

TENTATIVE ECOLOGY DIRECTION – SEPA RULES

10/16/13

1. Lands Covered By Water

Several of the categorical exemptions [WAC 197-11-800(1), (2), (3), (6), and (23)] require otherwise exempt proposals to undergo SEPA review if located “wholly or partly on lands covered by water.” There are a number of issues discussed with the advisory committee regarding the lands covered by water non-exemption including the updating the definition, clarifications regarding applicability, and changes in whether the non-exemption should be removed in some cases.

Ecology is considering the following:

- Definition update will continued to emphasize lands below the Ordinary High Water Mark (OHWM,) but with updated wetland definition similar to GMA and will not include some artificially created wetlands
- Not proposing changing the definition to include buffers
- Still considering the proposal for bridges over non-fish habitat streams – proposal appears to be crafted to so specifically that there would be no work below OHWM. Would proposal be subject to SEPA for other reasons?
- Intend to include language allowing subdivision of parcels with lands covered by water when protections are in place to prevent development of the wetland/water portion of the parcel.

2. Land use decisions

The Advisory Committee has discussed whether it is appropriate to use the type of land use permit as the determinant of whether a project is exempt, and opinions were mixed. Ecology has been weighing these different viewpoints. The agency believes the rule should be revised to clarify that the type of land use permit should not be the determining factor.

Ecology is considering the following:

- The definition of land use decision proposed in September will not be used
- With one exception (short subdivisions), the Rules will not refer to land use decisions as the basis for exemptions, but will focus on the actual project being proposed
- Subsequent short subdivision of lands will be exempt, as long as the original exempt level (tied to RCW 58.17.060) is not exceeded
- Rezones for which the potential impacts were previously analyzed in environmental review conducted for a comprehensive plan or sub-area plan adopted under RCW Chapter 36.70A will be exempt
- The new flexible thresholds for subdivisions (beyond short plats) proposed by counties will not be included

In order to accomplish these outcomes, two sections needed to be considered. The first, 197-11-800(1), is in the section titled “Minor new construction - Flexible thresholds.” It relates to the type of projects for which flexible threshold are provided, and includes language stating that “exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any license governing emissions to the air or discharges to water is required.” The second, WAC 197-11-800(6) (a-c), lists several specific types of land use decisions that are categorically exempt

from SEPA. The agency is still working to determine the specific changes needed to one or both of these sections.

3. Cultural resources

There has been extensive discussion of cultural resource issues. Several proposals have been discussed, with expressions of both support and concern for various ideas. It is clear that SEPA has provided an important “gap filler” role for cultural and historic resources issues; and that there is opportunity to make clarifications in the rule to improve this role. However, we recognize that the opportunity to improve language related to this topic needs to occur without creating significant new burdens within the SEPA procedures.

Ecology is considering the following:

- Checklist: We support updating and clarifying “historic and cultural preservation” questions along the lines previously discussed.
- Planning level findings in 197-11-800(1):
 - Key interests seem generally OK with extending the time for tribal and other comment to 60 days.
 - We think the requirements for raising the optional thresholds can be clarified. The DAHP resources will be used as examples of best available information, rather than as a mandate, in light of local government concerns regarding liability and the appropriate role of state agencies in local land use decisions.
- Demolition: We support clarifying applicability to demolition. However, we will not include reference to “eligible for listing” as this is too vague and open-ended.