



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **DRAFT STATUS REPORT**

*Chapter 197-11 WAC*

*State Environmental Policy Act*

August 9, 2013

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## Public Notice

### Improving Public Notice for Proposals

**Topic:** Improving Public Notice for Proposals

**Rule section:** 197-11-508 & 510

**Discussion:** The 2013 rulemaking includes the topic of improving public notice. The goal is to improve processes to ensure timely notice, provide open and accessible documents, and adequate comment periods. This notice is important for:

- a. Affected citizens, neighbors, interested parties
- b. Agencies with jurisdiction, affected jurisdictions, agencies with expertise
- c. Tribes

The Advisory Committee discussed public notice issues and Ecology received a couple of proposals for rule amendments. There were two themes related to improving public notice processes and modernizing the outreach tools.

1. Expanding the on-line SEPA Register to include non-SEPA documents
2. Requiring cities and counties to submit Notice of Applications for projects exempt from SEPA, the SEPA Register.

**Status:** Ecology is considering several rule amendments related to public notice and would like more discussion from the advisory committee on:

1. Revise WAC 197-11-508 (SEPA Register) to provide that the register is web-based and updated daily;
2. Revise WAC 197-11-510 (Public Notice) to specify that any postings on property must be visible to the general public, perhaps from the nearest public road), and that agencies are required to maintain an interested parties list for SEPA notices; and
3. Requiring cities and counties to submit all Notices of Application under RCW 36.70B (or equivalent notice) to the SEPA Register. (or some other statewide listing)

## GMA-SEPA Integration and Misc. Topics

### DNS Comment Period Change

**Topic:** DNS Comment Period Change

**Rule section:** 197-11-340 and 355

**Discussion:** At least half of all SEPA reviews for project proposals involve a comment period prior to the issuance of the DNS using the optional DNS process (or “ODNS”) specified in WAC 197-11-355. Process efficiencies and consistencies can be improved by creating more uniformity for public review of all DNSs. One idea that was discussed earlier in the year by the Advisory Committee (as part of the February 14

discussion on the county proposal for SEPA/GMA integration) is to modify the requirements for agency distribution and public notice of all DNSs to resemble the ODNS process. This means that the comment period for DNSs would occur prior to the formal issuance of the threshold determination. It could also mean that all DNSs would require a comment period –instead of only those that meet the criteria in 197-11-340(2)(a).

In summary, the concept is that the comment period for all DNS's would occur prior to making the threshold determination. Distribution of documents to other agencies and tribes would occur then, instead of after the threshold determination. After the close of the comment period, the agency would make its threshold determination, and another comment period would not be required.

**Status:** Ecology is considering this change and would like feedback from the Advisory Committee.

## **Consolidated Project Permit Application**

**Topic:** Consolidated Project Permit Application

**Rule section:** 197-11-355

**Discussion:** The County members of the Advisory Committee submitted a proposed concept related to a “consolidated project permit application” that combines the SEPA checklist with the master permit application and follows the optional DNS process (more or less) with more streamlining.

"Consolidated project permit application." Formal SEPA documents may be prepared as companion documents to a project review application or may be integrated into the project permit application. This section clarifies how WAC 197-11-640 (all SEPA documents) and WAC 197-11-425 through 197-11-442 (EISs) apply to integrated SEPA/GMA documents. The overriding consideration is the quality of information and analysis at the appropriate scope and level of detail for the proposed project, and not the format, length or bulk of the document.

**Status:** After some initial discussion with the Advisory Committee and internally here at Ecology, it seems like that idea has great potential, but it has a fair amount of issues to work through and may not be ready for rulemaking this year. However, Ecology would like feedback on whether a smaller scale “pilot” trial could be useful to generate some idea of how this could work for jurisdictions to voluntarily opt-in.

## **General SEPA/GMA Integration**

**Topic:** General SEPA/GMA Integration

**Rule section:** 197-11-158, 210, 220, 228, 230, 232, 235, 238

**Discussion:** These sections of the SEPA Rule were adopted in the mid-1990s and addressed SEPA/GMA integration envisioned by the regulatory reform legislation from 1995.

**Status:** Ecology has reviewed these sections and has not identified issues or proposed amendments except for clarification of some of the section titles.

Proposed Amendments to Rule Section Headers

197-11-158 SEPA/GMA project review – Reliance on existing plans, laws, and regulations.

197-11-235 SEPA/GMA integration documents.

197-11-238 SEPA/GMA integration Monitoring.

## **Planned Actions – Definition and criteria, Ordinances or resolutions**

**Topic:** Planned Actions – Definition and criteria, Ordinances or resolutions

**Rule section:** 197-11-164 and 168

**Discussion:** ESHB 1717, adopted by the 2013 legislature, allows recovery of costs for preparing a non-project EIS. In addition, the reference to the statute needs to be corrected. No other issues noted.

**Status:** Ecology will amend these sections to include the cost recovery provisions in ESHB 1717, and change statutory reference in 197-11-164 (1) from 43.21C.031 to 43.21C.440.

## **Environmental Checklist**

**Topic:** Environmental Checklist

**Rule section:** 197-11-960

**Discussion:** 2ESSB 6406 directed Ecology to, among other things, update the environmental checklist as part of the Phase 1 changes. Phase 1 changes were to be adopted by December 31, 2012. The specific direction for the environmental checklist was to:

- “(i) Improve efficiency of the environmental checklist; and
- (ii) Not include any new subjects into the scope of the checklist, including climate change and greenhouse gases.”

The Phase 1 rule amendments, adopted on December 28, 2012, included some changes to improve efficiency:

- For nonproject actions, part B does not have to be filled out if those questions do not contributed meaningfully to information;
- The lead agency may identify questions where the impacts are already adequately covered by existing regulatory provisions;
- Lead agencies are authorized to accept electronic submittals.

Additionally, SB 6082 in 2012 directed Ecology to update the checklist to address agricultural lands. to “ensure consideration of potential impacts to agricultural lands of long-term commercial significance . . . .the review and update shall ensure that the checklist is adequate to allow for consideration of impacts on adjacent agricultural properties, drainage patterns, agricultural soils, and normal agricultural operations.”

Discussions during the Phase 2 rulemaking have suggested several additional changes to the checklist:

- Update language in the checklist regarding agricultural lands (change the existing reference from “prime farmland” to the GMA terminology (“agricultural lands of long-term commercial significance”))
- DOH has requested that clarifying language be added to section 3 (water) regarding proposed ground water withdrawals and onsite sewage disposal systems, and to section 7 (environmental health) regarding hazardous materials and contamination
- Add language to section 9 (housing) regarding farmworker housing
- Revise the language in section 13 (historic and cultural preservation) to better address identification of potential historic and cultural resources that may be on a site
- Add language in section 14 (transportation) that addresses impacts to transportation of agricultural goods, non-motorized transportation, and other information

**Status:** Ecology is considering making the changes regarding agricultural lands, and the changes regarding historic and cultural resources. We are still considering these proposed changes, and would like additional feedback from the Advisory Committee. In addition, Ecology would like additional feedback on any other changes that Advisory Committee members would be appropriate during the Phase 2 rulemaking.