

Environmental Caucus Major Comment on Mixed Use – September 15, 2013

(Ecology Combined Status Report 9-10 -13 in blue and black – Enviro. Comment in Red)

Address Mixed Use

Topic: Add specific exemption threshold for mixed use projects (residential and commercial in one building or cluster of buildings)

Rule section: 197-11-800 (1) Minor New Construction New Section for Mixed Use

Discussion: Ecology suggested a new project type of “mixed use” buildings to add to the list of minor new construction exemptions. Mixed use is not addressed currently in the SEPA Rules, although it does appear in RCW 43.21c.229, Infill Development Exemption. Many new multi-family residential projects include some commercial space, but section 800(1) does not establish a clear threshold for determining what size of mixed-use building is exempt from SEPA review.

Ecology interprets the current rule language to authorize lead agencies to determine that SEPA is exempt for mixed-use projects with the residential unit numbers below the residential threshold and the commercial square footage and parking component below that applicable threshold. We suggested a new project type that reflects this interpretation –and combines both the residential exemption level and the commercial threshold. The minimum or default exempt mixed-use project size includes up to 4 dwelling units, 4,000 square feet and 20 parking spaces. Cities and Counties may increase those thresholds pursuant to 800(1)(c) and (d).

Options:

1. Add the provision as proposed above regarding a new project type for mixed-use construction.
2. Do not add the previously proposed language but instead specify that local government sets the mixed-use threshold up to a combined maximum flexible level using the residential units and commercial building sizes in 800(d).
3. Add a new mixed use exemption with a lower threshold than the combination of both residential and commercial thresholds.

Status: Ecology proposes option 2, where local governments will set mixed use thresholds. **The Environmental Caucus discussed this issue with Clay and we agreed to a version of Option 3, setting default levels and flexible levels for mixed use in the SEPA rules. We agreed to setting these levels so that mixed use could have a percentage of any or all of the default (or adopted flexible levels) but the total of these percentages cannot exceed 100%. So for example, the default exempt mixed-use project size can be 50% of the default level for dwelling units (two dwelling units) plus 50% of the default level for commercial use (2,000 square feet and 10 commercial parking spaces). The flexible mixed use exemption would work in the same way. A mixed use project would be exempt if it did not exceed, for example, 75% of the multifamily flexible exemption adopted by the local jurisdiction and 25% of the commercial flexible exemption adopted by the local jurisdiction. Or, as another example, it would be**

exempt if did not exceed 50% of the commercial flexible exemption adopted by the local jurisdiction plus 50% of the single family flexible exemption adopted by the local jurisdiction. We strongly oppose the Ecology proposal which would allow a project to be exempt with 100% of the multifamily exemption plus 100% of the commercial exemption. Such a project would have twice the impact of either the multifamily exemption or the commercial exemption. If the multifamily exemption and the commercial exemption each represent the maximum level of development that is still unlikely to have a significant adverse environmental impact, then the Ecology proposed multifamily exemption must be likely to have significant adverse environmental impact. Exemption for such projects (likely to have significant adverse environmental impact) are prohibited by statute.