

TO: Washington Department of Ecology
FROM: State Agencies (Commerce, DAHP, DNR, Parks, WDFW, WSDOT)¹
RE: 2012 SEPA Rulemaking
Date: October 9, 2012

The state agency caucus would like to offer the following comments on Ecology's Draft (10/8/2012) of proposed revisions to WAC 197-11 regarding SEPA rulemaking. These comments are listed by individual state agency, due to requested 1-day review period. This individual listing does not indicate that other state agencies do or do not support the concerns of an individual state agency, just that there was no time for state agencies to confer with one another about them.

Department of Archeology and Historic Preservation

It is not the size of the exemption that affects cultural resources, it's the location of the project. We recognize SEPA exemptions have always been focused on size, but this has created unnecessary impacts to cultural resources. The tradition of focusing on the size of a project verses the location of a project, will continue to have negative consequences for archaeological and cultural sites, as well as historic buildings. No one can guarantee that an exemption under SEPA will avoid harm to cultural resources. Further, if archaeological resources or human remains are damaged by a project due to lack of review, the punitive damages remain the same regardless of a SEPA exemption.

We appreciate that in order to raise exemption levels the local government must document that protection and/or mitigation for impacts to elements of the environment listed in WAC 197—11-444 must be adequately addressed. Since cultural resources are not a requirement of comprehensive plans the agency is not sure what Ecology assumes is "adequate" under development regulations or state/federal laws.

We appreciate that Ecology has added a rule requiring that an ordinance must be sent to the affected Tribes and agencies with jurisdiction for a 21 day comment period. We contend however, this may conflict with Section 301 of SB 6406. Section 301 of SB 6406 clearly stated: *Ensure that federally recognized tribes receive notice about projects that impact tribal interests through notice under chapter 43.21C RCW and means other than chapter 43.21C RCW.*

Noticing affected tribes about a proposed ordinance is not the same as determining which actual projects may impact tribal interests. This can only be achieved through direct consultation between the local government and the affected tribes. The general distribution of an ordinance for comment is not appropriate consultation that will educate planners on areas and projects of interest to tribal governments. While DAHP is the central repository for information on archaeological and historic sites....only the Tribes hold information on their sacred and cultural places of significance.

¹ State Caucus meetings originally invited all possibly interested state agencies (from a list supplied by Ecology) to attend state caucus meetings and provide input; input was ultimately provided by the group of state agencies listed here. Given the short turnaround for these final comments, our comments are made by agency rather than together.

We suggest that the proposed rules be amended to include a requirement that local government planners meet in person with affected tribes before issuing any draft ordinance.

Overall, we suggest that the rules be amended to reflect appropriate tribal consultation, and define what constitutes adequate coverage by a development regulation, ordinance etc. for cultural resources.

Department of Commerce

(c) Optional higher thresholds.

~~—(i) Tier 1 optional higher thresholds:~~ Cities, towns or counties may raise the exempt levels to the Tier 1 maximum specified in Table 1 below by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904) ~~and sent to the department of ecology. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations.~~ An agency may adopt a system of several exempt levels (such as different levels for different geographic areas.)

At a minimum, the following process shall be met in order to establish a new flexible exemption level.

i. Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed. These can be addressed in specific adopted development regulations, comprehensive plans and applicable state and federal regulations.

ii. Description of the project-level public comment opportunities that are otherwise provided for proposals included in these increased exemption levels.

iii. The ordinance or resolution containing the proposed new exemption levels and associated documentation is subject to a 21-day comment period that includes public notice and agency distribution to the Department of Ecology, affected Tribes, agencies with expertise and affected jurisdictions.

An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt levels for the exemptions in (1)(b) of this section are identified on Table 1. Separate maximum optional thresholds are established in Table 1 applying to incorporated areas and unincorporated Urban Growth Areas; and for other unincorporated areas.

Comment [LB1]: This sentence is not very clearly written. I don't recall that it was part of the alternative C agreement, but if it is included, I suggest it be made a part of the notice under iii. That way it would be clear to all interested parties what the new exemption levels are and what project-level comment opportunities will no longer be available.

Comment [LB2]: This is essentially a repeat of the text at the beginning of subsection c above. Doesn't need to be repeated in two places.

Department of Fish and Wildlife

DFW supports the proposed approach to the utility exemption and DAHP's comments on Cultural Resources. Local jurisdictions can control impacts with GMA from most of the increased proposed development thresholds in the table except for some cases of fill and excavation of 1,000 square feet (100 dump truck loads) when this occurs near streams where heavy rains could wash sediments into the stream. This risk would increase when streams fall below shoreline threshold (20 cfs) or have small riparian buffers in critical area ordinances.

Department of Natural Resources

DNR supports Ecology's language related to the utility exemption that is included in the 10/8/12 draft and reads as follows:

(23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class. . . .

(c) All electric distribution facilities, lines, equipment or appurtenances, not including distribution substations, ~~installed within existing improved rights-of-way and developed utility corridors~~, with an associated voltage of 55,000 ~~115,000~~ volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (more than 55,000 volts); electric transmission facilities, lines, equipment or appurtenances, not including transmission substations up to and including 115,000 volts) installed within the demonstrated vertical and horizontal limits of previous construction in existing improved rights-of-way and developed utility corridors; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

DNR supports Ecology's approach of requiring new exempt levels to be supported by minimum process requirements that include addressing each element of the environment with respect to any activity that becomes exempt. DNR notes that relying on comprehensive plans could result in increased exemption levels that have no corresponding adopted development regulation since comprehensive plans do not directly regulate development. Additionally, relying on applicable state and federal regulations allows a local agency to rely on another entity to impose mitigation without the corresponding ability to control if that occurs in a particular instance, nor whether changes to state or federal regulations will be adopted that alter whether the applicable regulation continues to protect the environment. As such, DNR suggests that "comprehensive plans and applicable state and federal regulations" be deleted. Alternatively, the second sentence should end after "specific adopted development regulations" and a new sentence read as follows:

"These can also be addressed through comprehensive plan designations that are supported by adopted development regulations and state and federal regulations that have been identified in local ordinances as providing relevant protections."

Additionally, the rule revision does not address the issue of what will occur when an exemption level has been increased in reliance on a development regulation and that regulation is appealed or amended (and potentially no longer supports the exemption). To support the long-term integrity of adopted maximum levels, DNR suggests the following sentence be added at the end of 197-11-800(1)(c):

“The adopted maximum exempt level shall continue to be valid so long as the specifically adopted development regulations identified in findings supporting the exempt level remain in effect.”

Washington State Parks and Recreation Commission

No new comments received.

Washington Department of Transportation

Two points to offer to Ecology. 1 – NEPA reference in the checklist rule update; and 2 NEW concept - Traffic Generation Recommendation, described below:

The best way to get to WSDOT’s concerns on traffic generation is to use the Institute of Transportation Engineers (ITE) “Trip Generation Handbook.” The handbook identifies national standard trips associated with different kinds of development. This method would not require a traffic impact analysis, and could fairly easily apply a national standard to various developments. Looking at daily trips produced is a much more accurate way to measure potential traffic impacts than by counting parking stalls. WSDOT suggests an exemption level for traffic generated by an “office, school, commercial uses”, which equals the trips produced by the residential uses.

To come up with the specific trip generation recommended thresholds, WSDOT used the handbook’s values for the residential thresholds and applied that number to the commercial development threshold. Specifically, 1 Single Family House generates 10 Trips Per Day (national standard). 10 trips/day x 20 Houses = 200 Daily Trips. Similarly, 1 Apartment generates 6.70 Trips Per Day (national standard). 6.7 trips/day x 60 Apts.= 402 Daily Trips. In comparison a 4,000 sq. ft. McDonald’s Restaurant (with a national standard of 1,984 Daily Trips) generates much more traffic than a 30,000 sq. ft. warehouse (461 Daily Trips – national standard). By using daily trips and not peak hour trips, local reviewers can avoid collecting data on all the traffic variables such as AM, PM, Weekend, Adjacent Street Traffic, Peak Hour of the Generator, etc.

Levels	Fully Planning GMA Counties		All other counties
	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential [# of units]	30	20	20
Multifamily residential [# of unit]	60	25	25
Agricultural [sq ft]	40,000	40,000	40,000

Levels	Fully Planning GMA Counties		All other counties
	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Office, school, commercial + <u>daily</u> vehicle trips produced [sq ft + daily vehicle trips produced]	30,000 + 90 400	12,000 + 40200	12,000 + 40200
Landfill or excavation [cu yds]	1000	1000	1000

Comment [RCL3]: Developers and locals use trip generation. This provides a better measure of potential traffic impacts. Ecology could use both parking spaces and trips. Institute of Transportation Engineers (ITE) "Trip Generation Handbook" identifies national standard trips associated with different kinds of development. This method would not require a traffic impact analysis, but yields a useful measure for assessing impacts on both local and state roads.