

Cultural Resources Interest Group Response to Preliminary Draft Rule Proposals (Dept. of Ecology Proposals A-B and Ad Hoc Caucus Proposal C)

October 4, 2012

First, we would like to thank the Department of Ecology and the SEPA Rule Making Advisory Committee for their hard work during this first phase of rulemaking. We acknowledge the challenge of operating under a truncated timeframe and still meeting the Legislative mandate to put forth a proposal by year's end.

Regardless of the challenging situation, however, none of the current proposals (A-C) adequately addresses our concerns. While we appreciate, for example, the relative simplicity of Proposal C to carry us through the next phase of rulemaking, it nonetheless remains silent on specific provisions for cultural resource protection as do Proposals A and B.

Background

SEPA explicitly includes cultural resources and is intended generally to “preserve important historic, cultural, and natural aspects of our national heritage” and prevent “probable significant adverse environmental impact.” The purpose of the modernization called for in SB 6406 is to bring SEPA in line with current land-use planning and development regulations, including the Growth Management Act (GMA) and the Shoreline Management Act (SMA); however, not all local jurisdictions use the GMA or the SMA to plan for cultural resources, even though their protection is a stated goal of both Acts.

Therefore, the directive to increase the thresholds for SEPA review of minor construction projects will result in an increased number of projects that are not reviewed for impacts to cultural resources via the SEPA Checklist; the resulting impacts may well constitute a “probable significant adverse environmental impact” (RCW 43.21C.031) and could result in violation of State cultural resource law (RCW 27.53 and 27.44). Such a scenario is in direct conflict with the broad agreement Ecology reported was reached during the multi-year effort leading up to SB 6406: “Reform will not reduce protection of the natural and built environment.”

Modernizing SEPA necessarily involves not only the proposed streamlining efforts but also a heightened recognition of cultural resource issues and the increased availability of relevant information (e.g. DAHP's online WISAARD database) that local jurisdictions should apply during planning and development activities. It is no longer acceptable to ignore a critical pre-project opportunity to determine if a hole is to be dug in a high probability zone for archaeology or if a new building will affect existing historic resources. Pre-project review like that conducted via SEPA can help prevent situations like the Port Angeles Graving Dock.

PROPOSALS A-C

Increased Optional Maximum Thresholds

In terms of the proposed increases to the optional maximum thresholds for certain minor construction, we oppose them not on the basis that they are too permissive but on the basis that such increases are not accompanied by specific findings related to cultural resources. The issue is not the size of the hole in the ground but the location of the hole. Basing thresholds on variables such as units of housing and square footage is not appropriate to cultural resource concerns.

“Findings”

The “findings” requirement of Proposals A and C holds promise, but it is too vague at this point. What are the necessary findings? How are they proven? Who approves/denies their adequacy? Are cultural resources and their locational (vs. size) sensitivity factored in? Clarification of these issues must occur before considering a findings provision, Proposal A or otherwise.

Similarly, Proposals A and C allow jurisdictions to adopt the new optional exempt level through ordinance or resolution provided the jurisdiction demonstrates it has adequately addressed “environmental analysis, protection and mitigation” in applicable and specific “adopted development regulations, comprehensive plans, and applicable state and federal regulations.” This approach also holds some promise but, again, does not provide a consistent standard for jurisdictions to demonstrate that cultural resources have been adequately considered. As long as cultural resources remain an optional element under the GMA and, by extension, jurisdictional comprehensive planning, relying on such plans and regulations will not necessarily address cultural resource concerns.

Notification

Because applicants and SEPA Officials often overlook cultural resources, notification is a crucial element of the SEPA process and is often the only notice we receive. Proposals B and C do not require notification for projects that fall within the new maximums. From a cultural resources standpoint, this effectively precludes public comment for such projects, as SEPA is the only regulatory process at the State level that requires consideration of impacts to cultural resources. Again, such a scenario is in direct conflict with the broad agreement Ecology reported was reached: “Reform [of the notification process] will be equal or better [than the current process].”

ALTERNATIVE APPROACH

In our experience, significant savings of time and money are achieved by considering impacts during pre-project review like SEPA rather than during an inadvertent discovery during project implementation. The means for doing so are not inherently burdensome and do not require additional staff. With the increased availability of relevant information (e.g. DAHP’s online WISAARD database, data-sharing agreements), local jurisdictions can readily integrate specific cultural resource findings during planning and development activities.

In contrast to Proposals A-C, we reiterate the types of cultural resources “findings” necessary for a project to be SEPA-exempt; again, they are not dependent on size but on locational information:

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)

Conclusion

We cannot support proposals that result in fewer notifications and/or increased exemptions granted without appropriate cultural resource findings, as this will only raise the potential for increased impacts to cultural resources.

Cultural resource protection is not, as some have suggested, an “outlier” issue in terms of SEPA specifically or environmental protection generally. Cultural resources are the tangible evidence of our collective history. They are part of what makes communities unique, and they impart a sense of place critical to our individual and group identity.

Cultural resources enhance economic development pursuits and frequently represent a value-added component of successful projects. They are an integral part of sustainable development as measured from the “triple bottom line” perspective (i.e. people, planet, profit). It is no mistake that “people” (i.e. stakeholders) come first.

It *is* possible to include cultural resources in pre-project review of potential impacts if we are willing to do so.