October 9, 2013
Maia Bellon, Director
Washington Department of Ecology
P.O. Box 47600
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Subject: 2013 Rulemaking for Chapter 197-11 WAC , SEPA Rules Categorical Exemptions and Notification to Tribes and State Agencies

Ms. Bellon,

The Snoqualmie Indian Tribe thanks the Department of Ecology for the opportunity to comment on the proposed SEPA rule changes. We offer these comments for consideration.

The State Environmental Policy Act (SEPA) requires the preservation of important historic, cultural, and natural aspects of our national heritage [43.21C.020(d)]. In determining an impact's significance, the responsible official shall take into account the adverse effect on environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, and endangered or threatened species or their habitat [197-11-330 (3)(e)(i)(ii)]. Section 301(1) of Senate Bill (SB) 6406 justifies the increase of categorical exemption thresholds in light of the increased environmental protections in place under chapters 36.70A RCW (Growth Management Act) and 90.58 RCW (Shoreline Management Act). While a Shoreline Master Program comprehensively updated under the new guidelines (WAC 173-26) plans for and protects cultural resources, the GMA does not require planning for or protection of cultural resources, providing for probable significant, adverse environmental impacts to cultural resources and treaty-reserved rights. Both known and unknown archaeological resources are vulnerable under the new SEPA categorical exemptions. It is important to remember that archaeological resources once damaged are damaged forever; they are non-renewable. Any level of mitigation cannot undo the damage. Understanding the possible negative impacts as early as possible is vital to protecting these resources.

SB 6406 requires Ecology to ensure that federally recognized tribes receive notice about projects that impact tribal interests through notice under SEPA and other means. It also requires Ecology to ensure that state agencies and other interested parties receive notice about projects of interest through notice under SEPA and other means. Tribal interests

include all varieties of cultural resources across the landscape. The Snoqualmie Indian Tribe has reviewed draft rule language for WAC 197-11 and offers the following comments.

The Snoqualmie Indian Tribe has rights, interests, and resources that will be adversely affected by changes to the current SEPA process. The Snoqualmie Indian Tribe is a signatory to the Point Elliott Treaty of 1855, which created a government-to-government relationship with the United States thirty-four years before Washington even became a State. However, we have ancestral connections dating back thousands of years along the Cascade Mountains all the way to and including the coastal areas of the State of Washington. Signing the Treaty did not abrogate our interests and rights to resources in these areas. Treaties are the supreme law of the land (Article VI, U.S. Constitution), and Ecology must consider any changes that may impact treaty-reserved rights. We hunt, fish, gather and pray in the same areas our ancestors taught us. Natural resources are cultural resources in our culture; thus we use the terms "natural resources, "cultural resources", and "archaeological resources" interchangeably unless otherwise specified in context. As an integrated society we must manage these resources responsibly. It is the sacred duty of the Snoqualmie People to protect our connection to the land and all of the resources connected to it.

Our ancestors gave us this land to take care of for future generations and since time immemorial the Snoqualmie People have had an intimate knowledge of our environment. We understand the variety and utility of the resources across the diverse landscapes of the ceded and traditional use lands. We expect theses resources to be preserved and protected for future generations. Some of the sacred foods of the Snoqualmie People include alq^{w}uʔ (water), sčədadx^{w} (salmon), cabid (camas), ʔulal (cattail) and wədaʔx̌ (huckleberries). Some sacred animals include sk^{w}ag^{w}ičed (elk), sqig^{w}əc (deer), sčətx^{w}əd (bear), sx^{w}ekay (mountain goat) and yəx̌^{w}əlaʔ (eagle). These all play significant parts in the Snoqualmie People's spiritual and cultural practices and connect us to the environmental landscape.

This connection to the environment is missing in modern Euro-American culture. The development has created permanent, detrimental impacts to the landscape that in some instances it is barely recognizable. Any further loss of habitat and resources will have an exponentially negative impact on the Snoqualmie People's ability to live in a traditional manner. This violates our rights to live, hunt, gather and pray as our ancestors taught us; thus making it more difficult to pass these traditions on to our children as we have for countless generations.

The environmental landscape also contains archaeological resources, whether previously recorded or still unrecognized (RCW 27.53.040). These resources are physical manifestations of our ancestors in the environmental landscape and connect us to the past. These resources are important to the Snoqualmie Indian Tribe for their cultural, historical, scientific and spiritual value. They demonstrate the variety of activities by our ancestors across the diverse landscapes around the Pacific Northwest. Once again we emphasize that

once archaeological resources are damaged, they are damaged forever; they are non-renewable.

To facilitate the preservation and protection of resources of cultural value across the ceded and traditional use areas of the Snoqualmie Indian Tribe, we expect the Department of Ecology to require the utilization of a systematic interdisciplinary approach that integrates natural and social sciences [RCW 43.21C.030(a)], including archaeological field investigations when any lead agency reviews the permitting of any ground disturbing activity. Systematic archaeological field investigations are necessary to assure that still unrecognized archaeological resources are not disturbed (RCW 27.53.040).

The Washington State Department of Archaeology and Historic Preservation (DAHP) has a confidential database with known archaeological sites. All sub-divisions of Washington State that permit ground disturbing activities should be required to have a data-sharing agreement with DAHP and should screen every project they review, both potentially SEPA exempt and non-exempt, as part of their review process to insure that archaeological sites are not disturbed (RCW 27.53.060). A professional archaeologist, in consultation with affected Tribes, must assess any project to determine site boundaries and develop site protection plans. All projects with known archaeological sites should not be categorically exempt from SEPA under any jurisdiction. Failure to use available statewide information is irresponsible and should not be allowed as it is inconsistent with RCW 43.21C.030(a).

DAHP has created an archaeological predictive model for Washington State. DAHP's model should be used to trigger archaeological surveys whenever any portion of a proposed project, both potentially SEPA exempt and non-exempt, includes "high risk" and/or "very high risk" for archaeological resources as indicated in the database. If the archaeological surveys discover archaeological resources, the project should not be exempt from SEPA. Every permit needs to include an archaeological resource incidental discovery clause so the proponent knows what measures must be taken if archaeological resources are discovered during the project. Again, archaeological resources once damaged are destroyed forever; they are non-renewable in any circumstance.

There are also a considerable number of native plants and vegetation habitats that would be devastated by the proposed increase in thresholds. For the protection of these endangered plants, the Washington Department of Natural Resources, Natural Heritage Program should be utilized, consistent with RCW 43.21C.030(a).

The Snoqualmie Indian Tribe has reviewed draft rule language for WAC 197-11 and offers the following comments; which echoes comments from other Native American Tribes:

The Snoqualmie Indian Tribe concurs with draft language for WAC 197-11-800 (c)(iv) if all of the bullets are required and the provisions apply statewide, regardless of GMA planning status. Additionally, "Cultural Resources Management Plan", "pre-project cultural resources review" and "standard inadvertent discovery plan" need to be defined. We suggest that the language proposed by the Association of Cities for WAC 197-11-800 (c)(iv) also be added as WAC 197-11-800 (c)(v).
For question 13 of the SEPA checklist the Snoqualmie Indian Tribe suggests:

13. Historic and cultural preservation

a) *Generally describe any landmarks or evidence of historic, archaeological, scientific or cultural features or objects that are known to be on or within 1000 feet of the project.*
b) *Describe the methods used to assess the potential impacts to cultural resources on or within 1000 feet of the project.*
    - *What tribe(s) was consulted?*
    - *Was the Department of Archaeology and Historic Preservation consulted? What historic maps and records were reviewed?*
    - *Was an archaeological survey conducted? Were additional methods used to identify cultural resources?*
c) *Are there any places or objects listed on or proposed for listing on, or eligible for listing on the national, state or local preservation registers known to be on or within 1000 feet of the project? If so, generally describe them.*
d) *What measures are proposed to reduce or control impacts to cultural resources, if any?*

The Snoqualmie Indian Tribe is opposed to any new exemptions for projects on or near lands covered by water. There are too many variables with the potential to provide significant, adverse environmental impacts to treaty-reserved rights for support of new exemptions. The proposal of an exemption for dredging under fifty cubic yards in WAC 197-11-800(3) is unacceptable and irresponsible and should be removed. Dredging is widely known to have adverse effects on aquatic life. Additionally, project proponents underestimate the quantity of excavated materials at an unfortunately high frequency. Revising this section of code would result in dredging projects where, whether genuinely mistaken or not, large quantities of material would be removed from lands covered by water to the detriment of the aquatic ecosystem.

While our preference is for no revision of this section, a somewhat acceptable threshold might be five cubic yards of material. This lower threshold would limit the extent of possible impacts to the aquatic environment as well as not create the impression that substantial

dredging projects are exempt. However, we reiterate that the Best Available Science indicates that dredging always poses serious risks to the environment and treaty-reserved resources, and therefore it is preferable and responsible that no dredging in any quantity would be exempt.

The Snoqualmie Indian Tribe also has comments on the proposed language for WAC [197-11-800 (6)(c)] *Rezones where the potential impacts were previously analyzed in environmental review conducted for a comprehensive plan or sub-area plan.* Rezones should take into account the most up-to-date information available. A time threshold should be applied to this code. We suggest a minimum of 3 years as an acceptable threshold. If three years have passed since the potential impacts of a rezoning proposal were analyzed then an update to the analysis should occur, incorporating any new materials and information and allowing for changes that occurred in the interim. This would also allow any new information about previously unknown archeological sites near a project location to be considered before inadvertent damage to it.

We would also like to remind Ecology of their responsibilities and agreements under the Centennial Accord, the Millennium Agreement and the Washington State Department of Ecology Centennial Accord Implementation Plan. The Snoqualmie Indian Tribe is concerned about the level of effort Ecology has made during the rulemaking process to ensure that proper consultation polices have been followed as stated in the Implementation Plan:

> *Consultation means more than simply informing affected tribes about what the agency is planning to do. Consultation means respectful, effective communication that works toward a consensus before a decision is made or an action is taken. Ecology is committed to government-to-government consultation with tribes on all actions and issues of interest to tribes under Ecology's statutory authority."*
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> *"Ecology's objective is to provide early notification and an open invitation for consultation on all decisions that may affect tribal rights and interests. On major issues where we have been informed of tribal interests or the implication of a policy or action has obvious tribal implications, Ecology will seek to cooperatively establish the manner and time frame for consultation with tribal governments. Consultation with tribal governments will occur independent of the public participation process but representatives of tribal governments and tribal members have equal access to Ecology's public participation processes as well. When a major rule or policy process is planned, Ecology will encourage tribal participation as key members of any planned advisory group while at the same time inviting interested tribes to consult on a government-to-government basis."*

Discussion and changes to any part of the SEPA process, even when driven by the Legislature, is clearly a decision "that may affect tribal rights and interests." We are not

aware of any direct attempts by Ecology staff in the past two years reach out to Tribes on this process. Ecology has made no attempt to discuss any of the SEPA changes or rule making process to Tribes out side of general public meetings. Ecology has not ensured that "consultation with tribal governments will occur independent of the public participation process." In fact the only known meeting between just Ecology staff and Tribal staff we are aware of was organized *not* by Ecology but by a small group of Tribal staff. Again Ecology failed to live up to their responsibilities to Tribes; we are not members of the public, but sovereign governments.

We strongly encourage Ecology to live up to these agreements and policies by actively working with Tribes. We fully expect Ecology to make the proper efforts in the future, not just for the SEPA rule making process but in any action Ecology takes that may affect Tribal interests.

SB 6406 requires Ecology to ensure that federally recognized tribes receive notice about projects that impact tribal interests through notice under SEPA and other means. The proposed rulemaking ignores SB 6406 and is in opposition to legislative requirements. With the increased threshold exemptions adopted in 2012, the Snoqualmie Indian Tribe will receive fewer notices, with the potential for significant, adverse environmental impacts to treaty-reserved rights. This is unacceptable and potentially violates treaties between Tribes and the U.S. Government and decisions up to this point have been made without proper consolation with affected Tribes as per Ecology policy. Thank you again for the opportunity to comment, we look forward to working with Ecology in the future.

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