9/4/12 Draft from Tom Clingman – For SEPA Steering Committee discussion

Ideas for criteria/required findings for an optional higher minor construction SEPA threshold

The following are ideas to help frame SEPA Advisory Committee discussion of criteria or findings that would apply to an optional higher set of minor construction SEPA thresholds. The concept here is that we would have a new set of optional thresholds above the current range; and that adopting these new higher thresholds would entail specific findings.

The language below draws heavily on 43.21C.240 "Project Review under the GMA", and WAC 197-11-158 "GMA project review — Reliance on existing plans, laws, and regulations." These provisions set out criteria for determining that existing regulations provide adequate mitigation for a *specific development project*. The following is a proposed framework for a *programmatic* determination regarding adequacy of review for *types* of development proposed for the optional categorical exemption. The format for discussion is a set of findings being made by a local government, to illustrate how the framework would be applied. This would be put into WAC format for adoption.

The (city/county) makes the following findings related to the higher optional thresholds for Minor Construction under WAC 197-11-800(d) *(anticipated number of new set of optional thresholds)*:

(Item 1 is a basic finding, utilizing language from 197-11-158(2)(d))

1. The (city/county) has determined that the requirements for environmental analysis, protection, and mitigation measures related to the exempted types of development in this ordinance have been adequately addressed in development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules. *(From*

(Item 2 would require detailed identification of applicable local regulations. Whether this level of detail is warranted may depend on the size of the new optional upper threshold. The suggested approach consolidates Elements into "buckets" of issues. An option would be to "require identification of the local ordinances that mitigate impacts to Elements of the Environment" or similar language – and leave format of the findings to the local government.)

2. Significant affects of the exempted development on the quality of the natural and built environment are avoided or mitigated by the following development regulations adopted by (city or county): *(*

   a. Natural resources

      1) Critical Areas Ordinance ____

      2) Shoreline Master Program ____

      3) Stormwater Manual ____

4) Etc.

b. Discharges to water, air or noise

1)

c. Built environment

1) Transportation: _____

2) Schools: Impact fee adopted _____

3) Etc.

d. Cultural resources

1)

(Item 3 addresses use of regulations adopted by other agencies, borrowing from 197-11-158(1) and (4))

3. In addition to the above, the following rules or laws of other agencies with jurisdiction are determined by (city/county) to provide mitigation of impacts from the exempted types of projects. The (county/city) has consulted in writing with these agencies. When deferring to these regulations to mitigate impacts, the (county/city) shall base or condition its project approval on compliance with these other existing rules or laws. a. _____

   b. etc.

(Item 4 mirrors the "environmental review" fallback provision language in WAC 197-11-158(3))

4. During project review, the (city/county) may determine that a project exempt under this ordinance has specific impacts that have not been adequately addressed that may require additional environmental review. Examples of project specific impacts that may have probable significant environment impacts that not have been adequately addressed include, but are not limited to, impacts resulting from changed conditions, impacts indicated by new information, or impacts not reasonably foreseeable in the planning process.

(Item 5 is based on a suggestion from Gerald Steele during the ad hoc discussion on findings. Idea is that a renewable action will ensure periodic review of changed conditions or information.)

5. This ordinance shall be applicable for five years from the effective date. The optional threshold levels in this ordinance shall expire unless renewed by an ordinance or resolution including the findings required by WAC 197-11-800(d).