divisions exempt from RCW 58.17. This is important because although some lot line revisions are filed alongside other land use actions that would qualify them as exempt, they are often filed independently – say if two landowners want to adjust the lot line between them, or merging of lot lines on multiple commonly owned parcels. They may also not be associated with projects or rezones.

Short Plats:

E This exemption from 197-11-800(6) seems to have been inadvertently struck, we do not recall any conversation on this and would support retaining this exemption for clarity's sake

Mixed Use:

F We strongly support the Departments intention to proceed with authorizing local governments to adopt jurisdictionally appropriate mixed use exemption levels at local discretion. We appreciate that the Department agrees with us that limiting the scale of these exemptions or rating down the positive land use decision to undertake mixed use development would present a negative policy consequence for the state. We do not want to be in a position to be encouraging development to subdivide land and develop less efficiently to take advantage of legally appropriate exemption thresholds.

SEPA Checklist:

G There is a new addition to the cultural/historic resources question that now asks whether structures are “eligible for listing” on historic registers. We have previously commented that we had concerns about our ability to readily determine whether structures were eligible for listing on various registers. The agency declined to add this language, as had been requested, to the exemption for demolition, so we ask for consistency on the checklist as well.

H Page 38: “ Are there any buildings or structures over 45 years old listed in, or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe.” Eligible for listing is ambiguous and is not defined.

Clarification of language on impervious underground or above ground tanks:

I Exemption language (Page 10: 197-11-800(2)h) for storage tanks speaks to a capacity of 10,000 gallons, or a “total” of 60,000 gallons in agricultural or industrial areas. It seems the intent is to allow for larger tanks to qualify for an exemption in these areas, but as written could allow potentially limit installation of multiple tanks in those areas. We suggest removing the word “total.”

Carl Schroeder

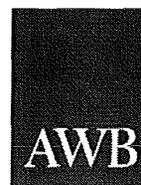
Association of Washington Cities

Laura Merrill

Washington State Association of Counties

#2

February 5, 2014



Association
of Washington
Business

Washington State's Chamber of Commerce

Tom Clingman
SEPA Policy Manager
Department of Ecology
PO Box 47703
Olympia WA 98504-7703

RE: Association of Washington Business comment letter – State Environment Policy Act
proposed rule language

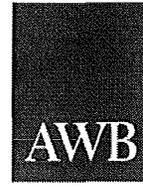
Mr. Clingman:

On behalf of the Association of Washington Business (AWB), thank you for the opportunity to comment on the final proposed SEPA rule language being put forward by the Department of Ecology.

AWB is the state's oldest and largest statewide business association, representing more than 8,200 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 in developing rule language consistent with the implementing legislation, SB 6406, which was adopted during the 2012 Legislative Session.

While we are appreciative of Ecology's, and other stakeholders, willingness to have a conversation throughout the Advisory Committee process, the broader business community is disappointed by the lack of true streamlining of the SEPA rules throughout the process. It is our belief that additional opportunities to streamline the SEPA process may have been realized by identifying and removing duplicative regulatory process, and increasing exemptions.



Association
of Washington
Business

Washington State's Chamber of Commerce

The legislative rulemaking mandate in Sec. 301 of the enacting legislation explicitly states the state should conduct rulemaking, "in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, and other laws."

A

In previous comments we've highlighted the lack of review of the "increased environmental protections" in a way that allowed for a meaningful discussion on the value added through the current SEPA process. Ultimately, the rule language provided by Ecology represents less progress than we had hoped for.

B

Nevertheless, there are many provisions included in the rule that provide meaningful advances, and are supported by the business community. These include sections dealing with:

1. Lands Covered by Water/Minor Land Use Decisions
2. Minor Code Amendments
3. Mixed Use Exemptions
4. New findings language for Cultural Resources

Although the 2013 rule process has concluded, we look forward to continuing our work with Ecology, and others, to ensure additional progress and streamlining of the state's environmental policies is achieved in a beneficial way.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Houskeeper".

Brandon Houskeeper
Director, Government Affairs
Association of Washington Business



John Rothlin
Manager of Washington
Government Relations

February 5, 2014

Tom Clingman, SEPA Policy Manager
Department of Ecology
PO Box 47703
Olympia WA 98504-7703

RE: Avista Corporation Written Comments – 2013 State Environment Policy Act proposed rule language

Mr. Clingman:

Thank you for the opportunity to comment on the proposed rule changes to Chapter 197-11 WAC, which implements Washington's State Environmental Policy Act (SEPA). Avista respectfully submits our comments for consideration on the rule proposal dated December 15, 2013.

As you are aware, the 2012 Legislature (2ESSB 6406, Section 301) directed Ecology to update SEPA rules in light of the increased environmental protections in place under Chapter 36.70A RCW, Chapter 90.58 RCW and other laws. The Growth Management Act (GMA), the Shoreline Management Act, and many other federal and state laws involve processes and requirements that can be redundant and repetitive for permit applicants and permitting jurisdictions. The effort to eliminate regulatory duplication and to identify appropriate SEPA exemptions while maintaining environmental protection is worthwhile. Our specific comments are listed below:

Lands covered by water: Projects that are within lands covered by water, that would otherwise be exempt, should be considered exempt under WAC 197-11-800(1), (2), (3), (6), and (23). The Shorelines Management Act (and implementing programs), GMA critical areas ordinances (pertaining to wetlands, floodplains, etc.), U.S. Army Corps Nationwide/404 permits, stormwater construction permits, and Hydraulic Permit Approvals provide substantial and adequate review of these projects and for the opportunity to ensure appropriate conditions for environmental protection. The Department should consider whether projects subject to NEPA should be exempt from SEPA requirements.

Repair, remodeling and maintenance activities - Clarify in-water maintenance work, dredging, bulkheads: In-water maintenance work, dredging, and bulkheads under WAC 197-11-800(3) should be considered exempt from SEPA for reasons similar to those stated above for projects on lands covered by water. There are multiple regulatory requirements for these projects, including but not limited to: Shorelines Management Act, U.S. Army Corps Nationwide/Section 404, WDFW HPA, GMA critical areas ordinances, and stormwater permits that adequately address the environmental concerns for projects in the water.

We support Ecology's proposal to exempt some dredging activities, however the 50-cubic-yard exemption is arbitrary and insufficient for common and routine maintenance projects at hydroelectric facilities. Sediment must be moved periodically when repairs and maintenance of the facility are needed. This work doesn't increase sediment loading or impact the ultimate distribution of sediments, as typically, such sediments would be redistributed naturally during periods of high flow. We propose a broader exemption to this section that recognizes the work performed for routine hydroelectric facility maintenance.

Utilities. Avista suggests edits to the utility section as indicated below.

Proposed Rule Amendments

WAC 197-11-800(23)

23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.

(c) ~~All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (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.~~ All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; the overbuilding of existing distribution systems with transmission lines of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

New – Exception to exemptions - Cultural Resources. Projects that involve potential impacts to cultural resources are adequately addressed through existing requirements. Overlaying additional SEPA review and compliance could, in fact, set up conflicts between different authorities in addition to being duplicative. For example, work undertaken under our FERC license and related requirements for our hydroelectric facilities and properties along the Spokane River are subject to a comprehensive cultural resource management plan developed with agencies, tribes and other stakeholders. Each individual project is subject to its requirements and further review by the State Historic Preservation Office and/or Tribal Historic Preservation Office. **E** We agree with the agency's decision to not include exceptions to the exemption on cultural resources. **F** We also oppose additional planning level requirements that will only serve to cause unnecessary delays and costs without any evidence of enhanced resource protection. **G**

Once again, we appreciate the opportunity to comment on this draft rule. Please feel free to contact Robin Bekkedahl at (509) 495-8657 with any questions you may have regarding these comments.

Sincerely,



John Rothlin
Manager of Washington State Government Relations
Avista Corporation



111 21st Avenue SW | Olympia, WA 98501
360.352.7800 | www.BIAW.com

#4

February 5, 2014

Tom Clingman
SEPA Policy Manager
Department of Ecology
PO Box 47703
Olympia WA 98504-7703

RE: SEPA Rulemaking BIAW Comments

Mr. Clingman:

On behalf of the Building Industry Association of Washington (BIAW), thank you for allowing comments on the final proposed SEPA rule language.

BIAW represents nearly 8,000 businesses across the state engage in all aspects of home construction. New home construction directly accounts for over 24,000 jobs in Washington State most of those are jobs provided by small businesses in every area of the state.

A BIAW appreciates the enormous effort by the Department of Ecology to develop rule as called for by the 2012 State Legislature in SB 6406. However, there BIAW believes the effort to streamline SEPA rules falls short of making significant streamlining progress. Home builders were hopeful that this process would look for additional opportunities to streamline by identifying and removing duplications in the regulatory process, and increasing exemptions. SB 6406 specifically sites 36.70A and 90.58 RCW as reference points to look for duplications. During the SEPA rulemaking process there was a lack of consideration of the "increased environmental protections." Making these statutes work together better was what those organizations which were supportive of SB 6406 intended and the inability of Ecology to do so is disappointing.

B There are some provisions in this final proposed rule language that are helpful and encouraging to home builders. Lands Covered by Water/Minor Land Use Decisions, Minor Code Amendments, Mixed Use Exemptions, and New Findings Language for Cultural Resources all answer the spirit of SB 6406 to expand categorical exemptions and rid SEPA of duplicative regulations.

Now that the 2013 rulemaking process is over, BIAW looks forward to continued work to ensure that real progress and streamlining of the state's environmental policies are truly achieved.

Sincerely,

Jan Himebaugh
Government Affairs Director

Cherry Point Aquatic Reserve Citizen Stewardship Committee
Bellingham, WA 98225

Washington State Department of Ecology
Shorelands and Environmental Assistance Program
Fran Sant and Brenden McFarland
PO Box 47703
Olympia, Washington 98504-7600
Via e-mail: separulemaking@ecy.wa.gov

AS

February 5, 2014

Re: Comments regarding CR102 – Proposed SEPA Rule Making

Dear Ms. Sant and Mr. McFarland,

We, the Cherry Point Aquatic Reserve Citizen Stewardship Committee, have a number of concerns regarding the proposed SEPA rule making changes.

The Cherry Point Aquatic Reserve Citizens Stewardship Committee is designed to engage citizens in the management of their local Aquatic Reserve by encouraging them to take action to protect it. Our work in the Reserve is in conjunction with the DNR's existing management program.

About the Cherry Point Aquatic Reserve:

Cherry Point Aquatic Reserve is designated as an environmental reserve by the Washington Department of Natural Resources. The purpose of this designation is the protection and restoration of the unique environment and the Cherry Point herring stock. Other fish species are also dependent on the area: there are five species of salmon (including the endangered Nooksack Chinook stock), endangered bull trout, flatfish, and rockfish. It is an important area for birds and invertebrates, including the economically important Dungeness crab. It is also utilized by marine mammals, including killer, grey, and humpback whales; Dall and harbor porpoise; sea lions; and harbor seals. It also contains an important emergent salt water marsh, which is the interface between two streams and deep water. This provides important rearing habitat for many juvenile species. Development along the shoreline and the adjacent uplands has the potential to negatively impact these important ecosystems.

We believe that the Washington State Environmental Policy Act plays an important role in safeguarding important environmental resources, such as those of the Cherry Point Reserve, by providing for public transparency and lead agency review. In our opinion, SEPA is critically important to ensuring the protection of the Aquatic Reserve for three reasons:

- 1) **SEPA is designed to ensure proposed projects and actions are adequately reviewed for potential adverse environmental impacts before construction starts or a decision is made.**

Projects with the potential to negatively impact the Aquatic Reserve could be exempt from the SEPA review process, lessening the lead agency's ability to require further review or mitigation before a project begins.

A Completion of the SEPA checklist and its summary review by lead agencies are key mechanisms for making application participants mindful of environmental impacts. The process for filling out a SEPA checklist is not onerous, nor is the lead agency's process of issuing a determination of non-significance difficult.

B Adding exemptions for mixed use projects, small scale dredging operations, storage tank installation and removal, culvert replacement and certain projects requiring air and water discharge permits allow these proposals to circumvent the essential SEPA evaluation procedures. This increases the likelihood that projects having unforeseen adverse impacts on the Cherry Point Aquatic Reserve will be able to move forward without an adequate or comprehensive environmental review or opportunity for public input

2) **SEPA is designed to perform a cumulative analysis of the project's impacts.**

By increasing exemptions for all of these different categories of development, the possibility for cumulative impact analysis could be severely limited. Undergoing the SEPA review process increases accountability. For example, without the need for individual SEPA review, a series of numerous "insignificant" small-scale dredging projects may no longer consider regional and aggregate impacts to protected habitats in aquatic reserves like the one overseen by DNR at Cherry Point.

3) **SEPA provides for public notification and ensures transparency regarding proposed projects.**

SEPA provides for public notification in many instances where other permitting and regulatory processes do not, thus filling the gap in public awareness of a proposal's existence and giving the public the right to address and respond to possible detrimental consequences. By increasing the quantity of exempt applications from SEPA, the ability for owners of neighboring properties, general members of the public, and others to participate in this important democratic process is significantly lessened.

For example, the installation and removal of culverts can require several permitting approvals. However, these authorizations do not have public notice and commenting opportunities afforded by SEPA. Public awareness and participation (including that of aquatic reserve stewardship committees) in the determinations of catch basin and culvert projects will be essentially eliminated.

The proposed rule changes around air and water discharge permits, variances, and dredging all follow inaccurate assumptions that existing regulations protect the entirety of environmental resources affected; therefore SEPA is duplicative and unnecessary.

The Cherry Point Aquatic Reserve is home to three industrial facilities, with the potential of a fourth. With a diminished oversight capacity of SEPA on numerous and potentially overlapping disturbances to Cherry Point Aquatic Reserve, it is possible that significant regional development could be undertaken in a piecemeal fashion and without public knowledge. In such a sparsely populated area, the capability of neighborhood witnesses to observe major ecological disturbances is drastically limited.

We believe the proposed rule will lessen the ability for SEPA to fulfill all three of these important roles.

For specific examples of how the rule changes might adversely impact the Reserve's ecosystem, we address the following in more detail:

- The update to the definition of lands covered by water
- Increased exemptions for mixed-use projects, storage tanks

dredging and bulkheads, and variances

- **Lands covered by water definition change (WAC 197-11-756)**

The proposed rule clarification to remove buffers and adjacent lands above the high water mark from the official "lands covered by water" definition has the potential to exempt projects that negatively impact the Cherry Point Aquatic Reserve. Designated buffers surrounding "lands covered by water" sustain critical habitat to species residing within, and provide an important ecological connection between the supratidal and aquatic reserve habitats.

One example of a potentially overlooked consequences resulting from this rule change inclusion are substantial disturbances to surf smelt spawning beaches. Surf smelt are an important link in the food web, and use upper intertidal reaches for spawning habitat. Buffers and adjacent lands to spawning beaches provide allocthonous nourishment and essential overhead shading. Spawning habitats for surf smelt and other forage fish are protected under state law. Although WDFW may receive prior notification of potential spawning impacts; public transparency may stir interest and local information outside of agency resources that could help protect such vital trophic and ecosystem structures.

Another potential adverse impact is the disruption of hydrologic connectivity between upland and marine environments. Undeveloped buffers and adjacent lands are pervious surfaces that absorb runoff and replenish groundwater reserves. In the case of Cherry Point surface water enters back into the Reserve through small seeps and streams. The emergent salt water marsh, for example, is a vital interface between two riparian systems and deep water, providing an important rearing habitat for many juvenile species in the Reserve.

One of the goals of the Cherry Point Aquatic Reserve Management Plan is to identify, protect and restore the functions and natural processes of the aquatic nearshore and subtidal ecosystems that support endangered, threatened, and sensitive species and aquatic resources identified for conservation. This goal is not feasible without successfully ensuring the protection of the adjacent upland buffers that are integral to conserving natural shoreline processes.

- **Increased exemptions. Many of the additional exemptions undermine the explicitly stated goals of SEPA.** We believe that all of these exemptions will allow adverse cumulative impacts to occur without proper assessment, oversight and public input.

Adding a specific exemption threshold for mixed use projects. Rule section 197-11-800 (1) (d)

The proposed addition of exemptions for mixed use projects should not be included in the final rule changes. Our concern with this proposal is twofold. First, allowing every local jurisdiction to set the flexible threshold for mixed use projects does not ensure consistent resource management practices and statewide environmental policy implementation. Second, allowing an exemption for mixed use projects up to the combined maximum flexible level is an unreasonable increase in the size allowed for (SEPA?) exempt projects.

Exemptions for the installation and removal of tanks. Rule section 197-11-800(2)(g)

The exemption threshold for installation or removal of above or below storage tanks on agricultural and industrial lands should not be increased from 10,000 gallons to 60,000 gallons.

E At Cherry Point there are three industrial sites. The installation and removal of tanks should be reviewed for environmental impacts because potential leaks could directly harm herring, surf smelt, salmon and other species that live in the Reserve. The January 9th West Virginia 4-methylcyclohexanemethanol (MCHM) spill was about 10,000 gallons illustrating that a 60,000 gallon tank could have an even larger impact and thus, should be required to undergo a SEPA review. <http://www.wvgazette.com/News/201401280050>.

L
Exemptions for in water dredging, bulkheads. Rule section: 197-11-800(3)(a) and (b).

F Exempting projects dredging up to 50 cubic yards prevents any due process to ensure adequate protection for important habitats. For example, under this proposed rule change, dredging could occur for a small project at Cherry Point and have many unintended consequences, such as, disturbing spawning of the declining cherry point herring stock or removal of important rearing habitat for endangered juvenile salmon.

G Additionally, we support Ecology's initial proposal to list bulkheads as an example of shoreline protection. It is important, whenever possible, for Ecology to be explicitly clear in its language and intent. The fact that some entities pushed back on this clarifying language, makes it more important to clarify, so that so-called "ignorance" of the law does not become an excuse for ignoring the law. Please explicitly list bulkheads in the rule, as not being exempt.

Changes to exemptions for the granting of variances. Rule section: 197-11-800(6) (a-c)

H Variances are significant deviations from standard code and requests for variances ought to be accompanied by a SEPA checklist and followed up with a determination of environmental significance. Significant deviations from standard code should be, accompanied by a SEPA checklist and a determination of environmental significance.

We believe that variances should continue to be included in SEPA notifications to enable opportunities for local oversight of nonstandard or nonconformant project proposals. This is especially important in designated aquatic reserves like Cherry Point, where habitats are critical to the health of the Salish Sea as a whole, and immediate public observations are limited.

The Cherry Point Aquatic Reserve is just one example of many important and unique ecosystems that could be impacted by these rule changes. We strongly urge you to revise the proposed rule changes to reduce the potential harm to the environment that will occur if these exemption increases are allowed.

Thank you for your time,

The Cherry Point Aquatic Reserve Citizen Stewardship Committee:

Ben Albers
Bill Beers
Jeremy Brown
Bob Cecile
Kim Clarkin

Marie Hitchman
Kathy Orlich
John Stockman
Gaythia Weis
John Yearsley

X/6

Sant, Fran (ECY)

From: Adonais Clark [aclark@co.pierce.wa.us]
Sent: Tuesday, February 04, 2014 10:55 AM
To: ECY RE SEPA Rule Making
Subject: SEPA Rulemaking Comment period closes 2-5-14

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Mixed Comments

My comments relate to WAC 197-11-800 (23) Utilities.

- A 1. WAC 197-11-800 (23) (c) should be clarified to make it clear that it does, or does not, include water reservoirs (water tanks) – the term water facilities is too vague. [I don't see how the diameter of the "lines" has anything to do with potential impacts. If the exemption is intended to include water reservoirs, the exemption should be
- B based on the size/height of the water tank] and
- C 2. WAC 197-11-800 (23) should be clarified to make it clear that filling/grading over the applicable threshold does, or does not, trigger SEPA review. It is confusing as currently written and proposed as it does not address a scenario where the proposal includes filling/grading over the applicable threshold when the rest of the project is under the threshold. This is important as WAC 197-11-800 (2) (e) **does** specifically address this scenario for minor new construction **but not for any other listed categorical exemptions**. This could lead one to believe that filling/grading over the applicable threshold for any other type of utility project would trigger SEPA review since only filling/grading associated with minor new construction was specifically called out as a categorical exemption.

Adonais Clark

Senior Planner
Pierce County Planning and Land Services Department



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

[Handwritten signature]

February 4, 2014

Maia Bellon, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Rulemaking for Chapter 197-11 WAC, SEPA Rules, DOE AO#13-01

Director Bellon:

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 rulemaking that has the potential for probable significant, adverse environmental impacts to cultural resources and Treaty-reserved rights. Treaties are the Supreme law of the land (Article VI, U.S. Constitution).

The Yakama Nation has reviewed draft rule language for WAC 197-11 and offers the following comments:

A We support retaining the exceptions for lands covered by water, discharges to water and emissions to air. Developments in lands covered by water, or that discharge to water or air have too many variables with the potential to negatively affect treaty-reserved resources to be exempt from SEPA review. The Yakama Nation requires the notification and opportunity to comment on such proposals.

B We agree that local jurisdictions that propose to raise their SEPA threshold exemptions need to provide proof that environmental analysis, protection and mitigation for cultural and historic resources have been adequately addressed (WAC 197-11-80(1)(c)(iv)). However, the rules need to be more explicit to accomplish that task as explained in this letter.

C The State Environmental Policy Act (SEPA) requires the preservation of important historic, cultural, and natural aspects of our national heritage [43.21C.020(d)]. In determining an impact's significance, the responsible official shall take into account the adverse effect on environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, and endangered or threatened species or their habitat [197-11-330 (3)(e)(i)(ii)]. Section 301(1) of SB 6406 justifies the increase of categorical exemption thresholds in light of the increased environmental protections in place under chapters 36.70A RCW (Growth Management Act) and 90.58 RCW (Shoreline Management Act). While a Shoreline Master Program comprehensively updated under the new guidelines (WAC 173-26) plans for and protects cultural resources, the GMA does not require planning for or protection of cultural resources, providing for probable significant, adverse environmental impacts to cultural resources and treaty-reserved rights. Therefore, both known and still unrecognized archaeological resources are vulnerable under the new SEPA categorical exemptions.

SB 6406 requires Ecology to ensure that federally recognized tribes receive notice about projects that impact tribal interests through notice under SEPA and other means. Tribal interests include all varieties of cultural resources across the landscape. This means Tribes shall be notified about projects under SEPA and other means by government subdivisions that adopt increased categorical exclusions. The proposed rules fail to address these criteria.

D In WAC 197-11-80(1)(c)(iv) and to be consistent with the tribal notification requirements in SB 6406, in addition to the environmental analysis, protection and mitigation for cultural resources, local governments should be required to have a memorandum of consultation with local tribes that ensure proper notification and opportunity to comment for proposals with the potential to negatively affect cultural resources.

E We agree that proposed amendments to question 13 of the SEPA checklist are improvements but believe using "1000 feet" is better than the subjective term "near" and would provide clearer direction. Terms used in the new rules need to be defined.

For millennia the Yakama People have had an intimate knowledge of our environment. We understand the variety and utility of the resources across the diverse landscapes of the ceded and traditional use lands. We expect the resources of cultural value to be preserved and protected for future generations. Some of the sacred foods of the Yakama People include chíish (water), núsux (salmon), pyáxi (bitterroot), lúksh (biscuitroot), sawítk (wild carrots), xmáash (camas), and wíwnu (huckleberries). Some sacred animals include pnít (elk), yáamash (deer), anahuy (bear), and xwayamá (eagle).

Archaeological resources are a kind of cultural resource. They are important to the Yakama Nation for their cultural value. Archaeological resources are physical manifestations of our ancestors in the landscape. Archaeological sites contain value to the Yakama People. They demonstrate the variety of activities by our ancestors across the diverse landscapes of Washington. The landscape contains archaeological resources,

J On page 9, WAC 197-11-800 the words "are in place" should be inserted in the paragraph that requires local development regulations "include at a minimum pre-project cultural resource review where warranted...". That will ensure that local governments will have ordinances or amended development regulations that require a cultural resource review where warranted - ie. In areas where there is a high likelihood of impact to a cultural resource, before adopting new thresholds to categorical exemptions.

K For the protection of endangered plants, the Washington Department of Natural Resources, Natural Heritage Program should be utilized, consistent with RCW 43.21C.030(a).

L The proposal of an exemption for dredging under fifty cubic yards in WAC 197-11-800(3) is unacceptable and should be removed. Dredging in lands covered by water has to many variables with the potential to negatively affect treaty reserved resources to be exempt from SEPA review. The Yakama Nation requires notification and opportunity to comment on such proposals.

M The DOT maintenance exemptions in WAC 197-11-860(10) are unacceptable. Minor repair and maintenance of a bridge may be an acceptable SEPA exemption, however, the reconstruction or replacement of a bridge requires SEPA review, including tribal notification and opportunity to comment. Bridges designed on past engineering practices failed to account for the passage of woody debris and ice. Nearly all of the bridge reconstruction proposals reviewed by the Yakama Nation in the ceded lands required larger structures to account for wood and ice, and the migration of aquatic life. Bridge reconstruction or replacement has too many variables with the potential to negatively affect treaty-reserved resources to be exempt from SEPA review. The Yakama Nation requires notification and opportunity to comment on such proposals.

N For Department of Natural Resources' rock sales, WAC 197-11-830(9), archaeological field investigations are needed to insure that glyptic records (RCW 27.53) are not disturbed. Rock pits" should be defined or explained in the Rule. Affected Federally recognized Tribes should be consulted before any "rock pit" is disturbed, through sales or otherwise.

Thank you for considering these comments. I anticipate they will be discussed and incorporated into the final Rule.

Sincerely,



Philip Rigdon, Deputy Director
Division of Natural Resources

cc: Brandon McFarland, WA Dept. of Ecology

whether previously recorded or still unrecognized (RCW 27.53.040). As of 2011 only 0.00024% of Washington has been investigated for archaeological resources (DAHP).

To facilitate the preservation and protection of resources of cultural value across the ceded and traditional use areas of the Yakama Nation, we expect the Department of Ecology to require the utilization of a systematic interdisciplinary approach that integrates natural and social sciences [RCW 43.21C.030(a)], including archaeological field investigations when any lead agency reviews the permitting of any ground disturbing activity. Systematic archaeological field investigations are necessary to insure that still unrecognized archaeological resources are not disturbed (RCW 27.53.040).

F
G
The Department of Archaeology and Historic Preservation (DAHP) has a confidential database with known archaeological sites. Simply encouraging data-sharing agreements with DAHP does not insure that "available data" will be used in decision making. All subdivisions of Washington State that permit ground disturbing activities should be required to have a data-sharing agreement with DAHP, unless they can demonstrate they have obtained equivalent data, and should screen every project they review, both potentially SEPA exempt and non-exempt, as part of their review process to insure that archaeological sites are not disturbed (RCW 27.53.060). Any project with a known archaeological site must be assessed by a professional archaeologist to determine site boundaries and protection plans. [All projects with known archaeological sites should not be categorically exempt from SEPA unless they have a Cultural Resources Management Plan approved by DAHP and the affected Tribe(s). Allowing government subdivisions to proceed in ignorance with permitting projects without using available data is irresponsible and inconsistent with RCW 43.21C.030(a).]

H
DAHP has created an archaeological predictive model for Washington State. DAHP's model should be used to trigger archaeological surveys by all government subdivisions using categorical exemptions whenever any portion of a proposed project, both potentially SEPA exempt and non-exempt, includes "high risk" and/or "very high risk" for archaeological resources. If the archaeological surveys discover archaeological resources, the project should not be exempt from SEPA, unless they have a Cultural Resources Management Plan approved by DAHP and the affected Tribe(s). Every permit needs to include standard inadvertent discovery plan language so the proponent knows what measures must be taken if archaeological resources are discovered during the project.

I
For WAC 197-11-800 (c)(iv), the terms "Cultural Resources Management Plan", "pre-project cultural resources review" and "standard inadvertent discovery plan" need to be defined. Language for "Cultural Resource Management Plan" could be defined as a Plan that integrates cultural resource identification and management into land use planning and permitting processing. "Pre-project cultural resources review" should have a requirement that this is done by DAHP or an affected Federally recognized Tribe. Local governments that do not have an archeologist will not have the knowledge or expertise to do these reviews.

Tom Clingman, WA Dept. of Ecology
Tom Laurie, Tribal and Environmental Affairs, WA Dept. of Ecology
Legislative Committee, Tribal Council
Cultural Resources Committee, Tribal Council
Johnson Meninick, Cultural Resources Program
Kate Valdez, Tribal Historic Preservation Office
John Marvin, Habitat Biologist, YKFP
Allyson Brooks, Ph.D., DAHP
Senator John McCoy
Senator Sharon Nelson

XS

**Comments on Ecology's Proposed Rule Amendments
WAC 197-11 Filed December 16, 2013**

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

February 3, 2014

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

First, we would like to thank Ecology and the SEPA Rule Making Advisory Committee for their work during the entire SEPA rule making process (August 2012-present). While we have made a concerted effort to keep the larger cultural resource constituency informed about the process, the following comments are those of the cultural resources representatives to the Advisory Committee alone.

While we sincerely appreciate Ecology's inclusion in the proposed rule amendments of a number of our suggestions for improving cultural resource protection, the rule making process itself has highlighted a number of serious problems with the way impacts to cultural resources are (or are not) considered prior to project implementation. We look forward to addressing these problems in the near future, perhaps with the assistance of Ecology's Cultural Resources Work Group and through means such as new legislation and/or additional rule amendments.

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.

A

As a result, various aspects of the rule making, such as the directive to increase the thresholds for SEPA review of minor construction projects, have resulted in an increased number of projects that are not reviewed for impacts to cultural resources via the SEPA 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 available to local jurisdictions during planning and development activities [e.g. the Department of Archaeology and Historic Preservation (DAHP) 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 recent discovery in Oak Harbor.

COMMENTS ON PROPOSED RULE

At the October 17, 2013, Advisory Committee meeting, Ecology presented their perspective and tentative direction on the rule amendments. In terms of cultural resources, Ecology stated:

It is clear that SEPA has provided an important "gap filler" role for cultural and historic resources issues; and that there is opportunity to make clarifications in the rule to improve this role. However, we recognize that the opportunity to improve language related to this topic needs to occur without creating significant new burdens within the SEPA procedures.

B Ecology's statement underscores the importance of committing to address a number of serious problems with the way impacts to cultural resources are (or are not) considered prior to project implementation that were highlighted by the rule making process. We look forward to addressing these problems in the near future, perhaps with the assistance of Ecology's Cultural Resources Work Group and through means such as new legislation and/or additional rule amendments.

C **Exceptions to the Exemptions-Cultural Resources** (pg. 9 of staff report; pg. 9 of proposed rule) – According to the staff report dated December 9, 2013, rather than creating an exception to the exemptions for cultural resources, Ecology is proposing inclusion of elements of the "planning-level approach" we have presented throughout the rule making process. These elements include 1) use of available data on known and likely cultural resources, 2) planning/permitting processes ensuring compliance with cultural resource regulations, and 3) local development regulations with a minimum of pre-project cultural resource review and standard inadvertent discovery language for all projects. These elements will serve as required "findings" for raising maximum thresholds for minor new construction.

We strongly support Ecology's proposed changes to this section of the rule [WAC 197-11-800(1)(c)]. Generally, the required "findings" section allows jurisdictions to adopt higher maximum thresholds 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." The proposed changes provide a

consistent standard for jurisdictions to demonstrate that cultural resources specifically have been adequately considered. We support this approach considering current streamlining efforts because, as long as cultural resources remain an optional element under the GMA and, by extension, comprehensive planning, relying on such regulations and plans will not necessarily address cultural resource concerns.

On October 23, 2013, we submitted to Ecology our final "synthesis" of recommendations regarding consideration of potential impacts to cultural resources during project planning and permitting; the synthesis was also included in the final report of Ecology's Cultural Resources Work Group dated November 21. Included in the synthesis is a sample decision tree for pre-project cultural resource review. The decision tree includes steps for reviewing both above-ground cultural resources (e.g. historic buildings) and below-ground resources (e.g. archaeological sites). We offer the decision tree, as well as the other information in the synthesis, as a starting place for jurisdictions seeking to meet the proposed required "findings" for raising maximum thresholds for certain minor construction.

D It is important to note that the proposed language only applies to jurisdictions raising their exempt levels after the current round of rule making. While we support the current proposed language, we fear jurisdictions not covered by this section (i.e. those not raising their maximum thresholds) will continue to default to the "applicable state and federal regulations" standard, which currently addresses only the treatment of known cultural resources or cultural resources discovered after the fact (RCW 27.44 and 27.53). The result of the proposed changes in these jurisdictions, therefore, is no real improvement to the present situation. This, again, underscores the importance of committing to address a number of serious problems with the way impacts to cultural resources are (or are not) considered prior to project implementation.

Finally, we suggest that efforts to solicit information relevant to considering the impacts of raising maximum thresholds could be furthered through adoption of a proposal submitted by the Washington State Department of Natural Resources:

E The Washington State Department of Natural Resources submitted a comment letter dated October 4 that includes language that would establish "reasonably sufficient information" required of applicants. Language would be added to two sections of the rule: threshold determination [WAC 197-11-100(2)] and the optional DNS process [WAC 197-11-355]. This approach would go beyond "findings" which only apply to jurisdictions opting to raise their maximum thresholds.

F **Exemption for demolition of buildings** (pg. 14 of staff report; pg. 10 of proposed rule) – According to the staff report, Ecology is not planning any amendments to this section; however, we continue to request an amendment defining the current phrase "recognized historical significance" as a structure or facility that is "listed in or eligible for listing in an historic register." This amendment will clarify the current phrase according to standard professional practice.

At the September 17, 2013, Advisory Committee meeting, general support was expressed for changing the current phrase "recognized historical significance" to "listed in an historical register" for clarity; however, including the phrase "or eligible for listing" was opposed, primarily due to concerns about the time it would take staff of local jurisdictions to determine a structure's eligibility. At the October 17 meeting, Ecology's perspective was that the phrase "eligible for listing" is too "vague and "open-ended."

In terms of concerns about staff time, some Committee members oppose an amendment that would require staff efforts beyond consulting an existing register. This approach is flawed, however, as existing registers are incomplete; that is, many eligible buildings have not yet been added to a register, and more buildings become eligible over time. We have presented a process for staff to follow in order to determine eligibility, and we believe such efforts are merited in the face of demolition. At a minimum, DAHP is always available to advise staff on questions of eligibility.

Past opposition to the "eligible for listing" language also stemmed, in part, from an erroneous notion that "eligibility" is tied solely to the age of a building. In addition to age, integrity and significance are also considered when determining eligibility. All three factors (age, integrity, significance) are considered according to established criteria.

Again, we continue to request an amendment defining the current phrase "recognized historical significance" as a structure or facility that is "listed in or eligible for listing in an historic register." This amendment will clarify the current phrase according to standard professional practice.

G **Environmental Checklist** (pg. 28 of staff report; pg. 38-39 of proposed rule) – We support Ecology's proposed changes to Section B, Question 13 of the Checklist in order to support efforts "to better address identification of potential historic and cultural resources that may be on a site." We offer two minor clarifications as follows:

SEPA Checklist – Section B, Question #13

13(a) Current question: 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.

Proposed question: Are there any buildings or structures over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near to the site? If so, specifically describe.

Revised question: Are there any buildings or structures located on or near the site that are over 45 years old and listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.

13(b) Current question: Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site?

Proposed question with one suggested revision: Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Is [change "Is" to "Are"] there any material evidence, artifacts, or areas of cultural importance on or next to the site? Please list any professional studies conducted at the site to identify such resources.

13(c) No revisions.

13(d) No revisions.

We recommend that question 13(d) include the following information for the benefit of the applicant and the SEPA Official:

- H
- Washington State law (RCW 27.53 and 27.44) protects archaeological resources (RCW 27.53) and Indian burial grounds and historic graves (RCW 27.44) located on both the public and private lands of the State.
 - An archaeological excavation permit issued by DAHP is required in order to disturb an archaeological site.
 - Knowing disturbance of burials/graves and failure to report the location of human remains are prohibited at all times (RCW 27.44 and 68.60).

Efforts to solicit project information more relevant to the threshold determination process, such as the proposed changes to the Checklist, could be furthered through adoption of a proposal submitted by the Washington State Department of Natural Resources:

I

The Washington State Department of Natural Resources submitted a comment letter dated October 4 that includes language that would establish "reasonably sufficient information" required of applicants. Language would be added to two sections of the rule: threshold determination [WAC 197-11-100(2)] and the optional DNS process [WAC197-11-355]. This approach would go beyond "findings" which only apply to jurisdictions opting to raise their maximum thresholds.

Public Notice (pg. 6 of staff report; pg. 5-6 of proposed rule) – We support Ecology's stated goals for the SEPA Register: 1) provide that the SEPA Register is web-based and updated daily, and 2) agencies are required to maintain an interested parties list for SEPA notices.

J

We would like to point out that the proposed changes related to item #2 above at WAC 197-11-510 do not make such notice mandatory. Rather, the relevant change (at section 1, item "g") is one option in a list of examples of reasonable methods to inform the public. That is, agencies must still use reasonable methods to inform the public, but the proposed change does not require a list of interested parties.

While we support the proposed changes to public notice, we remain concerned that

they are too limited in scope. Because applicants and SEPA Officials often overlook cultural resources, notification is a crucial element of the SEPA process, and it is often the only notice we receive. The current rule does not require notification for projects that fall within the new maximums. From a cultural resources standpoint, this effectively precludes public comment for such projects, as SEPA is the only regulatory process at the State level that requires consideration of impacts to cultural resources. Such a scenario is in direct conflict with the broad agreement Ecology reported was reached: "Reform [of the notification process] will be equal or better [than the current process]."

FUTURE IMPROVEMENTS

While we appreciate Ecology's inclusion in the proposed rule amendments of a number of our suggestions for improving cultural resource protection, the rule making process itself has highlighted a number of serious problems with the way impacts to cultural resources are (or are not) considered prior to project implementation.

K 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 during project implementation. 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. Pre-project review represents an important risk management opportunity.

As mentioned above, we have submitted to Ecology our final "synthesis" of recommendations regarding consideration of potential impacts to cultural resources during project planning and permitting. The synthesis includes a sample decision tree for pre-project cultural resource review addressing both above-ground cultural resources (e.g. historic buildings) and below-ground resources (e.g. archaeological sites). We would welcome any opportunities to share the synthesis with jurisdictions seeking to meet the proposed required "findings" for raising maximum thresholds for certain minor construction, as well as jurisdictions seeking to improve their cultural resource planning and permitting processes and/or their local development regulations.

L Another problem area highlighted by the SEPA rule making process concerns the fact that State law does not provide an avenue for requiring a project proponent to conduct a pre-project review if one appears necessary; furthermore, many local jurisdictions do not have a provision in their code either. This problem merits further analysis and discussion, including an examination of whether it would be more effective to have one statewide process for all jurisdictions to follow or whether the process should be left up to individual local jurisdictions.

We look forward to addressing these and other improvements in the near future, perhaps with the assistance of Ecology's Cultural Resources Work Group and through means such as new legislation and/or additional rule amendments.

Conclusion

Throughout the rule making process (August 2012-present), we have opposed proposals that result in fewer notifications and/or increased exemptions granted without appropriate cultural resource findings, as this will only raise the potential for increased impacts to cultural resources.

We are encouraged by the reception of our message that cultural resource protection is not, as some suggested early on, 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.

For too long, though, cultural resources have been isolated and marginalized in the regulations and in planning processes, but this will only perpetuate the lack of real, proactive consideration and management. Local jurisdictions and citizens will needlessly suffer the consequences, along with the resources. We can do better.

It *is* possible to include cultural resources in pre-project review of potential impacts and in longer-range planning efforts if we are willing to do so. We look forward to working together in the near future to improve the protection of our State's shared cultural resources.

Sant, Fran (ECY)

#9

From: Troy Davis [tdavis@arlingtonwa.gov]
Sent: Monday, January 27, 2014 10:44 AM
To: ECY RE SEPA Rule Making
Subject: SEPA Rulemaking Public Comment Period December 16, 2013-February 5, 2014

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Mixed Comments

Dear DOE-

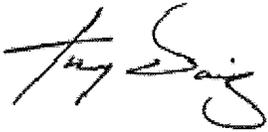
A

Thanks for the opportunity to comment on the proposed SEPA changes. I haven't had time to do a detailed review but have had a chance to briefly look over the proposed changes. I only have a couple questions/comments. 1. Under projects exempt from SEPA review, have you listed specific land use actions such as a Boundary Line Adjustment (aka. Lot Line Adjustment) as being exempt from SEPA? If not, I think it would be good to clarify 2. Is there a specific SEPA rule that states that all projects that are not exempt are subject to SEPA review? (I'm sure there is I just haven't seen it).

B

Thanks!

Sincerely,



Troy Davis, Associate Planner
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18204 59 Avenue NE
Arlington, WA 98223
360.403.3436

All correspondence with this e-mail address is subject to public disclosure pursuant to RCW 42.56.

A 10

Fran Sant
Department of Ecology
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separulemaking@ecy.wa.gov

January 15 2014

A

I would like to begin this letter by saying I agree with DOE on the extension of the notice period from 21 to 60 days. Often 21 days is not enough time to compile thoughts and put them into meaningful order and truthfully, what project is so important that it cannot hold off for an extra 39 days?

B

Although I wonder whether or not SEPA is the best place to address the short comings in the protection of cultural resources, Ecology is at least addressing it, which would lead me to believe they see serious issues of how it has been dealt with in the past and are making an honest effort to right the wrongs.

WAC 197-11-800 AMENDATORY SECTION

(iv) For cultural and historic resources (per WAC 197-11-444), Documentation that environmental analysis, protection and mitigation have been adequately addressed for the development exempted shall include a minimum of the following:

- *Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.*
- *Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.*
- *Local development regulations that include at minimum pre project cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.*

C

I believe that some of the changes proposed will leave too much of the decision making process to the counties, and putting more responsibility onto counties and cities

especially those in eastern Washington who are intensely pro-private property rights and anti-regulation would not be a wise decision.

I will use Douglas County (where I live) as an example. About 15 years ago a well known land speculator illegally excavated 1200' of Columbia River shoreline. This would probably have never come to light except one (I emphasize one) person employed by Douglas County felt it was wrong and advised me. I contacted the local paper and a story was done.

The county then had to deal with the miscreant but one of the county commissioners said, "The County has no way to deal with this, not even an account to put fines into, because the county has never had a violation by developers before."

Douglas County was established in 1883, and according to the esteemed commissioner the first violation of state and county regulations by a developer was well over 100 years later, no wonder DOE feels that we can confidently, "*ensure compliance with applicable laws.*"

Again using Douglas County as an example, it has allowed "self regulation" for people employed in the land development industry as opposed to creation and enforcement of county regulations. Does the DOE think self regulation would work in the reporting and protection of cultural resources?

As you can surmise by the above examples all of the planning, permitting and regulations are worthless unless they are enforced. Douglas County admits it does not and cannot enforce many of the regulations already on the books due to lack of funding, so the enforcement of violations to cultural resource regulations, is highly unlikely. Of course the county could actually administer substantial fines to violators but that could adversely affect campaign contributions in the next election. But I digress.....

D
Some of the amendments also appear to conflict with existing protection laws, which by creating confusion is better for the attorneys to find loop-holes and allow for easier violation. This is a bad thing of course and added to the above apathy of county officials in enforcement of regulations, would only encourage even more excuses for violations.

E
While DOE suggests "*local ordinance or development regulations address pre-project review*" who would be doing the review? County planning staff? If so they "work at the pleasure of the County Commissioners" and if the commissioners want a project to be approved with no hitches, then it will be. If it is the developer and their planners doing the review, well let me just say that I have seen very few that ever mentioned anything that could slow up the project or incur extra costs.

"Cultural resource management plan is incorporated into the GMA comprehensive plan"

Many county commissioners agree with the building industry that the GMA is nothing more than Seattle liberals foisting their anti-private property rights agenda onto the freedom loving eastsiders. Violating the GMA is a badge of honor on this side of the mountains.

F I realize activities are often exempted from National Environmental Policy Act of the National Historic Preservation Act (Sec. 106) review because they do not meet the threshold to adversely affect the environment of cultural sites. Activities like lawn care, building maintenance, etc. can be considered passive and most likely non-intrusive actions but I have to disagree with some of the proposed actions to be categorically excluded from review for Federal Highway Administration.

Paths, utility installations, even emergency action to name a few. By allowing exemptions it encourages unethical individuals or entities to minimize the impact of their proposals by inferring little disturbance due to the lack of size of the project, "it is just a path" or need of immediate action due to a perceived emergency. Much like our land speculator friend above, once given the go ahead they can ignore anything that gets in their way with no or minimal punishment.

G Some protection from much of this would be if federal, state or county laws and regulations are violated, the first object would be to prevent any further impacts to the area. Then, to obtain off-site mitigation (Offsite mitigation is an available form of mitigation under the regulations implementing section 106 of the National Historic Preservation Act) in terms of funding for appraisals and options to purchase the properties containing cultural deposits and hopefully adjoining properties believed to be associated with the site and possible cultural resources. This step would be to assist the county or city in their purchase of the area for preservation as perpetual open space.

G Also forcing the developer to employ an independent archaeologist, limit excavation, and provide daily logs among other mitigations and protective measures. If the developer refuses to comply or has already done damage (again remember our friend the land speculator) then **significant** payment from the developer to a trust to aid in the acquisition of offsite property in order to protect other important resources. This might cause others to be more respectful of cultural resource laws and regulations, "self regulation" at its best by seeing what will happen to them if they do not.

L I realize I have addressed issues of penalties for violation of cultural resource regulations which is not actually part of the proposed amendments, but DOE needs to be well aware of the apathy in government especially in eastern Washington. Secondly maybe few local officials will read this and step up to the plate to begin upholding the laws they were elected to protect and enforce.

Dixie Dringman
6551 Keane Grade
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509-679-1539
nopales@frontier.com

11

February 5, 2014

Ms. Fran Sant
Washington State Department of Ecology
Shorelands and Environmental Assistance Program
PO Box 47703
Olympia, Washington 98504-7600

Dear Ms. Sant:

Subject: Comments on the Proposed Amendments to the Washington State
Environmental Policy Act regulations proposed as part of the 2013-14
Rulemaking

Sent by email to: separulemaking@ecy.wa.gov

On behalf of the environmental representatives on the State Environmental Policy Act (SEPA) Rules Advisory Committee and the other signers, thank you for the opportunity to comment on the proposed amendments to the SEPA regulations. 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 and other actions. We also support measures to reduce the time and costs of environmental review when the people of Washington State, their property, and their environment are still protected.

We appreciate the work of your agency and that of the other participants on the SEPA Rules Advisory Committee. Overall, we support the updates to the SEPA rules as an important step to update best practices for ensuring that SEPA still fills in the gaps but does not duplicate other environmental laws. However we have five important changes that we believe are critical for Ecology to include in the final rule so that all Washingtonians will benefit from greater certainty and a healthy environment.

The SEPA Rules Advisory Committee discussed many concepts, but some of the rule amendments were not discussed by the committee. So we are concerned that some of these changes that were not discussed by the committee did not receive a full evaluation of efficacy and impacts. Because Ecology so rarely amends the SEPA rules, only rules that have been carefully evaluated should be adopted.

WAC 197-11-508, Amendment to Allow Online SEPA Register

A We support the online SEPA register and believe Ecology has made many valuable enhancements. So we support this amendment. We believe that the register should also

include links to the SEPA documents and this would save Ecology, local governments, and state agencies a lot of time responding to requests for the documents. We recommend that the rule be amended to provide for links to the SEPA documents. We recognize that this may take Ecology some time to implement so the rule could provide a phase-in period for this part of the amendment.

WAC 197-11-800(1) Minor new construction - Flexible thresholds.

Cultural and Historic Resources Standards for Adopting Higher Flexible Thresholds

B We strongly support the more specific requirements for regulations necessary to protect cultural and historic resources in WAC 197-11-800(1)(c)(iv). These valuable resources are managed largely through SEPA now. If the thresholds are to be raised then we agree alternative protections need to be in place.

Mixed-use

C We are concerned that WAC 197-11-800(1)(c) authorizes local governments to adopt mixed-use exemption levels without any maximum other than the maximums in WAC 197-11-800(1)(d). **We urge the Department of Ecology to better limit the new “mixed-use” categorical exemption in WAC 197-11-800(1)(c).** As written in WAC 197-11-800(1)(c) would allow a state agency or local government to adopt a mixed-use exemption level that is 100 percent of the commercial limit and 100 percent of the residential limit. We strongly oppose a rule amendment which would allow a project to be exempt with 100% of the residential exemption plus 100% of the commercial exemption (or other like combinations). Such a project would have twice the impact of either the residential exemption or the commercial exemption. If the residential exemption and the commercial exemption each represent the maximum level of development that is still unlikely to have a significant adverse environmental impact, then a proposed coupling of the two exemptions must be likely to have significant adverse environmental impact. Some argue that a building meeting the residential maximum and another building meeting the commercial maximum can be sited on opposite corners of an intersection, so why not allow the same amount of development on the same lot or corner. However, as proposed in the draft rule, buildings that have both the residential and commercial maximums could be built on all four corners in four independent projects and without SEPA review with significant adverse environmental impacts caused by each of the four projects. As mentioned above, 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.¹

Excavations

D WAC 197-11-800(1)(b)(v) on page 8 of the rule authorizes, in part “Any fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation ...” We recommend that the exemption be clarified so that either the sum of the fill or

¹ RCW 43.21C.110(1)(a).

excavation cannot exceed 100 cubic yards or that fills and excavations each have a 100 cubic yard maximum.

Storage tanks

We urge the Department to limit the new above-ground storage tanks exemption size based on what is being stored in the tanks. We oppose the new exemption in WAC 197-11-800(2)(h) created to allow the installation of above ground tanks without environmental review. Above-ground tanks should be limited in size to 1,000 gallons if they hold explosive, flammable or hazardous materials. Larger tanks in agricultural and industrial locations should only be exempt for non-hazardous, non-explosive, and non-flammable materials and only when there are no residential or commercial lands or uses within a 1000 foot buffer for 30,000 gallon tanks and a 2000 foot buffer for 60,000 gallon tanks. As the April 17, 2013 West Fertilizer Plant explosion showed, storing hazardous materials near residences, schools, and nursing homes is dangerous.² While Washington's zoning for these hazardous materials is not as bad as it is in Texas, schools, residences, and other sensitive uses are still located near dangerous uses. Large above ground flammable or hazardous materials tanks should not be exempt from SEPA.

Dredging

Currently maintenance dredging is not exempt from SEPA. WAC 197-11-800(3)(a) is proposed to be amended to exempt dredging of 50 cubic yards or less, the equivalent of five standard dump trucks. Dredging is an in water activity that has very significant environmental impacts.³ We recommend that dredging not be exempted from SEPA due to its adverse environmental impacts.

Land Use Decisions

WAC 197-11-800(6) is amended from exempting "minor land use decisions" to just exempt "land use decisions." We object to this proposal to which effectively adds exemptions for rezones, conditional use permits, and shoreline conditional uses to WAC 197-11-800(6). These permits can have significant adverse effects requiring SEPA review. 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: See RCW 43.21C.110(1)(a).

The original intent of the existing language in WAC 197-11-800(1) and (6) was to exempt traditional construction permits (building and grading permits and incidental permits such as electrical, mechanical, plumbing, septic, and access permits), and not planning permits (such as rezones, subdivisions, binding site plans, and conditional and special use permits). The current language explicitly states that rezones are not exempted by WAC 197-11-800(1) and the exemption only applies to certain listed types of

² Ken Steif, *Lessons from West: Do Texas Land Use Laws Put Residents at Risk?* Planetizen (Aug. 29, 2013) accessed on Jan. 31, 2014 at: <http://www.planetizen.com/node/64869> and enclosed with this letter.

³ Barbara Nightingale and Charles Simenstad, White Paper: Dredging Activities: Marine Issues Executive Summary pp. 3 – 6 (Submitted to Washington Department of Fish and Wildlife, Washington Department of Ecology, Washington Department of Transportation: July 13, 2001) accessed on Jan. 31, 2014 at: <http://wdfw.wa.gov/publications/00055/wdfw00055.pdf> and enclosed with this letter.

“construction.”⁴ It implicitly requires environmental review for most subdivision and binding site plan planning permits and WAC 197-11-800(6) explicitly exempts only limited short subdivision planning permits. The Washington State Supreme Court has explicitly held that subdivisions are not exempt from SEPA.⁵ The current regulatory language does not exempt conditional and special use permits and should stay that way.

H
Because rezones are a planning permit and not a traditional construction permit, we strongly oppose allowing otherwise exempt 800(1) construction permits to continue to be exempt when any rezone planning permit is required. Normally, area-wide rezones require SEPA review as do site-specific rezones. A site-specific rezone may be consistent with a comprehensive plan or subarea plan, but it always still has site-specific impacts that haven't been reviewed and need to be reviewed under SEPA. A site-specific rezone is, by definition, a change in the allowed use on a site and this can create impacts in a neighborhood that has already developed under prior zoning. These impacts should continue to be subject to SEPA review.

While we appreciate that WAC 197-11-800(6)(c)(iii) now requires that “[t]he applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption; and the EIS adequately addressed the environmental impacts of the rezone” one of the problems with a lack of site specific SEPA analysis is that you do not know what you do not know. For example most jurisdictions do not have regulations requiring that uses have actual and legal access to water. Wells are running dry due to overdevelopment in some areas. If the EIS only generally addressed water supplies the local government may be unaware of this limitation on development and allow uses that do not have legal access to water, harming instream flows and senior water rights holders. Nor are there standards for the type or level of analysis required. The analysis could be purely qualitative with no analysis of the number of trips generated or the gallons of water required for the proposal. This new exemption requires no previous analysis of whether existing facilities can adequately address the impacts of the rezone. The problems created by this lack of analysis are compounded by the nature of comprehensive plans which are general, apply to large areas, and often authorize a broad range of uses. Unless the planned action procedure is used, the SEPA analysis for a comprehensive plan or sub-area plan is typically very general and qualitative.

Under the current language in 800(1) and (6), all rezones require SEPA review. Under the proposed language, a much more amorphous standard is created regarding whether all potential impacts of the site-specific rezone were previously analyzed in an EIS that could not have possibly analyzed all impacts that the specific change on the specific site would have on subsequent development on neighboring properties. For area-wide rezones the test is even more unclear. This proposed new provision is a legal quagmire that creates more problems than it solves.

⁴ WAC 197-11-800(1).

⁵ *Norway Hill Preservation and Protection Ass'n v. King County Council*, 87 Wn.2d 267, 278 fn.8, 552 P.2d 674, 681 fn.8 (1976).

Another reason that conditional use or special use permits should not be exempt is that they are, by their nature, uses that can have significant adverse environmental impacts. As Professor Settle explains: Conditional uses and special uses are:

I ... based on recognition that the capability of some uses may be impractical to determine without knowing their precise location and other qualities. In other words, some uses may or may not be compatible within a given district – or indeed anywhere in the municipality – depending upon where they are located and how they actually are developed. Thus, churches, private clubs and schools and professional offices may be conditional uses in single-family residential districts and permitted outright in some other districts. Uses which are potentially very obnoxious or dangerous, such as airports or gasoline stations, may not be permitted outright in any districts and permitted only as conditional or special uses in some districts.⁶

Environmental impacts, such as the potential of gas stations to pollute ground water, are an important aspect of compatibility and many conditional uses have significant environmental impacts. Given this need for site specific review to determine if a conditional use is compatible and will protect the environment, conditional uses and special uses should not be exempt from SEPA review.

J **197-11-830(9) Department of Natural Resources Rock mining exemption**

It appears that the reference in 197-11-830(9) to WAC 197-11-800(1)(v) should be to WAC 197-11-800(1)(b)(v).

WAC 197-11-860(10) Department of Transportation exemption for repair, reconstruction, restoration, retrofitting, or replacement

Transportation facilities can have significant adverse impacts on the environment. As the Washington State Department of Fish and Wildlife has written:

Whether constructed as a part of forest practices, agriculture, recreation, or urbanization, roads may have significant and long-lasting impacts on riparian and instream habitat and their fish and wildlife populations (Larse 1970, Thomas et al. 1979, Oakley et al. 1985, Furniss et al. 1991, Hicks et al. 1991b, Noss and Cooperrider 1994). Roads of all types and locations

⁶ Richard L. Settle, WASHINGTON LAND USE AND ENVIRONMENTAL LAW AND PRACTICE pp. 52 – 53 (Butterworth Legal Publishers, Seattle WA: 1983).

(not including foot trails) affect riparian or stream systems by changing the drainage of a watershed, removing riparian habitat, or by causing mass soil movement, erosion, and subsequent sedimentation into streams. The degree of these effects is related to the road location, construction and maintenance techniques, and to the manner in which roads cross streams. Roads more directly affect fish and wildlife populations by removing riparian habitat, altering instream habitat, introducing human disturbance to riparian and stream areas, acting as a barrier to movement, and causing vehicle related mortality of wildlife. To prevent or reduce impacts, road planning and route selection by an interdisciplinary team is perhaps the most important single element of road development (Larse 1970).⁷

K
While the above quote shows that maintenance techniques must be chosen carefully to avoid adverse impacts, the newly proposed exemption for repair, reconstruction, restoration, retrofitting, or replacement lacks adequate safeguards. We are particularly concerned that the exemption would allow development outside the developed right-of-way where archeological and cultural resources may be located. State highways are often located along rivers, streams, marine waters, and wetlands with their important resources and again the exemption has, by allowing development outside the developed right of way, the potential to harm these important resources. In short, this exemption would allow work outside the developed right of way without adequate environmental and interdisciplinary review. It is also unclear that this work will comply with the shoreline master programs, critical areas regulations, or similar local measures to protect these resources. So we recommend that the exemption be clarified to include these important protections. Our additions are double underlined and our deletions are double struck through.

WAC 197-11-860 Department of transportation. The following activities of the department of transportation shall be exempt:

....

(10) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation, as long as the action:

(a) Occurs within the existing developed right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original
~~except to meet current engineering standards or environmental permit requirements; and~~

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility; and

⁷ K. Lea Knutson and Virginia L. Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* p. 52 (Washington Department of Fish and Wildlife, Olympia, WA: December 1997). Accessed on Feb. 5, 2014 at: <http://wdfw.wa.gov/publications/00029/> and enclosed in a separate email.

(c) The action is consistent with and conforms to the relevant city or county comprehensive plan and development regulations including approved shoreline master programs.

WAC 197-11-960 Environmental checklist

L We believe the revisions proposed for the environmental checklist are helpful, will make it easier for the public to use, and we support them. While we would have preferred additional changes, such as a question about greenhouse gas emissions, we recognize that this is beyond the scope of this update.

We do recommend that proposed WAC 197-11-960B.4.c., one of the “plants” questions, request information on threatened, endangered, sensitive, and candidate species. Sensitive species include plants that if not properly managed will become threatened or endangered and are designated by Washington State.⁸ Candidate species are the federal government analogue. This information will be helpful to local governments and state agencies as they consider whether to undertake actions subject to SEPA review and we recommend that this information be added to the checklist. Our recommended additions are double underlined and our recommended deletions are double struck through.

c. List threatened, ~~or~~ endangered, sensitive, or candidate species known to be on or near the site.

M We also recommend that that proposed WAC 197-11-960B.5.b., one of the “animals” questions, request information on threatened, endangered, sensitive and candidate species. In Washington local governments are typically required to protect endangered, threatened, and sensitive species in their critical areas regulations and, to the extent they are shoreline dependent, in their shoreline master programs.⁹ State agencies should also protect these important species. Sensitive species are plants that if not properly managed will become threatened or endangered and are designated by Washington State. Candidate species are the federal government analogue. This information will be helpful to local governments and state agencies as they consider whether to undertake actions subject to SEPA review and we recommend that this information be added to the checklist. Our recommended additions are double underlined and our recommended deletions are double struck through.

b. List any threatened, ~~or~~ endangered, sensitive, or candidate species known to be on or near the site.

⁸ See the *List of Vascular Plants Tracked by the Washington Natural Heritage Program* (July 2013) accessed on January 31, 2014 at: <http://www1.dnr.wa.gov/nhp/refdesk/lists/plantrnk.html#key>

⁹ *Ferry County v. Concerned Friends of Ferry County*, 155 Wn.2d 824, 832 – 33, 123 P.3d 102, 106 (2005); WAC 173-26-221(2).

Ms. Fran Sant, Washington State Department of Ecology
February 5, 2014
Page 8

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 Tim Trohimovich at tim@futurewise.org or 206-343-0681 Ext. 118.

Sincerely,

Claudia Newman, Gerald Steel, and Ann Aagard with the SEPA Rules Advisory
Committee
Tim Trohimovich, Futurewise
Rebecca Ponzio, Washington Environmental Council
Lauren Goldberg, Columbia Riverkeeper



#12

**PLANNING AND
COMMUNITY DEVELOPMENT**

Allan Giffen
Director

February 4, 2014

Department of Ecology
RECEIVED

FEB 07 2014

Shorelands & Environmental
Assistance Program

Ms. Fran Sant
Washington State Department of Ecology
Shorelands and Environmental Assistance Program
PO Box 47703
Olympia, Washington 98504-7600

Dear Ms. Sant,

Thank you for the opportunity to review and comment on the proposed State Environmental Policy Act (SEPA) changes currently under review. The City of Everett has prepared a spread sheet identifying our specific areas of concern and our comments. The majority of these comments were generated by our Public Works Department; who deals with environmental issues in their day to day operations. These comments are generally intended to simplify or clarify the proposed language.

The City of Everett agrees with the state's premise that there have been a variety of regulatory changes since SEPA was enacted in 1971. These changes provide substantial environmental protection that did not exist when the SEPA regulations were originally enacted. The City appreciates and supports your efforts to streamline the SEPA process.

Thank you again for the opportunity to comment on these revised SEPA rules.

Sincerely,

Allan Giffen, Director

cc: Roy Harris
Paul Crane
Dave Koenig
Gerry Ervine

Attachment

Section	Sub-Section	Page Number	Comment
A WAC 197-11-610	(2)	6	After the word "non-significance" the draft has deleted ((or EIS)). We disagree with the strikeout and recommend that it includes ((or EIS)) to be consistent with (3)(b), (4), and (5).
B WAC 197-11-756	(1)	7	After the word "impounded waters" the draft has deleted ((marshes, and swamps)). We disagree with the strikeout and recommend that it includes ((marshes and swamps)) because marshes and swamps do have ordinary high water marks.
C WAC 197-11-756	(1)	7	After the word "impounded waters" ((marshes, and swamps)) the draft added " <u>and wetlands</u> ". We disagree with this addition and recommend that "and wetlands" be deleted to be consistent with the definition of "lands covered by waters" which means lands underlying waters of the state below the ordinary high water mark. Although "wetlands" are a sensitive area in part of the natural environment, groundwater saturated soils are the normal water sources for wetlands, which would not have an ordinary high water mark.
D WAC 197-11-800	(1)(a)(ii)	8	Delete all of (ii). Most discharges from stormwater systems require an NPDES permit which would eliminate minor new construction and drainage systems that discharge to water.
E WAC 197-11-800	(1)(a)(ii)	8	Delete all of (ii) to be consistent with (1)(aa) because these exemptions apply to all licenses required to undertake the construction in question.
F WAC 197-11-800	(1)(a)(iii)	8	Delete all of (iii) to be consistent with (1)(aa) because these exemptions apply to all licenses required to undertake the construction in question.
G WAC 197-11-800	(1)(a)(iv)	8	Delete all of (iv) to be consistent with (1)(aa) because these exemptions apply to all licenses required to undertake the construction in question.
H WAC 197-11-800	(2)(a)	10	The first sentence without the recommended deletions reads that the entire section would not be exempt except for (2)(a)(i).
I WAC 197-11-800	(2)(a)	10	(2)(b)-(L) under the current wordage would not be exempt. Suggest re-numbering this section so that (2)(b) begins with a statement "the following types of minor new construction shall be exempt," and the current (2)(b)-(L) be changed to (2)(i) and readjust the format to be consistent with the rest of the document, so these areas are exempt.
J WAC 197-11-960	(B)(2)(a)	34	In the draft, "operation and maintenance" were added to the current requirements for emissions to air. Recommend that they be deleted. Operation requirements are normally obtained separately and governed by a separate evaluation process during permitting.
K WAC 197-11-960	(B)(4)(e)	36	The addition of the new requirement to list all noxious weeds and invasive species known to be on or near the site is arbitrary and capricious. Recommend deleting all of (e). For example, listing himalayan blackberries, scotch broom, on the site or near a site would meet the requirement, but would serve no environmental benefit.
L WAC 197-11-960	(B)(5)(e)	36	The addition of the new requirement to list all invasive animal species known to be on or near the site is arbitrary and capricious. Recommend deleting all of (e). For example, listing a European Gray Squirrel or imported fish that were planted in lakes by fish and wildlife services (large mouth bass), on the site or near a site would meet the requirement, but would serve no environmental benefit.

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Section	Sub-Section	Page Number	Comment
WAC 197-11-960	(B)(7)(a)(3)	37	The current draft recommendation includes the statement "or at any time during the operating life of the project". One cannot speculate what events or circumstances may exist in the future; for example, a project constructed today may not even have a tenant for the structure for years after the completion of the project. Example being, a mini-mall. Recommend deleting "or at any time during the operating life of the project." If the property and the development were used in the future as an activity that needed permits to operate, these areas would be evaluated at that time.
WAC 197-11-960	(B)(14)(a)	37	After "serving the site," delete "or affected geographical area." This is arbitrary and capricious; it's not defined. Does it include Eastern Washington? County? City? A neighborhood? Any traffic increase will affect I-5. Is there an environmental benefit to repeat that knowledge in each SEPA document?
WAC 197-11-960	(B)(14)(b)	37	Delete "or affected geographical area". In this case, the term "or affected geographical area" may have no relationship to the need for public transit at the site.
WAC 197-11-960	(B)(14)(f)	37	Recommend deleting "and what percentage of the volume would be trucks". Trucks are not defined, and to what extent. UPS, Mail, Service trucks, trucks owned by the business, etc.
WAC 197-11-800	(1) Minor New Construction	pg 9	(iii) change from 21 days notice to 60 days public notice for adopting new exemption levels is contrary to streamlining which is one intent of this action.
WAC 197-11-960 Environmental Checklist	B. Environmental Elements, 13., Historical and cultural preservation. A. ...building and structures over 45 years old.	pg 38	This restriction covers all building and structures built before 1969. Given the architectural integrity and number of buildings in current use that are between 45 and 65 years old (post WW2) that have little to no historic value, to comply would counter to the intent of streamlining SEPA. Should remove the language "over 45 years old" and "or eligible for listing" to limit review to structures listed on national, state, or local preservation registers.

#13

To: Fran Sant and Brenden McFarland, Washington State Department of Ecology, Shorelands and Environmental Assistance Program

From: Fidalgo Bay Aquatic Reserve Citizen Stewardship Committee

Re: Comments regarding CR102 – Proposed SEPA Rule Making

We, the Fidalgo Bay Aquatic Reserve Citizen Stewardship Committee, have several concerns regarding the proposed SEPA rule making. We believe that the proposed rule changes lessen the ability of lead agencies to adequately review projects that might impact important environmental resources, including the Fidalgo Bay Aquatic Reserve.

A

Fidalgo Bay Aquatic Reserve is designated as an environmental reserve by the Washington Department of Natural Resources. Designated as an Environmental Reserve, Fidalgo Bay Aquatic Reserve was created with the purpose of preserving forage fish spawning habitat and conserving and enhancing the native ecosystems and associated plant and wildlife species. These important habitats and species include extensive eelgrass beds, rearing grounds for juvenile salmon and important foraging and resting grounds for birds. Development along the shoreline and the adjacent uplands has the potential to negatively impact these important ecosystems.

We believe that SEPA is critically important to ensuring the protection of the Aquatic Reserve for three reasons:

1. SEPA is designed to ensure proposed projects and actions are adequately reviewed for potential adverse environmental impacts before construction starts or a decision is made.
2. SEPA is designed to perform a cumulative analysis of the project's impacts.
3. SEPA provides public notification about proposed projects which ensures greater public transparency about a project's existence and possible impacts.

B

We believe the proposed rule changes lessen the ability for SEPA to fulfil all three of these important roles. Specifically, we are concerned about the proposed rule changes that increase exemptions for mixed-use projects, rezones, catch basins and culverts, and for projects that require air and water discharge permits. In all of these instances, projects with the potential to negatively impact the Aquatic Reserve could be exempt from the SEPA review process. This lessens the lead agency's ability to require further review or mitigation before a project begins, as well as the public's ability to know and comment on potential adverse impacts. Potential impacts that could be overlooked given these new exemptions include the placement of bulkheads, which limits net shore drift critical to the health of forage fish spawning beaches, paving of upland pervious surfaces creating increased pollution runoff into the reserve, and upland and shoreline development leading to the loss of habitat.

C

Additionally, these proposed rule changes all follow the assumption that because another permitting process already exists for these projects or a land use plan is set in place to protect certain features, SEPA is simply an unnecessary process. This assumption is wrong. SEPA is the

only review process that reviews the cumulative impacts of a project and provides an avenue for public involvement and commenting before any permits are issued and adverse impacts are able to take place. By limiting SEPA's scope through these proposed rule changes, the public's ability to know and respond to projects with potential adverse impacts is severely limited.

The Fidalgo Bay Aquatic Reserve is just one example of an important and unique ecosystem that could be impacted by these rule changes. We strongly urge you to revise the proposed rule changes to reduce the potential harm to the environment that will occur if these exemption increases are allowed.

Thank you for your time,

The Fidalgo Bay Aquatic Reserve Citizen Stewardship Committee

Phyllis Bravinder
Wayne Huseby
Morty Cohen
Pete Haase
Scott Petersen
Michael Kyte
Jan Hersey



#14

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

January 28, 2014

Washington State Department of Ecology
Shorelands and Environmental Assistance Program
ATTN: Ms. Fran Sant
PO Box 47703
Olympia, Washington 98504-7600

SENT BY EMAIL: separulemaking@ecy.wa.gov

SUBJECT: CR102 - Proposed Rule Making Notice (SEPA Rulemaking Round 2)

Dear Ms. Sant:

Thank you for the opportunity to comment on CR102-Proposed Rule Making (filed December 16, 2013) pertaining to proposed amendments to Chapter 197-11 WAC, State Environmental Policy Act (SEPA).

In reviewing the proposed rules, we would like to offer the following comments. In making these comments we want to commend the SEPA Rulemaking Advisory Committee and Washington State Department of Ecology for the time and effort put into developing these proposed amendments. We appreciate the work that has gone into the proposal.

COMMENTS

1. Certain proposed amendments address Washington Administrative Code (WAC) provisions that have created longstanding interpretation issues and/or that address exemptions that would benefit from amendment. These amendments will advance the objectives of streamlining regulatory processes and achieving program efficiencies.

Examples of such amendments that further these objectives include:

- Increasing the SEPA exemption of utility lines from 8 inches in diameter to 12 inches.
- Applying the SEPA exemption for underground storage tanks to above ground storage tanks as well, and clarifying that the removal of storage tanks (below the exemption threshold) is also exempt.
- Clarification that fill and excavation is exempt, if necessary for an otherwise exempt project.
- Clarification of the exemption applicability to land use decisions for otherwise exempt projects. It is especially important that this exemption be applied generally, regardless of the land use decision type since various jurisdictions may assign different names to different permit types.

A

- Clarification that buffers and adjacent lands above the ordinary high water mark do not constitute "lands covered by water".

2. We encourage the Department of Ecology to revise one SEPA rule amendment proposal related to increasing categorical exemption thresholds.

B
Proposed amendments to WAC 197-11-800(1)(c) establish an additional requirement for increasing categorical exemption levels. The language proposed to WAC 197-11-800(1)(c)(iv), related to cultural and historical resources, is overly specific to accomplish the intended objective. In being so specific, it deviates from the broader approach already required to document appropriate regulations for elements of the environment identified in WAC 197-11-800(1)(c)(i) and (ii). And arguably, the existing SEPA language in WAC 197-11-800(1)(c)(1) already requires documentation that impacts to elements of the environment listed in WAC 197-11-444 (including "Historic and cultural preservation" (WAC 197-11-444 (2)(b) (vi))) have been adequately addressed when increasing categorical exemption thresholds.

Further, the proposed additional requirements related to cultural and historic resources to increase exemption thresholds could exceed mitigation that would otherwise be required by a local jurisdiction for these newly exempted projects were the categorical exemption thresholds not increased.

Should there be a need to specifically call out cultural and historic resources, then rather than specify a series of requirements (bulleted items in WAC 197-11-800(1)(c)(iv)) this provision should state,

"(iv) For cultural and historic resources (per WAC 197-11-444) documentation that environmental analysis, protection and mitigation have been adequately addressed for the development exempted."

The approach to accomplish this documentation should be left to the lead agency to document in the proposed exemption threshold ordinance. That proposed ordinance would be subject to the 60 day comment period proposed by WAC 197-11-800(1)(c)(iii) at which point comments could be provided.

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

Sincerely,



David Osaki, AICP
Community Development Director/SEPA Responsible Official

cc: David Zabell, City Manager, City of Fife
Russ Blount, Public Works Director, City of Fife

Sant, Fran (ECY)

#15

From: David Greetham [Dgreetha@co.kitsap.wa.us]
Sent: Tuesday, February 04, 2014 10:33 AM
To: ECY RE SEPA Rule Making
Cc: Larry Keeton; Patty Charnas; Laura Merrill (lmerrill@wacounties.org); Eric Baker; Shelley E. Kneip; Steve Heacock
Subject: SEPA rule revisions

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Mixed Comments

Dear Ecology SEPA staff -

The Kitsap County Department of Community Development would like to offer the following comment regarding the current round of proposed SEPA rule revisions:

Relevant SEPA Section: WAC 107-11-800(3), Repair, Remodeling and Maintenance Activities

Recommendation: Specifically state how repair and maintenance of bulkheads and similar types of shoreline armoring fit within this category.

Background: Examples of both exempt and non-exempt activities are provided, including "groins and similar shoreline protection structures" under the non-exempt subsection (b). It is not clear from the language whether bulkheads are intended to be included in the category of "similar structures", even though they are more commonly encountered during the permit review process than groins.

Ecology's background report acknowledges that this language is also intended to apply to bulkheads, but no clarifying revision is proposed due to cited concerns. Kitsap County believes the intent of the exemption language should be clear in order to avoid uncertainty on the part of applicants and permit agencies.

Thank you for the opportunity to comment. Please feel free to contact me should you have any questions.

David Greetham
Environmental Planner
Kitsap County Department of Community Development
Planning and Environmental Programs Division
360-337-5777

#14

Hanford Site Comments on WAC 197-11 "SEPA Rules"; the 2013/2014 Proposed Rule Making

Comment Number	Proposed Rulemaking Section/Reference	Comment	Recommended Action/ Requested Change
1.	General comments regarding the use of NEPA documents for compliance with SEPA. A B C	a. Clarification is needed regarding the circumstances in which SEPA would apply for federal proposals. On federal proposals on federal land, SEPA would not apply except in certain limited circumstances. b. If a state or local agency has an action for a federal proposal, information for SEPA documentation purposes should only be required to provide elements of the environment over which a state or local agency has jurisdiction. For example, on federal land, a federal agency complies with the federal Farmland Protection Policy Act and the agency with jurisdiction over a proposal that has potential to affect prime or unique farmland is the federal Natural Resources Conservation Service (NRCS), not a state or local agency. c. The RCW 43.21C.150 would indicate that the state legislature intended to avoid duplication of effort by statutorily exempting an action from SEPA when an adequate NEPA EIS has been prepared. Yet the WACs, in particular 197.11.610 include NEPA documents in their SEPA adoption procedures.	a. Provide clarification regarding the circumstances in which SEPA would apply when there is federal agency involvement. b. Provide clarification regarding the circumstances in which SEPA would apply when there is federal agency involvement. c. Delete adoption requirements when an adequate (per the NEPA regulations) NEPA document has been prepared, unless the purpose for adopting the NEPA document is for a state or local proposal (a project different from the federal proposal).
2.	Ecology Staff Report (pg. 7-8): WAC 197-11-610 – Use of NEPA documents Background: The current rule allows for the <u>adoption of a NEPA environmental impact statement (EIS)</u> or environmental assessment (EA) by a SEPA lead agency to fulfill the analysis and documentation that accompanies a SEPA threshold determination. The "adoption" of a NEPA document is required make it a SEPA "environmental document". "Environmental document" is defined in WAC 197-11-744 and does not include NEPA documents. While the SEPA Rules encourage combining processes and reducing duplication, a SEPA lead agency must make a determination that the NEPA document is adequate for D E F	a. Please see additional comment #3 below regarding RCW 43.21C.150, the statutory exemption from the requirements of SEPA when a NEPA document is prepared. Therefore, adoption of a NEPA document would not be required unless a state or local agency were adopting it for a different, state or local project. b. The federal equivalent of a SEPA Categorical Exemption is a NEPA Categorical Exclusion, the acronym for which is usually a "CX" or a "CatEx" rather than a "DCE." c. The level of SEPA documentation and NEPA documentation are not being correctly compared. As previously stated, a SEPA CE is the equivalent of a NEPA CX. Therefore, it is not	a. Same recommended action/requested change as for comment #3 below. b. Revise federal "DCE" to read federal CX or CatEx. The intent is to avoid a SEPA Lead Agency expecting to see a federal document that has the title "DCE." c. Correct the text so that an action that is a CX under NEPA is the equivalent of a CE under SEPA. A NEPA EA, because it has project-specific information is the equivalent of a SEPA Checklist and, therefore, the elements of the environment would be addressed to the extent they are applicable and appropriate for a federal action. If the federal action is on federal land, it may be

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	<p>SEPA purposes. Otherwise, a state or local agency would be letting a federal agency determine what is adequate under SEPA.</p> <p>Consistent with the goals of reducing duplication and reducing paperwork, Ecology proposes the inclusion of an additional NEPA document to be reviewed and adopted in lieu of preparing a separate SEPA "environmental document". A "<u>documented categorical exclusion</u>" (DCE) is prepared by some federal agencies (under their agency-specific NEPA rules) to record how a proposal meets a specific type of NEPA exclusion (similar to SEPA "exemption"). The proposed SEPA rule change allows lead agencies to determine if the analysis/documentation in a <u>NEPA DCE is sufficient to support a SEPA determination of nonsignificance (DNS)</u>.</p> <p>Proposal: Ecology is proposing to allow lead agencies to determine if the analysis/documentation in a NEPA DCE is sufficient to support a DNS.</p> <p>Environmental Issues and Mitigating Factors: The purpose of the DCE is to document that a specific proposal meets the requirements for an agency-specific NEPA exemption category. Conversely, the purpose of the SEPA environmental checklist is to document how a specific project in a specific location will not result in significant impacts. The DCE, because it is federal agency-specific, may not address effects on the range of elements of the environment required to be considered under SEPA. This could result in impacts that are not adequately addressed by applicable laws and regulations.</p> <p>The proposed rule limits these potential problems with the following:</p> <ol style="list-style-type: none"> 1. The SEPA lead agency must review and ensure that the DCE meets the requirements of SEPA review and addresses the elements of the environment under WAC 197-11-444. 2. The amendment clarifies that NEPA documents must be "adopted" under SEPA and a DNS must be issued along with the 	<p>accurate to say that a NEPA CX does not provide the same level of detail as a SEPA Checklist because a SEPA Checklist is the equivalent of a NEPA Environmental Assessment (EA), <u>not</u> a NEPA CX. And an EA does address project-specific impacts, and (in the case of the US Department of Energy) includes scoping and a public involvement process and is generally more rigorous than a SEPA Checklist.</p> <p>Although the intent, to allow more NEPA documents to be adoptable under SEPA appears to be a good step toward reducing duplication, it raises questions and greater possibility for additional and unnecessary documentation.</p> <p>Also, the SEPA lead agency may not have authority or jurisdiction over all of the elements of the environment under WAC 197-11-444 and/or the proposal under review may be on federal land, over which the SEPA lead agency does not have jurisdiction. Therefore, not all the elements of the environment would apply.</p>	<p>appropriate that all of the SEPA elements of the environment are not evaluated. If the SEPA lead agency feels a need to address additional elements, the SEPA lead agency may decide to provide it, but not determine the NEPA documentation is incomplete and require the federal agency to provide it.</p>

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	<p>adoption of the NEPA DCE.</p> <p>3. A public and interagency comment period is required for the DNS/DCE Adoption. This provides an opportunity for the SEPA lead agency to notify and receive input in the event that the DCE requires additional analysis.</p>		
3.	<p>WAC 197-11-070, WAC 197-11-250, WAC 197-11-310, WAC 197-11-610 WAC 197-11-800, WAC 197-11-820, WAC 197-11-835, WAC 197-11-850, WAC 197-11-855, WAC 197-11-865 WAC 197-11-902, WAC 197-11-904, WAC 197-11-908</p> <p style="text-align: center;">G</p> <p style="text-align: center;">H</p>	<p>a. There is no citation or reference to statutory exemption RCW 43.21C.150 in any part of WAC 197-11; including WAC 197-11-610, "use of NEPA documents". In addition, as there is no mention of NEPA in RCW 43.21C (other than exemption 43.21C.150), including RCW 43.21C.110, the statutory basis to support WAC 197-11-610 as written or proposed appears to be insufficient.</p> <p>As a result, there is also a perceived conflict between the requirements of statutory exemption RCW 43.21C.150 when applied and the requirements of WAC 197-11-610.</p> <p>b. In addition, according to the 12/2013 Ecology Staff Report section "WAC 197-11-610 – Use of NEPA document" (page 7), a NEPA document must be adopted "by a SEPA lead agency to fulfill the analysis and documentation that accompanies a SEPA threshold determination. The "adoption" of a NEPA document is required make it a SEPA "environmental document". "Environmental document" is defined in WAC 197-11-744 and does not include NEPA documents. While the SEPA Rules encourage combining processes and reducing duplication, a SEPA lead agency must make a determination that the NEPA document is adequate for SEPA purposes. Otherwise, a state or local agency would be letting a federal agency determine what is adequate under SEPA."</p> <p>WAC 197-11-744 appears to be consistent with RCW 43.21C.150 by excluding NEPA documents from the definition of what is considered an "environmental document" prepared under the SEPA rule as NEPA documents are in fact,</p>	<p>a. Add citation to statutory exemption RCW 43.21C.150 to all appropriate sections in WAC 197-11 (see list of proposed sections below);</p> <p>WAC 197-11-070, WAC 197-11-250, WAC 197-11-310, WAC 197-11-610 WAC 197-11-800, WAC 197-11-820, WAC 197-11-835, WAC 197-11-850, WAC 197-11-855, WAC 197-11-865 WAC 197-11-902, WAC 197-11-904, WAC 197-11-908</p> <p>b. Eliminate conflict between WAC 197-11-610 and RCW 43.21C by either Option 1) deleting the rule section completely; or Option 2) preferably by incorporating the exemption into the rule section such that it explicitly provides the applicability of the rule section on utilizing NEPA documents in a way that is not contradictory with use of RCW 43.21C.150.</p> <p>An example of this would be that the 197-11-610 should only be used to adopt in whole or in part a NEPA document or its analyses in support of SEPA and only in place of conducting duplicative analyses or generating</p>

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		<p>prepared under the NEPA regulations. The text in WAC 197-11-865(4), other than the missing the statutory authority citation, also appears to be consistent with RCW 43.21C.150.</p> <p>The statement by Ecology that a State/SEPA lead agency must make a determination of adequacy and formally adopt a NEPA document in order to be compliant with SEPA is insufficiently supported by both SEPA statute and rule due to a) the existence of statutory exemption RCW 43.21C.150 (& statute trumps rule), and b) per WAC 197-11-305, WAC 197-11-744, WAC 197-11-800, WAC 197-11-865, plus the Dept. of Ecology's "SEPA Handbook" which all identify that no further SEPA review or documentation is required if the proposal meets a SEPA exemption by either rule or statute. So once a proposal has successfully completed the NEPA process and can apply RCW 43.21C.150, further review or determination by a State Agency of a NEPA documents adequacy to comply with SEPA would be duplicative and not in accordance with the SEPA statute or rule.</p>	<p>duplicative documentation under SEPA for a state-only action/land that is only subject to SEPA and not NEPA.</p>
4.	<p>WAC 197-11-610</p> <p style="text-align: center; font-size: 2em; color: blue;">I</p>	<p>a. New text in both 197-11-610(2) and (3): adds WAC 197-11-340 (DNS) as new requirement that must be met before it can be adopted. The specific citations of 197-11-340 appears to mean a NEPA document, legally adequate or not, cannot be adopted even if it is in compliance with WAC 197-11-350 (Mitigated DNS), 355 (Optional DNS), or 360 (DS). This inability to adopt an otherwise adequate NEPA document under SEPA could therefore result in the unnecessary generation of SEPA documents when an adoption would have otherwise sufficed; especially as 197-11-600 and 630 already contain provisions for adopting NEPA documents in whole or in part, amended/supplemented, incorporated by reference, etc. so there is no need for a singular NEPA document to have to be 100% compliant with all the requirements of 197-11-340.</p>	<p>WAC 197-11-340 should not be added to section 610 as a new requirement.</p> <p>WAC 197-11-444 should not be added to section 610 as a new requirement.</p>

Comment Number	Proposed Rulemaking Section/Reference	Comment	Recommended Action/ Requested Change
	J	<p>b. WAC 197-11-444 has been added as a new adoption requirement to this section. How does one 'prove' the NEPA document has adequately addressed all the requirements of WAC 197-11-444 and where is the benefit from doing so?</p> <p>i. Would this require submittal of a SEPA checklist with the NEPA document and adoption request? Especially for adoption of a CX as a NEPA CX is the equivalent of a SEPA CE, so it will not contain the volume or depth of information required by 197-11-444.</p> <p>ii. If a SEPA checklist is required to 'prove' compliance with 197-11-444, then in most cases (NEPA CX or EA level especially) there appears to be none to minimal benefit for the adoption process vs. the full and normal SEPA process. The adoption process becomes extra, unnecessary steps that would needlessly expend time and resources.</p> <p>iii. WAC 197-11-600 already contains allowances for when to adopt in whole or in part, making it unnecessary for all the elements of 197-11-444 to be addressed in a singular NEPA document before the processes in 197-11-600 and 630 can take place. Also, 197-11-600 already identifies steps for supplementing a document does not contain all the necessary information.</p>	
5.	<p>WAC 197-11-070, WAC 197-11-250, WAC 197-11-310, WAC 197-11-800, WAC 197-11-820, WAC 197-11-835, WAC 197-11-850, WAC 197-11-855, WAC 197-11-902, WAC 197-11-904,</p> <p style="text-align: center;">K</p>	<p>There is no citation or reference to statutory exemption RCW 43.21C.0384 anywhere in WAC 197-11.</p> <p>This exemption should be added to the appropriate sections in WAC 197-11 the same as nearly all the other statutory exemptions already have been to improve clarity and ensure the statutory exemption has been appropriately addressed and flowed down into the rule.</p>	<p>Add citation to statutory exemption RCW 43.21C.0384 to all appropriate sections in WAC 197-11 (see list of proposed sections below);</p> <p>WAC 197-11-070, WAC 197-11-250, WAC 197-11-310, WAC 197-11-800, WAC 197-11-820, WAC 197-11-835, WAC 197-11-850,</p>

Comment Number	Proposed Rulemaking Section/Reference	Comment	Recommended Action/ Requested Change
	WAC 197-11-908		WAC 197-11-855, WAC 197-11-902, WAC 197-11-904, & WAC 197-11-908



Department of Ecology
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JAN 29 2014

Shorelands & Environmental
Assistance Program

Handwritten initials/signature

PLANNING SERVICES

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January 27, 2014

Washington State Department of Ecology
Shorelands and Environmental Assistance Program
Fran Sant
PO Box 47703
Olympia, WA 98504-7600

Dear Ms. Sant:

Thank you for the opportunity to comment on SEPA Rulemaking 2013-14. Having followed the process, Kent staff appreciates the tremendous effort to reach this point in implementing the direction of the 2012 legislature.

There are a few areas of concern to the City that remain in the rulemaking and we offer the following comments.

A

- WAC 197-11-800(1)(c)(iv) – Even though “eligible for listing” has been removed from the proposed verbiage, this section requires use of available data regarding known and “likely” cultural and historic resources. We propose eliminating the word “likely” as it presents the same confusion as did “eligible for listing”. There needs to be clear guidance for making the determination of “likely”.
 - This verbiage and confusion seems to carry forward to Section B.13.a. of the environmental checklist in section WAC 197-11-960 where it asks about buildings or structures “eligible for listing”. This, too, should be deleted.

B

- Similarly, in the same WAC 197-11-800(1)(c)(iv) – This section requires local development regulations that include preproject cultural resource review “where warranted”. What criteria determine when the preproject review is warranted?

C

- WAC 197-11-800(2)(h) – The Department Staff Report dated December 9, 2013, recognizes that agricultural and industrial sites commonly have larger tanks than do residential sites. Leaving the exemption for tanks with a capacity of 10,000 gallons or less on non-agricultural or non-industrial sites makes sense, while increasing the tank size to 60,000 gallons or less on ag and industrial lands. The current wording, however, arguably does not implement the intent of the Staff Report, as the phrase “tanks, having a total capacity of 60,000 gallons or less” makes it unclear, for tanks in agricultural and

industrial areas, whether the 60,000 gallon size refers to a single tank or cumulative number of tanks. Removing the word "total" from "...having a total capacity of 60,000 gallons or less..." would provide clarification and be in line with the recommendation, which recognizes that a large agricultural site is likely to have larger tanks. Without the change, an ag site with one tank of 55,000 gallons and another tank of 6,000 gallons would no longer qualify for the exemption.

- D • Somewhat similarly, in WAC 197-11-800(3)(a) – Does "dredging of over fifty cubic yards of material" refer to a single culvert maintenance, for example, or a cumulative amount? Many maintenance projects involve several culverts and would include over fifty cubic yards cumulatively but could still be characterized minor maintenance.
- E • WAC 197-11-800(5)(b) – This section is unclear. Perhaps the sentence structure is what's problematic, with some redundancies. What exactly is not exempt? For example, does vacant public land originally intended for, but undeveloped as a park qualify for the exemption? What is the meaning of "...approved by the public landowner of the property related to the use of land by the public"? Under subsection (c), it makes more sense that the use to which the public property will be put is well-defined, but the ultimate use of a property need not be specifically identified at the point the public land is sold – the use may remain entirely unchanged or may become something else. Exempting the sale of publicly-owned real property altogether makes sense, with environmental analysis to occur only if and when the new landowner suggests some change in use.
- F • WAC 197-11-800(1)(d), WAC 197-11-800(6)(c), and WAC 197-11-800(6)(d) – Considering all of these sections together confuses the exemptions. Section (1)(d) provides an optional exemption of 30 single family residential units; (6)(c) exempts rezones for exempt "projects"; and (6)(d) exempts short plats. Wouldn't short plats (9 lots or less) already be exempt under the 30 units exempted in (1)(d), and if a rezone had no other associated "project" but "perhaps" could accommodate 30 units, would that also be exempt under (1)(d)? Or, if the rezone was just a rezone, and was compatible with the comprehensive plan, would it be exempt? What is intended by these sections?
- G • WAC 197-11-960 – Several problematic changes have been made to the environmental checklist. SESSB 6406 Section 301(2)(c) states DOE shall improve the efficiency of the checklist and not add new subjects. Sections 308(2) and (3) of the bill require lead agencies to identify what and how existing codes or authority mitigate impacts identified in the questions in the checklist.
 - o We were pleased to see the clarification of the groundwater withdrawal in B.3.b.1) and clarification of impacts to agricultural lands of long-term commercial significance in B.8.

- H
- As mentioned earlier, we would like deletion of "eligible for listing" in B.13.a. related to archaeology and cultural resources.
 - In B.14.f., what is the purpose and authority for the question on the percentage of peak trips that would be trucks? We believe the question should be deleted until appropriate discussion occurs related to its purpose, authority, and identification of potential impacts and mitigation.
- I

Again, thank you for your work on the SEPA update. We look forward to increased efficiency in the SEPA process.

Sincerely,



Charlene Anderson, AICP
Planning Manager and SEPA Responsible Official

Sant, Fran (ECY)

From: Kester, Jennifer [KesterJ@cityofgigharbor.net]
Sent: Wednesday, February 05, 2014 1:38 PM
To: ECY RE SEPA Rule Making
Subject: Gig Harbor Planning Comments

#18

A
The City of Gig Harbor Planning Department has no objections to the rule changes.

Jennifer

Jennifer Kester, Planning Director
Planning Department
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
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#19



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and Environmental Review
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February 5, 2014

Tom Clingman
SEPA Policy Manager
Washington State Department of Ecology
PO Box 47703
Olympia, WA 98501

Dear Mr. Clingman:

A Thank you for the opportunity to provide comments to the proposed State Environmental Policy Act (SEPA) rule changes. Most of the proposed changes are ministerial and we do not have any substantive concerns with those changes. The one amendment that is of concern is the proposed change to the definition of lands covered by water to include wetlands.

Certain categorical exemptions for minor development activities do not apply when occurring on lands covered by water. Presently lands covered by water include water bodies such as streams, tidal waters, marshes, bogs and other features that have an ordinary high water mark. The current proposal is to expand the definition of lands covered by water to include all wetland. In its October 4, 2013 letter to you, the Washington Associations of Cities and Counties identified this as one of the major areas of dispute and urged Ecology to clarify that for project actions the lands covered by water exception only applied when the project itself is actually undertaken below the ordinary high water line. The inclusion of wetlands to this definition will actually broaden the application of this exception to the categorical exemptions in WAC 197-11-800 (1) and (2) and include areas that do not have a defined high water mark. .

The inclusion of wetlands in the definition of lands covered by water will impact some single family residential developments and may have a significant impact on minor agricultural development. The majority of our designated agricultural lands are located in the flood plain and there are a variety of agricultural activities and developments that are allowed within grazed pasture wetlands. Many layers of regulations have been developed since the SEPA was adopted. We question the value of SEPA for these minor development activities when considered against the myriad of regulations these projects are required to comply with. Since adoption of stringent critical area and stormwater regulations mandated by the Growth Management and Clean Water Acts, we are aware of no minor construction project that would have been exempt from SEPA but for the lands covered by water exception where the SEPA process provided additional value.

Tom Clingman
SEPA Policy Manager
February 5, 2014
Page 2

Thank you again for the opportunity to comment on these proposed rule changes. If you have any questions, please contact Lisa Verner at 206-477-0304 or via email at Lisa.Verner@kingcounty.gov.

Sincerely,



John F. Starbard
Director

cc: Lisa Verner, Legislative Coordinator, Department of Permitting
and Environmental Review

#20

To: Fran Sant and Brenden McFarland, Washington State Department of Ecology, Shorelands and Environmental Assistance Program

From: Nisqually Reach Aquatic Reserve Citizen Stewardship Committee

Re: Comments regarding CR102 – Proposed SEPA Rule Making

A We, the Nisqually Reach Aquatic Reserve Citizen Stewardship Committee, have several concerns regarding the proposed SEPA rule making. We believe that the proposed rule changes lessen the ability of lead agencies to adequately review projects that might impact important environmental resources including the Nisqually Reach Aquatic Reserve.

Nisqually Reach Aquatic Reserve is designated as an environmental, scientific, and educational reserve by the Washington Department of Natural Resources. The purpose of this reserve's designation is to preserving highly productive habitats that support high species diversity. This habitat includes forage fish spawning habitat, rearing habitat for juvenile salmon species and seabird habitat, among others. Development along the shoreline and the adjacent uplands has the potential to negatively impact these important ecosystems.

In our minds, SEPA is critically important to ensuring the protection of the Aquatic Reserve for three reasons.

1. SEPA is designed to ensure proposed projects and actions are adequately reviewed for potential adverse environmental impacts before construction starts or a decision is made.
2. SEPA is designed to perform a cumulative analysis of the project's impacts.
3. SEPA provides public notification about proposed projects which ensures greater public transparency about a project's existence and possible impacts.

B We believe the proposed rule changes lessen the ability for SEPA to fulfil all three of these important roles. Specifically, we are concerned about the proposed rule changes that increase exemptions for mixed-use projects, rezones, catch basins and culverts, and for projects that require air and water discharge permits. In all of these instances projects with the potential to negatively impact the Aquatic Reserve could be exempt from the SEPA review process. This lessens the lead agency's ability to require further review or mitigation before a project begins and the public's ability to know and comment on potential adverse impacts. Potential impacts that could be overlooked given these new exemptions include development of the buffers critical to the health of forage fish spawning beaches, an increase in impervious surfaces upland, leading to increased polluted runoff into the ecosystem, and loss of habitat through upland and shoreline development, to name a few.

C Additionally, these proposed rule changes all follow the assumption that because another permitting process already exists for these projects or a land use plan is set in place to protect certain features, SEPA is simply an unnecessary process. This assumption is wrong. SEPA is the only review process that reviews impacts before any action takes place, that reviews the cumulative impacts of a project, and that ensures the public is notified of a project. By limiting

SEPA's scope through these proposed rule changes, the public's ability to know and respond to projects with potential adverse impacts is severely limited.

The Nisqually Reach Aquatic Reserve is just one example of an important and unique ecosystem that could be impacted by these rule changes. We strongly urge you to revise the proposed rule changes to reduce the potential harm to the environment that will occur if these exemption increases are allowed.

Thank you for your time,

The Nisqually Reach Nature Center and the Nisqually Reach Aquatic Reserve Citizen
Stewardship Committee



#21

January 13, 2014

Fran Sant
Department of Ecology
3000 Desmond Drive
Lacey, WA 98503

Subject: Proposed SEPA Rule Making

Dear Ms. Sant,

A I have reviewed the proposed SEPA rule. I think the changes add clarification and help streamline the SEPA process. However, I do not read that lot line revisions/boundary line adjustments are exempt as a minor land use action. It would seem that 197-11-800(6) could be clarified to specifically identify lot line revisions/boundary line adjustments as an exempt action. It appears that one can infer that they are exempt in conjunction with other minor land use actions. However, lot line revisions are also filed with local jurisdictions independently of other land use actions. For example, if two single family homeowners want to adjust the lot line between them, the way the rule reads, it doesn't appear it would be exempt. Another is the merging of lot lines or moving around of lot lines on multiple parcels commonly owned. This is sometimes done in anticipation of selling property. Again, there is no other land development application and it appears SEPA would be required.

If it is truly the intent of the new rule to exempt lot line revisions/boundary line adjustments, then it should be explicitly stated.

Thank you for considering this request. I may be reached at cbeam@redmond.gov or 425-556-2429 if you have any questions.

Sincerely,

Cathy Beam, AICP, Principal Planner
Department of Planning and Community Development

22

Mary J. Repar
6971 E. Loop Rd., #2
Stevenson, WA 98648
Tel: 509.427.7153

04 February 2014

Washington State Department of Ecology
Shorelands and Environmental Assistance Program
Attn: Fran Sant
P.O. Box 47703
Olympia, WA 98504-7600
e-mail: separulemaking@ecy.wa.gov

Ref: General Comments on SEPA, Comments on the Determination of Non-Significance (DNS) that was issued; and comments on the State Environmental Act (SEPA) Rulemaking 2013-2014 proposal (Draft Rule-making Language, reference WAC 197-11).

Dear Ms. Sant and the Department of Ecology,

Thank you for this opportunity to comment on the new draft language for the SEPA updates that the Department of Ecology (DoE) is proposing. I have some general comments and then I will comment on the eight (8) pages of the DNS and then on the 41-page Amendatory Section draft rule-making language document.

General Comments. I do believe that SEPA does need to be updated as our science gets better and more refined. I would hope that it always get updated with better conservation methods and protections for our environment. Sadly, many municipalities do not use SEPA with the best of intentions and just look upon it as one more checklist to fill out, instead of looking at it as a tool to protecting our environments and ecosystems. Our own City of Stevenson, here in Skamania County, recently did a non-project SEPA and I wanted to appeal it and my only recourse was to go to Superior Court; I did not find an attorney in time during the 21-day appeal period. [The City did not have an appeal policy in place and didn't know how to handle a SEPA appeal so it was difficult to get a hearing.] That is not acceptable—normal, every day people should not have to go to court to have their concerned voice heard by their local governing bodies. I would like to see stricter State rules that make administrative reviews an easy, non-court procedure; cities and counties, even if they don't plan under GMA should have policies and procedures in place—this should be part of SEPA, a question on the checklist—“Does your municipality or county have SEPA policies and procedure in place?” Non-project SEPAs should not be permitted to get away with just filling out the SEPA checklist and not having to account for environmental effects from whatever non-project they are proposing. For example, our City of Stevenson recently proposed a re-zone of quite a bit of acreage from R-1 to Public Recreation District (PRD); the allowable uses of an R-1 and a PR District are very significant, with a lot of short- and long-term effects in the PRD. Yet, our City claimed

B

that since this was a non-project proposal a DNS was sufficient. Well, no, it was not—there would have been many environmental, social, and neighborhood effects if the re-zone had gone through and I think the City should have enumerated these short-term and long-term effects so people could have made informed choices about the proposed re-zone. This happens a lot with “non-project” proposals. Planners think that non-projects mean that they don’t have to project consequences and cumulative impacts.

Which brings me to CUMULATIVE IMPACTS. I’m a great believer in cumulative impacts/effects (hereafter referred to as cumulative impacts) and the fact that they should be included in any environmental analyses—especially in SEPA. I did not see a section on cumulative impacts and I believe it is time that there was a section dedicated to questions on cumulative impacts to our air, water, social, environmental, ecosystems, etc. whenever any type of proposal, project or non-project is made. Cumulative impacts build up over time and uses and if they are recorded in SEPAs then we will have a better understanding of what we are doing to our environments and ecosystems, both locally and regionally. I happen to really like the Council on Environmental Quality (CEQ) Handbook, titled Considering Cumulative Effects: Under the National Environmental Policy Act. I think SEPA and NEPA are very valuable tools for protecting our environment. I believe that the State of WA has adopted the definition of cumulative effects in 42 U.S.C. § 4321 et seq., and I include it herein:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions (40 CFR § 1508.7).

It goes on to say “The CEQ’s “Considering Cumulative Effects Under the National Environmental Policy Act” provides a framework for advancing environmental impact analysis by addressing cumulative effects in either an environmental assessment (EA) or an environmental impact statement (EIS). The handbook presents practical methods for addressing coincident effects (adverse or beneficial) on specific resources, ecosystems, and human communities of all related activities, not just the proposed project or alternatives that initiate the assessment process.” This is what I hope every planner at whatever government level does—but it does not happen very often, if ever, in our community (and others). Cumulative impacts analyses make people antsy and upset because they (mostly) show how much degradation and damage has actually occurred in our environments and ecosystems.

Also, I don’t know the rules about off-site mitigation projects but I would definitely like to see some questions on off-site mitigation projects, and monitoring of same, in the SEPA. Frankly, I don’t like off-site mitigation projects because they are not adequately envisioned or monitored, and the science does not seem to support off-site mitigation. But, SEPA should require the information, in the checklist.

I would like to see some documentation in the SEPA checklist of what Best Available Science (BAS) and Best Management Practices (BMPs) will be used to

safeguard the environment. BAS and BMPs change over time as our science becomes more refined and fine-tuned, so I think it would behoove us to document, and make use of, in SEPA checklists and in the project and non-project assessments, the BASs and BMPs that are currently in use.

Plus, there is not any SEPA requirement for projects to address CARRYING CAPACITY, which is “usually defined as the maximum population of a given species that can be supported indefinitely in a defined habitat without permanently impairing the productivity of that habitat.” “An environment's carrying capacity is its maximum persistently supportable load (Catton 1986).” [Catton, W. (18 August, 1986). Carrying capacity and the limits to freedom. Paper prepared for Social Ecology Session 1, XI World Congress of Sociology. New Delhi, India.] Both these definitions are from a paper, Revisiting Carrying Capacity: Area-Based Indicators of Sustainability, by William E. Rees, The University of British Columbia. I am also attaching Rees’s paper as a reference for my comments. Carrying capacity and cumulative impacts/effects are inextricably tied together when environmental analysis takes place and they should be addressed in our State SEPA checklist.

C Additionally, I want to see the comment period for SEPAs extended from 14 to 30 days and I want to see a State requirement that ALL government entities that are responsible for doing SEPAs should also have ordinances on the books that address SEPA review and appeal policies and procedures. My own experience in my City of Stevenson was absurd—there is no written policy that tells an individual what the procedure is to appeal a SEPA!! Yes, they knew to tell me that I would have to go to Superior Court to appeal (after much back and forth and disagreement) a SEPA because the only City body that could hear an administrative appeal was the City Council and it would be really counter productive and conflict of interest for the City Council to both approve/disapprove SEPAs AND do administrative reviews!

D The use of the word **guidance** instead of **regulation**. Please. If authorities are given the option of guidance vs. rules, they will choose and use guidance to the detriment of our communities and our environments and ecosystems. Skamania County has already used that word “guidance” while doing some re-zoning and the manner in which they used it leads me to believe that guidance means “we’ll do it the way we’ve been doing it until somebody stops us.” Guidance reminds me of a teenager asking his father for the keys to the family car and Dad offer guidance, “Well, son, I’d prefer if you didn’t drive the family car.” Son says, “Thank you for your guidance, Dad. Now can I have the car keys?” Regulations work best with people who are already looking for excuses not to take care of their environments. Most governments are more into development and jobs, jobs, jobs, and not into conservation and the environment, the environment, the environment.

Grammar Issues: Use commas as needed. All Departments should be Capitalized and the appropriate acronyms (i.e., Department of Fish and Wildlife (DFW) defined.

DNS Comments. The following are my comments on the DNS:

- C
1. A lot of the language in the first section--increased flexible thresholds, the undefined word "minor", expanded minor new construction exemptions, new maintenance exemption, new exemption for special districts, new exemption for text amendments—appears to be a watering down or dilution of existing SEPA exemptions and adds new exemptions. Considering what is going on in our State and the state of our environment we should be adding more safeguards and not more exemptions to SEPA.
 - D
 2. p. 1, "Update of exemption for land use decisions to provide that most land use decisions will be exempt for otherwise exempt projects with some limited exceptions." This isn't even English as we know it! I read this quite a few times and I have no clue what it means. Stuff like this should be written in plain English so we can all understand it. Unless it means something bad and we're not meant to understand it. Common language should be used so it is understandable to a reasonable person. I have a degree in Applied Physics and I didn't understand this!
 - E
 3. Guidance vs. rule: I disagree that the model ordinance should be viewed as "guidance" vs. as a rule. DoE has not provided any background, that I have read, to show that this would make SEPA stronger and a better document to protect our environments and our ecosystems.
 - F
 4. p. 2, #1. If the process of review is going to be influenced by the new rule changes, it should be for the better and not the worse. That "...in some cases review of proposals is reduced..." and the reasoning is that our State SEPA is "not the only law or regulation affections decisions about proposals" is an unwarranted assumption about the way government entities use and abuse SEPA. Skamania County has not, to my memory, issues an Determination of Significance for any project under their review. If they did, it would be a fluke. Our State has an obligation to look out for the health of our environment and its citizens and wildlife and should not abrogate that responsibility to "...be addressed under other authorities." First, the State can't give up its duties and responsibilities to its citizens—we have a constitution after all! Second, since when does the State think other entities can do a better job of protection our lands, waters, wildlife, and citizens than Washington State?? I want a list of what other entities will do better than our state and that list should be part of this document. Isn't that what we elect our governing bodies to do? **This is obviously nonsense and should be stricken from the rule-making document.**
 - G
 5. p. 2, #3. Leaving it up to local governments to determine "whether certain exemptions apply in critical areas or determining appropriate thresholds for new construction...based on documentation...adequately addressed by other local, state, and federal regulations," is like asking the fox to guard the hen house. NOT! Local governments will do what is politically tenable for locals and that is not always what is best for the environment and the ecosystems. Environmental protections should be overseen by the State because the State has the clout to make them stick. Local governments like to cut environmental corners because, for the most part, they are more interested in development than they are in protecting the environment and ecosystems.
 6. p. 6 (p. 2, of the environmental checklist). No cumulative impacts/effects verbiage. See General Comments.

- H
7. p. 7 (p. 3 of the environmental checklist, part D). This part should be revised. Not all counties and cities plan under GMA and other laws may not be applicable. "These other regulations provide for the identification of and mitigation for any impacts. Thus there will be no additional impacts since the impacts will be addressed under other authorities." There is no basis in facts or reality for this last statement and it should be discounted as non-factual, an assumption and a hope and that is not what SEPA should do. No, they will NOT be addressed under other authorities because entities will not be forced to do SEPA which allows for a lot of public comment and administrative review processes. Government entities are always looking to "streamline" procedures, when actually they just want to limit public input and scrutiny. We need more SEPA rules, not less. And, we certainly should not be abrogating State authority to local governments who don't want to protect the environment as much as they want to develop it!!
- I
8. All the answers with "See discussion under 1 above" are non-answers to the questions in Part D and they should be properly and thoroughly answered. If "some proposals that would presently be reviewed under SEPA become exempt from SEPA" then there would be impacts on plants, animals, fish, marine life, energy, natural resources, environmentally sensitive areas, shoreline uses, demands on transportation, public services, utilities, etc. and those impacts should be collated in Part D.
- J
9. p. 8, (p. 4 of checklist, part D), #5. I don't understand what to "to ensure consideration of potential impacts to agricultural lands of long-term commercial significance" actually means. How is "long-term commercial significance" defined? Who does the defining? And, does this work in reverse in the SEPA process—that if agricultural lands are environmental problems that they are accounted for and the impacts on human health and the environment are documented?

Comments on the State Environmental Act (SEPA) Rule-making 2013-2014 proposal (Draft Rule-making Language):

- A
1. p. 5, WAC 197-11-238, SEPA/GMA integration monitoring. "...GMA counties/cities are encouraged to establish a process for monitoring the cumulative impacts of permit decisions and conditions, and to use that data to update the information about existing conditions for the built and natural environment..." Skamania County does partial GMA planning and frankly cumulative impacts of permit decisions and conditions are not on their environmental radar. I think all WA municipalities and governing bodies should have a mandatory process and policy in place to keep track of cumulative impacts and effects. This is an additive process not a one-time deal. Using words like "encourage" or "encouraged" is not helpful in protecting our environments and ecosystems. If it's not mandatory they won't do it. It's that simple. Cumulative Impact databases should be mandatory and should be updated regularly so that we know how our environs are being impacted and what effects are being manifested.

- K
2. p. 7, (iii), “by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C 1857.” Why is the Clean Air Act included and NOT the Clean Water Act?
- L
3. p.7, (5), “...a written request is received from at least fifty persons who reside within the agency's jurisdiction or are adversely affected by the environmental impact of the proposal.” I’m sorry, but this is prohibitive, especially in rural areas and should be **DELETED** from this section. All citizens are adversely affected when their environment is degraded in some manner, and to put a limit on public comments or participation is illegal, undemocratic, and not good policy.
- M
4. p.8, (1)(a), Minor new construction – Flexible thresholds. This is like an oxymoron. If you have a threshold, it shouldn’t be movable! Also, “If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency,” is not conducive to good environmental policy. Why should the lower standards and not the higher standards apply, especially when protecting our environment? If the lower standard city/county wants to do a good project then they should do it at the level of the higher city/county standard and not lower their high standards. Reaching the lowest common denominator is NOT good environmental policy. This should be CHANGED to “the HIGHER of the agencies’ adopted levels shall control...”
- N
5. p. 8, (1)(b)(i)(ii)(iv) and (v), construction exemptions. I see no reasoning behind these exemptions. Houses, offices, schools, and parking lots have environmental impacts—impermeable surfaces, to name one—and these exemptions should be DELETED. Pretty soon we’ll have an exemption for everything! How did you all come up with “100 cubic yards of fill or excavation? A normal dump truck carries about 10 cubic yards, so this means 10 dump trucks full and 20 truck trips through the landscape. I’d like to know the reasoning behind this.
- O
6. p. 9, (i). “(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.” There should be minimal exemptions for any development because there are cumulative impacts from development and since they are cumulative all development has to be tracked so that the timeline of development and impacts to the environment and ecosystems is also tracked. And, what does “adequately” mean? How is it defined? This is a squishy term which leaves a lot of room for maneuvering development to what cities and counties want instead of what their resources and carrying capacity can adequately (!) uphold. “Adequately” should be defined more clearly with a very clear set of maximum, NOT minimum, requirements. Cities and counties will, for the most part, always strive for the minimum because of fallacious thinking regarding the very real impacts of development on our environment. Instead of thinking that the environment should be protected and conserved in any development, they think that development should take as much from the environment as possible, without worrying about the consequences, which are cumulative impacts.
- P
7. p.9, (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.” What does this actually mean?? I’ve read it and it doesn’t make sense. Please clarify this in real English and common use language.

- Q
8. p.9, (iii). Upping the public comment period from 21 to 60 days is a great idea and it should be extended to all SEPAs and not just exemptions.
- R
9. p.10 and 11, “(h) The installation or removal of impervious underground or above-ground tanks, having a capacity of 10,000 gallons or less except on agricultural and industrial lands. On agricultural and industrial lands, the installation or removal of impervious underground or above-ground tanks, having a total capacity of 60,000 gallons or less.” I don’t understand why any types of tanks should be exempt, and they should not be since, historically, they might have been leakage in the tank’s lifespan. That leakage, if it occurred, should be subject to environmental oversight and how is this oversight accomplished if the tanks are exempt? At a minimum, soil testing should be done to ascertain if any leakage has taken place. No exemption.
- S
10. p.11, (4), “Water rights. Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.” Water is a precious resource and 2250 gallons per minute is 135,000 gallons per HOUR. That’s a lot of water to be accounted for and this exemption should be removed. Water belongs to all of us and water resources are in the commons and should be very well defined and regulated, especially wells and their numbers. Unless we know the extent of the aquifer or water source, there can’t be any kind of exemption granted to water rights. Water is our survival and we need to account for it. There are cumulative effects to water appropriations and these effects and their impacts should be analyzed. This exemption should be removed.
- T
11. p.12, (8), “Clean Air Act. The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.” Air pollution is air pollution and there should not be any exemptions, especially for one year of pollution! Pollution should not be allowed. This exemption should be removed.
- U
12. p.12, (10), “Activities of the state legislature. All actions of the state legislature are exempted.” I’m sorry but this is ridiculous. Even our legislature should be kept to the highest standards and if they propose something that is covered by SEPA then they should be held accountable. No exemption.
- V
13. p. 15, (19), Procedural actions. “(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt.” What does this actually mean, in practice? What is the definition of “substantive”?
- W
14. p. 15, (f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, ((That)) the chemicals used are approved by ((the)) Washington state ((department of agriculture)) and applied by licensed personnel. This exemption shall not apply to the use of

chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.” All use of pesticides by the State should have mandatory signage and notification policies and procedures. And, the State should monitor the use of pesticide and conduct cumulative effects analyses. The State uses pesticides on Hwy. 14 through Skamania County and along our ditches and these ditches flow into our streams and the Columbia River—of course there are cumulative effects and impacts on the environment!! The State should NOT be exempt from accountability for pesticide use and cumulative impacts. There should be a yearly requirement for cumulative impacts and effects from State use of pesticides on all our waterways, byways, and highways, etc.

X 15. p. 16, (24), “Natural resources management. In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt: (a) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.” Uh, NO. Cattle grazing has been shown to be detrimental over time to our environment and cumulative impacts analyses should be done to show exactly how our environment and our ecosystems are being impacted by grazing. Just because cattlemen (or any one else) have clout, does not mean that science should fall by the wayside and exemptions given out. There are legitimate, scientific concerns about grazing and they should be addressed through scientific analysis, no exemptions.

Y 16. p.16, (c) “Issuance of agricultural leases covering one hundred sixty contiguous acres or less.” Same as #15—No exemption. Someone could have thousands of acres, under 160 acres and not contiguous but not far apart, either, and we would never have any environmental analyses done to monitor and account for cumulative impacts and effects.

Z 17. p.18, (3) “Permits to use fuse on forest land.” The only fuses that I know about are the ones I knew about in the military and they were dangerous! What is fuse, as used in this section? Why is it exempt? And, if it’s dangerous, it should NOT be exempt.

AA 18. p.18, (7) “Those sales of timber from public lands that the department of natural resources determines, by rules adopted pursuant to RCW 43.21C.120 THAT {my addition} do not have potential for a substantial impact on the environment.” Who decides what “substantial impact” means and why don’t they have to do a cumulative impacts/effects analysis to show what impact there would be?? DNR is in the business of making money. The environment tends to take a distant second place to their monetary priority.

BB 19. p.18, (9) “Sales of rock from public lands involving rock pits less than three acres in size that are used for activities regulated under a forest practices application that is exempt under RCW 43.21C.037 and sales of rock from public lands for uses not associated with timber management that do not exceed the total volume threshold for excavation exempted under WAC 197-11-800 (1)(v).” Exemptions can be made when sound reasoning and common sense are used. This just sounds like another political exemption given to someone with political clout. Sales of ANY public resources should never be exempt from environmental review and cumulative effects analyses. NO EXEMPTION for rock pits.

- CC
20. p.18, "WAC 197-11-835 Department of ((fisheries)) fish and wildlife. The following activities of the department of ((fisheries)) fish and wildlife are exempted:..." Department of Fish and Wildlife (DFW). All Departments should have at least the first letter of their names capitalized and the appropriate ACRONYM defined.
- DD
21. p.20, (6) "The approval of any use of the pesticide DDT or DDD except for those uses approved by the centers for disease control of the United States Department of Health and Human Services (such as control of rabid bats)." It is Centers for Disease Control (CDC).
- EE
22. p.23, "WAC 197-11-920 Agencies with environmental expertise." I think the following is correct: Change "(d) Regional air pollution control authority or agency" to Southwest Clean Air Agency.
- FF
23. p.24, "(5) Fish and wildlife. (a) Department of game. (b) Department of fisheries." Change to (a) Department of Natural Resources, (b) Department of Fish and Wildlife.
- GG
24. p.25, (2) "When none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency that has the largest biennial appropriation." This does not make sense. The agency with the best and most current expertise should be the lead agency. Expertise doesn't have anything to do with the budget! This should be changed to "The agency with the best and most current expertise should be the lead agency."
- HH
25. p.26, "(5) For all private projects requiring a license or lease to use or affect state lands, the lead agency shall be the state agency managing the lands in question; however, this subsection shall not apply to the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is are required." Strike is and replace with are.
- II
26. p.27, WAC-197-11-960, Environmental Checklist. "An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment." I think the Department of Ecology should give us all a white paper on exactly what is meant by "probable significant adverse impacts" because I'm pretty sure each city and county makes sure that they are the minimal probable significant adverse impacts that they can get away with reporting! I think we all need more education on this issue and it should be explained in more detail on the checklist.
- JJ
27. p.27, "You must answer each question accurately and carefully, to the best of your knowledge." Well, even DoE did not answer the questions in this SEPA accurately and carefully so I'm pretty sure, from what I have seen and read, that other people, with less experience, won't either. **I would like to see this expanded to "...accurately, fully, and completely."** "Carefully" is an adverb and not a verb and we want people to be active and pro-active when they fill out the SEPA checklist.
- KK
28. p.28, **Environmental Elements. I don't understand why this section was not drafted in the same manner as the rest of the document, with strikeouts and proposed changes indicated so that we could see the proposed changes within the whole, old document? This is very disruptive to the cognitive process and I**

think that red-line drafts (as they are known) should be the normal way of doing such substantive changes as DoE is proposing.

29. p.34, Environmental Elements. “c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.” There is an easy way to check for soils in the Soil Conservation Handbook and it is online; I believe the NRCS (?) did it years ago and it is a great reference book. This section should indicate that the project proponent SHOULD find out the soil types and record them in this section. **This is easily done. I would also like to see the following added to this question: Will there be disturbance, and what kinds, to the existing soils? And, will the proposal result in decreased use of the agricultural lands, and by how much? Will the proposal cause any changes in the efficacy of the affected soils?**
30. p.35, “b. Ground: 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well? Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.” I think all well, public and private should be tested, at least annually, for chemicals and other ingredients. For example, in Carson, WA, our local utility has drilled two wells in which they have found E. Coli at over 400 feet of depth. This is not a good thing. There are many private wells up in Carson, too. This is a matter of public safety—and there should most definitely be testing when ownership changes hands so that buyers know what they are getting.
31. p.36, 5. Animals, c. “Is the site part of a migration route? If so, explain.” I would like to have this changed to “Is the site part of a migration route or routes?” Here in Skamania County we have several migration patterns and routes.
32. p. 36, 6. Energy and natural resources, “a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.” I think GEOTHERMAL ENERGY should be added to this section.
33. p. 36, “c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:...” I would propose changing this to **“c. What kinds of energy and efficiency conservation features are included in the plans of this proposal? List these and other proposed measures to reduce or control energy impacts, if any:...”** We have the NW Sixth Power Plan that tells us WA State can achieve it's 20' year projected energy requirements JUST through increasing the EFFICIENCIES of major appliances. That is a huge thing and our State needs to be promoting efficiencies in all things.
34. p.37, Land and Shoreline Use, “h. Has any part of the site been classified critical area by the city or county? If so, specify.” **I would like to see “environmentally sensitive” added to this—thus, “...been classified critical area or environmentally sensitive.”** Critical and sensitive areas are sometimes not considered the same. Critical and sensitive areas should also be clearly defined so there are no questions about what they actually are.

U

MM

NN

OO

PP

QQ

- RR 35. p.38, "m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:..." I would like to see this changed to **"...and forest lands of long-term commercial significance, State and Federally owned,..."** We should be taking into account surrounding lands and the region. We are not isolated from each other. What we do affects other people and the environments and ecosystems—and not all effects are felt at the proposed development or action.
- SS 36. p.38, 9. Housing, "c. Proposed measures to reduce or control housing impacts, if any:..." **I would like to see this changed to, "c. Proposed measures to reduce, control, and mitigate housing impacts, if any:..."** In rural areas, there is not adequate affordable housing and any loss is felt in our communities. So, there should be housing mitigation of some sort in the SEPA questions.
- JT 37. p.38, 10. Aesthetics, "b. What views in the immediate vicinity would be altered or obstructed?" I would like to see this changed to, **"b. Would any views and/or viewsheds in the immediate vicinity would be altered or obstructed? Provide pictures, with descriptives, to show affected views and/or viewsheds."** We humans enjoy our views and altering them can affect our health and well-being and this should be recognized.
- uu 38. p.38, Light and glare, "b. Could light or glare from the finished project be a safety hazard or interfere with views?" I would like to see this to include highway and street safety. People put up outdoor lighting that is very hazardous to night driving and these lights can be quite a distance from a highway or street.
- vv 39. p. 38, Light and glare. I would like to see us give people kudos for using the Dark Sky Initiative recommendations for lighting and glare. I would like to see a section on "Dark Sky" technology uses in the SEPA. People should be rewarded for doing this and this is where the documentation can start—some cities can give bonus points to developments that use Dark Sky recommendations.
- xx 40. p.39, Transportation, "b. Is site currently or affected geographic area served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?" Change to, "b. Is the site ~~currently~~ or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?"
- yy 41. p.39, Transportation, "c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?" Change to, "How many ~~additional~~ parking spaces, additional and new, would the completed project or non-project proposal have? How many would the project or proposal eliminate?"
- zz 42. p.39, Transportation, "d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private)." Add commas "...require any new, or improvements to, existing..."
- aaa 43. p.39, Transportation, "f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks. What data or transportation models were used to make these estimates?" I don't think this give enough data to go on—what kind of trucks, what weight trucks, axles, etc. Are

there weight restrictions to the roads and what are they? More information is needed in this section and I would like to see my questions added to this section.

bbb 44. p.39, Transportation, "h. Proposed measures to reduce or control transportation impacts, if any:..." **Change to, "h. Proposed measures to reduce, control, and mitigate transportation impacts, if any:..."**

ccc 45. p.40, "When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms." This sentence seems off and I don't understand it. Especially the part "would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented..." Well, if it wasn't implemented, then there wouldn't be anybody looking at it so we wouldn't know if it was being affected at a greater intensity or at a faster rate!! **What is DoE trying to ascertain with this question and can it please be put into real English?**

ddd 46. p.40, Part D, "2. How would the proposal be likely to affect plants, animals, fish, or marine life? Proposed measures to protect or conserve plants, animals, fish, or marine life are:..." **Additionally, there should be a question on how would the proposal affect wildlife habitat(s) and what measures will be taken to protect habitats.**

eee 47. p.40, Part D, "3. How would the proposal be likely to deplete energy or natural resources? Proposed measures to protect or conserve energy and natural resources are:..." **Add and/or and change to, "...likely to deplete energy and/or natural resource."**

Thank you, again, for bringing the SEPA rulemaking process to public attention for comments. SEPA is one of our most relevant and important State environmental protection documents and I do not want to see it diluted or restrained in any manner. There is not enough SEPA enforcement as it is and I would encourage DoE, and our State legislature, to remedy that problem. People do not necessarily cherish or honor our environments and ecosystems as they should, for their very survival and benefit. Thus, we need strong protections and we need very strong enforcement of environmental protection laws. I hope to see much more protection for our environment in future SEPA rule-making.

Sincerely,

/e-signature/Mary J. Repar
04 February 2014

#23

Brandy A. Rinck
4324 Latona Ave NE
Seattle, WA 98105

February 5, 2014

Department of Ecology
PO Box 47703
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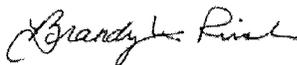
Dear Fran Sant,

Yesterday, the Cultural Resources Interest Group representatives on the State Environmental Protection Act (SEPA) Rule Making Advisory Committee submitted a detailed letter to the Department of Ecology concerning the effect of CR102 Proposed Rule Making on cultural resources. This letter by Mary Rossi, Chris Moore, and Mary Thompson is very important because it summarizes the impact of the proposed amendments on cultural resources in Washington State and includes the results of more than 2 years of dialogue on behalf of cultural resources as they relate to SEPA. As professionals working in the field of cultural resources management, we agree with the recommendations made in the Cultural Resources Interest Group's letter. We continue to oppose proposals that result in fewer notifications and increased exemptions granted without appropriate cultural resources assessment.

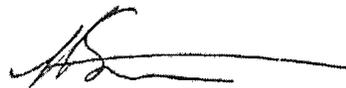
A The cultural resources management community is encouraged that protection of cultural resources is not being treated as an outlier issue of SEPA environmental protection. In the words of Mary Rossi, Chris Moore, and Mary Thompson, "cultural resources are the tangible evidence of our collective history. 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." Assessment of cultural resources can easily be included in pre-project review of potential impacts and planning.

Please follow the attached recommendations made by the Cultural Resources Interest Group of the SEPA Rule Making Advisory Committee in order to continue to safeguard and improve the protection of our State's shared cultural resources.

Sincerely,



Brandy A. Rinck, Geoarchaeologist
4324 Latona Avenue NE
Seattle, WA 98105



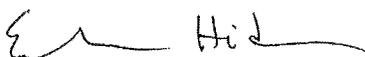
Ross E. Smith, Archaeologist
7639 N Brandon Avenue
Portland, OR 97217



Kate Shantry, Archaeologist
3037 NW Market Street #c306
Seattle, WA 98107



Lorelea Hudson, Archaeologist
7512 Dayton Avenue N
Seattle, WA 9810



Eileen Heideman, Architectural Historian
3416 Densmore Avenue N
Seattle, WA 98103



Cyrena Undem, Archaeologist
629 NW 76th Street
Seattle, WA 98117

Comments on Ecology's Proposed Rule Amendments WAC 197-11 Filed December 16, 2013

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

February 3, 2014

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

First, we would like to thank Ecology and the SEPA Rule Making Advisory Committee for their work during the entire SEPA rule making process (August 2012-present). While we have made a concerted effort to keep the larger cultural resource constituency informed about the process, the following comments are those of the cultural resources representatives to the Advisory Committee alone.

While we sincerely appreciate Ecology's inclusion in the proposed rule amendments of a number of our suggestions for improving cultural resource protection, the rule making process itself has highlighted a number of serious problems with the way impacts to cultural resources are (or are not) considered prior to project implementation. We look forward to addressing these problems in the near future, perhaps with the assistance of Ecology's Cultural Resources Work Group and through means such as new legislation and/or additional rule amendments.

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.

As a result, various aspects of the rule making, such as the directive to increase the thresholds for SEPA review of minor construction projects, have resulted in an increased number of projects that are not reviewed for impacts to cultural resources via the SEPA 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 available to local jurisdictions during planning and development activities [e.g. the Department of Archaeology and Historic Preservation (DAHP) 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 recent discovery in Oak Harbor.

COMMENTS ON PROPOSED RULE

At the October 17, 2013, Advisory Committee meeting, Ecology presented their perspective and tentative direction on the rule amendments. In terms of cultural resources, Ecology stated:

It is clear that SEPA has provided an important “gap filler” role for cultural and historic resources issues; and that there is opportunity to make clarifications in the rule to improve this role. However, we recognize that the opportunity to improve language related to this topic needs to occur without creating significant new burdens within the SEPA procedures.

Ecology’s statement underscores the importance of committing to address a number of serious problems with the way impacts to cultural resources are (or are not) considered prior to project implementation that were highlighted by the rule making process. We look forward to addressing these problems in the near future, perhaps with the assistance of Ecology’s Cultural Resources Work Group and through means such as new legislation and/or additional rule amendments.

Exceptions to the Exemptions-Cultural Resources (pg. 9 of staff report; pg. 9 of proposed rule) – According to the staff report dated December 9, 2013, rather than creating an exception to the exemptions for cultural resources, Ecology is proposing inclusion of elements of the “planning-level approach” we have presented throughout the rule making process. These elements include 1) use of available data on known and likely cultural resources, 2) planning/permitting processes ensuring compliance with cultural resource regulations, and 3) local development regulations with a minimum of pre-project cultural resource review and standard inadvertent discovery language for all projects. These elements will serve as required “findings” for raising maximum thresholds for minor new construction.

We strongly support Ecology’s proposed changes to this section of the rule [WAC 197-11-800(1)(c)]. Generally, the required “findings” section allows jurisdictions to adopt higher maximum thresholds 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.” The proposed changes provide a

consistent standard for jurisdictions to demonstrate that cultural resources specifically have been adequately considered. We support this approach considering current streamlining efforts because, as long as cultural resources remain an optional element under the GMA and, by extension, comprehensive planning, relying on such regulations and plans will not necessarily address cultural resource concerns.

On October 23, 2013, we submitted to Ecology our final “synthesis” of recommendations regarding consideration of potential impacts to cultural resources during project planning and permitting; the synthesis was also included in the final report of Ecology’s Cultural Resources Work Group dated November 21. Included in the synthesis is a sample decision tree for pre-project cultural resource review. The decision tree includes steps for reviewing both above-ground cultural resources (e.g. historic buildings) and below-ground resources (e.g. archaeological sites). We offer the decision tree, as well as the other information in the synthesis, as a starting place for jurisdictions seeking to meet the proposed required “findings” for raising maximum thresholds for certain minor construction.

It is important to note that the proposed language only applies to jurisdictions raising their exempt levels after the current round of rule making. While we support the current proposed language, we fear jurisdictions not covered by this section (i.e. those not raising their maximum thresholds) will continue to default to the “applicable state and federal regulations” standard, which currently addresses only the treatment of known cultural resources or cultural resources discovered after the fact (RCW 27.44 and 27.53). The result of the proposed changes in these jurisdictions, therefore, is no real improvement to the present situation. This, again, underscores the importance of committing to address a number of serious problems with the way impacts to cultural resources are (or are not) considered prior to project implementation.

Finally, we suggest that efforts to solicit information relevant to considering the impacts of raising maximum thresholds could be furthered through adoption of a proposal submitted by the Washington State Department of Natural Resources:

The Washington State Department of Natural Resources submitted a comment letter dated October 4 that includes language that would establish “reasonably sufficient information” required of applicants. Language would be added to two sections of the rule: threshold determination [WAC 197-11-100(2)] and the optional DNS process [WAC 197-11-355]. This approach would go beyond “findings” which only apply to jurisdictions opting to raise their maximum thresholds.

Exemption for demolition of buildings (pg. 14 of staff report; pg. 10 of proposed rule) – According to the staff report, Ecology is not planning any amendments to this section; however, we continue to request an amendment defining the current phrase “recognized historical significance” as a structure or facility that is “listed in or eligible for listing in an historic register.” This amendment will clarify the current phrase according to standard professional practice.

At the September 17, 2013, Advisory Committee meeting, general support was expressed for changing the current phrase "recognized historical significance" to "listed in an historical register" for clarity; however, including the phrase "or eligible for listing" was opposed, primarily due to concerns about the time it would take staff of local jurisdictions to determine a structure's eligibility. At the October 17 meeting, Ecology's perspective was that the phrase "eligible for listing" is too "vague and "open-ended."

In terms of concerns about staff time, some Committee members oppose an amendment that would require staff efforts beyond consulting an existing register. This approach is flawed, however, as existing registers are incomplete; that is, many eligible buildings have not yet been added to a register, and more buildings become eligible over time. We have presented a process for staff to follow in order to determine eligibility, and we believe such efforts are merited in the face of demolition. At a minimum, DAHP is always available to advise staff on questions of eligibility.

Past opposition to the "eligible for listing" language also stemmed, in part, from an erroneous notion that "eligibility" is tied solely to the age of a building. In addition to age, integrity and significance are also considered when determining eligibility. All three factors (age, integrity, significance) are considered according to established criteria.

Again, we continue to request an amendment defining the current phrase "recognized historical significance" as a structure or facility that is "listed in or eligible for listing in an historic register." This amendment will clarify the current phrase according to standard professional practice.

Environmental Checklist (pg. 28 of staff report; pg. 38-39 of proposed rule) – We support Ecology's proposed changes to Section B, Question 13 of the Checklist in order to support efforts "to better address identification of potential historic and cultural resources that may be on a site." We offer two minor clarifications as follows:

SEPA Checklist – Section B, Question #13

13(a) Current question: 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.

Proposed question: Are there any buildings or structures over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near to the site? If so, specifically describe.

Revised question: Are there any buildings or structures located on or near the site that are over 45 years old and listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.

13(b) Current question: Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site?

Proposed question with one suggested revision: Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Is [change "Is" to "Are"] there any material evidence, artifacts, or areas of cultural importance on or next to the site? Please list any professional studies conducted at the site to identify such resources.

13(c) No revisions.

13(d) No revisions.

We recommend that question 13(d) include the following information for the benefit of the applicant and the SEPA Official:

- Washington State law (RCW 27.53 and 27.44) protects archaeological resources (RCW 27.53) and Indian burial grounds and historic graves (RCW 27.44) located on both the public and private lands of the State.
- An archaeological excavation permit issued by DAHP is required in order to disturb an archaeological site.
- Knowing disturbance of burials/graves and failure to report the location of human remains are prohibited at all times (RCW 27.44 and 68.60).

Efforts to solicit project information more relevant to the threshold determination process, such as the proposed changes to the Checklist, could be furthered through adoption of a proposal submitted by the Washington State Department of Natural Resources:

The Washington State Department of Natural Resources submitted a comment letter dated October 4 that includes language that would establish "reasonably sufficient information" required of applicants. Language would be added to two sections of the rule: threshold determination [WAC 197-11-100(2)] and the optional DNS process [WAC197-11-355]. This approach would go beyond "findings" which only apply to jurisdictions opting to raise their maximum thresholds.

Public Notice (pg. 6 of staff report; pg. 5-6 of proposed rule) – We support Ecology's stated goals for the SEPA Register: 1) provide that the SEPA Register is web-based and updated daily, and 2) agencies are required to maintain an interested parties list for SEPA notices.

We would like to point out that the proposed changes related to item #2 above at WAC 197-11-510 do not make such notice mandatory. Rather, the relevant change (at section 1, item "g") is one option in a list of examples of reasonable methods to inform the public. That is, agencies must still use reasonable methods to inform the public, but the proposed change does not require a list of interested parties.

While we support the proposed changes to public notice, we remain concerned that

they are too limited in scope. Because applicants and SEPA Officials often overlook cultural resources, notification is a crucial element of the SEPA process, and it is often the only notice we receive. The current rule does not require notification for projects that fall within the new maximums. From a cultural resources standpoint, this effectively precludes public comment for such projects, as SEPA is the only regulatory process at the State level that requires consideration of impacts to cultural resources. Such a scenario is in direct conflict with the broad agreement Ecology reported was reached: "Reform [of the notification process] will be equal or better [than the current process]."

FUTURE IMPROVEMENTS

While we appreciate Ecology's inclusion in the proposed rule amendments of a number of our suggestions for improving cultural resource protection, the rule making process itself has highlighted a number of serious problems with the way impacts to cultural resources are (or are not) considered prior to project implementation.

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 during project implementation. 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. Pre-project review represents an important risk management opportunity.

As mentioned above, we have submitted to Ecology our final "synthesis" of recommendations regarding consideration of potential impacts to cultural resources during project planning and permitting. The synthesis includes a sample decision tree for pre-project cultural resource review addressing both above-ground cultural resources (e.g. historic buildings) and below-ground resources (e.g. archaeological sites). We would welcome any opportunities to share the synthesis with jurisdictions seeking to meet the proposed required "findings" for raising maximum thresholds for certain minor construction, as well as jurisdictions seeking to improve their cultural resource planning and permitting processes and/or their local development regulations.

Another problem area highlighted by the SEPA rule making process concerns the fact that State law does not provide an avenue for requiring a project proponent to conduct a pre-project review if one appears necessary; furthermore, many local jurisdictions do not have a provision in their code either. This problem merits further analysis and discussion, including an examination of whether it would be more effective to have one statewide process for all jurisdictions to follow or whether the process should be left up to individual local jurisdictions.

We look forward to addressing these and other improvements in the near future, perhaps with the assistance of Ecology's Cultural Resources Work Group and through means such as new legislation and/or additional rule amendments.

Conclusion

Throughout the rule making process (August 2012-present), we have opposed proposals that result in fewer notifications and/or increased exemptions granted without appropriate cultural resource findings, as this will only raise the potential for increased impacts to cultural resources.

We are encouraged by the reception of our message that cultural resource protection is not, as some suggested early on, 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.

For too long, though, cultural resources have been isolated and marginalized in the regulations and in planning processes, but this will only perpetuate the lack of real, proactive consideration and management. Local jurisdictions and citizens will needlessly suffer the consequences, along with the resources. We can do better.

It *is* possible to include cultural resources in pre-project review of potential impacts and in longer-range planning efforts if we are willing to do so. We look forward to working together in the near future to improve the protection of our State’s shared cultural resources.

#24

Sant, Fran (ECY)

From: Darlene Schanfald [darlenes@olympus.net]
Sent: Monday, January 27, 2014 8:07 PM
To: ECY RE SEPA Rule Making
Subject: Comments on SEPA rule changes

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Comments opposed to proposed rule

Please confirm receipt of this email.

WAC 197-11-756 Lands covered by water

Updating the definition of "lands covered by water".
I support including buffers on adjacent lands.

A

197-11-800 Categorical exemptions (6) Land Use Decisions

I oppose this exemption, no notice and threshold determination language and not allowing appeals under SEPA.
(6) Land use decisions relating to exemptions granted for (e) variances.
Variances are a type land use decision.
Environmental review is critical; otherwise there could be significant impacts as a result.

B

197-11-800(2)(g) Installation and removal of tanks .

I oppose this exemption.
Within industrial and agricultural areas installation or removal of impervious underground or above ground tanks of total capacity of 60,000 gallons or less are proposed to be considered exempt.

C

197-11-800(3) Repair, remodeling and maintenance activities.

I oppose these exemptions.
*in-water maintenance work, dredging, bulkheads.
*maintenance dredging of up to 50 cubic yards of sediment.
*repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities
*recreation and transportation facilities

D

Darlene Schanfald
901 Medsker Rd
Sequim WA 98382

25



City of Seattle
Edward B. Murray, Mayor

Seattle City Light
Jorge Carrasco, General Manager and CEO

February 5, 2013

Fran Sant
Washington State Department of Ecology
Shorelands and Environmental
Assistance Program
Post Office Box 47703
Olympia, WA 98504-7600

RE: CR 102 – Proposed Rule Making – WAC 197-11, SEPA Rules

Dear Ms. Sant:

Seattle City Light (City Light) has reviewed the Proposed Rule amendments and appreciates the opportunity to provide the following comments. Please note that we also submitted our comments via e-mail to separulemaking@ecy.wa.gov.

The comments below are keyed to sections by title and page number of the Staff Report dated Dec. 9, 2013, which lists each rule section where a change is being proposed and which, in addition, includes analysis to support the SEPA threshold determination and environmental checklist for the proposed rule changes.

WAC 197-11-610 – Use of NEPA documents – Proposed Rules p 6.

A

As explained in the staff report (p. 6-7), the current rule allows for the adoption of a NEPA EIS or EA if a lead agency has determined that the NEPA document is adequate for SEPA purposes. Ecology now proposes to allow lead agencies to also adopt “documented categorical exclusion” (DCE) documents if the lead agencies are satisfied that the DCE is sufficient to support a DNS. A public comment and interagency comment period would be required for the DNS/DCE adoption.

Comments:

- City Light owns and operates three hydroelectric facilities that are on or adjacent to federal lands. These include the Skagit Hydroelectric Project and Newhalem Creek Hydroelectric Project, which are situated completely within the North Cascades National Park Service Complex; and the Boundary Hydroelectric Project, which is adjacent to USDA-Forest Service lands. The utility also occasionally engages in upgrades of transmission and distribution delivery projects with the Bonneville Power Administration (BPA). Selected projects at City Light facilities on federal lands require analysis under the National Environmental Policy Act (NEPA). In such cases, City Light has been able to adopt NEPA

documents – specifically EAs and EISs--when satisfied that SEPA requirements are adequately addressed and would benefit from the option to adopt DCEs. The proposed amendment appropriately includes the provision that requirements of WAC 197-11-340 (Determination of Non-Significance), WAC 197-11-630 (Adoption Procedures), land elements of 197-11-444 (elements of the environment) are met. City Light supports this proposed amendment.

- There are occasions when an EA developed by a federal agency which contains mitigating actions results in the issuance of a FONSI which City Light elects to adopt. In such cases, it would seem more appropriate for the adopting agency to issue an MDNS rather than a DNS. Please consider providing explicit guidance for such cases in this section.

WAC 197-11-756 – Lands covered by water – Proposed Rules p. 7

B Ecology considers the current definition of lands cover by water deficient. The proposed change is also intended to clarify that artificially created wetlands are not considered lands covered by water for the purposes of SEPA review. In addition, the proposed rule indicates that buffers and adjacent lands above the OHWM are not considered “lands covered by water.” Furthermore, Ecology considers that “[T]he clarifications regarding applicability to buffers and adjacent lands reflect Ecology’s interpretation of the existing rule language. However, some lead agencies may have interpreted the definition more narrowly in the past without the benefit of the clarifications. In those cases, any reduction in impacts provided by SEPA review may be lost on the adjacent lands or in buffers. However, in such cases there are other mechanisms for protecting the adjacent lands (such as the Shoreline Management Act, SMA) and for protecting buffer areas (such as Critical Areas Ordinances.) “(Staff Report, 8)

Comment:

City Light does not immediately see issues related to the proposed update of the definition of “lands covered by water” regarding wetlands and the clarification that buffers and adjacent lands above the ordinary high water mark are not “lands covered by water”.

WAC 197-11-800 Categorical Exemptions

C 197-11-800(2) Other minor new construction

800(2) (f) Exemption for demolition of building p. 10

Currently, the demolition of a structure or facility that is within the construction exemption in 800 (1) and (2) is allowed unless the structure(s) or facility(ies) are listed in a national, state or local register. Ecology considered adding “eligible for listing” to the rule but decided not to propose that change. (Staff Report, 14)

Comment:

It is a standard practice in the preservation field to evaluate structures that are determined eligible for listing. SCL would not oppose an amendment that added "determined eligible" to the structures to which the construction exemption is not allowed.

800 (2) (1) Small energy projects p. 11

D Ecology proposes to add a new subsection to 800 (2) to create a new exemption for accessory solar energy installations on existing structures.

The Staff Report explains that a currently, many small energy projects are exempt under 800 (2) (d) if they are considered a small structure or minor facility that is an accessory to an exempt building/project. Ecology considers energy generation as 'accessory' to a building or facility if its purpose is to provide energy for that site only Staff Report, 16).

Comment:

Many small solar installations are "net metered" and are designed to feed a small amount of electricity back into the distribution grid. SCL requests that Ecology consider language which acknowledges this option and includes such projects in the category of small energy projects which are exempt.

800 (5) (c) Purchase or sale of real property p. 11

E Ecology has proposed including easements and "other lesser property interests" in 800 (5) (3) and also proposes language intended to clarify the term "authorized public use."

Comment:

SCL urges replacing the proposed new language under (c) with the following:
"(c) The lease of real property and granting an easement of real property." As a public utility, SCL frequently needs to grant easements or lease property for temporary uses which are consistent with jurisdictional requirements, such as zoning and noise ordinances. The current and proposed wording, if adopted, is administratively burdensome and, because purposes would be legally consistent with other requirements, unnecessary. This rulemaking is an opportunity to address this concern.

Again, we appreciate the opportunity to provide comments on the proposed rules. If you have any questions regarding these comments, please feel free to contact me directly (206) 386-4586 or our SEPA Coordinator, Margaret Duncan (206-733-9874).

Sincerely,



Lynn Best
Director of Environmental Affairs and Real Estate

#26

February 5, 2014

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

Dear Fran Sant,

Yesterday, the cultural resource representatives on the State Environmental Protection Act (SEPA) Rule Making Advisory Committee submitted a detailed letter to the Department of Ecology concerning the effect of CR102 Proposed Rule Making on cultural resources.

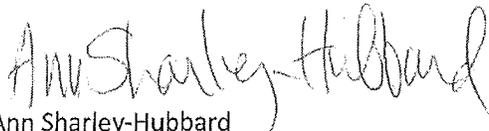
This letter, by Mary Rossi, Chris Moore, and Mary Thompson, is very important because it summarizes the impact of the proposed amendments on cultural resources in Washington State, and includes the results of more than two years of dialogue on behalf of cultural resources as they relate to SEPA.

As a professional working in the field of cultural resources management, I agree with the recommendations made in the SEPA Rule Making Advisory Committee's letter. I continue to oppose proposals that result in fewer notifications and increased exemptions granted without appropriate cultural resources assessment.

A The cultural resources management community is encouraged that protection of cultural resources is not being treated as an outlier issue of SEPA environmental protection. In the words of Mary Rossi, Chris Moore, and Mary Thompson, "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."

Assessment of cultural resources can easily be included in pre-project review of potential impacts and planning. Please follow the recommendations made by the SEPA Rule Making Advisory Committee in their letter in order to continue to safeguard and improve the protection of our State's shared cultural resources.

Sincerely,



Ann Sharley-Hubbard

Ann Sharley-Hubbard
2412 S. Cheryl Ct.
Spokane Valley, WA 99037

27



Tuesday, January 28, 2014

Ms. Fran Sant
SEPA Rule Coordinator
Washington State Dep. of Ecology
PO Box 47703
Olympia, WA 98504

RE: Proposed amendments to Chapter 197-11WAC, State Environmental Policy Act

Dear Ms. Sant:

Thank you for the opportunity to provide public comment on the proposed amendments to the State Environmental Policy Act. Skagitonians to Preserve Farmland is writing in support of proposed changes to WAC 197-11-960, the Environmental Checklist. Specifically, we are strongly in support of the amendments found in WAC 197-11-960:

- B1(c) and (h) - (page 34),
- B3(b)(3) - (page 35),
- B4(a) - (page 36),
- B8(b) - (page 37),
- B8(m) - (page 38), and
- B14(g)- (page 39)

A

I wish to thank you and the rest of the SEPA Rule Making Team for the tremendous amount of work you put in at the SEPA Rule Making Advisory Committee meetings as well as the countless hours in between meetings that was necessary to complete the draft rule.

Thank you again for allowing this opportunity to provide public comment. If you have any questions or desire additional information about our comments, please do not hesitate to contact me by phone at 360.336.3974 or by e-mail at allenr@skagitonians.org.

Sincerely,

Allen Rozema
Executive Director

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Ellsa Minerich
Development Assistant

28

To: Fran Sant and Brenden McFarland, Washington State Department of Ecology, Shorelands and Environmental Assistance Program

From: Smith and Minor Islands Aquatic Reserve Citizen Stewardship Committee

Re: Comments regarding CR102 – Proposed SEPA Rule Making

A We, the Smith and Minor Islands Aquatic Reserve Citizen Stewardship Committee, have several concerns regarding the proposed SEPA rule making. We believe that the proposed rule changes lessen the ability of lead agencies to adequately review projects that might impact important environmental resources including the Smith and Minor Islands Aquatic Reserve.

Smith and Minor Islands Aquatic Reserve is designated as both an environmental reserve and a scientific reserve by the Washington Department of Natural Resources. This reserve was designated with the purpose of conserving and enhancing native habitats and associated plant and wildlife species including; bull kelp beds, forage fish spawning areas, and marine seabird habitat. Development along the shoreline and the adjacent uplands has the potential to impact these ecosystems.

In our minds, SEPA is critically important to ensuring the protection of the Aquatic Reserve for three reasons.

1. SEPA is designed to ensure proposed projects and actions are adequately reviewed for potential adverse environmental impacts before construction starts or a decision is made.
2. SEPA is designed to perform a cumulative analysis of the project's impacts.
3. SEPA provides public notification about proposed projects which ensures greater public transparency about a project's existence and possible impacts.

B We believe the proposed rule changes lessen the ability for SEPA to fulfil all three of these important roles. Specifically, we are concerned about the proposed rule changes that increase exemptions for mixed-use projects, rezones, catch basins and culverts, and for projects that require air and water discharge permits. In all of these instances projects with the potential to negatively impact the Aquatic Reserve could be exempt from the SEPA review process. This lessens the lead agency's ability to require further review or mitigation before a project begins and the public's ability to know and comment on potential adverse impacts. Potential impacts that could be overlooked given these new exemptions include development of the buffers critical to the health of forage fish spawning beaches, an increase in impervious surfaces upland, leading to increased polluted runoff into the ecosystem, and loss of habitat through upland and shoreline development, to name a few.

C Additionally, these proposed rule changes all follow the assumption that because another permitting process already exists for these projects, SEPA is simply an unnecessary process. This assumption is wrong. SEPA is the only review process that reviews the cumulative impacts of a project, and that ensures the public is notified of a project long before an action is taken. By

limiting SEPA's scope through these proposed rule changes, the public's ability to know and respond to projects with potential adverse impacts is severely limited.

The Smith and Minor Islands Aquatic Reserve is just one example of an important and unique ecosystem that could be impacted by these rule changes. We strongly urge you to revise the proposed rule changes to reduce the potential harm to the environment that will occur if these exemption increases are allowed.

Thank you for your time,

The Smith and Minor Islands Aquatic Reserve Citizen Stewardship Committee

#29

Sant, Fran (ECY)

From: Stanton, Lita [StantonL@cityofgigharbor.net]
Sent: Wednesday, February 05, 2014 1:45 PM
To: ECY RE SEPA Rule Making
Subject: SEPA RULEMAKING COMMENTS

Follow Up Flag: Follow up
Flag Status: Completed

Hello Fran:

Thanks for the opportunity to comment.

All individual jurisdictions ought to be required to adopt pre-project noticing for cultural resource review. (For now) SEPA offers the only predictable and standardized vehicle.

Therefore, I am in full support of the changes proposed by the **Cultural Resources Interest Group Representatives** below:

SEPA CHECKLIST – SECTION B – QUESTION #13

A

Are there any ~~places or objects listed on, or proposed for, buildings or structures~~ located on or near the site that are over 45 years old and listed in or eligible for listing in national, state, or local preservation registers ~~known to be on or next to the site?~~ If so, ~~generally~~ specifically describe.

Best regards,

Lita Dawn Stanton
Historic Preservation for the City of Gig Harbor
(253) 853-7609

#30

Gerald Steel PE
Attorney at Law
7303 Young Rd. NW
Olympia WA 98502
360.867.1166 Phone

February 5, 2014

Ms. Fran Sant
Washington State Department of Ecology
Shorelands and Environmental Assistance Program
PO Box 47703
Olympia, Washington 98504-7600

Subject: Comments on the Proposed Amendments to the Washington State
Environmental Policy Act regulations proposed as part of the 2013-14
Rulemaking

Sent by email to: separulemaking@ecy.wa.gov

Dear Ms. Sant:

I submit these comments on behalf of myself. I want to thank the Department of Ecology for the substantial efforts made so far in the 2013-14 SEPA Rulemaking process. In a separate submittal, I have joined with the other environmental representatives on the State Environmental Policy Act (SEPA) Rules Advisory Committee to submit joint comments.

A I want to first note a typo in the proposed rules. On page 10 of <http://www.ecy.wa.gov/programs/sea/sepa/rulemaking/pdf/DraftRuleLanguage.pdf> in WAC 197-11-800(2)(a)(ii) the last word "or" should be moved to become the last word of WAC 197-11-800(2)(a)(iii).

B At the substantive level, I support the way Ecology has modified WAC 197-11-845 and other agency specific exemptions to implement the original intent of the agency-specific exemptions to only exempt actions of the named agencies.

C I believe a clarification is necessary in WAC 197-11-845(9). This new subsection states that it exempts DNR rock sales which are actions by DNR, the named agency. But, in my opinion, if the actual excavation on the site is not exempt by WAC 197-11-800(1)(b)(v), then any designation or selection of a site for excavations in excess of 100 cubic yards needs SEPA review even if the rock is being used as fill for exempt forest practices. Even a three-acre rock pit can expose ground water to pollution in a critical aquifer recharge area or cause other harms that can be avoided by SEPA review. The easiest way to fix this DNR exemption is to only allow the excavations to be exempt from SEPA if they do not exceed the 100 cubic yard exemption in WAC 197-11-800(1)(b)(v). If the excavation of a site is allowed to exceed 100 cubic yards, SEPA needs to be applied when the site is selected and WAC 197-11-845(9) should be clarified to make this clear.

D I have additional concerns about proposed WAC 197-11-800(2)(h). Tanks having a total capacity of 60,000 gallons of toxic, flammable, or explosive materials cannot be exempted from SEPA review if they are close enough to any neighboring property to do probable significant damage to that property. I would support a SEPA exemption on industrial and agricultural zoned lands if there is a 1,000-foot buffer from neighboring properties for tanks up to 30,000 gallons total and a 2,000-foot buffer from neighboring properties for tanks over 30,000 and up to 60,000 gallons total if the tanks contain toxic, flammable, or explosive materials. If tanks do not contain toxic, flammable, or explosive materials, there should be at least a 50-foot buffer from neighboring properties for tanks up to 30,000 gallons total and a 100-foot buffer for tanks over 30,000 and up to 60,000 gallons total to receive a SEPA exemption on industrial and agricultural zoned lands. Putting a 60,000 gallon tank of explosive material ten feet away from a residence will have a probable significant adverse safety impact on that residence and so WAC 197-11-800(2)(h) as written is in conflict with Chapter 43.21C RCW.

E Finally, I strongly support any web-based SEPA register collecting site location data that can be accurately mapped. For example, DFW uses a mapping program to implement its PHS program that maps nests of some sensitive species. Also many counties use mapping programs to map parcels. Such counties can give Ecology a link to the relevant parcel(s) where site-specific actions are proposed. Ecology can put such links in its SEPA register along with links to SEPA documents. This would be most useful to the public.

Respectfully submitted,

Gerald Steel, PE, Attorney at Law

31

STEVENS COUNTY LAND SERVICES

February 3, 214

Department of Ecology
Fran Sant
300 Desmond Drive
Lacey, WA 98503

RE: written Comments on proposed SEPA amendments (WAC 197-11)

Dear Ms. Sant:

Please find the comments below regarding the proposed amendments to WAC 197-11.

A. 197-11-800(1)(a)(i)_____ This language should be removed. The exemption for minor new construction should apply even when covered by water. Jurisdictions are required to have critical areas ordinances and shoreline master programs that protect lands covered by water. What is the point of SEPA in this situation? This also applies to; 197-11-800(1)(c)(iii), 197-11-800(2)(a)(i), 197-11-800(3), 197-11-800(6)(a) and 197-11-800(6)(d).

B. 197-11-600(6)(c)(i) and (ii) should be removed. What is the expected benefit from SEPA on a rezone associated with an exempt project? Rezones that do not require a Comprehensive Plan amendment should be exempt.

C. 197-11-600(20) should stay unless 197-11-600(19) applies to building codes associated with 19.27.

D. 197-11-938(4)(c) should be amended to only have local jurisdictions be lead agency if the "proposal" would require a license at the time the forest practices work occurs. The County does not want to be lead agency on a forest practices proposal that indicates some future building that may require a "license" from the County at a later date. Natural resources should be the lead agency associated with a forest practices application. Below are some of my concerns with how 197-11-938(4)(c) applies:

1. It will cost more; the applicant is still required to pay DNR the Forest Practices fee and will also have to pay the County for SEPA determination.
2. The County's determination process takes longer than DNR's and it is very unlikely that a County can meet the 30 day requirement found in RCW 42.21C.037(3).
3. If the County makes a SEPA determination for the forest practices project and does not have a license to issue associated with the project,

Building Division: (509) 684-8325
FAX: (509) 685-0674

Planning Division: (509) 684-2401
FAX: (509) 684-7525

MAILING ADDRESS: 215 S. Oak St. - Courthouse Annex • Colville, WA 99114
STREET ADDRESS: 260 S. Oak St. - Courthouse Annex • Colville, WA 99114

4. Any SEPA conditions are not enforceable unless they are attached to the underlying license. What license would the County attach them to?

Thank you for the opportunity to provide comments on the proposed amendments to WAC 197-11. If you have any questions regarding my comments, please feel free to contact me.

Sincerely,



Erik Johansen
Stevens County, Land Services Director

Comments reviewed and approved by Stevens County Board of County Commissioners



Wes McCart, Chairman

2/3/14
Date

#32

Stillaguamish Tribe of Indians

PO Box 277
3310 Smokey Point Drive
Arlington WA 98223

February 5, 2014

Maia Bellon, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98505-7600

Subject: 2013 Rulemaking for Chapter 197-11, SEPA Rules

Dear Ms. Bellon,

The Stillaguamish Tribe thanks the Department of Ecology for the opportunity to comment on the proposed SEPA rule changes. Meaningful government-to government consultation is critically important for tribes, as it allows progress to be made in unwinding centuries of colonialism while finding a positive way forward.

The Stillaguamish Tribe is a federally recognized tribe, and signatory on the Point Elliott Treaty of 1855. The Stillaguamish, in common with other indigenous peoples of this area, are original peoples of the Puget Sound region, and the Tribe has ancestral connections that go well beyond the Puget Sound region to the east of the Cascade Mountains and beyond.

Since August of 2012, the Stillaguamish Tribe has been actively involved in conference calls with Ecology, attending Advisory Committee and Cultural Resource Workgroup meetings in Olympia, and communicating with Tribal and state representatives about substantive issues in regards to the proposed rule changes. The Stillaguamish Tribe has commented on SEPA changes on October 5, 2012; October 31, 2013; , and also sent you a letter documenting a local example (no SEPA notification of construction of a Honda Dealership) of problems in notification from local governments on May of 2013.

We join in the comments of the Snoqualmie Indian Tribe, the Yakama Nation, Snoqualmie Tribe, and the Muckleshoot Indian Tribe, as well as those of the Cultural Resources Interest Group and those of the Environmental Community.

The Stillaguamish Tribe has reviewed the draft rule language for WAC 197-11, and would like to offer the following comments:

A We support the extension of the notice time to tribes under WAC 197-11-800 (1)(c)iii to 60 days, which is an increase from 21 days in the previous draft. This will give tribes significantly more time to respond and to engage in government-to government consultation with local governments. The proposed rule language in this section now reads:

"Before adopting the ordinance or resolution containing the proposed new exemption levels, the local government shall provide a minimum of sixty days' notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment."

B Proposed WAC 197-11-800 (1)(c)iv is also an improvement. Although this language isn't as tight and comprehensive as the tribes have asked for, at least it provides a floor ("shall include a minimum of the following") which is helpful. The new proposed language reads:

"For cultural and historic resources (per WAC 197-11-444), documentation that environmental analysis, protection and mitigation have been adequately addressed for the development exempted shall include a minimum of the following:

- Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.*
- Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.*
- Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects."*

C We concur with and support changes made to rule WAC 197-11-800 (1)(c) that local jurisdictions may raise SEPA threshold exemptions if they provide proof that they have adequately addressed environmental analysis, and protection and mitigation for cultural and historical resources. However, as the Yakima Nation has stated in their comment letter (dated February 4, 2014):

"the GMA (Growth Management Act) does not require planning for or protection of cultural resources and treaty-reserved rights. Therefore, both known and still unrecognized archaeological resources are vulnerable under the new SEPA categorical exemptions".

This would result in a net loss of cultural resources, unless local GMA's were to take on the burden of proof for the exemptions. With increased thresholds, comes greater responsibility at the hands of local governments and tribes to work together in preventing damage to cultural resources. We do not believe the GMA in its current form addresses Cultural Resource issues in an effective manor for this, and will require adjustments, including the implementation of Cultural Resource Management Plans to become an effective tool. We do see opportunities to

utilize the Washington State Department's predictive model as a tool to notify local governmental planners and project managers/developers of projects that carry a high risk of encountering cultural resources and that should require an archaeological survey.

D

We concur and support changes to Section B, Question 13 of the SEPA Checklist, with one exception: we strongly encourage qualifying "near" as 1000 feet for questions (a) and (b) – using the term "near" is not enforceable.

We concur with Yakima Nation comments that: "Cultural Resource Management Plan"; "pre-project cultural resources review"; and "Standard Inadvertent Discovery Plan" ... are all terms that need to be defined.

Under the Lands covered by Water section, we find an exemption for dredging under fifty cubic yards in WAC 197-11-800(3) unacceptable, and should be removed. Exempting projects in these environments poses too much risk and has too many variables to receive a blanket exemption such as this. Affected tribes should be consulted on these projects.

We look forward to continuing to work with the Department of Ecology towards the protection of cultural resources as this language is incorporated into the final rule. Every shovel turned on every piece of ground in Washington is taking place on land that is the aboriginal homeland of tribes. We appreciate your efforts and dedication, as we all work towards the preservation and protection of our state's cultural heritage.

Sincerely,

Shawn Yanity
Tribal Chairman

33



**Tribal Historic Preservation Officer
Archaeology and Historic Preservation Program
Fisheries Department
THE SUQUAMISH TRIBE**

Post Office Box 498
Suquamish, WA 98392-0498
Phone (360) 394-8529
Fax (360) 598-4666

February 4, 2014

Washington State Department of Ecology
Shorelands and Environmental Assistance Program
Fran Sant
PO Box 47703
Olympia, Washington 98504-7600

**RE: Suquamish Tribe Comments on the Washington State Department of Ecology's
Proposed SEPA Rule Amendments Regarding Cultural Resources**

Dear Ms. Sant:

The Suquamish Tribe reviewed SEPA Rule Amendments proposed by the Washington State Department of Ecology and offers the following comments regarding cultural resources issues.

The Tribe supports recommendations and cautions offered by the cultural resources representatives on Ecology's Rule Making Advisory Committee. The Tribe is concerned that many ground disturbing projects that have a potential to destroy archaeological deposits may be exempted from review by tribal staff under the proposed rule. The Tribe advocates increased availability of information pertaining to cultural resources during planning and permitting stages of projects to avoid destruction of irreplaceable tribal patrimony. The Tribe is opposed to any changes that will reduce or limit the opportunity of tribal cultural resources staff members to review and comment on projects. Tribes offer unique and unmatched viewpoints regarding cultural resources issues and often have access to elders and other informants who are not available to other cultural resources professionals. It is important that tribal staff track, review, and comment on construction projects in the Ancestral Territory of their constituents.

A

The Tribe supports the proposed "planning-level approach" for jurisdictions to address cultural resources issues (pg. 9 of the proposed rule) as long as the approach is applied correctly. We concur with the statement made by the cultural resources representatives on Ecology's Rule Making Advisory Committee who noted that applicants and permit reviewers often do not consider cultural resources adequately and/or are not trained cultural resources professionals who are qualified to make assessments. Thus, SEPA project notifications often are the only opportunity tribal staff have to review and comment on projects. And we concur with the committee members when they suggest that "significant savings of time and money are achieved by considering impacts during pre-project review like SEPA" rather than expenses incurred through inadvertent discovery activities during project construction. In virtually all inadvertent discovery cases I have dealt with, at least some archaeological resources were destroyed before contractors realized they had intersected archaeological deposits using heavy construction excavators and then stopped construction excavation.

Ms. Fran Sant
February 4, 2014
Page 2

B The Tribe supports proposed changes to the current environmental checklist, Section B, Question 13 (pg. 38-39 of the proposed rule) to include more information regarding cultural resources that may occur in project areas and to describe the basis for assessments of potential impacts to cultural resources. The new language will allow permit reviewers to make better reasoned evaluations of probable impacts to cultural resources and to determine if cultural resources have been given sufficient consideration by project proponents.

Thank you for the opportunity to comment on the SEPA Rule Amendments proposed by the Washington State Department of Ecology.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis E. Lewarch". The signature is written in black ink and is positioned below the word "Sincerely,".

Dennis E. Lewarch
Tribal Historic Preservation Officer

#34

Sant, Fran (ECY)

From: Karen Walter [KWalter@muckleshoot.nsn.us]
Sent: Tuesday, February 04, 2014 10:27 AM
To: ECY RE SEPA Rule Making
Subject: Amendments to Chapter 197-11 WAC, State Environmental Policy Act

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Mixed Comments

To Whom It May Concern:

We have reviewed the WA Department of Ecology's proposed changes to the State Environmental Policy Act (SEPA) and the associated Staff report and offer the following comments.

- A

1. WAC 197-11-508 and 510, the SEPA Register and Public Notice, the Staff report (on page 7) notes that one option Ecology considered was requiring cities and counties to submit all of Notices of Application under RCW 36.70B (or equivalent notice) to the SEPA register (or some other statewide listing). This is a good idea as reviewers could use the SEPA register (or whatever statewide listing is used) to determine if they are receiving Notices of Applications or not. Notices of Applications are an important tool for tribal staff that are reviewing multiple projects in multiple jurisdictions as they are often the first time we learn about a project which may be of concern. They provide an opportunity to obtain project clarifications, additional information and provide initial comments which may enable projects to reduce their impacts to the environment. There is no explanation as to why this option was not considered in the Staff Report.
- B

2. WAC 197-11-610, using NEPA documents, it may be appropriate for some projects to adopt NEPA documents to meet SEPA requirements. However, this assumes that the NEPA documents have been sent to affected Indian Tribes, which is not always the case. In particular, in our experience, Documented Categorical Exclusion NEPA documents are not routinely sent to us and certainly not in advance of their approval and adoption by Federal and State agencies. Per the Staff report, on page 8, it notes that there will be a public and interagency comments period required for the DNS/DCE adoption. We did not specifically see this language in the proposed NPEA documents section so we could not evaluate this notification language including the verification that affected Indian Tribes will also be noticed when the public and agencies are notices. If the intent was to use the WAC 197-11-340 for the notice and comment period, then it may not be sufficient time to review the NEPA documents being adopted, particularly if it is an EA with appendices as this WAC only allows a 14-day review period. Also, if anyone has concerns regarding the adequacy of the NEPA documents being adopted under SEPA, would they use the SEPA appeal procedures?
It seems that the SEPA rules may need to be revised to address all of these comments.
- C

3. WAC 197-11-756, lands covered by water definition, it seems that the exclusion of certain adjacent lands and designated buffers will result in many projects being exempt from SEPA review that will force issues to be resolved solely through permitting. For example, in areas where there are floodplains or designated channel migration zones, there may be filling, grading, or dredging activities proposed on these lands which could affect the environment and properties up and downstream which would be unknown because they are SEPA exempt and not subject to review by the public, agencies or affected Indian Tribes. This would also be the case for any project that is exempt from review via Critical Areas and Shoreline Management Program Ordinances. Further, a project that impacts stream and/or wetland buffers that is not available for review may not only adversely affect that particular stream or wetland but could adversely affect adjacent restoration or mitigation sites. Since there is currently no master database of potential restoration and mitigation sites for most areas, it is problematic to exempt projects that impact the stream and wetland buffers from SEPA review that may

adversely affect these areas. Finally, such an approach may eliminate the opportunity to assess cumulative impacts.

- D
4. WAC 197-11-800 (d)(vii), Categorical Exemptions, it seems to be ill-advised to have culvert installation projects proposed by any agency or private party for purposes of road and street improvements be exempt when these culverts involve fish-bearing or potential fish-bearing streams. Again, SEPA is usually the first time we hear about projects and use the process to identify any concerns we have with a project's design, impacts, and conceptual mitigation measures. If left solely to the permitting process, it seems likely that projects may experience delays as project concerns would be identified later in the process, not earlier as SEPA typically provides. Of course, nothing prevents the applicants from conducting early project review with affected Indian Tribes and agencies; however, there are no requirements to do so, unlike SEPA.

 - E
 5. WAC 197-11-800 (3), Categorical Exemptions maintenance dredging of 50 cubic yards of material or less being SEPA exempt may make sense; however, there is no consideration of multiple sites or multiple frequencies. Maintenance dredging is used often and can adversely affect fish habitat. It is often done without mitigation for these impacts and can be used when other approaches are needed, such as culvert replacement projects to allow more sediment and water to be conveyed through the structure. Without additional language that addresses these concerns, this exemption may be applied many times in many places without an opportunity to look at other alternative approaches that may have fewer environmental impacts and/or get mitigation for dredging impacts.

 - F
 6. With respect to WAC 197-11-800 (14), Categorical Exemptions- activities of agencies, it is not clear why grading of forest lands under Chapter 84.33 RCW would be exempt in this section which describes "administrative, fiscal and personnel activities of agencies". Grading of forest land can result in significant adverse impacts to the environment, particularly in floodplains, channel migration zones, erosion zones and landslide hazard areas. This part of the revised language should be removed as a result.

We appreciate the opportunity to review these amendments and look forward to Ecology's responses.

Thank you,
Karen Walter
Watersheds and Land Use Team Leader

Muckleshoot Indian Tribe Fisheries Division
39015 172nd Ave SE
Auburn, WA 98092
253-876-3116

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

February 5, 2014

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

Re: Comments on SEPA Proposed WAC 197-11-158 Revisions
Log: 092812-02-ECY

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. We would like to recognize and commend all parties for the amount of work that went into the rule-making process.

We believe the meetings and dialogue were key elements in expanding the understanding of cultural resource's importance in the SEPA process. We especially want to thank you and your staff's efforts to listen, understand, and address the topics and concerns raised during the meeting. We greatly appreciate your effort throughout this process.

We would like to take this opportunity to state our concerns and recommendations, as follows:

A general comment is that the code language and format is confusing. Some of our comments herein bring attention to specific instances of language or phrasing that is unclear about procedures regarding cultural and historic properties. However, beyond these examples, we recommend the document be reviewed with the goal of being more "user friendly." A larger concern is that the new regulations will receive many different interpretations and uneven implementation by jurisdictions across the state. We also recommend that the Department of Ecology work in partnership with stakeholders for ongoing education about the new regulations and the SEPA process.

A Beginning on page 7, WAC 197-11-800 Categorical Exemptions, we find that the language appears to be directed solely at jurisdictions raising their development thresholds. Some jurisdictions may choose not to raise exemptions. Our concern is that these entities will still be applying lower standards of review regarding cultural and historic resources rather than the more systematic review standards applied to projects that will be exempted under higher thresholds. This will not address shortcomings and gaps inherent in the SEPA process. While we appreciate the level of review proposed for exempted projects, we would prefer to see it applied at a minimum, to all projects under SEPA.

B On page 9 regarding (1) (c) (iv.), it is unclear what is implied in the phrase "for the development exempted". Does "development" refer to a specific project being proposed for construction, or does this refer to the generic development categories exempted from



review? Suggested revised language might read as follows:

(iv.) For cultural and historic resources...have been adequately addressed for exempted proposed construction projects shall include a minimum of the following...

Also, on page 9 in the same section, the second bullet point refers to "use of available data and other project review tools..." We recommend that language be added as follows: "or provide a letter of review from the Department of Archaeology and Historic Preservation." This would allow those entities that cannot or choose to not data share with DAHP, access to predictive models and other databases through DAHP staff review.

Regarding the second and third bullet points, we recommend adding language to the effect that the mentioned "planning and permitting processes" and "local development regulations" have been reviewed and accepted by the Washington Department of Archaeology and Historic Preservation.

Near the bottom of page 10, under section (2) (g) clarifying language is suggested to read like the following:

C
(g) The demolition or alteration of any building, structure, or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for buildings, structures or facilities with recognized historic significance such as listing or determination of eligibility, in a national, state, or local historic register of historic places.

On page 12 under section (6) (c) (iii), we recommend qualifying language regarding exempted land use decisions. Suggested language would read as follows:

D
(iii) The applicable comprehensive plan...and the EIS adequately addressed the environmental impacts of the rezone as determined by the appropriate agency(ies) with expertise.

Also on page 12 in section (6) (e), this language is confusing as to what special circumstances to the variance would be exempt from review. If a variance is requested on a property with cultural and historic resources, we recommend that such a request be reviewed.

In regard to proposed revisions to language in the SEPA checklist, on page 38, the following changes are recommended for the historic and cultural preservation checklist:

E
(a) Are there any buildings, structures, sites, objects, or districts over 45 years in age listed in, or eligible for listing in national, state, or local registers of historic places that are located on or near the project site, or located within a historic district that is listed in national, state, or a local register? If so, please identify and describe how the



resource(s) will be changed or impacted. (Tip: to start visit <https://fortress.wa.gov/dahp/wisaard/>)

(c) Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with...

(d) Proposed measures to avoid, minimize, or compensate for loss, changes to, or disturbance to the resource(s). Please include plans for the...

Thank you for the opportunity to provide comments. The above comments are intended to supplement to the state agency caucus comments by providing insights that are specific to our experience and the resources for which we are responsible for protecting.

If you have any questions, please feel free to contact me at 360.586.3066 or at Allyson.Brooks@dahp.wa.gov.

Sincerely,



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

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





WASHINGTON STATE DEPARTMENT OF
Natural Resources

36
PETER GOLDMARK
Commissioner of Public Lands

February 4, 2014

sent electronically

separulemaking@ecy.wa.gov
Department of Ecology
300 Desmond Drive
Lacey, WA 98504-7600

Re: Department of Ecology 2013 State Environmental Policy Act (SEPA) Rulemaking

Dear Rulemaking Coordinator,

This letter contains comments from the Washington Department of Natural Resources (DNR) on the draft State Environmental Policy Act, Ch. 43.21C RCW (SEPA) rule changes provided to us by the Washington Department of Ecology (Ecology) on December 18, 2013 (and filed by Ecology as a CR 102 on December 16, 2013). I served as the state caucus representative on the SEPA Rulemaking Advisory Committee from August 7, 2012 until December 12, 2013 when the final committee meeting minutes were published. In this role, I coordinated state agency involvement on areas of interest addressed by the committee, including those of DNR. The comments being submitted today, however, are solely on behalf of DNR.

DNR appreciates this opportunity to provide comments. Moreover, DNR appreciates the work Ecology put into the SEPA Rulemaking Advisory Committee process that enabled the state agency caucus and other interest groups the opportunity to provide input to Ecology as Ecology carefully considered how to carry out the legislative mandate to update the SEPA rules as expressed in SB 6406. DNR appreciates Ecology's efforts to facilitate the SEPA Rulemaking Advisory Committee's input and obtain, analyze, prioritize, and respond to a variety of perspectives.

DNR is an agency with varied responsibilities, including that of a large landowner (managing over 5.6 million acres of state owned land (both uplands and aquatic lands)), a regulator (regulating forest practices and mining reclamation across the state), and providing resource protection (in the form of fire prevention, suppression, and forest health), among other responsibilities. As such, DNR both relies on SEPA to be informed of the environmental consequences of its actions and relies on lead agencies across the state to inform DNR's decisions when DNR is not the lead agency but is an agency with jurisdiction or expertise or otherwise affected by a proposal.

These comments reflect DNR's overall agency interests and also include review by DNR experts in varying program areas. Please accept DNR's comments in the spirit of collaborative participation in the SEPA Rulemaking process that has taken place over the course of the last

year or so. Generally, these comments are organized numerically by rule number to make them easier to track against the draft of proposed rule changes.

Importance of State Agency Role in SEPA

Many state agencies regularly review proposals as lead agencies and changes to the SEPA rules affect state agencies very directly. DNR supports the interrelated purposes of this rulemaking -- updating the SEPA rules to be more efficient and relevant in the context of environmental laws that have been adopted since SEPA was enacted while maintaining the opportunity for environmental protection that SEPA provides.

DNR, as a single state agency example, serves as lead agency for over 400 proposals in an average year, and as an agency with jurisdiction in over 4,000. Including the input of active SEPA practitioners in the process has helped improve the potential for the rulemaking to address real issues and real problems. There is always room for more improvement, and DNR encourages Ecology to create a regular updating cycle for the SEPA rules as there are a number of subjects that we did not have time to address with the legislatively driven deadline.

Specific Proposed Rule Language Comments

DNR highlights comments on the following draft rule changes. Any draft rule not identified in this comment letter is either supported by DNR or DNR is neutral as to its revision.

A **WAC 197-11-756.** DNR supports Ecology's decision not to substantially alter the "lands covered by water" exception and has no objection to providing a GMA-based definition of wetlands that is also commonly used. It is worthy to note that the reason for the exception is that some of the most sensitive areas are on lands covered by water, reducing the likelihood that a proposal that impacts those lands should be presumed to be below the threshold of significance. DNR has a significant stake in this issue as an agency responsible for the management of approximately 2.6 million acres of state-owned aquatic lands that relies on the SEPA process to make certain impacts on aquatic resources are addressed.

Sometimes, SEPA provides the only opportunity for DNR to provide input to lead agencies regarding potential impacts to state-owned aquatic lands that may occur from projects proposed on nearby private lands or to perform its role as an agency with jurisdiction or expertise. It is thus important for the lands covered by water exception to several categorical exemptions to remain. DNR supports Ecology's proposed rule to retain this exception to several exemptions as specified in the draft rules.

B **WAC 197-11-800(1)(b)(v).** DNR supports this revision as providing additional clarity that there is an exemption both for fills and excavations that are not connected to a larger proposal and for those that are connected to specified minor new construction proposals. DNR also supports the deletion of the phrase that also provided an exemption for fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder because all Class I-III

forest practices are statutorily exempt, especially given Ecology has opted not to adopt the statutory exemptions by rule.

DNR also supports the revision that uses clearer language than “stand-alone parking” to identify the threshold for parking lots not associated with a structure.

C DNR currently interprets **WAC 197-11-800(3)** to include trail repair, remodeling, and maintenance. DNR supports the additional revisions proposed by Ecology to WAC 197-11-800(3) expressly referencing “recreation facilities” as being consistent with DNR’s interpretation that this rule allows for the repair, remodeling, and maintenance of these types of public facilities. Generally, replacing a trail or other recreational site is consistent with the existing exemption for recreational sites. DNR supports the following draft rule language:

The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities, or equipment, including utilities, recreation, and transportation facilities involving no material expansion or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks)....

WAC 197-11-800(3)(a). DNR is concerned with the addition of a new exemption for dredging activity that involves less than fifty cubic yards of material. This new exemption has the potential to cause significant adverse impacts if undertaken in areas where there are contaminated sediments or sensitive aquatic species. It is worth noting this exemption is not consistent with the current threshold used by the Army Corps of Engineers under its nationwide program related to its responsibilities under Section 404 of the Clean Water Act, which is 25 cubic yards in addition to providing other limitations that protect aquatic species. See NWP 3. In addition, the exemption is not time constrained as is the case for the analogous uplands excavation exemption in WAC 197-11-800(1)(a)(v), which could lead to several dredgings exceeding the threshold without environmental review. DNR proposes the following modification to the proposed rule:

The following maintenance activities shall not be considered exempt under this subsection:

- (a) Dredging of over fifty cubic yards of material, provided that any dredging of material that is equal to or less than fifty cubic yards of material is not exempt unless it is the combined volume for the entire project and is consistent with Ch. 173-204 WAC.

D **WAC 197-11-800(5)**. DNR supports Ecology’s proposal to provide a more precise definition of “authorized public use” to assist in interpreting the exemption related to real property transactions. DNR also acknowledges that different agencies use different definitions. For example, DNR’s recreation rules regarding the use of DNR managed lands for recreation define “authorized” as written approval by DNR and “designated” as any facility, trail or location that

has been approved by the department for public use. WAC 332-52-010. Although public lands are generally open to the public, there are exceptions and limitations under the Multi Use Act with respect to certain of the land DNR manages. RCW 79.10.100.

Ecology's proposed language is tied to a public use being "designated" as such for recreational and general public use, which DNR agrees make sense from the perspective of the point of the exemption, i.e., to examine impacts when land is being transferred out of public ownership that is actively used by the public. DNR supports Ecology's proposed language to clarify this rule:

The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to a specific designated and authorized public use approved by the public landowner of the property related to the use of land by the public.

DNR also supports the clarification in WAC 197-11-800(5)(c) to include easements and other lesser interests in property to be consistent with the notion that when such interests in property are granted, but the use is not changing, there is no change to the environment that requires evaluation, as follows:

Leasing, granting an easement, or otherwise authorizing the use of real property when the use of property for the term of the agreement will remain essentially the same as the existing use, or when the use under the lease, easement, or other authorization is otherwise exempted by this chapter.

E
WAC 197-11-830. During its earlier participation in the rulemaking process, DNR identified a need for a rock sale exemption to be added to WAC 197-11-830 because the requested narrow exemption is consistent with other related exemptions. It is unlikely such sales would involve a significant impact and the environmental issues are addressed by other environmental laws, i.e., the forest practices regulations. While DNR appreciates Ecology's draft rule change to exempt rock sales related to forest pits less than 3 acres in size (which are still regulated as Class I, II, or III forest practices), we have determined that we would also prefer to have the ability to adopt our own SEPA rule for those sales that don't fall under this exemption similar to the current timber sales exemption.

Thus, in addition to the new proposed rule change in WAC 197-11-830(9), DNR requests a revision to WAC 197-11-830(7) as follows:

Revise WAC 197-11-830(7) to read: Those sales of timber or rock from public lands that the department of natural resources determines, by rule adopted pursuant to RCW 43.21C.120 do not have potential for a substantial impact on the environment.

AND ALSO

Revise proposed **WAC 197-11-830(9)** to read: Sales of rock from public lands involving rock pits less than 3 acres in size that are used for activities regulated under a forest practices application that is exempt under RCW 43.21C.037.

F **WAC 197-11-835(2)**. Please note that due to other changes to existing law under SB 6406 (which became effective December 2013) that eliminate this type of HPA being issued by the Department of Fish and Wildlife, this SEPA rule is no longer applicable and should be deleted.

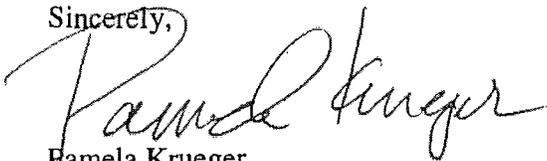
G **WAC 197-11-875**. Please note that DNR concurs with the deletion of 197-11-875(15) due to the elimination of the Forest Practices Appeals Board. However, it should be replaced with the Pollution Control Hearings Board, which now hears forest practices appeals.

Checklist Changes

H DNR supports the revision of Checklist questions that relate to the impact on GMA resource lands, particularly in **B.8.b**. It is particularly helpful to address both agricultural and forest lands of long-term commercial significance, promoting an awareness of impacts on working farms and forests, as well as lands adjacent to proposals. We do note that there are two instances in the proposed Checklist changes where the phrase "or be affected by" is used (with reference to B.8.b.1. and B.14.g). It is unclear to DNR why the SEPA Responsible Official would be concerned with how a proposal would be affected by (rather than how a proposal would impact) adjacent activities in making a threshold determination. This is likely to confuse proponents and be inconsistently interpreted by state and local lead agencies. DNR recommends this phrase be deleted from the Checklist changes.

Again, thank you for the opportunity to participate as a member of the 2012 and 2013 SEPA Rulemaking Advisory Committee and to submit comments on the proposed changes to the SEPA rules.

Sincerely,



Pamela Krueger

Legal Affairs Liaison, Office of the Commissioner of Public Lands
Environmental & Legal Affairs Section Manager

Cc: Neil Auland
Brenden McFarland, Ecology
Fran Sant, Ecology
Carol Lee Roalkvam, WSDOT (alternate, state agency Advisory Committee Member)
Allyson Brooks (DAHP)
Randy Kline (Parks)



February 5, 2014

TO: Fran Sant, Ecology
Submitted to: separulemaking@ecy.wa.gov

FROM: Carol Lee Roalkvam, Policy Branch Manager,
Environmental Services Office, 360-705-7126

SUBJECT: WSDOT's comments on SEPA Rulemaking

The 2012 Legislature directed a targeted reform of the State Environmental Policy Act (SEPA) with the passage of Senate Bill 6406 (now codified as Chapter 1, Laws of 2012 1st Special Session). The legislation set up two rounds of rule updates: A narrowly-focused initial round (by the end of 2012) and a broader round of SEPA rule updates during 2013. The legislation also directed Ecology to conduct a stakeholder process.

Washington State Department of Transportation (WSDOT) appreciates the opportunity to work with the stakeholders and Ecology through the two rounds of rulemaking.

WSDOT interacts with SEPA in three primary ways: as SEPA lead agency for WSDOT proposed actions; as an agency with jurisdiction or expertise; and as a reviewer of private development proposals that may impact the state transportation system. Our input throughout the stakeholder process reflected all of these varying perspectives.

On behalf of my agency, I want to thank Ecology for the time allowed during the advisory committee process to discuss the protection of state resources (including the transportation system). We also value the areas of agreement surrounding modernizing and updating the SEPA rule and the register.

We wanted to touch on two concerns that were of greatest interest to WSDOT during our engagement in this process: Traffic impacts and notice.

Traffic impacts associate with locally approved proposals

In our day-to-day practice, WSDOT frequently provides input on local agency SEPA determinations on private proposals. Specifically, we work together with the local jurisdictions to ensure traffic impacts and other indirect impacts to the state transportation system are considered. Indirect impacts from private developments can include storm water conveyance and treatment, safety, noise, state airport and ferry terminal functions.

In particular, relating to the stakeholder discussions on flexible thresholds, we suggested adding the number of trips generated (not just the number of parking stalls) as a way to consider traffic impacts. While this suggestion was not accepted, we are very pleased to see the increased number of days the new rule will require for review of local code/development regulations changes (from 21 days to 60 days). WSDOT encourages

local agencies to consider traffic impacts on the state system as part of local development review processes *and* when deciding whether or not an action is exempt. We also recognize that SEPA is not the only path for WSDOT to coordinate with locals. We look forward to continuing coordination with local agencies through the Growth Management Act compliance and through our state's transportation planning organizations.

Notice by other means other than SEPA

Meeting the intent of the Legislature in SB 6406 regarding public notice is still a work in progress. Sections (4)(a) (ii) and (iii)) tasked the stakeholder advisory committee process to ensure that federally recognized tribes state agencies and other interested parties can receive notice about projects of interest through notice under SEPA *and* means other SEPA.

As the second round of rulemaking comes to a close, we want to take this opportunity to highlight WSDOT's commitment to public notice, agency coordination and to comprehensive consultation with the Tribes. We actively engage with communities and adjacent property owners. WSDOT has a strong commitment to public involvement, environmental justice, and quality environmental decision-making.

For cultural resources consultation on WSDOT projects, Department of Archeology and Historic Preservation (DAHP) and the Tribes do not rely solely on SEPA. WSDOT has developed its consultation process with the Tribes and with DAHP; the process is outlined in our guidance (Section 106 programmatic agreement and Executive Order 05-05). WSDOT also meets with the Tribes annually to review our list of projects.

WSDOT is committed to continuing notice for projects that are newly exempt under the proposed rule. Many of our state transportation projects trigger federal laws requiring compliance and outreach under NEPA. Our Environmental Procedures Manual provides more information on the review processes for large and small projects. We will review our processes to determine whether there is a need to develop a process to ensure notification of projects that will be exempt under the proposed rule change, or if notification is adequate under existing procedures.

General Comments on the proposed rule

D WSDOT advocated for several of the changes and additions that appear in the proposed rule. We appreciate Ecology's inclusion of the new exemption for repair and replacement of existing state transportation facilities (197-11-860(10)). This exemption is in line with recent recommendations of the Joint Transportation Committee Study on Efficiencies.

In addition to the new WSDOT specific exemption, we support the:

- A • Revised 610 allowing the use of NEPA documented CEs in place of SEPA checklist when all required SEPA elements are covered
- B • Revised 800 (1)(c)(iii) Expand the time period for comments from 21 days to 60 (as we requested in our letter 12/10/12)
- C • Updates to 800(2) clarifying transportation infrastructure elements that are tied to minor new construction

- E • Revised 800(3) repair, remodeling and maintenance activities to include transportation facilities
- F • Updates to the checklist to clarify traffic impacts

Recommended Changes in Proposed Rule Language

WSDOT's specific recommendations to improve the implementation of the proposed rule are below.

WAC 197-11-860 Department of Transportation

WSDOT requests that Ecology clarify that the new exemption (currently in 860) also includes other agencies when issuing permits on an exempt WSDOT project. This may require a move from 860 to another section in order to clarify the exemption covers other agencies' permitting actions. I have proposed the following wording as a suggestion to achieve that clarity.

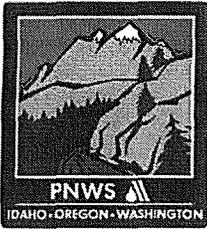
6 The following activities pertaining to existing state transportation facilities, including any applicable state or local agency permits or approvals, shall be categorically exempt: The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), ~~that is in operation,~~ as long as the action: (a) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements, or both; and (b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

Also please note in the above that we recommend striking the phrase "that is in operation" and add "existing" to the first line for clarity.

Checklist Question 14 b.

There appears to be a minor typographical error: In the checklist, (page 39 of the proposed WAC changes), should read "Is site or affected geographic area currently served by public transit?"

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Washington Water Utilities Council

October 2, 2013

Fran Sant
Department of Ecology
SEPA Rule Coordinator
PO Box 47600
Olympia, WA 98504-7600

[Sent via email to: fsan461@ecy.wa.gov]

RE: SEPA Categorical Exemption Rulemaking

Dear Fran:

The Washington Water Utilities Council (WWUC) is a coalition of water and wastewater utilities, including cities, sewer-water districts, public utility districts, and mutual, cooperative, and privately-owned systems. The WWUC has been following Ecology's SEPA categorical exemption rulemaking, and would like to express our appreciation for Ecology's efforts.

The WWUC specifically supports the proposal in Ecology's discussion draft to modify the existing categorical exemption for the installation or construction of storm water, water, and wastewater pipes from 8 inch pipes to 12 inch pipes. (Proposed WAC 197-11-800(23)). The WWUC and its members support this revision because it will streamline the process for installing and maintaining basic infrastructure at a reduced cost, but without compromising environmental protections. The rationale for modifying this exemption is explained in greater detail in the attached memorandum prepared by the WWUC.

A

If you have any further questions, please contact Bob Pancoast at 206.819.4215.

Sincerely,

Bob Pancoast, Chair
WWUC Issues and Priorities Committee

Enc.

Washington Water Utilities Council

Proposal for SEPA Categorical Exemption Revision

Introduction

SEPA is a state policy enacted in 1971 that requires all state and local agencies to review and disclose the likely environmental consequences, to both the natural and the built environment, of a proposal before it is approved or denied. Many new laws (Growth Management Act, Coordinated Water System Planning Act, etc.) and procedures have been implemented since SEPA was first adopted. In 2ESSB 6406, Section 301), the 2012 Legislature directed the Department of Ecology to update the SEPA rules. The first phase of this process will focus on two specific topics:

1. Thresholds triggering SEPA review for minor construction projects in Washington Administrative Code (WAC) 197-11-800(1) and (23)(c); and,
2. The SEPA checklist in WAC 197-11-960.

SB 6406 specifically directs Ecology to create an advisory committee to assist with the SEPA rule updates. Ecology envisions this being a small group of individuals with in-depth experience with implementing SEPA. As directed by the bill, the committee will be drawn from the wide range of interests affected by SEPA. Ecology will look to the committee members to help us keep interested associations and organizations informed during the 18-month update.

When completed, this will clarify the conditions under which a minor construction project will require SEPA review. Ecology anticipates adopting these rule amendments by December 31, 2012. The legislation also directs Ecology to follow this initial rule making with a more comprehensive update to the SEPA rule with amendments, to be completed by December 31, 2013.

Washington water utilities have expressed a desire for many years to increase the categorical SEPA exemption from the current 8-inch or less pipeline size. The SB 6406 process provides an opportunity for WWUC to promote increasing the categorical exemption from the current 8-inches or less to 12-inches or less. The proposed WWUC revisions to WAC 197-11-800 are shown below.

Proposed Change to Categorical Exemptions WAC 197-11-800

Categorical exemptions.

(23) Utilities. The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

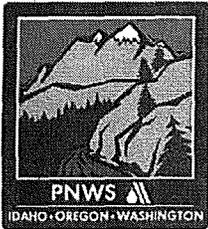
(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines ~~eight~~ twelve inches or less in diameter.

Rationale

- There is no significant difference in environmental impacts between installation of 8-inch pipeline and 12-inch pipeline. Similar, if not identical, sized excavation and support equipment are used for the installation of both sizes of pipeline. While the specific trench excavation is required to be several inches wider and deeper for a 12-inch pipeline compared to an 8-inch pipeline, this small increase is inconsequential in the overall real width of the impacted area which is determined by the operational width of the machinery and the adjacent cast spoil pile of soil excavated from and returned to the trench. Reclamation and repaving are identical for both size pipelines. Therefore, the final area disturbed does not change as a result of an increase in pipeline from 8-inch to 12-inch.
- The existing 8-inch categorical exemption is overly burdensome to the Public (local government taxpayers and public utility ratepayers) and does not provide any realized additional environmental benefit for the additional cost of SEPA determinations for pipelines between 8-inch and 12-inches in diameter.
- Typically increased pipeline size installations are usually required to meet fire flow requirements for in-structure fire sprinkler systems and fire hydrants, not water supply demand. Recent proposed legislation and proposals to the State Building Code Council have promoted the use of indoor sprinkler systems for all new residential housing. In addition, many local governments have revised their fire protection policies and support the installation of adequate fire protection both within and outside of the UGA. Restricting the categorical exemption to 8-inches is an unnecessary and burdensome restriction on ensuring adequate fire protection for human health.
- Increasing the categorical exemption for storm water, water, and sewer lines from eight inches or less to twelve inches or less will bring the SEPA exemptions more in line with SEPA exemptions for other utilities. For example, natural gas utilities are categorically exempt for ALL distribution mains and many of these natural gas systems have mains up to 16-inches in diameter. The installation of all communication lines including cable TV and underground electric utility transmission lines are ALL categorically exempt. Often these communication and electric lines are constructed in a joint trench that may be 4 to 5 feet in width. The impacted footprint of these other utilities underground operations is equal to or greater than the installation of a 12-inch pipeline. Categorical exemptions should be brought to a parity for all utilities by increasing the categorical exemption for storm water, water and sewer lines to twelve inches or less.

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Washington Water Utilities Council

February 2, 2014

Fran Sant
Department of Ecology
SEPA Rule Coordinator
PO Box 47600
Olympia, WA 98504-7600

[Sent via email to: fsan461@ecy.wa.gov]

RE: Comments on SEPA Categorical Exemption Rulemaking

Dear Fran:

The Washington Water Utilities Council (WWUC) is a coalition of water and wastewater utilities, including cities, sewer-water districts, public utility districts, and mutual, cooperative, and privately-owned systems. The WWUC has been following Ecology's SEPA categorical exemption rulemaking, and would like to express our appreciation for Ecology's efforts.

The WWUC specifically supports the revision to modify the existing categorical exemption for the installation or construction of storm water, water, and wastewater pipes from 8 inch pipes to 12 inch pipes. (Proposed WAC 197-11-800(23)). The WWUC and its members support this revision because it will streamline the process for installing and maintaining basic infrastructure at a reduced cost, but without compromising environmental protections. There is no significant difference in environmental impacts between installation of 8-inch pipeline and 12-inch pipeline. The existing 8-inch categorical exemption is overly burdensome to the Public (local government taxpayers and public utility ratepayers) and does not provide any realized additional environmental benefit for the additional cost of SEPA determinations for pipelines between 8-inch and 12-inches in diameter.

A

If you have any further questions, please contact Bob Pancoast at 206.819.4215.

Sincerely,

Bob Pancoast, Chair
WWUC Issues and Priorities Committee

#391

Sant, Fran (ECY)

From: Regan [fidalgoroost@gmail.com]
Sent: Wednesday, January 29, 2014 3:18 PM
To: ECY RE SEPA Rule Making
Subject: comments on SEPA rulemaking

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Mixed Comments

I appreciate the opportunity to provide the following comments on the draft SEPA regulations.

- A 1. WAC 197-11-800-2. I like the new minor construction categorical exemption for accessory solar energy generation equipment – it is well-worded.
- B 2. WAC-197-11-610. It makes sense to accept documented NEPA categorical exclusions when appropriate – several federal agencies document CXs quite extensively.
- C 3. WAC 197-11-830. The DNR only includes categorical exemptions for logging and rock quarries, yet they are responsible for many of the tidelands and marine waters in the state. Is there not a single categorical exemption that would or should apply? When I compare the list of the exemptions that Fish & Wildlife has for wildland management, it is surprising that DNR has none for similar activities.
I know that DNR is active in a number of admirable environmentally protective activities in my area (Fidalgo Island), such as replanting shade trees along beaches, removing creosote logs, coordinating with local volunteers to collect and monitor surf smelt eggs on local beaches. I see no categorical exemptions for any of these types of activities or anything involving marine habitat; *shouldn't there be?* Presumably if staff members are complying with SEPA requirements, categorical exemptions would simplify their jobs without causing environmental harm. Obviously I'm not talking about construction activities.
- D 4. WAC-197-11-830-9. This one seems far too contentious and potentially environmentally injurious for a categorical exemption. To be clear, I suggest the following clarification: "Sales of rock from public lands involving existing rock pits less than three acres in size that are used for activities regulated under a forest practices application that is exempt under RCW 43.21C.037 ~~and sales of rock from public lands for uses not associated with timber management...~~"
Considering that DNR is responsible for managing some of our most valuable marine islands and habitats (which I note are not 'associated with timber management'), this categorical exemption seems far too broad and very poorly worded. Are you planning to add a rock quarry on the upland portion of one of the smaller San Juan Islands under a categorical exemption? If you insist on this exemption, I suggest at the very least you also address the establishment of rock quarries. After all the news about the proposed privately-owned commercial operation on Maury Island a few years ago, this might be EIS territory.
- E 5. This comment is the one I feel is most important and is likely to be difficult to address. Under the Shoreline Management Act, installation of private marine bulkheads apparently proceeds without a SEPA review. According to a 11/4/2013 Crosscut newspaper article, about 26% of Puget Sound shorelines are already armored, and a mile of riprap and concrete are added annually, most on private property. The article quotes Randy Carman, who manages DFW's near-shore section and monitors the spread of bulkheads: "It's really death by a thousand cuts."
There is a pretty clear connection – riprap and bulkheads lead to lack of natural spawning beaches, which leads to lack of forage fish, which leads to lack of marine birds and salmon, which leads to lack of harbor porpoises,

Dall's porpoises, and orcas. Not only is the health of the Sound clearly at risk, but so is our Washington economy that relies on fishing and tourism.

If this "death by a thousand cuts" doesn't point to the desperate need for accurate SEPA reviews, I don't know what ever would. The Shoreline Management Act is intended to protect shoreline natural resources, including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life... against adverse effects." "All allowed uses are required to mitigate adverse environmental impacts to the maximum extent feasible and preserve the natural character and aesthetics of the shoreline." The master program provisions aren't cutting it. SEPA reviews are needed before installing all marine bulkheads and riprap; the cumulative effects must be considered – they obviously aren't being considered now.

Thank you for the opportunity to comment, I look forward to reviewing the revisions.

Ms. Regan Weeks
13187 Thompson Rd
Anacortes WA 98221

fidalgoost@gmail.com

#40

To: Fran Sant and Brenden McFarland, Washington State Department of Ecology, Shorelands and Environmental Assistance Program

From: Gaythia Weis, Bellingham

Re: Comments regarding CR102 – Proposed SEPA Rule Making

As President of my local Neighborhood Association, (Puget, in Bellingham), I believe that the Washington State Environmental Policy Act plays an important role in safeguarding important environmental resources, by providing for both public transparency and lead agency review. I urge you to reject the proposed SEPA rulemaking changes.

The process for filling out a SEPA checklist is not onerous, nor is the City of Bellingham or Whatcom County process of issuing even determinations of non-significance difficult or unduly burdensome for these local agencies.

In my role as Puget Neighborhood Association President I have benefited from the SEPA notification process. Even SEPA letters of non-significance and the preceding checklists provide information which I can use to keep my neighbors informed, allow their voices to be heard, and to help them successfully navigate upcoming changes.

I like the SEPA description I found online here:

State Environmental Policy Act (SEPA)

*The **STATE ENVIRONMENTAL POLICY ACT (SEPA)** provides a medium for citizens of the state to protect their environment. The law (Chapter 43.21C RCW) requires state and local governments within the state to:*

- *"**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;" and*
- ***ENSURE** "...environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations..."*
- ***PROVIDE** a forum for the public and other government agencies to comment on the proposal so that changes may be made during the planning phase before construction begins, to reduce impacts. When significant impacts have been identified a full review of all affected elements of our environment must be completed. This is called an Environmental Impact Statement.*

<http://wdfw.wa.gov/licensing/sepa/>

I think that the above definition demonstrates the vital role that SEPA plays in our democratic governance process. This process should be enhanced, not diminished.

Highlighting a few of the areas which I believe to be particularly important;

1. Bodies covered by water.

In a neighborhood situation, increases in impervious surfaces on wetlands area, and decreases in absorptive capacity create burdens and even dangers on surrounding, existing properties whose residents may now be faced with flooding in storms. Public notification of upcoming development is essential, and so is outside expert and impartial environmental review.

A
Buffers should be included in the lands covered by water definition, and SEPA review of these areas should be required. In these SEPA revisions, Ecology has limited land covered by water; excluding adjacent land or buffers above the ordinary high water mark. They note that the definition of lands covered by water is relevant to certain categorical exemptions— certain exemptions do not apply if the project is on lands covered by water. Eliminating buffers is ecologically unsound. Buffers around areas covered by water create significant habitat for species critical to those species residing within the water body. Water levels are obviously frequently above the mean. Events such as storms that generate higher water levels may, especially in the absence of buffers, potentially create environmental problems due to storm water runoff into surrounding areas. Additionally, groundwater recharge may be limited, as the runoff occurs more quickly. While we are on city water, not wells, the large trees in our neighborhood and frequently surrounding our homes are dependent on groundwater, and their continuing health is important.

- B
2. Culverts. Our neighborhood features a small stream, Lincoln Creek. While at this point, some stretches of this stream are under parking lots, over time this situation may be rectified and some of those stretches “daylighted”. It would be a shame if culverts then inhibited use by fish. We should be proactive. All new culverts should fall under SEPA requirements. Replacements should be based on environmental impacts and focused on meeting the terms of the legal judgment described below. As noted below, while city or county level culverts do not currently fall under this mandate, guidance is provided for future action in this regard. The SEPA process will provide a record to ensure that these necessary upgrades are taking place and where they may be needed in the future. The costs of creating such records for culverts where a SEPA determination of non-significance can be made are minor relative to the gains of complete documentary evidence as to where culverts meet the new standards.

<http://www.jdsupra.com/legalnews/us-district-court-judge-orders-washingto-87205/>

“Federal district court Judge Ricardo Martinez has issued a permanent injunction requiring the Washington State Department of Transportation (“WSDOT”), the Washington State Department of Natural Resources, and the Washington State Parks and Recreation Commission to remove barriers to fish

passage in hundreds of state-highway culverts over the next 17 years. The March 29 decision ("Culvert case") is the latest in a legal case dating back to the 1970s, in which Native American tribes in Washington state have sought to enforce their treaty fishing rights. While the decision does not apply to county roads or other barriers that might exist, it provides important guidance for future actions that could broaden the ruling's application beyond state-owned highway culverts."

- C 3. Storage tanks. While my immediate neighborhood is not agricultural or industrial, I believe that the experiences of the recent West Virginia spill ought to be a cautionary tale for all of us. It is important to note that the West Virginia 4-methylcyclohexanemethanol (MCHM) spill was about 10,000 gallons and that West Virginia is now working to increase storage tank regulation and monitoring. It would be very concerning if Washington State moved in the opposite direction.
<http://www.wvgazette.com/News/201401280050>

The exemption threshold for installation or removal of above or below storage tanks on agricultural and industrial lands should not be increased from 10,000 gallons to 60,000 gallons.

- D 4. Variances. This is a key area where hopes for development may entice local governmental agencies into decision that may not take the needs of the environment and current residents into account. Strong notification and review processes are crucial. Variances are significant deviations from standard code and requests for variances ought to be accompanied by a SEPA checklist and followed up with a determination of environmental significance.

E 5. Dredging maintenance exemption. While again not directly related to my own neighborhood, this ought to be of concern for all of us who border the Salish Sea. And also, this could impact our water source, Lake Whatcom. Having SEPA letters of non-significance on file in such individual instances is a good way to discover those instances in which a key habitat may be involved. Dredging that seems minor if one property owner does it may not be so if many do so, or if one property makes many smaller steps rather than one big one. The SEPA process also increases accountability and creates a record that will enable future determination of overall ecological impacts.

F 6. Bulkheads For all of us, global climate change, and sea level rise are leading to with rising awareness of the ecological significance and sensitivity of intertidal and near shore environments. This makes bulkhead construction a matter of increasing concern. Lakeshore bulkheads, as at our water source, Lake Whatcom, also can diminish water quality compared to "soft shore" installations, and again, deserve greater public awareness. This is an area where both public review and expert environmental evaluation are important.

G 7. Minor construction. Again, construction that seems minor if one property owner does it may not be so if many do so, or if one property makes many smaller steps rather than one big one. Having a SEPA letter of non-significance on file in such individual instances is a good way to increase accountability.

8. Mixed use projects. Exempting projects that have been broken into smaller segments encourages such piece-mealing development. This can lead to poor overall planning and again, restricts the ability for big picture, ecosystem analyses.

SEPA Strengthens Good Governance: Completion of the SEPA checklist and the review of that checklist by lead agencies are key mechanisms for making participants mindful of environmental impacts. Studies that may be required by lead agencies serve to bring more information to light. These preliminary processes, which can lead to a SEPA determination of non-significance, or further requirements for an Environmental Impact Statement (EIS) serve as important components of our democratic representative government public process.

SEPA Strengthens Public Awareness and Oversight: Restricting SEPA's scope through these proposed rule changes, would diminish the public's ability to become aware of and respond to projects with potential adverse in their neighborhoods, communities or regions. SEPA plays a vital role as the review process that creates a system for awareness and analysis of potential impacts before any action takes place, that examines the cumulative impacts of a project, and that helps to ensure the public is notified of projects before they commence. SEPA documentation, including decisions of non-significance create a record that can be returned to by both the public and government agencies for future review and improved decision-making. While other permitting processes do exist, SEPA remains a vital part of the overall regulatory system, and is not an unnecessary overlay.

Sincerely,

Gaythia R. Weis

1713 Edwards Ct.

Bellingham WA 98229

Appendix B: Transcripts from public hearings.

SEPA Rulemaking - Hearing Transcript

Hearing held by the Department of Ecology on January 29, 2014 at 1:30 pm.

Hello, I am Bari Schreiner, hearing's officer for this hearing.

Today we are to conduct a public hearing on the proposed amendments for Chapter 197-11 WAC – SEPA Rules (State Environmental Policy Act) and proposed repeal of Chapter 173-806 WAC Model Ordinance and the repeal of Chapter 197-06 WAC Public Records.

Let the record show it's 1:50 on January 29, 2014 and this hearing is being held at:

Department of Ecology
300 Desmond Drive
Lacey, WA 98504

Participants are also able to call-in using the phone number: 1-800-704-9804 – Pin number: 8386377# (pound).

Legal notices of this hearing were published in the Washington State Register:

- Washington State Register Number: 14-01-078 filed December 16, 2014
- Email notices were sent to approximately 800 interested people,
- And a news release was issued on December 20, 2013 and January 17, 2014.

At this time I show that nobody wants to provide testimony. I will check one more time that nobody has changed their mind.

Ok so let the record show Ecology we held the hearing on the rule proposal and nobody indicated that they wanted to provide oral testimony. If you would like to send Ecology written comments, please remember they are due February 5, 2014. You need to send them to:

Fran Sant
Department of Ecology
PO BOX 47703
Olympia, WA 98504
e-mail them to [separulemaking\(all one word\)@ecy.wa.gov](mailto:separulemaking@ecy.wa.gov)
Or you could fax them to (360)407-6904

Um... If you participated on the phone and you want to be added to an email list please send your contact information, to um..email it to separulemaking@ecy.wa.gov.

Well we did.... We are holding a second hearing this evening so if there is any testimony at that hearing and all written comments received um..no later than February 5, 2014 will be part of the official hearing record for this proposal.

Ecology will send notice about the Concise Explanatory Statement or the CES publication to:

Everyone that provides comments or oral testimony um..and has also given us contact information so we can also send them the notice

Everyone that signed in for today's hearing that provided an email address and other interested parties on the agencies mailing lists for this rulemaking.

The CES will among other things, contain the agency's response to questions and issues of concern that were submitted during the public comment period. If you want to receive a copy and you are not sure we have your contact information um.. please let one of the staff or you could email at separulemaking@ecy.wa.gov

So as we said the next step is to um...review the all comments and make a determination about whether to adopt the rule. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision.

Adoption is currently scheduled for no earlier than March, 2014. If the proposed rule should be adopted that and gets filed with the Code Reviser, it will go into effect 31 days after that.

If we can be of any other help to you today please let us know.

Thank you very much for coming and let the record show that this hearing is adjourned at 1:55 – thank you.

SEPA Rulemaking - Hearing Transcript

Hearing held by the Department of Ecology on January 29, 2014 at 6:30 pm.

I'm Sarah Lukas, hearing's officer for the hearing. Today we are here to conduct a hearing on the proposed amendments for Chapter 197-11 WAC – SEPA Rules (State Environmental Policy Act) that are proposed repealed and proposed repeal of Chapter 173-806 WAC Model Ordinance and Chapter 197-06 WAC Public Records.

Let the record show it's is 6:49 on **January 29, 2014** and this hearing is being held at:

The Department of Ecology
300 Desmond Drive
Lacey, WA 98504

Participants are also able to call-in using the phone number: 1-800-704-9804 – Pin number: 8386377#(pound)

Legal notices of this hearing were published in the **Washington State Register**:

- Washington State Register Number: 14-01-078 filed December 16, 2014
- Email notices were sent to approximately 800 interested people,
- And a news release was issued on December 30th oh-uh December 20th, 2013 and January 17th, 2014

Let the record show that about three people no 2 people attended this public hearing and one person attended by phone. No one wanted to provide oral testimony.

You can submit any written comments please, please remember they are due by:

February 5th, 2014

Send them to:

Fran Sant
Department of Ecology
PO BOX 47703
Olympia, WA 98504 or by e-mail separulemaking@ecy.wa.gov or you can also fax them to
(360)407-6904

If you provided comments on the phone, we do not have your contact information. If you would like to give your contact information to receive the Concise Explanatory Statement Please send a email to separulemaking@ecy.wa.gov and indicate in the message that you'd, you would like to be included in the Concise Explanatory Statement publication.

All testimony received at this hearing earlier today, along with all written comments postmarked no later than **February 5th, 2014** 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 testimony on this rule proposal and submitted contact information.

Everyone that signed in for today's hearing that provided an email address or mailing address.

And other interested parties on the agencies mailing lists for this rule.

The CES will contain the agency's response to questions and issues of concern that were submitted during the public comment period. If you would like to receive a copy but did not give us your contact information, please let one of the staff know at this hearing now, or contact Fran Sant at the contact information provided for submitting contacts/

The next step is to review the comments and make a determination whether to adopt the rule proposal. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision.

Adoption is currently scheduled for no earlier than March, 2014. If the proposed rule should be adopted that day and filed with the Code Reviser, it will go into effect 31 days later.

If we can be of any further help to you, please do not hesitate to ask or you can contact Fran Sant if you have other questions.

On behalf of the Department of Ecology, thank you for attending by phone and in person. I appreciate your cooperation and courtesy. Let the record show that this hearing is adjourned at 6:53 pm.

Appendix C: Citation List

Chapter 197-11 WAC State Environmental Policy Act (SEPA) Rules

Chapter 173-806 WAC SEPA Model Ordinance

Chapter 197-06 WAC Public Records

AO # 13-01

- Revised Code of Washington (RCW) 43.21C.110 – Content of state environmental policy act rules.
- Chapter 36.70A RCW – Growth Management – planning by selected counties and cities.
- Chapter 76.09 RCW – Forest Practices Act
- Title 222 WAC – Forest Practices Board
- Chapter 90.58 RCW – Shoreline Management Act of 1971
- SEPA Register data found online at:
<https://fortress.wa.gov/ecy/separ/Register/ShowRegisterTable.aspx>
- The Washington State Environmental Policy Act, A Legal and Policy Analysis, Richard L. Settle