

CULTURAL RESOURCES AND THE EFFECT OF INCREASED SEPA THRESHOLDS

White Paper

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Issue:

The 2012 Legislature passed Senate Bill 6406 that includes a directive to the Dept. of Ecology to modernize the rules guiding state/local agency SEPA reviews. The purpose of the modernization is to bring SEPA in line with current land-use planning and development regulations, including the Growth Management Act (GMA) and the Shoreline Management Act (SMA).

However, not all local jurisdictions use the GMA or the SMA to plan for cultural resources, even though their protection is a stated goal of both Acts. Modernizing SEPA necessarily involves not only the proposed streamlining efforts but also a heightened recognition of cultural resource issues and the increased availability of relevant information (e.g. DAHP's online WISAARD database) that local jurisdictions should apply during planning and development activities.

The directive to increase the thresholds for SEPA review of minor construction projects under Washington Administrative Code (WAC) 197-11-800(1) and (23)(c) will result in an *increased number of projects that are not reviewed for impacts to cultural resources* via the SEPA Checklist; such impacts constitute a "probable significant adverse environmental impact" (RCW 43.21C.031) and possible violation of State law (RCW 27.53 and 27.44).

Pre-project review of impacts represents an *essential proactive opportunity* to ensure that the State and its citizens fulfill their responsibility to "preserve important historic, cultural, and natural aspects of our national heritage" (RCW 43.21C.020).

Key elements that should be retained or implemented when increasing thresholds:

1. Notification (including tribes and advocacy groups) – all projects involving ground disturbance *and/or* buildings 45 years and older *or* eligible for/listed in historic register(s) and surveys
2. Standard inadvertent discovery language included on all related permits – compliance with State law (RCW 27.53 and 27.44)
3. No increase of thresholds without a data-sharing agreement between local government or State agency and DAHP

Suggested solutions for increasing thresholds and for SEPA modernization generally (from DAHP and SEPA Rule Making Advisory Committee meetings and outreach):

- Projects may be SEPA exempt if:
 1. A cultural resource management plan is prepared, approved by DAHP, and incorporated into the jurisdiction's Comprehensive Plan.
- OR*

1. Local ordinances and/or development regulations address pre-project review and include standard inadvertent discovery language (SIDL). **Examples** include:
 - a) Whatcom County Code 23.90.070 (Shoreline Management Program - General Policies and Regulations - Archaeological, historic and cultural resources)
 - b) Whatcom County Code 20.72.652 (Zoning - Point Roberts Special District - Archaeological Resources)
 - c) According to DAHP, other examples include San Juan, Island, and Clark Counties

AND

2. Local jurisdictions have a data-sharing agreement with DAHP that addresses access to DAHP cultural resource data (e.g. WISAARD), confidentiality, and application of the data to pre-project review.
- Projects are exempt from SEPA except for certain aspects, including cultural resources in which case data-sharing agreements with DAHP must be in place.