FEEDBACK ON CATEGORICAL EXEMPTIONS, SEPA/GMA INTEGRATION, & ENVIRONMENTAL CHECKLIST

Submitted by the Cultural Resources Interest Group Representatives

January 31, 2013

REMINDERS (from 12/10/12 feedback)

- **Legislative mandated components for rulemaking in 2013 (provided by Ecology):**

  By December 31, 2013, the department of ecology shall:

  (i) Update, but not decrease, the thresholds for all other project actions not specified in subsection (2) of this section [i.e. Phase 1 rulemaking in 2012];

  (ii) Propose methods for integrating the state environmental policy act process with provisions of the growth management act, chapter 36.70A RCW, including consideration of ways to revise WAC 197-11-210 through 197-11-232 to further the goals of RCW 43.21C.240; and

  (iii) Create categorical exemptions for minor code amendments for which review under chapter 43.21C RCW would not be required because they do not lessen environmental protection.

- **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

- **Categorical Exemptions (specific exemptions you believe need to be reviewed and your rationale for doing so)**

  We believe 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/listed 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).

- **SEPA/GMA Integration (list of obstacles)**

1) GMA (and SMA) integration – cultural resource planning is currently optional under GMA (and SMA)
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

Suggested fixes:

1) Provide notice for all projects involving ground disturbance and/or buildings 45 years and older or eligible for/listed in historic register(s) and surveys
2) 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.
3) Inform all applicants and SEPA Officials of the following:
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- **Environmental Checklist (issues with specific questions)**
  1) Improvements to Question 13 (Historic and cultural preservation) are needed and SEPA Officials should have a process for assessing applicants' answers
  2) All three parts of Question 13 (a-c below) are usually answered in ignorance and often consist of "no," "no," "not applicable" with no indication of how the answer was determined
     a) Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.
     b) Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.
     c) Proposed measures to reduce or control impacts, if any:

Suggested fixes:

1) Revise the Checklist to require applicants to complete Question #13 by using available data (e.g. DAHP's online WISAARD database) or by seeking assistance from a third party, such as DAHP, tribes, and/or CRM professionals
2) Revise Question #13 to separate it into "above-ground" (e.g. historic buildings) and "below-ground' (e.g. archaeological sites) issues. Require applicant to answer the former, and require DAHP to comment on the latter.
3) Require SEPA Officials to review answers to Checklist Question #13 by using available data (e.g. DAHP's online WISAARD database) or by seeking assistance from a third party, such as DAHP, tribes, and/or CRM professionals

4) Train SEPA Officials to require any necessary cultural resource protections (e.g. on-the-ground survey, archaeological monitoring) via permit conditions as third party reviewers can only recommend such measures.
5) Train SEPA Officials to enforce permit conditions during project activities (many constituents commented on the lack of enforcement).
6) 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).
7) Input from constituent re: Question 13(b):
   This question <u>cannot</u> be answered without a process that incorporates historic research, tribal consultation, data gathering and archaeological survey. SEPA rules require that decisions made during environmental review be based on sufficient information. Threshold determinations must be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal (WAC 197-11-335)." WAC 197-11-080(1) states that "(I)f information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents;" and "(W)hen there are gaps in relevant information or scientific uncertainty concerning significant impacts, agencies shall make clear that such information is lacking or that substantial uncertainty exists."

   In addition to this, WAC 197-11-080(3) says that if information is not available or costs too much to obtain or if the means to obtain the information is speculative or unknown, the agency may proceed but it "shall generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed." Therefore, without a professionally reasoned archaeological investigation of a proposed project area, it must be assumed that the entire area contains an archaeological site of cultural significance.
8) Input from constituent re: Question 13(a):
   B13a "Help" button is totally inadequate as it only talks about documenting structures over 50 years old. B13a should include the same "help" information as B13b.
9) Input from constituent re: Question 13:
   If this is our opportunity to modify the questions, I would reverse part a. and b. The first part of the question should be to generally describe what historic, archaeological, scientific or cultural features and objects are on or adjacent to the proposed project. Proponents should be encouraged to do research of historic maps and records as well as consulting DAHP and Tribes. The not answering in ignorance should be the first information provided for the whole 3-part question.

The second part should be to focus on what sites are on or adjacent to the proposal that may be eligible for inclusion in local, state or national registers of historic places. Then the third part is what measures are proposed to protect or mitigate affects to sites on or adjacent to the project.

10) Input from constituent re: Question 13:

I would like to see a) re-written to clarify what the answer is based on. Is it just the landowner saying they don't know of anything; did they actually look at DAHP's data; did they talk to tribes; and/or did they have a cultural resource investigation completed?

I'm not sure what the purpose of b) is unless the applicant actually know something about the subject. Does anyone ever answer that with anything other than that there's nothing there?

I think c) should include a reference to state laws that protect cultural resources. As currently written, it sounds like proposed measures are optional when in fact they should be required.