



**PORT GAMBLE S'KLALLAM TRIBE**  
31912 Little Boston Rd. NE – Kingston, WA 98346

October 8, 2012

Tom Clingman  
Washington State Department of Ecology  
PO Box 47600  
Olympia, WA, 98504

RE: State Environmental Policy Act Rule Making

Dear Mr. Clingman:

I appreciate the opportunity to provide comments on the proposed State Environmental Policy Act (SEPA) rule revisions. The Port Gamble S'Klallam Tribe is a federally recognized Indian tribe with reserved rights to fish at all usual and accustomed places, together with the privilege of hunting and gathering in our U&A and ceded areas both within and outside of our reservation. We are fortunate to have Washington Tribes represented on the SEPA Rulemaking Advisory Committee by the Yakima and Tulalip Tribes and we support all of their comments and recommendations as well.

We have a vested interest in any state rule making that has the potential to negatively affect any of our natural and or cultural resources or treaty reserved rights, including our water rights or the critical in stream flow reserved for salmon and many other species that depend up them. While SB 6406 states in Part 3, in part that: “Significant opportunities exist to...streamline regulatory process and achieve program efficiencies while...maintaining current levels of natural resource protection.”, it is critically important to understand and address the huge difference between streamlining the regulatory process in a way that helps with logistics and getting more done with less resources and “streamlining the permitting process” which seems to be the never-ending effort these days.

We are always very nervous when these continuous legislative pressures keep steering towards making it easier to permit more developments when it is so crystal clear that “death by a thousand cuts” is an ever increasing dilemma based on cumulative impacts that are continually eroding and damaging our natural and cultural resources and the ecosystems they depend on. Please review and note the more detailed comments of concern in the following pages.

We would be happy to follow up on any of these comments and concerns before any of these rule revisions are finalized. Please contact either Paul McCollum, our Natural Resources Director at 360 297-6237 or [paulm@pgst.nsn.us](mailto:paulm@pgst.nsn.us) or Roma Call, our Environmental Coordinator at 360 297-6265 or [romac@pgst.nsn.us](mailto:romac@pgst.nsn.us) if you have any questions about our comments or would like to follow up with any of the process or next steps.

Sincerely,

  
Jeromy Sullivan  
Chairman



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### **Overview**

Application of land use controls vary widely across the state, and the majority of local governments within areas of potential impact do not have a firm grasp on the purpose of SEPA and environmental review. It is often seen as just another "permit" to issue. The typical justification of the legislature seems to be is that GMA/SMA provides protection of critical areas such that SEPA environmental review can be relaxed or minimized. There are some local governments that did not have a critical areas ordinance until 2010. Any amendments to the SEPA administrative rules need to insure that jurisdictions with the requisite level of capacity and resources to implement its land use controls have SEPA flexibility, and those that do not should at least maintain the status quo.

Ecology submitted for review proposed draft rule making for increases in threshold exemptions, increases in threshold exemptions for electrical facilities, and efficiency changes to the environmental checklist on 09/25/2012. In addition to these comments, we would respectfully remind the State of its responsibilities to improve, preserve and to administer its laws to prevent or eliminate damage to the environment.

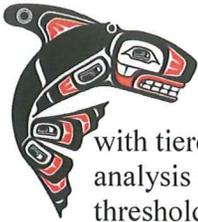
The legislature authorizes and directs that, to the fullest extent possible, the policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in the act, and that all branches of the government of this state, including state agencies ... shall: utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment (RCW 43.2IC.030). The process of improving logistics using new technologies and procedures to get more and better environmental review done with similar or less available resources is more reasonable and necessary, yet very different from making it easier for developments that may have significant impacts to slip quickly through the regulatory process in getting their permits.

### **Threshold Exemptions**

The threshold increases have two proposals; Proposal A with a general Tier I maximum and a Tier 2 of higher increases based on a higher level of scrutiny, with different levels inside and outside an Urban Growth Areas (UGA), and Proposal B limited to different thresholds inside and outside a UGA. In addition to proposed threshold increases, the proposal would require notice of SEPA exempt projects to the SEPA register.

At the beginning of the advisory group process, it was requested by numerous caucuses that any threshold increases be based on data; in an attempt to determine at what level does development not have a the potential for significant, adverse environmental impacts, and can therefore be exempted from SEPA review. No such data was ever provided. Each caucus submitted recommendations of new threshold levels. All of the recommendations appeared to be quite arbitrary, with no data or justification for the levels provided. The State caucus did however propose percentage increases based on a local review and analysis.

The draft Ecology proposals also appear to be arbitrary with a lack of any data to base rulemaking on. While the state caucus proposal based on a percentage increase with a local review and analysis seems appropriate, it is probably too complex to address in the short time frame this year, in addition to Ecology's Proposal A. If Ecology does put forth a proposal



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with tiered levels, it is imperative that the upper levels require a higher level of review and analysis for consistency with the act (RCW 43.21C). Until those that propose raising the threshold level for exemption from SEPA review, provide data to support that there will be no detrimental impact to the environment and or Treaty protected natural and cultural resources, we cannot agree to the levels presented in either Proposal A or B.

### **SEPA Notice**

Ecology's proposal to require SEPA exempt projects to put notice in the SEPA register will not adequately protect natural or cultural resources or associated Tribal treaty rights. Notice without the opportunity to comment, or the ability to appeal a decision is useless. Numerous jurisdictions implement their CAD regulations at an administrative level, with no notice requirements unless SEPA is also required. The GMA does not require local governments to develop ordinances or regulations to protect cultural resources, and SEPA is often the only avenue for the tribe to provide comments on a proposals potential to disturb or destroy cultural resources.

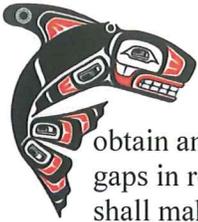
### **Electrical Facilities**

The proposed SEPA threshold exemption increase for electrical facilities from 55,000 volts to 115,000 volts could result in significant impacts to natural, cultural and archaeological resources (see photos of 115,000 volt transmission lines below). The SEPA threshold exemption for electrical facilities should not be raised even if they are within existing rights-of-way or developed utility corridors. These designations do not ensure that proper environmental and cultural review has occurred. It is imperative that tribes, government agencies, the public, and decision makers are made fully aware of these potential impacts through the SEPA process prior to issuance of permits and commencement of construction.

### **SEPA Checklist**

While many see the SEPA checklist as cumbersome or unnecessary, it is vital for tribal review of a proposal's potential effects to Treaty reserved rights and cultural resources. The majority of SEPA checklists reviewed within the Ceded lands are poorly prepared by the proponent and inadequately reviewed by local governments. The purpose of this process should not only be efficiency, but how to guide proponents to thoroughly prepare a SEPA checklist. For example, Question B13 of the SEPA checklist involves historic, archaeological and cultural resources. It has three parts: "a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe." Then "b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site?" Followed by "c. Proposed measures to reduce or control impacts, if any." These questions are usually answered in ignorance with a) no, b) no, and c) not applicable, when available data and information clearly suggests different answers where needed. SEPA proposals to state agencies, counties and municipalities often answer these questions without the proper review. These questions cannot be answered without a process that incorporates historic research, tribal consultation, data gathering and archaeological surveys. SEPA rules require that decisions made during environmental review be based on sufficient information.

Threshold determinations must be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal (WAC 19711- 335)." WAC 197-11-080(1) states that: "If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall



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obtain and include the information in their environmental documents;" and "When there are gaps in relevant information or scientific uncertainty concerning significant impacts, agencies shall make clear that such information is lacking or that substantial uncertainty exists." In addition to this, WAC 197-11-080(3) says that if information is not available or costs too much to obtain or if the means to obtain the information is speculative or unknown, the agency may proceed but it "shall generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed." Therefore, without a professionally reasoned archaeological investigation of a proposed project area, it must be assumed that the entire area contains an archaeological site of cultural significance.

The BI3a "Help" button is totally inadequate as it only talks about documenting structures over 50 years old. BI3a should include the same "help" information as BI3b. BI3c is good information on how to come up with measures to protect known sites. It would be more appropriate if part a. was switched with part b. The first part of the question should be to generally describe what historic, archaeological, scientific or cultural features and objects are on or adjacent to the proposed project.

Proponents should be encouraged to do the appropriate research and review of historic maps and records as well as consulting DAHP and local Tribes with much of that information provided for the whole 3-part question. The second part should be to focus on what sites are on or adjacent to the proposal that may be eligible for inclusion in local, state or national registers of historic places. Then the third part is what measures are proposed to protect or mitigate affects to sites on or adjacent to the project.

### **Conclusion**

We hope these comments have been helpful. We understand the legislative and political pressures Ecology is often under. However, most of the pressures that fall under a pro-development label, are the same pressures that allowed for historic and recent regulations that placed Puget Sound and the state as a whole in the environmental crises that now exists. When you look carefully at all the restoration and cleanup actions going on, and then see the continuous slippage and grinding away of the all too few important regulations on the books, such as SEPA, it makes no sense whatsoever. We hope Ecology be courageous enough to address SB 6406 in a way that is environmentally conservative and utilizes the all-important precautionary principal to the highest degree possible.