

10/5/12

Dear Department of Ecology,

On behalf of the environmental representatives on the SEPA Rules Advisory Committee (Committee), thank you for the opportunity to comment on your draft rule. We very much appreciate the work of the Department's staff and other stakeholders in pulling this draft rule together so quickly and facilitating a constructive discussion through the Committee process.

As you know, we are committed to preserving the integrity of the law by supporting transparency, ensuring accountability, and protecting our diverse environment from any significant impacts that may result from development projects. At the same time, we acknowledge that local governments are interested in having more flexibility. The stakeholders have made significant progress in striking the right balance between these interests, and our comments are focused on technical changes to clarify the rule language. We also have a specific recommendation regarding the commercial development threshold to guarantee that projects with significant impacts are adequately reviewed.

1. Categorical Exemptions

We generally support the Proposal C changes to the threshold limits and WAC 197-11-800(1)(c) that were brought forward at Tuesday's meeting.

We have a few additional comments and suggestions that we would like to add regarding our position on categorical exemptions:

- **We oppose increasing the default thresholds for categorical exemptions.** We support Proposal C because, among other things, it does not contain an increase of the default thresholds for categorical exemptions. The Committee was not directed to raise the default thresholds for categorical exemption. And further, there has been little justification for why this is needed. The environmental community strongly opposes any increase to the default thresholds for categorical exemption to be included with this update.
- **The changes do not apply to subdivisions.** Proposal C, as agreed to by several members of the advisory committee, does not apply to subdivisions. The reference to construction of residential structures is intended to refer to a proposal to construct those units, not a proposal for a subdivision.
- **We request that the Department set the Commercial development exemption limit in Proposal C at or below 20,000 square feet and 60 parking spaces for urban growth areas.** When adopting a rule that defines categorical exemptions, Ecology has a statutory obligation to include only those actions that are not major actions significantly

affecting the quality of the environment. RCW 43.21C.110(1)(a). It is a somewhat inappropriate science to define actions as exempted based on their size. Size is relevant, but the use proposed and the location that it is proposed in also plays a large role in whether there will be significant adverse impacts. Commercial development incorporates a large number of different types of uses that could be proposed in a wide variety of different locations, with great variation in impacts. There is a high likelihood of significant adverse impacts caused by noise, traffic, air emissions, and lights and impacts to water quality, water quantity, critical areas, aesthetics, land use, and more with large commercial uses. We believe that SEPA plays a critical role in filling the gaps to disclose, analyze, and mitigate these impacts for any commercial use larger than 20,000 square feet.

- **One thing that was not clarified in Proposal C – and was thus not a part of it – was how the grading exemption would be applied.** We strongly oppose the amendments proposed by the Ecology to the landfill provision in WAC 197-11-800(1)(b)(v). This would allow bad actors to get around SEPA review. For example, a person could have a primary plan to excavate one million cubic yards and avoid SEPA review by simply building a single family home along with the excavation. That language has nothing to do with the mandate that Ecology was given for December, 2012. We can address this next year if necessary.

2. Utilities

We support the proposed change by Ecology. This proposal will allow reasonable improvements to the electrical transmission grid while protecting the environment.

3. SEPA Checklist

We support the general efforts to make the checklist more efficient however we do have technical suggestions for improvement.

- **Remove references to “land-use plans” in all of 197-11-315** because they do not typically have regulatory authority.
- **Add greater clarity to 197-11-315(1)(d)** by rewriting it to read as follows: “(d) Projects where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, or other legal authority. In this situation, agencies shall use the environmental checklist in WAC 197-11-960, but may do so as described in subsection (6) of this section; or”

- **Add greater clarity to 197-11-315(e)** by rewriting it to read as follows: “(e) Non-project proposals where the questions in Part B are not meaningful to the analysis of the proposal. Part D shall be completed for all non-project proposals.”

Thank you for consideration of our comments. If you have any questions, please contact Claudia Newman at newman@bnd-law.com or 206-790-5249 or April Putney at april@futurewise.org or 206-343-0681x0.

Sincerely,

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