

FEEDBACK ON DRAFT PROPOSED RULE LANGUAGE, EXEMPTIONS

Submitted by the Cultural Resources Interest Group Representatives
June 4, 2013

REMINDERS (from 12/10/12 feedback)

- **Interest Group Goals:**

- 1) NO NET LOSS of cultural resource protections (e.g. notification, pre-project review)
- 2) Heightened recognition of cultural resource issues at the State and local level
- 3) Better understanding at the State and local level of the increased availability of relevant information (e.g. DAHP's online WISAARD database) that local governments should apply during planning and development activities, including the SEPA process
- 4) Pre-project review of impacts – represents an essential proactive opportunity to ensure that the State and its citizens fulfill their responsibility to “preserve important historic, cultural, and natural aspects of our national heritage” (RCW 43.21C.020)

FEEDBACK

In general, the proposed rule language did not include proposals submitted by the Cultural Resources representatives. This may be due in part to the establishment of a Cultural Resources Workgroup that has been convened and is meeting with regularity. The goal may be to include the recommendations from this workgroup into the final rule. In the meantime, Cultural Resource representatives continue to support our previously submitted recommendations.

We do have a few responses to the Draft Rule as presented at the May Advisory Committee meeting, as follows:

Specific: Section D(2)(f) ‘Other minor new construction’ states the following:

The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance.

The Draft language defines ‘recognized historical significance’ as those structures listed in or eligible for listing in a national, state or local register. Our recommended language for this section is as follows:

The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities listed in or eligible for listing in a national, state or local register.

This revision would make language in SEPA consistent with the generally accepted definitions/practices for determining significance.

Section N(7) DNR states:

Those sales of timber **and rocks** from public lands that the department of natural resources determines, by rules adopted pursuant to RCW [43.21C.120](#) do not have potential for a substantial impact on the environment.

The phrase 'and rocks' has been added. There should be clarification to distinguish rocks from 'rock art', the latter of which would not be allowed.

General:

We do note that the draft rule adds a clause citing that Agricultural Lands of long-term significance as defined by RCW 36.70A are not exempt from SEPA review (referenced on p. 2 of the draft Rule under C.(1) 'Minor new construction' and p. 7 G.(6) Minor Land Use decisions).

While the analogy is imperfect (the Ag Lands definition is tied to GMA), a similar mechanism could be in place for cultural resources.

In the meantime, we re-assert our position that all categorical exemptions should be reviewed for the following reasons:

- 1) Impact of increased thresholds and categorical exemptions – increased number of projects that will *not* be reviewed for impacts to cultural resources; SEPA exemptions based on size are not appropriate in terms of cultural resources...locational information is more appropriate
- 2) Notification (including tribes, advocacy groups, and the public) – SEPA is often the only notification these parties receive; should be given for all projects involving ground disturbance and/or buildings 45 years and older or eligible for/listed in historic register(s) and surveys
- 3) Exceptions to exemptions – cultural resources may represent such an exception

Suggested fixes:

- 1) Projects should only be SEPA-exempt according to the following "findings":

Exempt for archaeology if *any*:

- 1) Prior negative survey on file.
- 2) No ground disturbance proposed.
- 3) Project in 100% culturally-sterile fill.

Exempt for built environment if *both*:

- 1) Less than 45 years old; *and*
- 2) Not eligible for or listed in any historic register or historic survey.

Exempt for archaeology *and* built environment if:

- 1) Cultural resource management plan is incorporated into Comp Plan, *or*

- 1) Local ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL), *and*
- 2) Data-sharing agreement is in place.

For *all* projects, exempt or not:

Include SIDL on all related permits (compliance with RCW 27.53, 27.44)

- 2) Provide notice for all projects involving ground disturbance and/or buildings 45 years and older or eligible for/listing in historic register(s) and surveys
- 3) Require jurisdictions wishing to adopt higher thresholds or qualify for exemptions to include appropriate cultural resource protection language in their comprehensive plans and/or development regulations. Encourage them to work with DAHP on model language.
- 4) Inform all applicants and SEPA Officials of the following:
 - ⇒ Washington State law (RCW 27.53 and 27.44) protects archaeological resources (RCW 27.53) and Indian burial grounds and historic graves (RCW 27.44) located on both the public and private lands of the State.
 - ⇒ An archaeological excavation permit issued by DAHP is required in order to disturb an archaeological site.
 - ⇒ Knowing disturbance of burials/graves and failure to report the location of human remains are prohibited at all times (RCW 27.44 and 68.60).