

HISTORIC/CULTURAL RESOURCES WORKGROUP
Meeting notes: April 22, 2013

Welcome and Introductions

Neil Aaland, Facilitator, opened the meeting. Introductions were made around the room and on the phone. Neil reviewed the agenda.

Review Task

Tom Clingman, Department of Ecology, joined the meeting and provided background from the meeting convened by Rep. John McCoy. The meeting resulted in a commitment by Ecology Director Maia Bellon to form a workgroup specifically to review the issue of notice, particularly “actionable” notice, for cultural and historic preservation matters. The committee is charged with looking at SEPA and beyond, if necessary, and serves as an adjunct to the SEPA Advisory Committee advising Ecology on all other aspects of the SEPA Rule amendments (as directed by 2ESSB 6406).

Discussion:

- The only way notification occurs right now is through SEPA
- The proposed bill was about SEPA and getting a cultural resources review
- Notification is the first step; actionable review is the next step
- Need to look at GMA vs. non-GMA jurisdictions; may need different procedures

Mary Rossi asked for time to provide a possible starting point for discussion. Her thoughts:

- Solution might include notification PLUS a pre-project historic review
- Notification: link local government to resources such as herself and DAHP
- The questions to answer in establishing a simplified process:
 - Who will do the thinking about cultural/historic resources?
 - When will this occur?
 - Where is the process housed in regulation?
- There are already three proposals on the table (at the larger Advisory Committee):
 - “Project level decision tree” provided by cultural/historic AC members
 - Not calling for a survey in every case
 - Proposal from the environmental community AC members
 - One page project form sent to clearinghouse
 - Proposal from Counties on notice
- Important to address at the planning level [rather than waiting till permit level]
- Need some interim assurances, will take some time to get these in place
- Do some part of the project level review

Background on rules/regulations applicable to cultural and historic preservation (Dr. Allyson Brooks, Director WA DAHP)

Dr. Brooks provided background on projects reviewed by her office. They review 10,000 projects per year; 5,000 are new projects. They look at 2-3,000 per year under SEPA. The current laws don’t require any jurisdiction to take their comments into account, or to consult with tribes. She discussed costs that can occur if historic/cultural preservation sites are not considered. Washington is one of three states that protect archaeological sites on private property. There is a 60-day process to comment. If a site is damaged and this is discovered, damages are assessed and mitigation is required. At the state level the regulatory framework addresses after-the-fact issues (e.g. assessing damages and mitigation); federal laws address

before the fact. Back end mitigation is costly. In 1949 tribes were authorized to litigate under state law for emotional distress; this has occurred in situations in Blaine and Oak Harbor.

Discussion and comments:

- Clark County has a data sharing agreement
- Yakama tribe sent a letter to Clark County commenting on their current proposal to amend their SEPA ordinance
- Stillaguamish tribe has always been concerned about the “culturally sterile fill” provisions that exist in some laws
- Tribes have a lot of information that DAHP does not have
- If graves are disturbed, spiritual work needs to be done by tribes
- If these issues are addressed in a comprehensive plan, by such methods as getting a data sharing agreement and overlaying with zoning, get a sense of what’s out there
 - Adopt some policies for high risk sites, low risk sites; get into development regulations
- Seems similar to what has developed over the years for wetlands
 - Problem is trying to use SEPA as the safety net
- Gap with Shoreline Master Programs as venue – no requirement that Ecology confer with or give deference to DAHP comments on SMPs
 - No party is given deference that comments on SMPs
- Better approach is to address in advance, similar to how wetlands are addressed
 - Good to use a predictive model
- Some things [sites] are known only by the state
- How much does a site survey cost?
 - Not sure; can be a 10-fold factor between low and high bids
 - Ecology will see about getting information on costs
- Is there a process under the Forest Practices Act to address?
 - Yakama tribe reviews FPAs, asks permission to visit sites to assess priority
 - Typically does not require a site report
- Whatcom County Pt. Roberts ordinance is an example

Note: the discussion above moved into the next topic as well – discussion aspects of the proposal from the Cultural/Historic Preservation members of the Advisory Committee

To do for next meeting (in three weeks)

- Cost of surveys
- Organize the proposals as described by Mary Rossi to aid discussion
- More information on data-sharing agreements
- Information on liability issues – public disclosure requests (can a local jurisdiction be sued on those as relate to data sharing?)

Meeting adjourned at 2:00 pm.