

PETITION FOR ADOPTION, AMENDMENT, OR REPEAL
OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)

CHAPTER 173-517 WAC

PETITIONER'S NAME **Dennis A Schultz, President, Olympic Stewardship Foundation**

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CITY **Port Townsend** STATE **WA** ZIP CODE **98368**

AGENCY RESPONSIBLE FOR ADMINISTERING THE RULE
Department of Ecology

1. NEW: I am requesting that a new WAC be developed.
I believe a new rule should be developed.
The subject of this rule is:
The rule will affect the following people:
The need for the rule is:

2. AMEND: I am requesting a change to existing WAC:

3. REPEAL: I am requesting existing WAC be removed. **YES**

CHAPTER 173-517 WAC

I believe this rule should be changed or repealed because (check one or more):

- It does not do what it was intended to do. **YES**
- It imposes unreasonable costs. **YES**
- It is applied differently to public and private parties.
- It is not clear
- It is no longer needed.
- It is not authorized. The agency has no authority to make this rule.
- It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if known:
- It duplicates another federal, state or local law or rule. Please list number of the duplicate law or rule, if known:
- Other (please explain): **The SMALL BUSINESS ECONOMIC IMPACT ANALYSIS does not meet the criteria of RCW 19.85.040 and the Findings in RCW 19.85.020. SEE ATTACHED SHEETS (7 pages) for a detailed discussion and excerpts from the RCW's .**

PETITIONER'S SIGNATURE

DATE

Dennis A Schultz
President,
Olympic Stewardship Foundation

December 29, 2009

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Discussion

This analysis uses the period from 1996 to mid 2006 as a base for making projections. In those years, large developments such as Kala Point and the Port Ludlow Master planned Resort were built and largely completed.

- Since that time no such developments have been planned or started.
- Building permits have dropped from over 400 in 2007 to 200 in 2008, to under 70 in 2009.
- Most of the jobs and companies in construction and real estate have disappeared and the workers are unemployed or left the area.
- This rule restricting water, particularly in those rural areas where there is no real water shortage, will depress real estate values as potential buyers realize that they will not be able to live the rural lifestyle they are looking for. The equity loss for those with buildable properties that will not receive water in the Chimacum basin is on the order of at least \$40,000,000.
- The long time impact of this rule on property tax should be discussed in this section.
- The drop to an average of 45 new homes a year from the current 70, will be an even greater loss of jobs and income in the construction industry – not a benefit
- What about the approximately 1,000 current construction workers currently in this county? Will they be put out of work, or expected to go elsewhere?

This analysis assumes that if the Rule is not adopted, DOE will close the watershed to all new water uses. If this happens, it will drive many businesses out of the county or force them to shut down. It does not legitimately compare the benefit or costs of the rule against current conditions, or any other alternatives, but rather against conditions that it knows would be ruinous to the county and its residents, totally impractical and politically impossible if they were attempted. This is using the WAC and DOE's administrative powers as administrative blackmail: 'Do it our way or we will ruin you economically!'

The \$25,000,000 projected labor income (Table 2) calculates out to about a median family income of about \$30,000 for the 819 new jobs that this rule will create. This is defined by the federal government as 'poverty level income' not family supporting jobs! These families can not afford to live in this county. With a current unemployment rate over 10%, this county does not need this kind of help. This is not a benefit!

The \$35,000,000 benefit for new home construction is based on the alternative that absolutely no new homes will be constructed between 2009 and 2025, i.e. DOE will close the watershed to all new water uses and put a freeze on all new construction. Even if this rule is put to use, it will cause a dramatic decrease in the building industry and jobs. This \$35,000,000 represents a major decrease in business income, not a benefit. The

current building rate of 70 new homes a year represents \$56,000,000 in income.

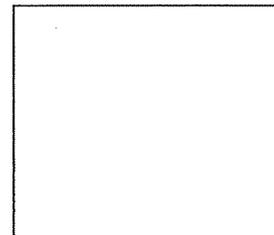
Most of the industrial areas in Table 2 do not exist in this county. The NAICS based model used for this projection is not applicable to Jefferson County. 'The OFM 2002 Washington Input-Output Model is used to predict a picture of the state's economic structure including inter-industry linkages and the economy's dependence on U.S. domestic and international markets' (from OFM website). It is not meant to be used to predict the economic structure of a rural county. It does not have an intrastate industrial geographic location element. Many of the potential jobs in table 2 do not exist within a reasonable distance from Jefferson County. If this model is the basis for the benefits analysis, it must be validated by some other justified method. Specifically, it ignored most of the small businesses in WRIA17. Almost all of the small businesses in the area are 'Home Based' or 'Cottage Industries' as defined in the Jefferson County Unified Development Code. Jefferson County has no data about these businesses as it does not require a business license for them. Owners of these businesses report their income on IRS Form 1040. None of this business is found in the IRS SIC Code reporting data. The list of businesses used by Tryg Hoff is a very partial list full of errors. Most, if not all of the businesses were never contacted by Hoff to validate his projections. A number of these businesses no longer exist. Some of them cannot expand because of code limitations and some are retiree businesses with no desire to expand. And yet, he made large projections for their growth (to grow from a part time helper to a range of 4 to 9 new employees). Jefferson County and City of Port Townsend codes restrict the number of employees in these types of businesses. The section 'Expected Jobs Created or Lost' and 'Table 2' are meaningless and are based on erroneous data and analysis. This must be redone!

The problem with this rule is not the incremental cost of doing business. It is that it will keep businesses from locating here. There is almost no land zoned for industrial or commercial use in the county areas. There is about 740 acres in total zoned for these uses and most of that is already in use or under severe development restrictions.

DOE's answer to the water restrictions is: buy property with water rights, or buy water rights to transfer, or pay for mitigation. In reality, agricultural land with water rights rarely comes on the market, transfer of water rights won't allow transferring water from basin to basin, and there are no water mitigation projects that users can buy into.

The impact of this rule has to be reanalyzed. If implemented, it will be a financial disaster for the county in a few years.

What we really need is a better plan to manage the water we have, and to allocate it to the users that need it. Possibly a 'water board', or some such authority, that can determine where and how water is currently being used, who needs water, and, that can act on water allocation in a timely manner is what we need. The proposed 'one size meets all' rule applied to a number of sub-basins with very different characteristics is a very poor way to manage our water resources. This rule is just a rewrite of the rule proposed in 2005. There has to be a better way to manage our



water.

In summary:

- It is based on 'old data' not current conditions.
- It only compares the effects of the rule vs a moratorium on all new construction and development for 16 years. No alternative approaches are analyzed.
- It shows a major loss of jobs, not new jobs being created.
- It shows a major loss in construction income.
- It uses an inappropriate model and data to predict growth.

It does not solve our water management needs here in Jefferson County.

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RCW's that this rule does not meet the criteria of:

(Pertinent sections are underlined and comments are in red)

This rule does not meet the findings in RCW19.85.020, in particular (1),(7), (9) and (10):

RCW 19.85.020
Definitions.

Findings -- 2007 c 239: "The legislature finds that:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

This rule will discourage the growth of new business - it will place this area in an uncompetitive position, compared to other counties.

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

See (1)

(9) Alternative regulatory approaches which do not conflict with the state objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;

No alternative approaches have been proposed.

(10) The process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules." [2007 c 239 § 1.]

The prime industries in this area, Agriculture, Aquaculture, Forestry, and Mining were not involved in drawing up this rule.

This Small Business Economic Impact Analysis (SBEIS), Chapter 173-517, does not meet the criteria of RCW 19.85.040(1), (2) and (3):

RCW 19.85.040

Small business economic impact statement — Purpose — Contents.

(1) A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, professional services, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

This rule will cause a significant loss in construction sales and in real estate values.

(2) A small business economic impact statement must also include:

(a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(2), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(2);

This rule does not reduce any of the costs for small businesses. It will increase the costs for new businesses to locate here.

(d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.

It ignores the existence of an existing construction industry workforce, many of whom will not have work under the planned build out rate of 45 homes a year.

(3) To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW 34.05.310(2) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business.

Other than public meetings and press notices, it appears that no effort was made to contact local businesses or survey their future plans to determine the impact of this rule.

It does not meet the criteria of RCW 34.05.325 (6)(a)(iii), (responses such as: 'DOE disagrees, etc.' are not acceptable).

RCW 34.05.325

Public participation — Concise explanatory statement.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

Many of Ecology's answers to the questions in the comments are of the nature: 'DOE disagrees', and did not respond to the questions asked.

It does not meet the requirements of the 'Cost/Benefit Analysis' as required in RCW 34.05.328 (1)(d) and (1)(e). Or the findings with respect to The Regulatory Reform Act of 1995:

RCW 34.05.328

Significant legislative rules, other selected rules.

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

The benefits claimed are over exaggerated and costs minimized or ignored.

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

No alternative solutions have been presented other than a moratorium on all new development.

Findings -- Short title -- Intent -- 1995 c 403: "(1) The legislature finds that:

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

This rule will definitely have a negative impact on the local economy.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth.

This rule does not meet the goal of this law