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Sent: Monday, May 20, 2013 5:08 PM
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Subject: City Response to Ecology Proposal Language

Neil and Fran –

Below are some high level comments on the rulemaking process up through this draft, and attached are specific comments on what has been proposed. Appreciate all your work on this.

Carl

Cities appreciate the work that has gone into this SEPA rulemaking by the Department and other stakeholders. We recognize that this is a significant undertaking under tight timelines and limited staff. That said, this process needs to result in rule changes of a broader scope and scale than we see in this initial draft.

We believe that the progress to date represented by this rule draft does not adequately reflect the spirit of the law. SB 6406 Section 301 recognizes in the first sentence that thresholds have not been updated in recent years and should be reviewed in light of the other environmental protections in place. From our perspective this duty has not yet been adequately met. Cities and counties have put forward ideas supported by data and analysis that have not been accepted, while other areas of the rule proposal move away from the streamlining required by the law. Major categories of required categorical exemptions have received very limited movement, for instance the duty to create categorical exemptions for minor code amendments.

We request Ecology reconsider several items below that were advanced by cities, and continue to explore opportunities to streamline SEPA and harmonize its responsibilities with the other regulatory structures in place. There is still time to make this a substantial proposal.

Below are examples of issues from the general city submittal and Seattle's list that don't appear to have made the draft rule – we request continued consideration of these and other items:

- Lands covered by water
- Pipelines and conduits in existing right of way
- Solar systems
- Repair maintenance of "existing facilities" (197-11-800(3))
- Historical resource restoration
- Extension of utility distribution facilities
- Fence Height ordinances
- Side yard setbacks

Carl Schroeder

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**2013 SEPA Rulemaking
Summary -Draft Proposed Amendments for Exemption Subsections**

Ref #	197-11-800	Title	Objectives of Amendment	Rationale	City Comments
A	197-11-756	Lands Covered by Water	Modify definition of lands covered by water to be more consistent with definition in GMA	Definition is outdated and does not explicitly exclude artificial wetlands	More comprehensive amendments are required. Proposal definition should clarify when a project is deemed to be land covered by water (on the same parcel? Within a prescribed distance?) Proposal needs to be expanded to comprehensively address circumstances where it is appropriate to remove the “exception from an exemption.” It was a hallmark of the legislation that categorical exemptions should reviewed in light of the increased environmental protections in place under chapters 36.70A RCW 90.58 RCW (GMA and SMA). Allowing the elimination of this exception for jurisdictions with adopted Critical Areas Ordinances based on BAS and Ecology-approved Shoreline Master Programs would act as an incentive for local governments to adopt comprehensive regulations with predictable application as an alternative to relying on the ambiguity and broad discretion provided in SEPA to address impacts that occur in the shoreline.
B	New Section	Industrial Use	Create a definition of “Industrial Use” to distinguish between commercial and industrial in minor new construction exemptions in 800(1)	Proposal to remove exception language for air and water permits is premised upon not including “industrial” projects in the exemption for 800(iv) –office, storage, commercial etc.	The proposal definition is overly broad and could lead to unintended consequences. “Storage of bulk materials” is included in the definition, but “storage building” is a “Project Type” included in the Minor New Construction exemption. The definition as crafted would require SEPA on all industrial projects (whether large or small), without regard to the actual project impacts associated with the proposed facility. The ambiguity created by proposal language is not a reasonable tradeoff in return for deleting the air and water discharge permits exception. Reference to conditional use permits should be removed – permits are not an indicator of impact that should be used in exemption thresholds. Refer to comments on item G.6 (Minor Land Use Decisions)

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C	1	Minor New Construction	<ol style="list-style-type: none"> 1. Remove air and water discharge permits exception 2. Add exception for protection of significant agricultural lands for otherwise exempt projects under 800(1). 3. Clarify that changes in facility use that require a Conditional Use Permit are also exempt. 4. Add clarification that commercial projects are not industrial uses. 5. Remove stand-alone fill and excavation projects from the list of project types. 6. Add project type for mixed-use that combines maximum thresholds but does not create a separate set of thresholds limits. 	<ol style="list-style-type: none"> 1. Requirement for these permits should not change exemption status. 2. Protection of agricultural lands is specified in new statutory language for SEPA because other laws are not protective of indirect and cumulative impacts to this resource. 3. The issuance of conditional use permits for changes related to an exempt facility have not clearly been addressed in the SEPA rules to date. 4. Industrial uses have different types of impacts from commercial and this language replaces the exception for air and water discharge permits. 5. The exemption for excavation and grading activities associated with a project is addressed in 800(2). This clarification will reduce confusion and conflict about when SEPA is required for otherwise exempt minor projects. It should result in less SEPA reviews for single residential projects. 6. It is not consistently clear that both residential and commercial thresholds must be combined and many infill projects are proposed as "mixed-use." 	<ol style="list-style-type: none"> 1. See B New Section above. 2. Agricultural lands are required to be protected under GMA. What data exists to demonstrate that the GMA protections are not adequate, and there is a gap that needs to be addressed. This proposal amendment adds a new "exception to the exemptions," but there seemed to be Advisory Committee agreement during the 2012 Rulemaking that this drafting convention was undesirable and should be discarded. Replicating this drafting convention is not prudent from a code clarity perspective and seems inconsistent with the express language of 2ESSB 6406 that directs the CE thresholds to be updated, but not decreased. Section 301 (3)(a)(i). 3. References to permit types should be removed. Refer to comments on item G.6 (Minor Land Use Decisions) 4. See B New Section above. 5. Removal of stand-alone fill and excavation projects from list of projects types leaves clearing and grading activities of any size without an exemption. Activities that move any amount of soil from one location on a site to another location when not associated with another exempt project would have no clear categorical exemption. In practice, jurisdictions use the current exemption for fill and excavation projects to cover clearing and grading projects as well. The 2012 Rulemaking clarified that clearing and grading associated with an exempt project is also exempt, but the exemption levels adopted as part of the 2012 Rulemaking should also be retained. 6. The cities endorse this clarification.
D	2	Other Minor New Construction	<ol style="list-style-type: none"> 1. Remove air and water discharge permits exception. 2. Clarify that the transportation 	<ol style="list-style-type: none"> 1. Requirement for these permits should not change exemption status. 	<p>It seems that there is an internal conflict in this section. The proposal amendment clarifies that the installation of catch basins and culverts "for the purpose of road and</p>

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			<p>exemptions apply to all agencies and private parties.</p> <p>3. Update reference to herbicide spraying to reflect current state registration rules.</p> <p>4. Limit road expansion to within right of way.</p> <p>5. Clarify “recognized historical significance”.</p> <p>6. Add exemption for above-ground tanks and removal of both to list. Same volume threshold.</p>	<p>2. Some confusion about what types of transportation projects can use exemptions here.</p> <p>3. Change of pesticide registration WAC</p> <p>4. City of Seattle suggestion</p> <p>5. This clarifies that listed and eligible structures are applicable here.</p> <p>6. Above-ground tanks (not accessories to exempt buildings) often trigger SEPA review since there are regulations requiring a permit.</p>	<p>street improvements are exempt.” However, this paragraph has an exception for construction undertaken wholly or in part on lands covered by water (unless specifically exempted by this section). Please clarify whether culverts installed for stream crossings as part of a road project are exempt or excepted from the exemption because they are constructed on land covered by water.</p> <p>In paragraph (g), the proposal language should read “installation OR removal of impervious underground or above-ground tanks,” rather than installation AND removal.</p>
E	3	Repair, remodeling and maintenance activities	<p>1. Restrict dredging <u>exception</u> in water for maintenance -to over 50 cu yds</p> <p>2. Clarify that bulkheads are a type of shoreline protection</p>	<p>1. Dredging exception could be more consistent with WDFW exemption in 197-11-835, plus culvert maintenance should be exempt if the installation and removal of culverts are exempt.</p>	<p>1. Clarify that culvert replacement is exempt</p> <p>2. Should “shoreline protection” structure be referred to as “shoreline stabilization” to be consistent with SMP guidelines?</p>
F	5	Purchase or sale of real property	<p>Clarify “authorized public use” without adding a specific definition</p>	<p>Agencies define public use differently, but more uniformity about the “authorized” requirement has been requested.</p>	<p>Not clear how new language describing public use provides additional clarity. With park land conversions disfavored and protected under state and federal law, what is the environmental impact that would be disclosed and potentially avoided by running SEPA on a sale, transfer or exchange of “specifically designated preexisting, and documented” public use property? Addition information needed to assess this proposal language.</p>
G	6	Minor land use decisions	<p>1. Add decisions related to boundary line adjustments as an exemption.</p> <p>2. Add exception for protection of significant agricultural lands for land-use decisions.</p>	<p>1. The assumption here is they do not result in additional lots.</p> <p>2. Protection of agricultural lands is specified in new statutory language for SEPA because other laws are not protective of indirect and cumulative impacts to this resource. Land-use changes are one of the main sources</p>	<p>1. Categorical Exemption thresholds should not rely on permit types – too much variability between jurisdictions (conditional uses are also called special uses, uses by exception). By adding some permit types (such as BLA), permits issued by jurisdictions that are not specifically named would seem to now require SEPA. Addition of BLAs is not needed, because BLAs do not create new lots and are therefore already</p>

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				of impacts to agricultural lands. Note: other suggested exemption increases are not appropriate for minor land-use category.	SEPA exempt. Thresholds should focus on the impacts of a proposal, not the permit process that is used by a jurisdiction to render a decision on a specific project. 2. See Item 2 under C1 above. 3. Should consider removing limitation on re-platting, so long as the original exempt level is not exceeded. If jurisdiction sets exempt level at 4, a 2 lot short plat should be allowed to re-divide the previously platted lots so long as the ultimate outcome is not more than 4 lots.
H	16	Local Improvement Districts	Expand to exempt <u>formation</u> of all special districts or special purpose districts –that are a local government entity designated by the Revised Code of Washington (RCW) and not a city, town, township, or county. Background paper on special districts MRSC page	Establishing districts is procedural, but planning and project development is still subject to SEPA.	
I	23	Utilities	<ol style="list-style-type: none"> Increase water pipe size from eight to twelve inches. Expand and clarify that projects done in existing vaults and pipes are also exempt in 23(e) Update language to current reference for herbicide use. 	<ol style="list-style-type: none"> Twelve inches is industry minimum size in most cases. Impacts are similar to smaller size (see handout from April meeting). City of Seattle suggested inclusion of projects within vaults and pipes for exemption 248-60-66- was repealed. 	<ol style="list-style-type: none"> Cities support increasing water pipe size, but wonder if size is not the only appropriate threshold to consider for categorical exemption related to utility infrastructure. Impacts of replacing pipe within the limits of developed right-of-way would be no different for a 24” or larger pipe. Utility replacement within developed right-of-way may not need a threshold. New technology for installation of pipe may also effectively limit impacts, should pipe installed with certain installation techniques be exempt?
J	24	Natural resources management	Add exemption for maintenance of motorized recreational trails –except lands covered by water	DNR requested	While this is not specifically a “city” issue, it seems odd that an exemption would allow rerouting of motorized recreational trails where net increase in length is not proposed, but without limitation on net increases in trail width. Wouldn’t better measure be no net increase in “trail coverage?”
K	25	Personal	Updates to removed outdated	Update directed by 2013	This proposal approach raises the broader WAC drafting

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		wireless service facilities	language and make exemption more consistent with federal law. Adds exemption for collocating, removing, or replacing transmission equipment	legislation SHB 1183	question of whether to include statutory exemptions within the WAC or not. For ease of use, it would seem appropriate to either include all statutory exemptions or exclude all statutory exemptions within the WAC. A proposal that includes some subset of statutory exemptions (but not all of them), will create uncertainty and confusion for the public and for SEPA administrators. Building code adoptions were added statutorily, but are not proposed for inclusion in the rule
L	New	Habitat restoration projects	New exemption for habitat restoration projects –using some of Seattle’s proposed language	Minor restoration projects should have same or greater exemption benefit as minor new development projects –for similar reasons.	Is subparagraph (3) of the proposal language intended to include stream restoration projects that involve stream relocation or in-stream work such as placement of large woody debris or gravel substrate?
M	197-11-810 - 197-11-855	Agency Specific Exemptions	Clarify these sections to limit exempt actions to only those named agencies. Plus update names of agencies.	Some of the agency specific exemption sections are vague about how the exemptions apply only to the agency specified. Also, the names of the agencies have not been updated in over 30 years.	
N	197-11-830	DNR Exemptions	Add exemption for rock sales (to existing language for timber sales) on DNR lands – when determined there is no “substantial impact on the environment.”	DNR requested	

DRAFT - SEPA Rule Exemptions
Not Proposed for 2013 Changes

197-11-800	Title	Suggested Change	Rationale	City Comments
7	Open burning	none		
8	Clean Air Act	none		
9	Water Quality Certifications	none		
10	Activities of the state legislature	none		
11	Judicial Activity	none		
12	Enforcement and inspections	none		
13	Business and other regulatory licenses	Proposal to include "events" as a type of exemption	Unnecessary since rule language says "including but not limited to "	
14	Activities of Agencies	none		
15	Financial Assistance Grants	none		
17	Information collection and research	none		
18	Acceptance of Filings	none		
19	Procedural Actions	Proposal to expand this list to include non-procedural minor code amendments	The new non-project statutory exemptions address this. The issuance of a DNS does not necessarily mean the code change is minor. The issue of improving and streamlining non-project review can be addressed in other areas of the rule plus improved guidance.	More discussion is needed, SB 6406 Section 307 was not intended to be the end of the discussion on exemptions for minor code amendments as evidenced by Section 301 (3)a(iii) which directs Ecology to create new exemptions for minor code amendments where review under SEPA is not necessary.

20	Building Codes	none		This proposal approach raises the broader WAC drafting question of whether to include statutory exemptions within the WAC or not. For ease of use, it would seem appropriate to either include all statutory exemptions or exclude all statutory exemptions within the WAC. A proposal that includes some subset of statutory exemptions (but not all of them), will create uncertainty and confusion for the public and for SEPA administrators. Personal wireless service facilities were added statutorily, and are not proposed for inclusion in the rule. The rulemaking should have a consistent approach to inclusion of statutory exemptions. Section should be amendment to read consistently with the statutory amendment. Right now, 197-11-800 (20) says the following Building code adoptions are exempt - The adoption by ordinance of all codes as required by the state Building Code Act (chapter 19.27 RCW). The statutory exemption is more expansive.
21	Adoption of Noise Ordinances	none		This needs to be fixed. Ecology review process is not funded, and SEPA does not add value.
22	Review and Comment Activities	none		
New Exemption	small energy projects	Proposal to create a new exemption for solar energy systems and small hydroelectric projects.	Some of these are already exempt when accessory to exempt facility, some are too big to exempt	