



WASHINGTON STATE ASSOCIATION OF COUNTIES

The following is the draft county proposal on revising the SEPA exemptions and other language in WAC 197-11-800(1). Our primary goals are to find thresholds which will give local governments’ options which will meet review needs, ensure our commitment to notice and public participation remains, find ways to make SEPA more efficient and effective..

We have broken up our proposal into four sections. The first deals with our proposal for exemptions in 197-11-800(1). The second relates to “findings”, which was an issue during the first meeting and subsequent conference call. The third and fourth are regarding noticing issues and the exceptions in 800(1).

**1) Exemptions proposal**

The County proposal would have three levels of exemptions. This would mirror how the current Rules and Statute work.

**Level 1-** The following would be the default exemption levels for all cities, towns, and counties under 800(1)(a). Under SB 6406, these are the current default levels for all local governments.

Dwelling units (single or multi-family)	20 du
Agricultural structure	30,000 sq. ft.
Commercial	12,000 sq. ft
Parking spaces	40 parking spaces

**Level 2 -** A city, town, or county would be able to raise or lower the exemption levels using the same method currently allowed in 800(1)(c) which states “*Cities, towns or counties may raise the exempt or lower levels to the maximum specified 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). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:*

This would require both an ordinance/resolution and findings which should alleviate many with concerns with having to make findings and having an appeal process.

The maximum exemption levels would be as follows. There would be no minimum levels if a city, town, county decides to adopt lower thresholds to meet their needs.

	City planning under GMA	UGA of county planning under GMA	Non-GMA planning county or city and rural area of GMA planning county
Single Family dwelling units <sup>1</sup>	80 du	40 du	25 du
Multi-Family dwelling units	80 du	40 du	25 du
Agricultural structure <sup>2</sup>	30,000 sq. ft.	30,000 sq. ft.	30,000 sq. ft. within non-GMA planning county or city/60,000 sq. ft in rural areas of planning county
Commercial	30,000 sq. ft.	20,000 sq. ft	12,000 sq. ft.
Parking spaces	80	60	40

**Level 3** – For even higher thresholds, a city, town, or county planning under GMA may raise the exemption levels for infill development that is consistent with the local government’s comprehensive plan using the process in RCW 43.21c.229. 43.21c.229 applies to residential, mixed-use, and commercial development up to 65,000 sq. ft. within UGAs and cities planning under GMA. The process outlined in current statute requires the local government legislative body to take legislative action and findings supporting the categorical exemptions. The local government must determine that the probable significant adverse environmental impacts will be addressed by development regulations. The comprehensive plan or the decision to establish the categorical exemptions must be analyzed through an EIS. This approach allows local governments to make individual choices based on their individual circumstances.

**2) Findings**

The proposal put forward by the counties would require findings and would provide an appeal process for anyone adopting thresholds higher than the default. We believe that this should alleviate concerns which have been expressed.

**3) Notice**

The counties understand that noticing is a big issue for many interest groups. We believe, however, that the SEPA rules are not the right place to address this issue. This issue should be addressed in the requirements of noticing under RCW 36.70B, and related statutes such as 36.70A, 58.17 and 90.58 if enhanced noticing is needed. Counties also believe that the way notice is provided needs to be part of the discussion. Requiring publication and mailed notice to adjoining property owners and interested agencies and tribes would be expensive and could overwhelm the recipients. Part of this discussion should include consideration of alternatives to the traditional approaches to notice that will put at least part of the burden on those who are interested in receiving notice.

As we outlined previously, there are generally four levels of project noticing that seem to be coming up during our discussions:

- 1) Project doesn’t require notice/SEPA isn’t required

<sup>1</sup> Counties assume that single family dwelling units as referenced in WAC 197-11-800(1) does not apply to subdivisions or short subdivisions. The latter are covered by a separate exemption in WAC 197-11-800(6). The former are presumed not to be categorically exempt from SEPA.

<sup>2</sup> Agricultural buildings under SB 6406 are limited to barns, loafing sheds, farm equipment storage buildings, produce storing or packing structures, or similar structures. This exemption would not apply to buildings that are used as a place of assembly.

**2) Project doesn't require notice/SEPA is required**

- 3) Project requires notice/SEPA isn't required
- 4) Project requires notice/SEPA is required

A vast majority of projects already fall within category one and notice is not required. This category would encompass thousands of permits issued annually by local governments. All sides agree that notice on these types of projects wouldn't be prudent. Projects in categories three and four already require notice because of various statutes already on the books like RCW 36.70B. These projects are not an issue because notice, comment, and appeal processes are provided. The only projects left are those in category two, which encompass those not requiring notice but requiring a SEPA checklist. It is our opinion that the types of projects which fall within this category are typically minor land use projects. For those which are not minor projects, local government would require public notice pursuant to RCW 36.70B. If the only reason for requiring SEPA for these projects is to provide notice, alternative approaches to providing that notice should be considered. This will help to focus scarce resources of governmental agencies and the public on those projects that need attention and better implement WAC 197-11-030(f) which states "Encourage public involvement in decisions that significantly affect environmental quality."

**4) Exceptions**

Rezone

The counties believe that the exception for "rezone" in 197-11-800(1)(a) should be removed as it is redundant. A "rezone" is a land use decision and is addressed in 197-11-800(6) - Minor land use decisions. It currently is not listed as being exempt from SEPA.

When we get to 800(6) next year, we would advocate for separating out the different types of "rezones". Rezones which implement our comprehensive plan and have already been subjected to SEPA should be exempt. Those requiring a comprehensive plan amendment in conjunction with the rezone should still require SEPA. Clarity in 800(6) is really needed.

Lands covered by water

The counties believe that the exception in 197-11-800(1)(b) (lands covered by water) should be removed as it is archaic and no longer necessary. This term was put into SEPA in 1984 which predated many jurisdictions adopting a Shoreline Master Program and the requirement under the Growth Management Act that all cities, towns, and counties adopt critical areas regulations (even non-planning counties).

As part of this process, counties were asked if they could research their records and let us know if: "They have issued anything but a DNS in the past five years for a project, otherwise exempt under 197-11-800(1) which required SEPA only because it was on "lands covered by water"? At this time, only one out of ten counties who have responded on short notice could locate a project where the "lands covered by water" language was utilized. This means that there have been hundreds of projects where the provision has not been helpful in mitigating project impacts. The reason is that projects with shorelines or critical areas are mitigated by existing critical area and shoreline regulations.

The county who has utilized the provision in the past five years indicated like the other counties, that this provision triggers an unnecessary SEPA process and that they would be able to utilize existing regulations to mitigate projects.

Emissions to air and discharges to water

The counties believe that the exception for “emissions to air and discharges to water” in 197-11-800(1)(a) should be removed. Since 1984, numerous laws have been passed which require local, state, and federal permits for projects which require air emissions and discharges of water. We believe that the underlying permit for these types of actions should be used to mitigate project impacts.