

October 5, 2012

Ms. Fran Sant

SEPA Rule Coordinator

Washington State Department of Ecology

Olympia, WA

RE: Comments on SEPA Rulemaking Proposals

Dear Ms. Sant:

Thank you for the opportunity to review the SEPA Rulemaking Advisory Committee proposals. I am a consultant with 20 years as a practitioner authoring SEPA documents for public agencies and private clients. I have reviewed them and have the following comments:

Requirement to Publish SEPA Exemptions in the SEPA Register

My first comment concerns the proposal to require a categorical exemption to be listed in the SEPA Register. I think it is a very unwise decision and urge the Committee to re-think this proposal.

My understanding of the SEPA Rulemaking Advisory Committee is that the legislature requested streamlining of the SEPA process. Adding an additional step to the SEPA Exemption process is quite the opposite of streamlining. The decision to require SEPA Exemptions to be posted in the SEPA register should be reconsidered.

More importantly, a project that qualifies for a categorical exemption should be a project that is not of enough note to merit a public notice. That is why it is exempt. If someone on the Committee has an issue that they are not getting notice of projects they consider to have environmental impacts, they should take up that issue with the legislature and ask them to change the exemptions. However, the legislature has asked the SEPA Rulemaking Advisory Committee to do the opposite. They requested that the Committee review the existing exemptions and increase the threshold limits as they see fit.

From a practical standpoint, I think it is important for the Committee to consider how much extra time and effort this will take a proponent and how much more time it will take Ecology staff to administer. Does the Committee have statistics on how many SEPA exemptions are written on average each year across the state? I would estimate there would be at least several thousand each year.

One last point is that I recommend the Committee examine the definition for a SEPA exemption in terms of which ones must be submitted in written form. Currently, there are some lead agencies that write a SEPA memo to the file. There are others that don't. I predict confusion on the part of lead agencies to know what the trigger would be to actually have to document a SEPA exemption and send it to the SEPA Register.

Comment on changes to 197-11-315 Environmental checklist

(1) Agencies shall use the environmental checklist substantially in the form found in WAC 197-11-960 to assist in making threshold determinations for proposals, except for:

(a) Public proposals on which the lead agency has decided to prepare its own EIS; or (b) Proposals on which the lead agency and applicant agree an EIS will be prepared; or (c) Projects which are proposed as planned actions (see subsection (2) of this section) ; or

(d) Projects where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority (see subsection (6) of this section); or.

(e) Nonproject proposals where the questions in Part B do not provide meaningfully to the analysis of the proposal. In such cases, part D shall be completed.

My comment on this proposed change is that is written in too cryptic a fashion to be useful. SEPA does need to address whether permit conditions are met. However, there is another layer of SEPA review that goes to whether a reasonable person would consider there to be an environmental impact (over and above the permit levels). Clarification is needed prior to implementation.

Thank you for the opportunity to comment. Please contact me if I can be of assistance in providing more information or details to you.

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