

Ad Hoc Subcommittee – Notifications
Meeting notes from August 20 2012 conference call
Facilitator: Neil Aaland

Agenda:

- What are the issues related to streamlining for this topic?
- What are some examples of how this can be a problem with streamlining? (specific examples would be very helpful to inform the conversation)
- What are your ideas for addressing this topic?
- Any specific recommendations for Advisory Committee?

Participants:

- Scott Kuhta
- Clay White
- Carol Lee Roalkvam
- Pat Schneider
- Harry Reinert
- Mary Rossi
- Brandon Houskeeper
- Chris Moore
- Claudia Newman
- Mary Thompson

Ecology staff present:

- Tom Clingman
- Brenden McFarland
- Annie Szvetecz
- Fran Sant

Discussion:

Cultural resources:

- It's important to use some of the technology tools to notify tribes, interested parties, others about potential presence of cultural resources. There is a mandate under SEPA to protect cultural resources; only a small percent of cultural resources have been identified.
- What does SEPA notice provide that other notifications do not?
 - Not sure. Local governments do have access to the database
- Is the concern more about ability to comment or about being notified?
 - It's also about better forms of notification, more efficiency
 - SEPA is often the only opportunity to comment
- Is it enough to be notified of a project? Most local governments put together a monthly report of building permits.
 - Might want to require some kind of survey if it is known that cultural resources are potentially present

One idea is to require some type of notice for the newly categorical exempt projects

- We need to be clear on what notice is; notice could be the start of a public involvement process.
- What's the purpose of notifying unless there is some other process to consider comments?

Local governments say the permitting process takes care of public notice.

- Public notification helps to ensure that codes are being followed.

Pat Schneider: Comments sometimes make a difference even without a formal comment period. Some jurisdictions have a code provision for considering comments received before the permit is issued if there's something to consider. But have to make expectations clear; such a notice should tell people that there is no formal comment period.

- Could issue a notice that the city or county received an application, there is no official comment period, but city or county will consider any comments received prior to a decision being made.
- Don't want to increase burden on local government. Is it worthwhile to propose that projects that become exempt have some type of notice required – e.g. publication on city's website; mailing

Could we create a simple table that puts out the different options for public notification?

- WASHDOT holds annual meetings with tribes to let them know in advance of projects
- Clay: Under RCW 36.70B [local project review act] local governments make decisions on the classification of their permits, including which ones require notice. If we don't make good decisions on this, we hear from our citizens. Every local government is different. RCW36.70B does a pretty good job. Is anything in there broken? Discussion:
 - Often local governments only do notice if SEPA is triggered; don't want to lose that
 - 90% of notices don't get any helpful response.
 - Claudia says more and more cases are projects next door to people with major impacts and they did not get notice; LUPA deadline passed before they knew about it
 - Clay doesn't disagree but that is a minority
 - Is this conversation inextricably tied in to how high the exemptions go?

Need to be sure that the interests of state agencies are considered.

If state agencies are lead, they are not subject to local project review act so those notification provisions are not in place.

State agencies need to look at it from also being the recipient of notice, not just as lead agencies.

Tom: Is there something special about notice to state agencies?

There have been suggestions to expand the SEPA register.

Local governments are concerned about trading one process for another one; nervous about requiring comment periods under 36.70B for small projects that don't have impacts and where agency discretion is narrow (i.e. of meet requirements permit is issued).

Issue: other agencies that rely on lead agency to do SEPA on their behalf

There are a lot of permits that don't require comment unless SEPA is required. Two ways to see this: 1.) Increases opportunity for public review; or 2.) Adds significant time and cost to minor projects that local government already determined do not warrant a formal comment period.

Claudia thinks she agrees with Pat Schneider – don't require a checklist, no comment period, no DNS...the only thing to hold onto is the public notification.

Don't want to exchange one comment period for another. If there were a clearing house to provide information, want to provide notice for LUPA purposes. Don't want to create a new cause for action. What kind of projects are we really discussing?

Pat restated his idea:

- Only provide a simple notice; some that will now be categorically exempt will still require notice under other regulations.
- For those newly exempt that now won't trigger notice at all, just have a simple notice requirement....simple clearinghouse, no comment period.
- This doesn't transform the permit into a discretionary permit.

Neil asked for others to weigh in:

- Sounds simple but may cause some confusion.
- What does it mean to not require notice?
 - Since DAHP already doesn't receive notice on the vast majority of permits that are exempt, what's the extra value when they receive notice?
- Regarding cultural resources, those interests sometimes get notice from other people; concern is that folks still have that opportunity
 - Hanging on to that notice in some form is going to be important

One perspective is we already have a complex set of regulations regarding notice – 36.70B spawned. Right now, if building permits are not subject to SEPA, there is no notice at all. He doesn't want to have to provide notice they didn't have to provide before.

Tom Clingman mentioned that one charge is to harmonize things with GMA. Local governments have 36.70B; what's the level of notice...how do we harmonize that notice piece with GMA?

It will require lots of action by local governments, they will have to change their codes.

Why haven't local governments raised the minimum thresholds?

- Many small cities and towns just adopt SEPA by reference, and they don't see many checklists. Not a big deal for them.

The idea here is if you increase your exemptions above what you have now, you provide the new notice

Discussion about a statewide clearinghouse for these new exemptions/notices:

- Could potentially still use SEPA register, create new category
- If all we're talking about is notice, makes sense to have it in centralized process in one place, rather than going to each jurisdiction.
- Would like to see us really modernize; would be challenging to go down the path of only having each individual jurisdiction provide its own method.

A 50 unit project in Snohomish county is minor but it's big in Stevens or Asotin County. What we're talking about is it's not one size fits all.

Tom C: One challenge is trying to bring cultural resources information is up to the same level as wetlands. We need to think about how to bring that info about. Comments:

- A complicating factor is information must be kept confidential due to potential vandalism, loss of resource.
- Onus can't be on property owner but has to be on public official with access to that information.
- The key is finding the appropriate places to trigger a review. An individual property owner can find out about their own property. Lots of info on file but does anyone ask?
- There are data sharing agreements between DAHP and about 40 local governments, tribes. Is part of the solution might be increasing the agreements between DAHP and other units of government? Yes, good first step.

Concerned about notice process generally, but we need to focus on the narrow issue we have in front of us now. Are we going to require some form of notice for the newly categorically exempt projects? He may be willing to go down that path

- We need to have the discussion about proposed higher threshold numbers to understand how to approach notice issue.

The participants want a chance to see meeting notes before deciding how to proceed with a proposal.

The discussion ended at 4:50 pm.