



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 197-11 WAC
SEPA Rules

Summary of rule making and response to comments

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Concise Explanatory Statement

Chapter 197-11 WAC SEPA Rules

Shorelands and Environmental Assistance Program
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Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: SEPA Rules
WAC Chapter(s): 197-11
Adopted date: December 28, 2012
Effective date: January 28, 2013

To see more information related to this rule making or other Ecology rule makings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>

Reasons for Adopting the Rule

Ecology has been directed by Chapter 1, Laws of 2012 (2ESSB 6406) to update the SEPA rules to help streamline regulatory processes and achieve program efficiencies.

Ecology's goals for this rule making include:

- The SEPA process and documentation requirements can become more efficient with current technology and better aligned with current regulatory processes.
- New categorical exemptions will not reduce protection of natural and built environment.
- Public notice for projects exempted from SEPA will be maintained or improved.
The category of actions in the revision "shall be limited to those types which are not major actions significantly affecting the quality of the environment" (from RCW 43.21C.110).

Ecology's considerations for the rule making include:

The range and severity of environmental impacts of the activities covered by the proposed amendment, and the approximate number of actions of this type.

Existing tools that local governments can use to streamline project-level SEPA review, including:

- Infill exemption.
- Planned actions.
- Subarea planning for transit-oriented development.

The proposed rule amendments include:

- Increasing the flexible thresholds that local governments may adopt to exempt minor new construction projects from SEPA review.
- Establishing separate flexible exemption thresholds for local governments in counties fully planning under RCW 36.70A.040 and local governments in other counties.
- Revising the process that local governments follow in adopting flexible SEPA minor new construction exemption thresholds.
- Revising and clarifying language related to the “residential”, “parking lot” and “landfill and excavation” categories of minor new construction.
- Increasing the exemption threshold for SEPA review of electric facilities.
- Adding flexibility for all lead agencies to improve the efficiency of the environmental checklist. This includes allowing for electronic submittal of the environmental checklist, including electronic signature.

This initial rule making is to be completed by December 31, 2012 under a 2012 legislative directive (2ESSB 6406 Section 301). Ecology will follow this initial rule making with a more comprehensive update to the SEPA rule with amendments, to be completed by December 31, 2013.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on October 24, 2012 and the adopted rule filed on December 28, 2012. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology’s reasons for making them. We have summarized the changes; the text of the changes is shown in Appendix C.

- WAC 197-11-315(6): Edited for clarity.
- WAC 197-11-800(1)(b)(v): Edited section on landfill and excavation by eliminating reference to “stand-alone”; for clarity

- WAC 197-11-800(1)(c): Changed references from “table 1” to the WAC subsection; clarified language relating to the process for adopting a local ordinance; deleted reference to “comprehensive plans” in subsection (i); and other clarifications
- WAC 197-11-800(1)(d): Created new subsection for the table of project types, rather than referring to it as Table 1 in an earlier subsection; deleted stand-alone text references that are now included in the table; added clarifying language within the table
- WAC 197-11-800(23)(c): Added clarifying language regarding the upper limit of the exemption for overbuilding lines in response to comments and in consideration of the relationship of overbuilding to the added exempt electrical lines.
- WAC 197-11-960: Added clarifying language to the portion of the checklist that describes the new ability to exclude questions for non-project actions

Response to Comments

Description of comments:

Ecology has summarized and organized the comments by topic. If several comments made from multiple parties were related and on the same topic, one response was made. The tables below summarize those issues each party commented on. Responses are directly to the right of each comment.

All of the complete comments (and any attachments) in Appendix A were received by the agency during the formal comment period, and have not been edited in any way. Appendix A contains the written comments and Appendix B contains the transcripts, including comments from the public hearings.

Commenter identification:

Ecology accepted comments from October 24, 2012 until December 11, 2012. This section provides summarized comments that we received during the public comment period and our responses. (RCW 34.05.325(6)(a)(iii)). We have also provided an index to identify the specific comment each commenter made and the corresponding summary and response in the tables below (see page 18).

Comments and responses by topic

1. Flexible Thresholds

Comment	Response
A. Ecology has reached a reasonable balance with the flexible thresholds. We support retaining the current minimums as a default. We also support differentiating between fully planning under the	<i>Comment noted.</i>

Comment	Response
GMA and not fully planning	
B. Consider adding the number of trips generated in the new threshold levels, rather than just the number of parking stalls. Since this was not added, we request this be a topic in the phase 2 rulemaking.	<i>We will schedule this discussion for the phase 2 rulemaking.</i>
C. Some of the wording in Table 1 is confusing. In multi-family residential (MFR), does “60” refer to the number of units a MFR may have, or the number of MFR buildings?	<p><i>It refers to the number of individual dwelling units in an MFR, not to the number of MFR buildings. We will make the following changes to table 1:</i></p> <ul style="list-style-type: none"> • <i>Add the words “units” and “square feet/parking stalls” within each cell of the table, rather than just in the left-hand column</i> • <i>Better describe the reference in the table for commercial/office/school by reflecting the language used in the text</i> • <i>Refer to “project types” in the left column of the table instead of “levels”</i>
D. We recommend the exemptions for utilities, landfill, and excavation not apply to identified priority habitats and areas identified in sensitive area ordinances. There is the potential for impacts caused by utilities crossing sensitive areas and fill and excavation near sensitive areas.	<p><i>We believe these sensitive areas can be identified as critical areas at a local government’s discretion, and could make these exemptions not apply in critical area</i></p> <p><i>This and other exceptions to exemptions will be reviewed by the Advisory Committee in phase 2 of the rulemaking.</i></p>
E. It is imperative that higher threshold levels require a higher level of review and analysis for consistency with RCW 43.21C. Until data is provided that shows there will be no detrimental impact, we cannot support the proposed levels.	<i>The rule language requires a higher level of scrutiny by local governments, through the process of revising their local SEPA ordinance, if they choose to adopt higher levels.</i>
F. Mitigation sequencing is an important part of SEPA. If categorical exemptions are increased, then this may reduce the ability to use sequencing.	<i>We do not believe the rule changes affect the ability to use mitigation sequencing.</i>
G. Regarding the new exemption level for commercial/office/etc. -rather than the proposed 30,000 square feet and 90 parking spaces, lower that maximum upper threshold to 20,000 square feet and 60 parking spaces within urban growth areas. Evidence is cited that the trips per day for a 20,000 square foot office building would be	<i>Ecology understands this concern and also recognizes that the impacts associated with the 30,000 square foot maximum threshold level must be considered when local governments adopt a new threshold level. Traffic impacts (and others associated with this size of development) are often addressed</i>

Comment	Response
<p>231 average week day trips, whereas the number for a 30,000 square foot office building would be 347 average week day trips.</p> <p>(Note: several comments were received with these concerns)</p>	<p><i>through locally adopted impact fee regulations.</i></p>
<p>H. We propose several technical clarifications:</p> <ol style="list-style-type: none"> 1. Clarify that “requirements” as referenced in WAC 197-11-800(1)(c)(I) refers to policies and regulations adopted that apply to the exempt development 2. Remove all references to “land use plan” in subsection 315 (6) and 800. Land use plans are generally not regulatory. 3. Several changes to the language in 197-11-800(1)(b)(v) 4. Several changes to the language in 197-11-800(1)(c) 5. Several changes to the. language in 197-11-800(1)(c)(iii) 	<p><i>Thank you for the suggestions.</i></p> <ol style="list-style-type: none"> 1. <i>We have made this change.</i> 2. <i>It seems to us that in some cases, even though they are not regulatory, information in the land use plan might be useful in making the determinations called for in these sections. We are willing to re-visit this during phase 2.</i> 3. <i>We deleted “stand-alone” in 800(b)(v) because it seemed redundant.</i> 4. <i>We made some grammatical changes and clarified the reference to the new table with exemption levels.</i> 5. <i>We clarified reference to the table as a new subsection “d”, but did not change the reference from “exemptions” to “actions.” We thought that might cause confusion with the term “action” as defined elsewhere in the SEPA Rules.</i>
<p>I. The Department should not adopt the proposed changes, especially for jurisdictions that do not plan under the GMA. Jurisdictions planning under the GMA are required to protect quality and quantity of groundwater for public water supplies.</p>	<p><i>Please note that the minimum or “default” exemption levels have not been changed and therefore all agencies are subject to the same required standard. When using the optional flexible exemption levels, GMA counties and cities are better able to “adequately address” the impacts associated with the project types. They have plans, programs, infrastructure requirements zoning and other development regulations including impact fees.</i></p>
<p>J. We view the proposed streamlining and efficiency rulemaking as weakening environmental protection and further distancing the general population from the process. We have a number of specific comments:</p> <ol style="list-style-type: none"> 1. How will this affect local watersheds, communities? 2. How did Ecology determine what is “minor” and what is “major”? Neither a 30 unit multi-family building housing 	<ol style="list-style-type: none"> 1. <i>We believe, given new development regulations, that these higher threshold levels will not result in impacts that cannot be addressed through these other regulations.</i> 2. <i>See 1 above.</i> 3. <i>This exemption is not about sanitary landfills. It is about placing fill materials on a site.</i>

Comment	Response
<p>development nor a 30 single family housing development or minor, nor is a 10,000 to 40,000 square foot agriculture project minor.</p> <p>3. Increasing the landfill exemption is counterintuitive; stormwater and leachate in landfills have near and far distant impacts.</p>	
<p>K. Having two standards is in conflict with the nature of SEPA. And who is pushing to change the SEPA procedures?</p>	<p><i>We assume that the reference to having “two standards” is about the geographic difference specified for the flexible maximum exemption levels, based on whether a jurisdiction is planning under the GMA. Please note that the minimum or “default” exemption levels have not been changed and therefore all agencies are subject to the same required standard. When using the optional flexible exemption levels, GMA counties and cities are better able to “adequately address” the impacts associated with the exempt project types. They have plans, programs, infrastructure requirements zoning and other development regulations including impact fees.</i></p>
<p>L. We support dividing single-family and multi-family into separate exemptions. The Department may need to define “multi-family”. We also agree with landfill and excavation provisions.</p>	<p><i>We will consider the need for further definition in phase 2.</i></p>
<p>M. Please consider a wording change in 197-11-800(1)(b)(i) that clarifies what we are concerned about – the location or construction of single family dwelling units. We are also concerned that (b)(ii) isn’t clear that duplexes could be allowed. Also, please use similar terminology; the term “default” is used in some places but not others.</p>	<p><i>We are leaving the language as proposed. “Location” allows for the possibility of installing manufactured or mobile homes, which are not typically “constructed”. A duplex is a multi-family residence and will not likely get confused with the exemption for “single family” structures. Regarding the term “default”, we have made the recommended change to subsection (c).</i></p>
<p>N.</p> <ul style="list-style-type: none"> • If categorical exemptions are increased and fewer proposals are subject to SEPA review, it is likely that future cumulative impacts from permitted development will be greater. • Allowing local governments more flexibility in deciding critical environmental issues would seem to be a poor choice at this particular time. • By reducing development subject to SEPA review, you are reducing the public’s right to 	<p><i>The proposed rule change allows but does not require higher exemption levels to for cities and counties. Any newly proposed exemption threshold must be supported by findings of fact that existing regulations adequately avoid, minimize or compensate for impacts to all elements of the environment listed in WAC 197-11-444. This includes impacts to Puget Sound.</i></p>

Comment	Response
<p>meaningfully participate in local government. Public process is an important part of SEPA, but will be an unintended casualty if exemptions are increased.</p> <ul style="list-style-type: none"> • If we are to stop the degradation of Puget Sound we need more restrictive permitting not more exemptions. • I object to proposed changes in the SEPA Rules, which would increase the difficulty in adopting land use practices that could keep Puget Sound from becoming a dead zone. • I do not think we should raise the threshold levels for exempting projects from environmental review. • The enactment of other environmental regulations does not negate the need to rely on SEPA. <p>(Note: several comments were received with these concerns)</p>	

2. Local Government Ordinance Adoption

Comment	Response
<p>A. The comment period for review of local ordinances should be changed from 21 days to 60 days, as was suggested to the Advisory Committee. 21 days will not allow time for meaningful review and engagement with local governments. Evaluating the implications of code changes across larger geographic areas is more complex.</p>	<p><i>The length of the comment period is proposed to be at least 21 days so an agency with a longer review time would not have to change their procedures. Ecology staff, and those at other agencies, were concerned that local ordinances that propose a change to SEPA exemption thresholds require a longer review period than the typical 14-days for DNSs.</i></p>
<p>B. Could Ecology prescribe a standard notice process for local ordinances, so that local governments announce SEPA changes in an easily-identifiable manner?</p>	<p><i>We agree this would be helpful, but think this is an issue for guidance and training rather than rulemaking. We may discuss this as part of the phase 2 rulemaking.</i></p>
<p>C. Please delete the proposed new section in WAC 197-11-800(1)(c)(ii) that calls for a description of the public comment opportunities This effectively requires a project level review process for newly exempt projects. The more appropriate idea is in WAC 197-11-800(1)(c)(3), wherein there is a public notice requirement for adoption of the new SEPA ordinance that establishes new exemption level.</p>	<p><i>The proposed rule only requires local government to disclose the underlying project level public notice/comment opportunity without SEPA review. It does not require additional public notice for exempt projects.</i></p>

D. The idea of only having 21 days to review a new ordinance puts a burden on local citizen groups. This should be 6 weeks.	<i>See response to 2A above.</i>
E. We support the new procedural requirement for adopting an ordinance or resolution enacting higher optional thresholds.	<i>Comment noted.</i>
F. We support the 21-day review period for ordinances or resolutions adopting higher thresholds.	<i>Comment noted.</i>

3. Cultural/Historic Resources

Comment	Response
A. There will be decreased notice for potential impacts to cultural and historic resources posed by increasing the exemption levels. Unlike other impacts, there are generally not other regulations that provide the same level of notice and review for cultural resources. It is the project's location, rather than its scale, that is of concern. This omission could mean a "probable significant adverse environmental impact" under SEPA. The increased exemption levels should result in "no net loss and no harm" to significant cultural resources.	<i>We understand and appreciate the concerns raised in these comments. We have committed to addressing the topic of notification and cultural resources related to SEPA in the phase 2 rulemaking, which starts in January 2013.</i>
B. <ul style="list-style-type: none"> • The local ordinance adoption procedures hold promise but are currently too vague around the cultural resources issues • There is a proposal for requiring adopting of a specific set of findings that should be considered for inclusion in the rule, along with consistent standards • Ecology should consult with the Washington State Department of Archaeology and Historic Preservation in developing proposed findings • Any rule revision must result in no net loss or harm to significant cultural resources <p>(Note: several comments were received with these concerns)</p>	<i>These are useful suggestions and will be considered in the phase 2 rulemaking.</i>
C. The revisions outlining a process for new exemption levels also refer to mitigation if impacts are "adequately addressed". It should be made clear that "environmental analysis"	<i>The commenters are correct that the GMA does not require a local government to address cultural resources "...in the context of comprehensive planning..." This topic will</i>

<p>includes consideration of the full range of cultural resources as elements of the environment to be addressed. In addition, it should be noted that the GMA does not address or safeguard cultural resources in the context of comprehensive planning. It needs to be made clear that, as already noted, “adequately addressed” includes consideration of cultural resources.</p>	<p><i>be part of the considerations during the phase 2 rulemaking. Part of the consideration will be whether this issue requires modification to rule language, or whether it is best addressed by providing guidance in the SEPA handbook and in specific training.</i></p>
<p>D. SEPA is often the only notice received regarding potential impacts to cultural resources. Ecology’s proposal to require exempt projects to put notice in the SEPA register will not protect cultural resources.</p>	<p><i>This proposal for listing newly exempt projects in the SEPA Register was an early idea, but was not ultimately included in the rule proposal. Ecology will continue to work with the Advisory Committee to maintain or improve public notice for projects exempt from SEPA review.</i></p>
<p>E. We recommend the checklist include an electronic link to DAHP and the online WISAARD database (Washington Information System for Architectural and Archaeological Records Data)</p>	<p><i>Ecology has been working on updating our checklist guidance for the past year. It currently includes revised guidance related to cultural resources and a link to the DAHP database. Follow this link for more information:</i></p> <p style="text-align: center;"><u>SEPA Environmental Checklist with Guidance</u></p>
<p>F. Checklist is vital for tribal review of a project’s potential impacts. Question B13 (historic/archaeological/cultural resources) cannot be answered without a process that includes historic research, tribal consultation, data gathering and archaeological survey. A “no” answer is not adequate. We have several specific suggestions on improving question B13.</p>	<p><i>Ecology agrees and appreciates specific suggestions for changing both the wording of the questions and the guidance for answers to Question 13(a-c). The specific process suggestions will be addressed during phase 2 rulemaking.</i></p>
<p>G. We oppose the increases to optional maximum thresholds for certain minor construction because they are not accompanied by specific findings related to cultural resources.</p>	<p><i>See response to comment 3 (A) above.</i></p>
<p>H. Consider a new proposal for a set of findings necessary for a project to be SEPA-exempt:</p> <ul style="list-style-type: none"> a. Exempt for archaeology if: <ul style="list-style-type: none"> i. Prior negative survey on file ii. No ground disturbance proposed iii. Project in 100% culturally-sterile soil b. Exempt for built environment if both: 	<p><i>We will include this proposal in our phase 2 discussions about cultural resources and notifications. We appreciate the time you took to develop this approach.</i></p>

<ul style="list-style-type: none"> i. Less than 45 years old; and ii. Not eligible for or listed in any historic register or historic survey c. Exempt for archaeology and built environment if: <ul style="list-style-type: none"> i. Cultural resource management plan is incorporated into comp plan; or ii. Local ordinances or development regulations address pre-project review and standard inadvertent discovery language (SIDL); and iii. Data-sharing agreement in place. d. For all projects, exempt or not: <ul style="list-style-type: none"> i. Include standard inadvertent discovery language on all related permits to facilitate compliance with RCW 27.53 and 27.44 	
<p>I. Cultural resources findings necessary for a project to be SEPA-exempt for archeology should be when there has been prior negative survey information that includes the specific area of the current project and has been conducted within the past five years and is on file at DAHP.</p>	<p><i>Comment noted</i></p>

4. Environmental Checklist

Comment	Response
<p>A. We support the ability to waive the requirement to complete part B of the environmental checklist. This will simplify the process. We support the change to allow electronic signature</p>	<p><i>Comment noted.</i></p>
<p>B. Regarding WAC 197-11-315(d), there is often disagreement on what is “adequately covered”, therefore this is not a good WAC modifier.</p>	<p><i>We considered other terms to convey this requirement but this one is commonly used and therefore has familiarity along with being vague. We may be able to revisit this term in Phase 2 rulemaking or at a later date after seeing how it has been used by local governments.</i></p>
<p>C. What is an “irrelevant project checklist”?</p>	<p><i>In many instances it is not appropriate to fill out the project checklist portion for a nonproject action.</i></p>

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5. Electric Facilities

Comment	Response
A. Support the proposed change. New lines can generate considerable community interest and concern.	<i>Thank you for your comment.</i>
B. The current proposed language provides some flexibility and recognition of our desire to use existing corridors but not full recognition. Our transmission lines are typically 115kv or 230kv and both use similar pole configurations and require the same right of way corridors. The failure to recognize all existing corridors is a problem. We request the threshold be 230kv instead of 115kv, and the flexibility of right of way widths when upgrading from distribution to transmission lines.	<i>The intent of the proposed exemption increase is to update the rule language in response to the current industry standards for distribution lines. We did not consider an alternative for higher voltage transmission lines because of the potential for significant impacts in some locations and configurations.</i>
C. We recommend adding a new subsection that would apply in areas where electrical facilities already comprise part of the existing infrastructure, and in areas where future urban growth and associated infrastructure needs are addressed in GMA comprehensive plans. This proposal would extend, in a limited way, an existing exemption that has been in effect for over thirty years.	<i>This is a new exemption proposal and may warrant some additional discussion in Phase 2.</i>
D. The threshold exemption level for electrical facilities should not be raised, regardless of whether they are in existing rights of way or utility corridors. These designations do not ensure that proper environmental and cultural review has occurred.	<i>As noted above, the proposed increase from 55kv to 115kv is consistent with the current industry standards for local distribution of electricity - which is what the current exemption is intended to cover.</i>
E. We propose the following clarification in subsection 23: confirm that the exemption for transmission does have an upper limit by striking “more than 55,000 volts” and inserting “up to and including 115,000 volts”.	<i>We have made that change.</i>
F. What are the impacts to wildlife and adjoining communities by increasing the exemption level to 115,000 volts? Who will be measuring the radio frequency emissions?	<i>No information was provided that indicates there is any additional impact to wildlife and adjoining communities by increasing the exemption level. And, as far as we know, there are no requirements for any particular agency to measure radio frequency</i>

	<i>emissions.</i>
<p>G. Transmission line overbuilds should not be exempt, for these reasons:</p> <ul style="list-style-type: none"> a. A prior threshold determination should exist b. They have increased environmental impacts and increase the rate of bird kills. c. They can result in greater aesthetic impact d. They may require structural changes to poles and wiring configurations e. They may require digging new holes or enlarging road networks that would require cultural resource surveys if not previously done f. They can increase EMF exposure for workers and the public g. Exemptions can result in loss of oversight and missed opportunities for cost-savings through conductor replacements h. They have significant impacts by definition and result in cumulative impacts i. They can increase the risk of wildfires j. The term “overbuild” is vague and not defined <p>(Note: several comments were received with these concerns)</p>	<p><i>We consulted with utilities, state agencies, and our advisory committee in developing these revisions (as directed by the state legislature to consider). The information we have available to us does not indicate increased impacts as noted in this list. Regarding the comment about no definition for “overbuild”, we will consider that during the phase 2 rulemaking.</i></p>

6. Other Comments

Comment	Response
<p>A. We question some of the assumptions in the cost-benefit analysis. It fails to consider the potential costs of transferring cost from SEPA project proponent to the public. Commercial and residential project proponents should provide decision makers with information on trip generation and traffic impacts. This rule allows local governments to exclude projects from SEPA review; the c/b analysis is silent on the potential costs of impact of the lack of notice.</p>	<p><i>Ecology does not foresee a transfer of potential costs; the changes are predicated on local governments’ ability to address these impacts in existing ordinances, not using the SEPA process.</i></p>
<p>B. Amendments to SEPA need to consider jurisdictions that are so small they don’t have</p>	<p><i>The lower exemption levels are the default. If a jurisdiction is considering using the higher</i></p>

<p>staff with appropriate knowledge. Jurisdictions with the appropriate sophistication should be able to have SEPA flexibility; others should maintain the status quo.</p>	<p><i>exemption levels, they will need to explain their decisions through their findings in order to use the higher levels</i></p>
<p>C. We request that Ecology seek an interpretation from the AG’s office on the distinction between the categorical exemption for construction or location of residential structures (197-11-800(1)(b)(i)) and the exemption for short plats or short subdivisions (197-11-800(6)(a)). We will comment on this after reviewing the AG interpretation.</p>	<p><i>We have the understanding that these are two separate topics, and plan to consider this during the phase 2 rulemaking. During phase 2, we will consider whether this issue warrants a discuss with the AG’s office</i></p>
<p>D. Why was only one public hearing held, and only in Olympia?</p>	<p><i>We provided the opportunity for people anywhere in the state to call in and provide testimony via telephone, and listen in on the proceedings. We held two hearings on December 4, one in the afternoon and one in the evening. There were 13 people attending the afternoon hearing, and 8 on the phone. In the evening, there were 3 people attending and 2 on the phone.</i></p>
<p>E. The timeframe for the phase 1 rulemaking was accelerated by legislative direction. However, we think there are ways to improve the stakeholder process for phase 2. We encourage Ecology to prepare a record that reflects the issues and concerns raised by all participants.</p>	<p><i>We will confer with the Advisory Group and other stakeholders to improve the process for phase 2.</i></p>
<p>F. The Ocean Acidification Blue Ribbon Panel just issued its report. Ocean acidification is known to threaten Washington’s shellfish industry. Two principle causes of ocean acidification are atmospheric CO2 and excess nutrients. How do the current changes in SEPA reduce the causes of ocean acidification? Will future changes in SEPA address the causes of ocean acidification?</p>	<p><i>If a specific governmental “action” (including permit applications) is found to have adverse impacts related to ocean acidification, an agency with jurisdiction can condition or deny the proposal based on their SEPA supplemental authority and the identified impacts in the environmental review.</i></p>
<p>G. Increased environmental protection from GMA and SMA regulations are cited as a basis for increasing exemptions, yet the evidence is that “no net loss” standards and anti-degradation standards are not being met.</p>	<p><i>This comment indicates that the implementation and enforcement of GMA and SMA is inadequate and consequently SEPA authorities and responsibilities are still needed to compensate for this. There is broad agency discretion related to the substantive and procedural content of SEPA reviews. Consequently, there is no greater opportunity to achieve GMA and SMA environmental protection standards using SEPA review on a project by project basis.</i></p>

	<p><i>Nevertheless, Ecology recognizes the importance (and statutory requirement) of identifying circumstances when a specific exemption should not apply based on the potential for significant impacts -despite the existence of GMA and SMA. The 2013 SEPA rulemaking process will be looking at these issues in a bit more depth.</i></p>
<p>H. Reduce the complexity of the SEPA process:</p> <ul style="list-style-type: none"> • I am in favor of increasing the exemptions on more projects. Anything that would reduce the complexity and cost of things associated with living is welcome. • The requirements for SEPA review have always been redundant and a time burden. SEPA is a dinosaur and should be gotten rid of. • Please lessen the burden on local jurisdictions and applicants and loosen the current requirements of SEPA. 	<p><i>The proposed increase in the flexible exemption levels for minor construction projects as well as the less burdensome checklist for non-project proposals responds to these concerns.</i></p>
<p>I. We are concerned that the new exemptions may affect conservation practices funded by local conservation districts. The new exemptions should only be allowed for communities with demonstrated adequate regulatory capacity to protect natural resources.</p>	<p><i>The proposed rule change allows but does not require higher exemption levels to for cities and counties. Any newly proposed exemption threshold must be supported by findings of fact that existing regulations adequately avoid, minimize or compensate for impacts to all elements of the environment listed in WAC 197-11-444.</i></p>
<p>J. We removed and replaced tanks and piping at 2 sites, cleaned up both of them received nfa on one and waiting for an nfa on the other. The tanks and plumbing were replaced with all new dbl wall fiberglass, with all the bells and whistles to avoid pollution. We did not add any fueling positions, or increase our footprint. The other agencies said that we did not need a SEPA. But Northwest Air Pollution Authority said we did. I think that this is very unjust and is only done as an income source. They considered it a substantial development, to remove and replace piping. You need to get a handle on these other agencies.</p>	<p><i>Comment noted.</i></p>
<p>K. Dec 4 hearing – summarized comment</p> <ul style="list-style-type: none"> • Watering down SEPA is not helpful. As it is now, SEPA seems to have little effect on holding entities accountable for what projects 	<ul style="list-style-type: none"> • <i>The rule changes do not change the responsibility of an agency to deal with environmental impacts. Under state law and the SEPA Rules, local governments still have</i>

<p>they propose or how they implement them. It seems that the revisions are about making it easier for Counties, Cities, and ecology to rubber stamp and okay them without having to do too much to protect the environment.</p> <ul style="list-style-type: none"> • I wonder how you can apply requirements if you don't know where the critical areas are. • What stops counties or cities from breaking them up a larger project into three or four smaller projects to meet the minimum requirement and then after all the permits and everything are issued, suddenly decide that they're one cohesive plan? • The legislature should not worry about streamlining the SEPA process while gutting any power in it has of protecting the environment but to work to enforce the current SEPA rules. I also think that it's very wrong that they're trying to keep the public from having availability to go before the growth management board. 	<p><i>to review projects and identify potential impacts. The changes acknowledge that some impacts are already addressed in other more specific regulations, so agencies don't need to do it twice.</i></p> <ul style="list-style-type: none"> • <i>Generally, an agency knows the broad outlines of critical area locations, but sometimes relies on the specific information provided by a project applicant to finish identifying specific areas and locations.</i> • <i>The SEPA Rules require counties and cities to consider projects as a whole, not break them up for purposes of avoiding requirements. There are provisions for "phased review", which allows agencies and the public to focus on issues that are ready for decision and excludes from consideration issues already decided or not yet ready. WAC 197-11-060(5)(b)</i> • <i>Comment noted. These rules do not affect what is eligible for review by the Growth Management Hearings Board.</i>
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Commenter Index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s). The comments have been grouped together where possible. Commenters can find their comment and response by viewing the above tables and seeing the number/letter reference. These number/letter references can be found in the comment/response table above.

1. Mary Rossi, Mary Thompson, Chris Moore (SEPA Advisory Committee Members for Cultural Resources) - 3A, 3B, 3C, 3D, 3E, 3G, 3H
2. Allyson Brooks, Washington State Department of Archaeology and Historic Preservation (DAHP) – 3A, 3B, 3C, 3D, 3I
3. Philip Rigdon, Yakama Nation – 1E, 3A, 3D, 3F, 5D, 6B, 6C
4. Jennifer Kenny, City of Olympia Community Planning & Development – 3A, 3B
5. Claudia Newman, Ann Aagard, Gerald Steel (SEPA Advisory Committee Members for Environmental Community), Washington Environmental Council, Futurewise – 1G, 1H, 5D
6. Andronetta Douglass – 1N
7. Dan Polinder – 1N
8. Wendy Harris – 1F, 1N, 6B, 6G
9. Pat Collier – 1N
10. Peggy Bruton – 1N
11. Steve Marquardt, UFCW Local 21 – 1G
12. Glenn Hayman, Hayman Environmental LLC – 6F
13. George Pollow – 1N, 6B
14. Robert Ziegler, Washington Department of Fish and Wildlife (WDFW) – 1D
15. Laura Merrill, Washington State Association of Counties (WSAC) – 1A, 4A, 5A
16. Stephen Reinmuth, Washington State Department of Transportation (WSDOT) – 1B, 1C, 2A, 2B, 6A, 6E
17. David Osaki, City of Fife – 2C
18. Nancy Atwood, Puget Sound Energy – 5C
19. Gerald Steel (on behalf of himself and Washington Growthwatch) – 5E
20. Robin Bekkedahl, Avista (letter and oral comment at Dec 4, 1:30 PM hearing) – 5B
21. George Wooten, People for Alternatives, Conservation and Education (PACE) – 5F, 5G
22. Suzanne Skinner, Center for Environmental Law and Policy (CELP) – 1I
23. Darlene Schanfald, Olympic Environmental Council – 1J, 4B, 4C, 5E, 6D
24. Danna Del Porto – 1J, 1K
25. Bob Sextro – 1E, 1J, 6B
26. Al Bergstein – 1E, 2D
27. Isabelle Spohn, Methow Valley Citizens Council – 1I, 2A, 5F
28. Diane Sugimura, City of Seattle – 1A
29. David Kliegman, Okanogan Highlands Alliance – 1I
30. Brandon Houskeeper, Association of Washington Business (AWB) – 1A, 1L, 2E, 4A, 6E, 5B
31. Leslie Ann Rose, Citizens for a Healthy Bay (CHB) – 2F, 1G, 5E
32. Jeanette McKague, Washington Realtors – 1M, 4A
33. Craig T. Nelson, Okanogan Conservation District – 6B, 6I
34. Gordon Bearse – 6H

35. Raymond Tyas – 6H
36. Chuck Sundsmo – 6H
37. Barney Yorkston – 6J
38. Patricia Vandehay (oral comment at Dec 4, 1:30 PM hearing – see appendix B) – 6K

Appendix A: Written Comments Received

Appendix B: Transcripts from Public Hearings

Olympia, Washington – 1:30 December 4, 2012

Washington Department of Ecology
Transcript of Public Hearing for Proposed Amendments Chapter 197-11
December 4th, 2012, 2:13 PM

FEMALE ON INTERCOM: This conference is being recorded.

BARI SCHREINER: I'm Bari Schreiner hearing officer for this hearing today we are to conduct a hearing on the proposed amendments for chapter 197-11 Washington Administrative Code, SEPA rules state environmental policy act. Let the record show that it is 2:13pm on December 4th 2012 and this hearing is being held at the Department of Ecology 300 Desmond Drive, Lacey Washington, 98504. Participants are also able to call in using 1-800-704-9804, pin number 543362#. Legal notices of this hearing were published in the Washington State Register November 7th 2012. Washington State Register Number 12-21-125. In addition notices of the hearing were emailed to approximately...um...two thousand interested people and a news release was issued on November 6th 2012 and November 27th 2012. I'll be calling people now to provide testimony based on the order that they um, either signed in here in the room or that their name appears on the phone call-in list. Once everyone who's indicated they want to provide testimony, I'll check again to see if there's anyone that changed their mind. Umm, right now we only have two people signed up, um, so we're going to ask everyone to please, you know, talk about five minutes and then begin summarizing your comments please remember that um, written comments are given the same consideration as oral testimony received here today and written comments again need to be submitted by December 11th 2012. Let's see, umm...okay...so the per--, the first person, we're gonna start here in the room is, Patricia, and I'm sorry I can't read your last name.

PATRICIA VANDEHAY: Vandehay.

BARI SCHREINER: Okay if you'll please come up here, if you could state your name for the record if you, and if you have any...um...affiliation to an organization.

PATRICIA VANDEHAY: Uh, my name is Patricia Vandehay, uh, I'm just a resident, citizen of Mason county. Uh, I suppose you're wondering why this old lady is up here talking about SEPA, um, I had my first...uh...acquaintance with SEPA when the, uh, Adage Project was trying to be brought into Mason County and I found out that it was going to be over a class one CARA...umm...I'd been reading SEPAs ever since from all these different projects that had been, been going on in Mason County, and I don't feel that, uh, uh, watering down, uh, what the rules and regulations are, are gonna be very helpful because it seems that even now the SEPAs have gone through and DNS has almost immediately given no matter what it seems to, uh, you know, have possible problems with. Umm...the pro-comments that I read, I read through all the information that we, we had received, and I read the pros and cons, and it seemed that the pros...umm...all seemed to be making it easier for projects to be greased through and for

Counties, Cities, and ecology to rubber stamp and okay without having to do too much to protect the environment, which is the original purpose of the SEPA. As it is now, the SEPA seems to have little effect on holding entities accountable for what projects they propose or how they implement them. I'd been reading the SEPA checklist for about three years it's not a very long time but it's efficient to notice a trend, uh, starting with that adage monstrosity, which consisted of two very large binders I found out, and then they had to re-do it again so there was another two to go through and I spent most of the time reading it, marking it, and making notes on it. Uhh...after a great deal of, of uh, numbing rhetoric and hair splitting over the use of the word debris as a fuel, the prosecuting attorney office in Shelton declared debris as not a fuel. So along with this information and many other questionable answers in the SEPA check list, plus the cost to get wood and to bring it to the site and the recommendation for an EIS, the dragon was slayed and the promoters left town. But there's been a lot of other different projects that have come up. Uhh...there's one right now in the works that are going to be decided on next week, in fact there's three of them, at a commissioners meetings. Uh, some things that just seem to jump out that there should be a more in-detailed investigation is: a project for a resort area to be put in, which has a fifty percent slope on it and they say they're only gonna use like a thousand gallons of water out from the well. Uh, there's, uh, a two story lodge, there's two campsites, cabins, a paddock, and an administrative building. And I don't know how this could be possible but this is what's in the SEPA report. It never even had in it, uh, what the number of acreage was that they were going to be building on. Uh, there's another project that's still in the going the Bellfair one, uh, they, they're took out over four thousand cubic yards of uh, contaminated soil, no information of where it was being dumped...uh...they, uh, I've seen the SEPA report, it's been quite, it was done quite a while ago, where the information was actually not true, and yet it was still permitted. Uh, one of the things that I find very difficult in finding out how they can even process any of this, is that the city of Shelton and Mason County do not know where CARAS one and two are located. The Shelton, uh, city of Shelton has one map, the County has another map, what, they show the, uh, one and two in exactly opposite directions and they both receive the information from the same source, it's a mystery. And, I brought this up I don't know how many times in front of the Commissioners and they just disregard it. So, you know, how can you uh, apply uh, the um, requirements for critical areas if you don't even know where they are, and I believe that's mandated by the uh, Brook Management Act. Uh, I noticed one of the quotes from con side, the bill does not provide fiscal relief and is not about reform, the fee will not cover the cost of the programs the bill will have short term costs and long term environmental impacts. Uh, the other thing I was wondering about is talking about the small size of the small projects that are going to be exempt. What stops counties or cities from breaking them up a larger project into three or four smaller projects to meet the minimum requirement and then after all the permits and everything are issued, suddenly decide that they're one cohesive plan? Uh, another thing that I think is putting the cart before the horse which is already in, is this, uh, non-project tacked on to uh...uh...uh, rezoning, we have that in the process right now too...uh, Green Diamond Timber is requesting a rezone of some of their, uh, two pieces of property, from, uh, long term, uh, commercial timber to RR5 and vice versa...uh...with a non-project. So, in order to even re-...um...conform to the rules of RR5...uh...you have to have some information. Growth management act requires that you do not have urban sprawl, uh, that all the infrastructure is in before the development is put in, this all seems to be just, you know, ignored, so, uh, I'm sure they're going to, uh, approve that because Green Diamond sent a letter to the planning commission and put in there specifically how they wanted it worded and that's how the wording is in the, uh, the rezone amendment. Umm...I

believe that the legislature should not worry about streamlining the SEPA process while gutting any power in it has of protecting the environment but to work to enforce the current SEPA checklist in a more stringent manner. I also think that it's very wrong that they're trying to keep the public from having, uh, availability to go before the growth management board. Uh, to me this is a blatant attack on our first amendment right of freedom of speech, thank you.

FEMALE: Thank you.

PATRICIA VANDEHAY: Oh and I have a copy I want to submit.

BARI SCHREINER: I'll take that from you, thank you.

PATRICIA VANDEHAY: Mhm, thank you.

BARI SCHREINER: K, the um, the next person that we have that's gonna provide testimony is on the phone. Please remember when you're--

FEMALE ON INTERCOM: (inaudible)...participant line unmuted.

BARI SCHREINER: Hold on one second. Sorry. Um, please remember to state your name and remember that we don't have contact information for people on the phone so you can either provide it as a part of your testimony or email it to separulemaking, all one word, @ecy.wa.gov. All right please go ahead, on the phone.

ROBIN BEKKEDAHL: Umm, hi, my name is Robin Bekkedahl I'm from Avista and I've finally figured out some of the technical difficulties. I'm going to provide my testimony. Umm, (inaudible) Avista (inaudible) proposed rule-making (inaudible) election portion of (inaudible) we think (inaudible) cook management act and many of the different county wide(inaudible)--

BARI SCHREINER: Okay, Excuse me, sorry one minute, I'm going to have to ask you to speak up a little, I think we're having a hard time hearing you here.

ROBIN BEKKEDAHL: Okay.

BARI SCHREINER: Sorry about that.

ROBIN BEKKEDAHL: Excuse me I'm sorry. So, my name is Robin Bekkedahl, I'm a representative for Avista, and we are in support of the proposed rule-making under (inaudible) 197-11-15 subtitled 23C titled Utilities or the Exemption. It's more that this exemption better aligned with the current growth management, the goals and the policies and various countywide planning policies and regulations that were written, and with the, we are allowed now, if this is approved, to actually use existing corridors and use the utility corridors and other existing corridors for basically rebuilding and upgrades. So I did write a letter and it was on November the 29th and I submitted that to DOE and if they have any questions on that I can answer those too. Thank you.

BARI SCHREINER: Thank you, k, umm, please remember if you're on the phone, press Star 1 if you'd like to provide comments, is there anybody in the room who has changed their mind who would like to come up now? Okay...is anybody...okay.

FEMALE ON INTERCOM: There are no more questions.

BARI SCHREINER: K please remember if you'd like to send ecology written comments they are due by December 11th 2012, you need to, umm, send them to Fran Sant at Department of Ecology, P.O. Box 47703 Olympia, Washington, 98504 or you can email them to separulemaking@ecy.wa.gov or they can be faxed to 360-407-6904 and this information is also available on the department of ecology's website. Umm, all testimony received at this hearing as well as the hearing we're holding, um, later tonight along with all written comments received, um, by December 11th will be part of the official hearing record for this proposal. Ecology will send notice about the Concise Explanatory Statement or CES publication to everyone that provided written comments or oral, oral testimony at this, um, hearing and submitted contact information to us, um, everyone that attended today's hearings that also provided us an email umm, contact information, email address, sorry, and any other interested parties that are on the agency's mailing list that we use for this rule-making. The, um, CES contains among other things the agency's response to questions and issues of concern raised during the comment period. Umm, if you would like to receive a copy and you didn't give us that contact information please let one of the staff here today know and we could write that down or you could, um, email it to Fran and we can get you added, um, to those mailing lists. The next step is to review the comments and make a determination about whether to move forward with the adoption of this rule. The Ecology, the Ecology director will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for no earlier than December 28th 2012, if the proposed rule should be adopted on that day and filed with the code reviser on that day it becomes effective 31 days later. So if we could be of any further help to you today please don't hesitate to ask. Umm, I appreciate your cooperation. Let the record show that this hearing is adjourned at 2:28 pm. Thank you very much.

Olympia, Washington – 6:30 December 4, 2012

**Washington Department of Ecology
Transcript of Public Hearing for Proposed Amendments Chapter 197-11
December 4th, 2012, 7:01 PM**

BARI SCHREINER: Starting to record now. I'm Bari Schreiner hearing officer for this hearing. Today we are to conduct a public hearing on the proposed amendments for Chapter 197-11 Washington administrative code, SEPA Rules, State Environmental Policy Act. Let the record show that it is now 7:01 PM on December 4th 2012 and this hearing is being held at the Department of Ecology, 300 Desmond Drive, Lacey, Washington 98504. Participants are also able to call in using 1-800-704-9804 with Participant Pin number 543362#. Legal notices of this hearing were published in the Washington State Register, November 7th 2012, Washington State register number 12-21-125. In addition, notices of the hearing were emailed to approximately, um, two thousand people and a news release was issued on November 6, 2012 and November 27th

2012. So now we're gonna move into the formal, um, hearing. If you're on the phone and you'd like to provide formal comments please press Star 1. At, um, this time I have nobody signed up in the room has anyone changed their mind? K, I see a 'no' from the audience, has anybody on the phone?

FEMALE: No.

BARI SCHREINER: Okay, I'll, I'll continue and I'll check one more time, um, in a second. So again...umm...oh um, I'm sorry, wrong way...umm...if you'd like to send ecology written comments please remember they are due by December 11th 2012. You need to send them to Fran Sant Department of Ecology, P.O. Box 47703, Olympia, Washington 98504. Or you could email them to seeparulemaking, all one word, @ecy.wa.gov or you could fax them to 360-407-6904. I'm going to check one more time, if there's anybody on the phone that wants to provide testimony please press Star 1, anybody in the room changed their mind, no. No? All right, um, let the record show that we had, um, four participants at this hearing and no one indicated that they wanted to provide oral testimony. Umm, so in closing, all testimony received at the hearing held earlier today along with all written comments received by December 11th will become part of the official hearing record, or the off--, I'm sorry, official public record for this proposal. Ecology sends out notice, um, about the Concise Explanatory Statement or CES publication, um, to everyone that provided written comments or oral testimony on the rule proposal and submitted contact information, everyone that attended today's hearing that provided an email address and if you're on the phone and you'd like us to send you updates please remember to send your contact information to seeparulemaking, one word, @ecy.wa.gov and we'll get you added to this list and then we also will send out notice to our other interested parties list that the agency, um, uses for this rule making. And the Concise Explanatory Statement contains the agency's response to issues and comments um, that we received during the public hearing, among other issues, um, that we, other, other documentation that we include in there, um, and then we send out notice when it's available, um, to our mailing list at the, um, after the comment period, is over. So the next step is to review the comments and make a determination whether to adopt the rule. Ecology's director will consider the rule documentation, staff recommendations and we'll make that decision about adopting the proposal. Adoption is currently scheduled for no earlier than December 28th 2012 and if the proposed rule should be adopted that day and filed with the code reviser it will go into effect thirty-one days later. So if we can be of any further help please let us know or you can contact Fran and her contact information is also available on Ecology's website, um, on the SEPA rule making pages. On behalf of the department of Ecology thank you very much for coming. Let the record show that this hearing is adjourned at 7:05 PM. Thank you.

MALE: Yeah thanks for coming --