

SEPA Advisory Committee Meeting Notes March 14, 2013

Welcome and Introductions

Neil Aaland, Facilitator welcomed the committee and observers. Introductions were made around the room and on the phone. He reviewed the agenda and made several preliminary comments:

- The first several meetings of 2013 have focused on getting input from the Advisory Committee
- Given the short timeframe for preparing a draft rule, it seems time to start providing some language to react to
- After today's meeting, Ecology will start providing some draft rule language or policies to focus the discussion at each meeting
- These will be based on the discussion here, and Ecology will continue to revise them based on these meetings
- By early August, the intention is to have the draft rule ready for filing

Agricultural/Natural Resources: Presentation by Allen Rozema and Pamela Krueger on agriculture/natural resources issues related to the environmental checklist

Allen discussed the handouts provided to the Advisory Committee. He mentioned that resources continue to be lost, and SEPA is a tool to address that loss. Pamela said the issues are reflected in the proposed revisions to the environmental checklist (one of the two handouts). The changes focus on the relationship to the Growth Management Act. Pamela mentioned she did not have time to confer with the state caucus, so these changes reflect only her thoughts.

Discussion included the following points/questions:

- Allen said the proposed changes relied on Ecology's guidance documents
- The new questions would typically be addressed at the comprehensive plan level; are these really project level questions?
 - SEPA is intended to catch things that might not have been addressed at the plan level
- Farmworker housing is exempt from local permits – so what is the intent of the new question?
 - The issue is removal of farmworker housing
 - Some areas are prohibiting farmworker housing due to density, it is moving to urban areas
- Questions on checklist are designed to get information that applicants know; answers to these new questions would likely be at the plan level and most applicants won't know this information
 - Checklist is designed to get information that applicants know, then lead agencies have to follow up
 - A lot of information is available at plan stage, but things like rezones happen after the planning stage
- Checklist educates the public on SEPA issues, important to have this information
- WDFW had a few detailed questions of Pamela as the state agency lead, she'll follow up with them
- Shouldn't resource lands also be included here?
- Should consider thinking about the checklist in terms of different modules that could be included as applicable

- Nervous about adding new specific questions
- Like the question about agricultural conversion
- What about mineral resource lands?
- Did the 6082 legislation mention anything other than agriculture?
 - Answer: No; specific direction is "...consideration of potential impacts to agricultural lands of long-term commercial significance, as that term is used in chapter 36.70A RCW..."

Other environmental checklist topics

- There is a perception that the checklist equals SEPA review; it's just a tool
 - Checklist is the beginning of review
- Options for addressing the overall checklist include:
 - Removing from rule and having it in guidance
 - Leave it in rule as is
 - Leave it in rule and amend
- Smaller/rural local governments look at the checklist, and if nothing pops out that is their review
- The checklist is important to the public
- Questions should be designed for the people filling them out
 - This may not be realistic, as it has wide applicability
- The checklist should remain as a part of state law (remain as WAC)
- Checklist is information for affected people; more information should be included on the type of permit needed in a specific jurisdiction (e.g. type 1, type 2)
- CEQ has just published new guidance on NEPA that may be helpful
- May be an opportunity to "plain talk", or simplify, the checklist
- Losing uniformity is a concern, having to deal with many jurisdictions with different checklists
- Fundamental point is that the checklist is the start; the proposed action is the agency's action
- Apprehensive about making the checklist "easier", might lose information
 - Who is the customer?
- Exciting to think about a different way; perhaps Harry Reinert can help think this through
- Need some type of checklist, some way to get information from a checklist
 - Perhaps we need something like a NEPA FONSI document

Cultural/Historic Preservation: Discuss information provided at last meeting by cultural/historic resources members

Tom Clingman, Ecology, provided a brief summary of recent action on HB 1809, which would have done two things:

- Make decisions on certain project and non-project actions subject to the cultural resource requirements of the State Environmental Policy Act environmental checklist.
- Make decisions exempt from the cultural resource requirements if the branch of government has: (1) a data-sharing agreement with the Department of Archaeology and Historic Preservation; (2) either a local ordinance protecting archaeological and historic properties or a cultural resource management plan; and (3) a written consultation agreement approved by affected federally recognized tribes.

Tom said the bill is mostly dead at this point. He suggested to the sponsor, Rep. McCoy, that the points might end up as part of the current Advisory Committee process. Some believe the term "notice" around this topic includes SEPA substantive authority.

Discussion:

- Was the opposition to 1809 more about process or substance?
- One person thought both
- When cultural resources came up during phase 1, it was said that proponents should go to the legislature, so this is a natural outgrowth of that advice
- If legislature creates a new exception here, why wouldn't advocates of other impacted areas ask for an exception?
- Did Rep. McCoy discuss the idea of a direct regulatory mechanism instead of through SEPA?
- Tom pointed out that the component of requiring a written agreement with affected tribes to be exempt may not work – some tribes don't enter into such agreements
- It's an exception to exemptions, as lands covered by water
- Is it authority to mitigate or an allowance to mitigate?
- Allyson Brooks, DAHP Director, said it's trying to prevent lawsuits based on emotions; all they want is the database to be checked
- Pamela suggested that 197-11-335 talks about additional information, perhaps it could say that unless agencies have checked with DAHP they don't have sufficient information to make their threshold determination
- Mary Rossi reminded that Pat Schneider made a proposal regarding notifications in a conference call last August, that should be reviewed
 - She also commented that the issue they struggle with is timing and analysis
- Can DAHP handle the extra volume if they start getting a lot more notifications
 - DAHP will take care of the volume and will do the checks that they can; but tribes often don't want to share the information with DAHP
- Concern about the perceived lack of interest in data sharing agreements with DAHP
- Pamela will write up her idea
 - Nothing is in the rule regarding how tribal consultation works; do we need to provide direction for SEPA related tribal consultation?
 - DAHP prepared a map of tribes interested in consultation for oil spill issues, something similar might be able to be done here
- Gerald handed out an idea about notice given for excavation

GMA/SEPA integration. Discuss revised proposal by counties as follow-up to last meeting

Clay White reviewed his summary of the data on Notices of Application.

- Some questions about assumptions, e.g. notice for short plats under RCW 58.17
 - But the proposal still might work
- Claudia pointed out anytime something is categorically exempt, it no longer requires notice under RCW 36.70B (Local Project Review Act)

Harry Reinert reviewed his revised proposal from last meeting. Cities generally support it. He wants to use the SEPA register and turn it into something that can also provide notice under this proposal. Notices of Application may be included; perhaps require all GMA jurisdictions to file their NOAs on the register. He said non-GMA jurisdictions are not seeing much development.

- It was pointed out that WAC 197-11-510 says reasonable methods of notice are required
- Harry said this is intended to be above and beyond that section
- Claudia likes the direction; wants information to be available

- Ann also likes the direction
- A question is whether there is enough information to comment on a proposal

Wrap-up and Action Items

Meeting adjourned at approximately 1:00 pm.