



October 4, 2013

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We appreciate the work that the Department and facilitator have done to date in managing a series of difficult and controversial conversations on potential updates to the SEPA rules over the last two years. We also appreciate the work that went into producing the “draft status report” – that document was a helpful synopsis of the Department’s current thinking on the multitude of issues that have been discussed over the last several years. We collectively asked Ecology to do this, and we appreciate the work that went into it. It was helpful as we prepared our latest rounds of comments into this process.

Each association would like to retain our option to comment separately, but thought it would be most valuable to the Department to hear from us collectively about areas of particular interest:

1. Cultural and Historic Resources
2. Lands Covered by Water
3. Minor Land Use Decisions
4. Minor Code Amendments
5. Mixed Use Exemptions

1. Cultural and Historic Resources:

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 ("notice with teeth").

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 believe that Ecology's proposal on page 167 and 168 of the draft rule needs further refinement to meet these standards. In particular we are concerned that providing a functional "veto" to the Department of Archaeology & Historic Preservation on any SEPA exemption level increases sets up an untenable situation. While we recognize that the data sharing agreement is very successful in some circumstances, other jurisdictions have expressed concerns about public records and other liability concerns with the data sharing agreement, concerns about staff management with the requirement to have a single staff person identified as the sole authorized user of the predictive model. Rather than forcing every jurisdiction through that one means to address cultural and historic resources, we request additional flexibility. We believe there is an opportunity for the Department of Archaeology and Historic Preservation to work with cities and counties to revisit their standard agreement and try to address some of these concerns. In the meantime there is not a consensus among the local government community about entering into an agreement with DAHP because of these concerns. Therefore we need additional options to address these issues.

We would suggest that a combination of that approach with the approach recently proposed by the cities would accomplish these goals. Perhaps something like the following would work:

(iv) Impacts to cultural and historic resources (per WAC 197-11-444) are adequately addressed if one of the following is in by the local agency:

Option A:

- 1) A data-sharing agreement is in place between the Department of Archeology and Historic Preservation and that local agency; and
- 2) A Cultural Resource Management Plan is incorporated into the local comprehensive plan and the agency has adopted development regulations that require, at a minimum, pre-project cultural resource review and standard inadvertent discovery language (SIDL)

OR

Option B:

Documentation through the process in WAC 197-11-800(1)c demonstrating how specific adopted development regulations and applicable state and federal laws provide adequate protections for all elements of the environment including cultural and historic resources when exemption levels are raised.

The requirements for notice and opportunity to comment in WAC 197-11-800(1) c (ii) and (iii) and the requirements for protection and mitigation in WAC 197-11-800(1)c(i) must be specifically documented.

We would also be amenable to requiring that the ordinance adopting higher exemption thresholds be provided to affected tribes and state agencies with 60 days' notice before potential adoption – providing additional opportunity for comments on the adequacy of the system of resource protection.

This solution meets many of the goals put forward by advisory committee members: Retention of notice and public comment opportunities for projects newly exempted from SEPA. Retention of authority to mitigate projects based on cultural or historic resources concerns. Encouragement to utilize the DAHP predictive model. Flexibility for local governments to choose the option that best fits their situation.

We also want to note that this represents a significant concession from earlier proposals advanced by local governments and business. We are proposing going back and providing further administrative responsibilities within the process to adopt higher SEPA thresholds. That process itself was a new responsibility put on local governments who had up until last year had flexibility about how best to meet the statutory and regulatory standards of only adopting exemption levels that would not cause environmental harm.

2. Lands covered by water:

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 wish that the rulemaking discussion had more directly engaged with the legislative directive to review these SEPA responsibilities “in light of increased environmental protections” from GMA, SMA and other laws.

At a minimum we reiterate our desire the Ecology clarify that for project actions the lands covered by water exception only applies when the project itself is actually undertaken below the ordinary high water line.

Cities, counties, and the business community undertook side discussions with the Environmental community over these issues as well, and we made some progress in discussions on how to address short plats and short subdivisions on parcels partially covered by water.

While we made progress, the majority of local government practitioners believe that including references to buffers in this section would actually represent a reduction in flexibility from what we enjoy right now. Therefore we would request that either no references to buffers be made or no changes to the treatment of subdivision or the creation of short plats as they relate to lands covered by water be made.

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. Many jurisdictions use different terms for similar processes, so the proposal on Page 17 of the status report to provide specific exemptions for conditional use permits or special use permits is unacceptable.

Providing these specific exemptions may call into question long established practice of declining to review through SEPA other minor land use decision such as right of way permits or street vacations. Additionally, minor decisions like binding site plans or code interpretations are potentially subjected to SEPA when the analysis provides no value.

We believe that the intent of SB 6406 on this front could be best realized by dealing with this in the reverse manner from which has been proposed. Provide for a more clear exemption for land use decisions where the underlying action is exempt, and then provide for clear exceptions to that exemption where there is a potential for significant environmental impact. We have yet to hear compelling specific examples of why this would be harmful. As the on the ground practitioners, city and county planning directors have brought forward this proposal as something we believe would work and would like to see it incorporated absent specific substantive concerns which we have yet to hear. Therefore we continue to advocate for the approach below in favor of the existing proposal with the potential unintended consequences listed above.

This could be addressed by utilizing the following language:

WAC 197-11-800(6)

- (6) Land use decisions: The following land use decisions shall be exempt:
- (a) Land use decisions where the underlying action being proposed is exempt from SEPA, except rezones, unless they meet the criteria of 197-11-800(6)(b).
 - (b) Rezones, within cities and Urban Growth Areas, in fully planning counties, which do not require an amendment to the Comprehensive Plan map and the city or county's applicable comprehensive plan was previously subjected to environmental analysis through an environmental impact statement under the requirements of this chapter prior to adoption.

The following land use decisions shall be exempt except on lands covered by water:

- (c) Short subdivisions or short platting within the original short plat short subdivision boundaries that would not cause the cumulative division to exceed the total lots allowed to be created under a short subdivision.
- (d) Binding Site Plans, which do not exceed the maximum exemption levels adopted by local government for single family, multi-family, or commercial development in WAC 197-11-800(1).

Cities, towns, and counties may raise exemption levels to include subdivisions following the procedures in WAC 197-11-800(1)(c). The maximum exemption levels are:

	Fully planning GMA counties		All other counties
Project types	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Subdivisions	60	15	15

4. Minor Code Amendments:

We fundamentally disagree with the interpretation that the statutory exemptions for minor code amendments in Section 307 of SB 6406 precludes the Department from offering new SEPA exemptions for minor code amendments that do not lessen environmental protections as directed by Section 301 (3)a(iii). In plain language, why would the Legislature have put the provisions in Section 301 in place if they intended them to be invalidated by Section 307.

The Department has not adequately fulfilled its responsibility to create new non project exemptions, and we support continued work on this front. Actions like sign codes, process changes, updates to fee ordinances or modifications to use-matrixes are all actions that are undergoing un-needed SEPA review right now. These are ripe for consideration for amendment by the Department.

5. Mixed Use:

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 appears to agree 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.

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