

City of
Aberdeen



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Department of Planning & Economic Development
Office of Code Enforcement
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May 19, 1997

Neil Aaland
Department of Ecology
State of Washington
P.O. Box 47703
Olympia, Washington 98504-7703

RE: SEPA Exemptions

Dear Mr. Aaland:

Thank you for the opportunity to comment on the revision process for categorical exemptions to the State Environmental Policy Act (SEPA).

The City of Aberdeen requests the consideration of the following changes to the Washington Administrative Code(WAC):

WAC 197-11-800(3) Repair, remodeling and maintenance activities. The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes beyond that previously existing; except that, where undertaken wholly or partially on lands covered by water, only minor repair or replacement of structures shall be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection, unless as provided in 173-27-070 WAC:

- (a) Dredging;
- (b) Reconstruction/maintenance of groins and similar shoreline protection structures;
- or
- (c) Replacement of utility cables/lines that must be buried under the surface of the bedlands.
- (d) Repair/rebuilding of major dams, dikes, and reservoirs.

WAC 197-11-800(24) Utilities. The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. Utility line installation beneath the surface of the bedlands which utilizes the directional drilling technique shall be exempt. The following exemptions include 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....

Please contact me at (360) 533-4100, extension 226 if I can be of any further assistance concerning these proposed changes.

Thank you again.

Sincerely,

Brian Shea
Director

cc: File

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City of
Bellevue



Post Office Box 90012 • Bellevue, Washington • 98009 9012

June 27, 1997

Neal Aaland
SEPA Unit
Washington Department of Ecology
P.O. Box 47703
300 Desmond Drive
Lacey, WA 98504-7703

FAX (360) 407-6904

Subject: Suggested Amendments to SEPA Categorical Exemptions, WAC 197-11-800.

Dear Mr. Aaland:

The City of Bellevue is pleased at the opportunity to suggest revisions to the SEPA Rules regarding Categorical Exemptions. We believe that adapting the categorical exemptions to take into consideration the experience of agencies in implementing the current exemptions will be a further contribution to integration of environmental and permit review as mandated by Engrossed Substitute House Bill 1724 passed by the 1995 legislature.

Our comments indicate the effect of the change we propose. In most cases we have not proposed specific wording.

WAC 197-11-800(1)(a) Clarify that if a project is exempt under one of the criteria, it need not meet other exemption criteria.

- (1)(b)(iii) Delete the parking threshold for associated parking. Parking requirements for buildings differ by use, some 4,000 square foot buildings may require more than 20 parking spaces.
- (1)(b)(v) Raise the landfill threshold to 500 cubic yards
- (1)(c)(iii) Delete the parking threshold for associated parking.
- (1)(c)(v) Raise the landfill threshold to 10,000 cubic yards
- (2)(c) Reorganize this section for clarity by utilizing subsections or breaking into separately numbered headings. The complexity of the sentence structure limits its usability
- (2)(f) Exempt all demolition, except of historic structures.
- (15)(c) Add reference to Capital Investment Plans where the decision to undertake projects has previously been made in general system plans such as transportation or utility plans.
- (24) Exempt all utility construction where a) included in an adopted utility plan, and b)

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undertaken within the existing improved portion of a public street right-of-way, or other right-of-way in which no change in vegetation or topography will result from the installation.

Again, we appreciate the opportunity to participate in the process of updating the SEPA Rules and we commend the Department of Ecology for the open and balanced approach to integration of permit and environmental review you have shown in this effort.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Sherrard". The signature is fluid and cursive, with a large initial "D" and "S".

David E. Sherrard
Senior Environmental Planner

cc: Matt Terry, Director
Faith Lumsden, Environmental Coordinator

Post-It™ brand fax transmittal memo 7871		# of pages > 13
To Neil Aaland	From JACKIE LYNCH	
Co. D. O. E.	Co. City of Blount	
Dept. SEPA CENTER	Phone # (360) 676-6982	
Fax # (360) 407-6904	Fax #	

June 12, 1997

Neil L. Aaland, AICP
 Senior Planner
 Department of Ecology
 P.O. Box 47600
 Olympia, WA 98504-7600

Subj: Categorical Exemption Changes

Dear Mr. Aaland:

Thank you for the opportunity to comment on changes to the State Environmental Policy Act (SEPA) involving Categorical Exemptions (CE). My qualifications to comment on this subject include:

1. A Master's Degree in Urban and Regional Planning and a Bachelor's degree in Environmental Sciences,
2. Membership in the American Institute of Certified Planners, and
3. Professional experience in SEPA since 1986 at both County and City levels. This experience includes reviewing Environmental Checklists and Impact Statements, assisting private parties to prepare SEPA Checklists, teaching dozens of staff members about the SEPA code, and drafting hundreds of CE and SEPA determinations.

This letter discusses a number of issues related to CEs in the SEPA code. Well thought out changes to CEs have the potential to help:

'Make the SEPA process more useful to decisionmakers and the public; promote certainty; reduce paperwork; integrate the requirements of SEPA with existing agency planning practices, ensure the use of concise, high quality environmental information; integrate the SEPA process with other laws and decisions; and encourage actions that preserve and enhance environmental quality.' (portions WAC 197-11-030 and -650).

CE Editing Issues

The CE section of SEPA must be clear so we can delineate what will not have an environmental impact, from what needs threshold examination. But the CE section needs to be reworded and reformatted. It is a difficult code to interpret and enforce. The wording is often obtuse and overly

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complex. I strongly recommend you have the section reviewed by a technical editor. I have taken the liberty of attempting to reword a few sections that seem to cause me the most confusion.

The most significant editing change proposed by this document revises the CE section to clearly delineate what must always undergo a SEPA review and what is never allowed to be reviewed by SEPA.

CE Content Issues

The content of the CE sections need to be revised because some exemptions are not clear in light of changes in technology or practices in the real world. As well, the passage of the Growth Management Act and Regulatory Reform have changed the regulatory and environmental climate within the State of Washington, making some SEPA-mandated reviews, either repetitive or unnecessary. Lastly, we are beginning to realize that development is channeled, amongst other methods, by the time it takes to get reviewed. As the Growth Management Act encourages development within municipal boundaries and because environmental impact, per capita, is less within municipalities, one way to reduce the environmental impact of the population growth within the State of Washington is to encourage development within municipalities by reducing the amount of review a smaller development application must undergo.

The CE amendment attachment to this letter makes line-by-line recommendations to meet the goals of reducing review time and clarifying exemption levels. In summary, appropriate changes to SEPA's CEs include:

- 1) Revising CEs to raise exemption thresholds for lands within a municipality in compliance with the Growth Management Act;
- 2) Clearly state that proposals are exempt if they are completely described by, and their impacts have been completely reviewed by, an environmental document; and
- 3) Allowing a wider range of CEs if the jurisdiction has adopted and is enforcing regulations which meet State requirements and no environmental impact is anticipated. This change will greatly widen the scope of CE in municipalities which have met the Growth Management Act. Will some proposals be constructed which have a significant environmental impact because a jurisdiction is not allowed to do SEPA? No, because the Lead Agency has the authority to do SEPA under WAC 197-11-305:

'A proposal is only categorically exempt when it ... may have a probable significant adverse environmental impact' (edited).

Please call me at (360) 676-6982 to discuss any portion of this letter.

Sincerely,

Jacquelyn Lynch, AICP
Associate Planner

RECOMMENDED CHANGES TO CATEGORICAL EXEMPTIONS

Recommendations for additions are show in underlined, deletions are ~~struck-out~~, and comments are enclosed in <<angled brackets>>. Sections are not renumbered. New sections are given new numbers only to help clarify their relationship to other sections.

WAC 197-11-305

<< See PART NINE, below, for a draft of WAC 197-11-305 combined with PART NINE. This will clarify exemptions and the procedures for determining exemptions. >>

WAC 197-11-600 WHEN TO USE EXISTING ENVIRONMENTAL DOCUMENTS...

(4) Existing documents may be used for a proposal by employing one or more of the following methods:

(a) "Adoption," where an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA. Agencies acting on the same or substantially similar proposal for which an environmental document was prepared are not required to adopt the document; or

<<Comment: A proposal which has been previously analyzed under SEPA and has been slightly changed should not be required to be reanalyzed. The use of the word 'same' with no modifier implies even the slightest change would require a new SEPA determination. >>

WAC 197-11-660 SUBSTANTIVE AUTHORITY AND MITIGATION.

(1) ~~Any governmental nonexempt action on public or private proposals that are not exempt~~ may be conditioned or denied under SEPA to mitigate the environmental impact...

<<Comment: Clarification needed. Also, some words superfluous. >>

PART NINE - CATEGORICALLY EXEMPTIONS AND NONEXEMPT ACTIONS

WAC 197-11-206800 CATEGORICAL EXEMPTIONS...

(1)(b) The proposal is a segment of a proposal that includes:

(i) A series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not; or

(ii) ~~An series of exempt actions that are physically or functionally related to each other, and that together~~ may have a probable significant adverse environmental impact in the judgment of an agency with jurisdiction...

<<Comment: Sometimes, a single action may have a significant adverse environmental impact. For instance, a 40-acre Class III Forest Practice Permit on steep slopes upstream, of a large number of homes on a floodplain, or placement of a

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single-family home next to a toxic contaminated site. > >

(3) To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency.

< < This section moved from WAC 197-11-900(1)(a). It makes more sense here. > >

(4) How to use this section.

(a) Describe the action fully, including the actions which have not been approved but are needed to bring about the action, and all of the results of the action.

For instance, an action might be the subdivision of a parcel of land into two parcels of land, but the action which is needed to bring about the action is an amendment to the Subdivision Code, and the results of the action is creation of a lot which is totally occupied by a wetland and would require fill of the wetland prior to development. Either the prior action or the result would be subject to threshold determination, although the proposal being reviewed would not. Therefore, the proposal being reviewed be combined with the prior action and result, and all three actions would undergo threshold determination.

(b) Determine if the action is not exempt, WAC 197-11-801, below.

(c) If the proposal not within WAC 197-11-801, examine the list in WAC 197-11-802. Section (1) is for actions within municipalities planning under the Growth Management Act. Section (2) is for all other jurisdictions.

(d) If the action is not listed under WAC 197-11-800 or -801, it is not exempt and must undergo threshold determination.

< < Comment: A clear statement of how the exemption process works is needed. > >

WAC 197-11-8001 ACTIONS WHICH ARE NOT CATEGORICALLY EXEMPTIONS. The proposed actions contained in Part Nine are categorically exempt from threshold determination and fill requirements. The proposals in this section are never exempt from threshold determination and FIS requirements:

- (1) conditional use permits, rezones, changes to comprehensive plans and subarea plans, and similar permits not otherwise exempted by this chapter.
- (2) license governing emissions to the air
- (3) license governing discharges to water.
- (4) any action wholly or partly on lands covered by water, regardless of whether or not lands covered by water are mapped. Lands covered by water include seasonal streams and wetlands as defined by Department of Ecology manuals. Although some maintenance wholly or partly on lands covered by water may be exempt (see below), the following

maintenance activities are not exempt under any circumstance:

- (a) Dredging;
- (b) Reconstruction/maintenance of groins and similar shoreline protection structures;
- (c) Replacement of utility cables that must be buried under the bedlands; or
- (d) Repair/rebuilding of major dams, dikes, and reservoirs.
- (5) the application of herbicides within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.
- (6) additions or modifications to or replacement of any building or facility which removes it from an exempt class.
- (7) actions involving historic structures, facilities, or properties listed on or have qualifications for listing on, a Federal, State, or Local Historic Registry.
- (8) actions involving acquisition of right-of-way.
- (9) Actions involving construction of new traffic lanes.
- (10) Commercial off-premise signs.

<< Comment: Actions which are never exempt should be clearly stated in their own section. This will simplify the exemption sections, following. >>

WAC 197-11-802 CATEGORICAL EXEMPTIONS LIST. The proposed actions contained in ~~Part Nine~~ this section are categorically exempt from threshold determination ~~and EIS requirements,~~ subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305800.

(1) The following categorical exemptions apply to all actions within municipalities with approved Comprehensive Plans under the Growth Management Act:

<< Within municipalities because the per capita affect of development is less in municipalities (less water and air pollution, fewer vehicle miles driven, higher transit use, less impervious surface) than in less-densely developed unincorporated areas. Only municipalities with Approved Comprehensive Plans under the Growth Management Act (GMA) should be exempted because the GMA review and approval process involves an overall SEPA determination and meeting the goals and objectives of GMA. >>

~~(1) Minor new construction - Flexible thresholds.~~

~~(a) The exemptions in this subsection apply to all licenses actions required to undertake the construction in question, except when a rezone or any license governing emissions to the air or discharges to water is required. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency.~~

<< This section was combined into WAC 197-11-801 and moved to the top of PART NINE. >>

(b) The following types of construction shall be exempt, ~~except when undertaken wholly or partly on lands covered by water:~~

- (i) ~~The construction or location of any residential structures of four dwelling units.~~
- (ii) ~~The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of for farming the property. This exemption shall not apply to feed lots.~~
- (iii) ~~The construction of an office, school, commercial, recreational, service or storage commercial, recreational, industrial, or institutional building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles.~~
- (iv) ~~The construction of a 20-automobile parking lot, either free-standing or as part of another action, designed for twenty automobiles.~~
- (v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

(c) Cities, towns or counties may raise the exempt levels to the maximum specified below by ~~implementing~~ ordinance or resolution. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations which deal with all onsite and offsite environmental impacts of these higher levels of development. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904) and sent to the ~~d~~Department of ~~e~~Ecology. ~~A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations.~~

<< Comment: Moved and clarified sentence >>

An agency may adopt a system of several exempt levels (such as different levels for different geographic areas or different critical lands). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:

- ~~(i) 20 dwelling units.~~
- (i) 50 dwelling units.

<< 50 dwelling units is the threshold whereby traffic and drainage impacts are almost always felt out of the immediate vicinity. >>

- (ii) 30,000 square feet.
- ~~(iii) 12,000 square feet; 40 automobiles.~~
- (iii) 40,000 square feet.

<< A 40,000 square foot retail use will create regional traffic impacts and has the potential to have economic and environmental impacts offsite. >>

- ~~(iv) 40 automobiles.~~
- (iv) 100 automobiles.

<< A 100-space parking lot will cover approximately 35,000 square feet, and could have drainage and traffic impacts outside of the vicinity. >>

- ~~(v) 500 cubic yards.~~
- (v) 5,000 cubic yards.

<<5,000 cubic yards involves the use of approximately 500 truck trips and will cover approximately one acre, one yard deep. Impacts of this type of filling operation will be felt outside of the local area of fill.>>

...
 (2) (d) Grading, excavating, filling, septic and aboveground tank installations, and landscaping necessary for accessory to any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of ~~small structures~~ buildings under 800 square feet in size and minor structures and facilities clearly accessory thereto.

<< Clarification is needed.

- Aboveground storage tanks accessory to an exempt use, such as petroleum tanks attached to single-family homes, should be exempt.
- We have found that 800 square feet is a good breakpoint between small and medium accessory buildings.
- The term 'accessory' has a lot of case law interpretation and clearly delineates the 'secondary' function of such accessory uses.>>

...
 (6) Minor land use decisions. The following land use decisions shall be exempt:

- (a) ~~Except upon lands covered by water,~~ The approval of nine lot short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060. This does, but not including further short subdivisions or short platting within a previous plat or subdivision previously which was exempted under this subsection (aka "Second Generation" short plats.

<< Comment: The subdivision code allows municipalities to finalize 9-lot short subdivisions.

The second sentence is confusing. This is a proposed rewrite.>>

(2) The following categorical exemptions apply to all actions not within municipalities with approved Comprehensive Plans under the Growth Management Act:

(1) Minor new construction--Flexible thresholds.

- (a)-(c) << no change from (1), above>>

(d) The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:

- (i) 20 dwelling units.
- (ii) 130,000 square feet.
- (iii) 12,000 square feet; ~~40 automobiles.~~
- (iv) 40 automobiles.
- (v) 500 cubic yards.

(10)

...
 (2)(d) Grading, excavating, filling, septic and aboveground tank installations, and landscaping ~~necessary for accessory~~ to any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of ~~small structures~~ buildings under 200 square feet in size and minor structures and facilities clearly accessory thereto.

< < - See comments under WAC 197-11-801, (2)(d) above.
 - 200 square feet is definitely a small building, perhaps a one-car garage. > >

...
 (6) Minor land use decisions. The following land use decisions shall be exempt:
 (a) ~~Except upon lands covered by water,~~ The approval of four lot or less short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060. This does, but not including further short subdivisions or short platting within a previous plat or subdivision previously which was exempt-exempted under this subsection.

< < Comment: The latter part of this sentence is confusing. This is a proposed rewrite. > >

(3) The following categorical exemptions apply to all actions within the State of Washington:

(2) Other minor new construction. The following types of construction shall be exempt ~~except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection);~~ the exemptions provided by this section shall apply to all actions ~~licenses~~ required to undertake the construction in question, ~~except where a rezone or any license governing emissions to the air or discharges to water is required:~~

(a) The construction or designation of transit, school bus, and taxicab related bus stops, loading zones, shelters, access facilities and pull-out lanes. ~~for taxicabs, transit and school vehicles.~~

(b) The construction and/or installation of commercial on-premise signs, and public signs and signals.

(c) The construction or installation of minor ~~road and street improvements~~ where no new right of way is required, such as:

(i) minor street safety improvements, such as:

- railroad protective devices (not including grade-separated crossings),
- glare screen,
- safety barriers, guard rails, and barricades installation,
- correction of substandard curves and intersections ~~within existing rights of way,~~
- channelization ~~and~~
- elimination of sight restrictions at intersections,
- street lighting,
- freeway surveillance and control systems,

(ii) minor street surface improvements, such as:

- pavement marking,
- grooving,
- widening of a highway by less than a single lane width where capacity is not significantly increased ~~and no new right of way is required,~~

- adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased ~~and no new right-of-way is required,~~
 - reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.
- (iii) minor street facility improvements, such as:
- transportation corridor landscaping (including the application of Washington State Department of Agriculture approved herbicides by licensed personnel for right-of-way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660),
 - energy attenuators,
 - noise barriers,
 - temporary traffic controls and detours, and
 - installation of catch basins and culverts

<< Comments: This section is unclear and should be reorganized and segmented (as above) or rewritten. Also, minor changes as suggested above will help clarify these exemptions. >>

(e) and (3):

Additions, or modifications to, repair, remodeling, maintenance, or minor alterations of or replacement of any existing buildings, equipment, utilities, or facilities exempted by ~~subsections (1) and (2) of this section,~~ when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class and involving no material expansions or changes in use beyond that previously existing. Changes in use involve changes between significant land use categories, such as conversion of a residence into a commercial building, or an agricultural building into an industrial use. Material expansion is the usable, consequential, or significant.

~~(3) Repair, remodeling and maintenance activities. The following activities shall be categorically exempt except: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:~~

~~a) Dredging;~~

~~b) Reconstruction/maintenance of groins and similar shoreline protection structures; or~~

~~c) Replacement of utility cables that must be buried under the surface of the bedlands.~~

~~Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.~~

<< Comment:

- (2)(e) and (3) have always overlapped. This is an attempt to combine these two sections.
- Deletions within Section 3 are addressed in the new WAC 197-11-801, above.
- The new 'changes in use' and 'material expansion' explanations are needed to clarify the words: 'use' and 'material'. Or, these definitions could be added to WAC 197-11-700.
- The addition of these explanations is needed to assist SEPA reviewers to deal with buildings over exemption thresholds which are proposed for expansion. >>

(f) ~~The demolition of any structure or facility, the construction of which would have been exempt, ed by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance.~~

(g) The installation of an impervious underground tanks, having a gross capacity of 10,000 gallons or less.

<< Comment: Clarification needed. Was this intended as the maximum size of each tank or of all tanks being simultaneously installed? Tank-by tank exemption makes more sense to this writer. Also, this section does not exempt pervious tanks. Was that purposeful? >>

(h) ~~The Right-of-way and easement vacation of streets, or roads.~~

(i) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(j) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(3) << See above. >>

(4-5) << unchanged >>

(6)...

(b) Granting of variances based on special circumstances, (not including economic hardship), applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density which would not be exempted under this chapter.

<< Many variances have minor affects on density. >>

(6)(c)-(13)(c) << Unchanged >>

(13)(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. ~~No licenses and adoptions of any ordinance, regulation or resolution are shall not be considered exempt by virtue of under~~ this subsection.

(e) Any suspension or revocation of a license for any purpose.

(14a-c) << unchanged >>

(14)(d) All licenses to operate or engage in charitable or retail sales and service activities, including but not limited to peddlers, solicitors, second hand shops, pawnbrokers, hanging publicly-reviewed temporary banners over rights of way, vehicle and housing rental agencies, tobacco sellers, close out and special sales, seasonal sales stands such as fireworks and tree sales, massage parlors, public garages and parking lots, and used automobile dealers.

<< Comment: Recommendation.>>

(14)(e)-(23) << unchanged >>

(24) 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.~~

<< Comment: Clarification and removal of repetition. Could this be combined with (2)(e), above?>>

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

<< Comment: This section should be updated to be in conformance with the FCC's Telecommunications Act of 1996. Or, the provisions of this act should be mentioned in this section.

Either way, the applicability of SEPA exemptions to communications facilities should be addressed. Several jurisdictions interpret this to mean that facilities similar in function to "communication towers and relay stations", such as two-way satellite dishes, are not exempt. >>

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 less than 115 kilovolts or less; and the overbuilding of existing distribution lines (~~55,000 less than 115 kilovolts or less~~) with transmission lines (more than 55,000 115 kilovolts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.

<< Comment:

- The distribution/transmission breakline is at 115 kilovolts (115,000 volts) these days. It was at a lower level when WAC 197-10 was originally written. I am told by my utility contacts that few lines are constructed between 55,000 and 115,000 volts, these days.

- Why are underground power lines not exempt if in an established right of way?>>

(24)(d)-(e) <<no change>>

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: PROVIDED, that chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. ~~This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.~~

(g) All grants of rights-of-way easements by agencies to utilities for use for distribution (as opposed to transmission) purposes.

<<Comment: I believe the word most commonly in use is 'easement'. Right of Way includes the concept of allowing vehicular travel. I don't believe a new dirt road is exempt. >>

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights-of-way easements by utilities.

<<Comment: Utilities can dispose of easements. Only municipalities can dispose of rights of way(aka Street Vacations, exempt above under (2)(h)). See RCW 35.79.010. >>

(25) Natural resources management. In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) Within incorporated areas, all Class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder. Within incorporated areas planning under the Growth Management Act, all Class I, and II Forest Practices as defined by RCW 76.09.050 or regulations thereunder.

<<Comment: Incorporated jurisdictions can receive significant environmental impacts from Class III Forest Practices. RCW 43.21C.037 states that Class III forest practices are not subject to RCW 43.21C.030(2)(c). However the rest of RCW43.21C.030 are not specifically exempted by this clause. >>

(25)(b)-(h) <<no changes>>

(i) Periodic use of chemical or mechanical means to maintain public park and recreational land: PROVIDED, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. ~~This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.~~

(j) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

<<Comment: Use of existing rights of way with no potential for environmental impact should be allowed in all areas. >> (15)

...
**WAC 197-11-8135 DEPARTMENT OF FISHERIES; and
WAC 197-11-840 DEPARTMENT OF GAME.**

<< Comment: These two sections should be combined. >>

WAC 197-11-890 PETITIONING DOE TO CHANGE EXEMPTIONS. (1) Except for the preceding section, agencies may create additional exemptions in their procedures only after receiving approval from the Department of Ecology under this section...

WAC 197-11-908 ENVIRONMENTALLY SENSITIVE CRITICAL AREAS. (1) Each county/city may at its option designate areas within its jurisdiction that are environmentally sensitive critical areas, and shall adopt such designation in its agency SEPA procedures (WAC 197-11-906). Environmentally sensitive critical areas shall be those within which the exemptions listed in the next subsection could have a significant adverse environmental impact, including but not limited to areas with unstable soils, steep slopes, unusual or unique plants or animals, significant views, wetlands, or areas which lie within floodplains. The location and extent of all environmentally sensitive critical areas shall be clearly indicated on a map that shall be adopted by reference as part of the SEPA procedures of the county/city; a copy shall be sent to the department of ecology.

(2) Each county/city that designates and maps an environmentally sensitive critical area may select certain categorical exemptions that do not apply within the area. The selection of exemptions that will not apply may be made from the following subsections of WAC 197-11-800: (1), (2)(a) through (h), (13), (5), (6)(a), (8), (14)(c), (24)(a) through (gh), and (25)(d), (f), (h), (i)...

<< Comments:

- "significant view" areas should be included as a potential critical area. Aesthetic/view impacts are an accepted environmental impact.
- (8): Open Burning permits have the potential for significant environmental impacts.
- (24)(h): Grants of franchises have the potential to begin a series of actions which would have significant impacts. Franchises in certain sensitive critical areas should be reviewed for impacts on those areas. >>



PLANNING AND COMMUNITY DEVELOPMENT

awp
Paul A. Roberts
Director

April 30, 1997

Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
P.O. Box 47703
Olympia, WA 98504

RE: RECOMMENDED SEPA CATEGORICAL EXEMPTIONS

Dear Mr. Aaland,

The Everett Planning and Community Development Department would like to make the following recommendations on SEPA categorical exemptions:

1. WAC 197-11-800 should be updated to include any changes in the RCWs regarding exemptions, including annexations per RCW 43.21C.222.
2. 197-11-800(2)g. The installation of impervious underground tanks, having a capacity of 10,000 gallons or less.

SEPA should not be required for underground fuel tanks that have to comply with 40 CFR Part 280 or WAC 173-360. 40 CFR Part 280 regulates underground storage tanks containing petroleum or substances defined as hazardous under CERCLA. It includes requirements for leak detection, leak prevention, financial responsibility and corrective action for all underground tanks containing regulated substances. WAC 173-360 directs the Department of Ecology to establish an underground storage tank program that at a minimum meets the requirements for delegation of the Federal Underground Storage Tank Program of RCRA. It includes notification, reporting and recordkeeping requirements; performance standards and operating and closure requirements; financial responsibility requirements; local programs; and registration and licensing requirements for underground storage tank service providers and service supervisors.

The City of Everett Stormwater Management Manual also includes Source Control BMP's and Regulatory Requirements for petroleum products, including below and above ground storage.

3. We recommend a categorical exemption for aboveground fuel tanks of up to 3,000 gallons.

(17)

4. Demolition of up to 12,000 s.f. for commercial and industrial and 20 multiple family residential units should be categorically exempt.

The exemption for demolition should be expanded to cover other structures such as demolition of towers for antennas (covered in 197-11-800(24)).

5. Many activities are exempt except when undertaken wholly or partly on "lands covered by water." The definition of "lands covered by water" (197-11-756) should be clarified to address whether it applies to wetlands that don't necessarily have a high water mark. Where local jurisdictions have current ESA regulations and Shoreline requirements which protect wetlands, SEPA analysis should not be required for activities that are otherwise exempt.

We appreciate the opportunity to provide comments on the SEPA categorical exemptions. If you would like to have additional information and our justification for the above comments, we can do that in a follow-up letter. If you have any questions or comments on our recommendations, I can be reached at (425)257-8731.

Sincerely,



Robert A. Landles, Manager
Land Use Planning

cc: Paul Roberts



**PLANNING AND
COMMUNITY DEVELOPMENT**

Paul A. Roberts
Director

June 14, 1997

RECEIVED
JUN 18 1997

DEPARTMENT OF ECOLOGY
ENVIRONMENTAL REVIEW

Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
P.O. Box 47703
Olympia, WA 98504

RE: RECOMMENDED SEPA CATEGORICAL EXEMPTIONS

Dear Mr. Aaland,

Thank you for the opportunity to comment on the Department of Ecology's review of the categorical exemptions to SEPA. We previously submitted comments in our letter dated April 30, 1997 in response to the previous comment deadline (attached). After further review of the possible amendments to the SEPA Rules, we would like to add the following comments:

1. Since the minimum storm water pipe size adopted by Everett and other jurisdictions is twelve (12) inches, we would recommend increasing the exemption for utility line size from eight (8) inches or less to twelve (12) inches or less.

Such a change is justified because 12" water, sewer and storm sewer lines are standard utility installations and the equipment, trenching procedures and environmental impacts from their installation are virtually identical to the impacts from the installation of 8" lines. In both cases, the impacts are minor and transitory, and there are sound hydraulic, engineering reliability, and business reasons for installation of the larger lines to meet modern utility requirements. The 8" limitation is obsolete and a change to 12" results in little, if any, additional environmental impact.

2. Sections 197-11-835 (Department of Fisheries) and 197-11-840 (Department of Game) should be combined as the Departments now are.
3. We recommend the addition of language to WAC 197-11-800(3) that makes it clear that repair, maintenance, and remodeling activities on lands covered by water are categorically exempt if the required HPA is exempt under WAC 197-11-835(3) and 197-11-840(7).

We also support the SEPA exemption as recommended by the Puget Sound Air Pollution Control Agency for issuance of minor air permits (see the attached letter).

We appreciate the opportunity to provide additional comments on the SEPA categorical exemptions. If you have any questions or comments on our recommendations, I can be reached at (425)257-8731.

Sincerely,



Paul A. Roberts, Director

by Robert A. Landles, Land Use Manager

cc: Clair Olivers, Kathie Joyner, & Larry Crawford



PLANNING AND COMMUNITY DEVELOPMENT

Paul A. Roberts
Direc

October 30, 1998

Neil Aaland
Department of Ecology
SEA Program
PO Box 47703
Olympia, WA 98504-7703

Re: Categorical Exemptions Comments

Dear Neil:

The City reviewed the Determination of Significance and Request For Comments on Scope of EIS for the SEPA Categorical Exemption changes. Due to staff vacations, we missed the comment deadline for the initial document. The following comments are in response to the revised September 23, 1998 list of proposed amendments and deletions to the existing categorical exemptions.

1. **WAC 197-11-800(1)(b), etc.:** The amendments discuss the "lands covered by water" definition. We understand that a subcommittee is being formed to address this issue. We request that this group consider whether "lands covered by water" should be changed to "critical areas, unless the jurisdiction has adopted a critical areas ordinance and the proposal is consistent with the ordinance." The group should also address whether this applies to work done during low tide and during normal drawdowns of water bodies.
2. **WAC 197-11-800(1)(b)(iv):** The third proposed amendment suggests converting the exemption to square feet of impervious surface. The term "parking lot" could also be expanded to cover outdoor storage and display areas, loading areas, etc. In the past, we have required SEPA review for these land uses if more than 20 cars could park in the paved or graveled area.
3. **WAC 197-11-800(2) (j):** A specific exemption for fences is proposed. The EIS should address the impact of fences on wildlife migration corridors (wildlife migration corridors should then be defined in "definitions").
4. **WAC 197-11-800(24):** The first proposed revision that requires no change in vegetation is too restrictive. Instead this exemption should apply only if removal of trees or shrubs in undisturbed areas is not required and work is outside critical areas. Please clarify the intent of the proposed amendment.
5. **WAC 197-11-800(25):** The second bullet under proposed changes would exempt recreational mineral and placer prospecting. This suggested exemption should not apply if the mineral prospecting would take place beneath the OHWM of Types 1 and 2 waters.

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WAC 197-11-800(25)(h): We suggest that the language "and not sited in municipal watershed" be added at the end of the sentence.

6. **WAC 197-11-830(8):** We suggest changing item 8 to read "Except on aquatic lands under state control or in municipal watersheds..."
7. **WAC 197-11-830:** It appears that the suggested revision labeled (6) may be mis-numbered (doesn't appear to address (6) which addresses dumping of forest debris). We assume that it actually relates to (8) and suggest that this activity not be exempt when taking place in municipal watersheds and/or Types 1 and 2 waters.
8. **WAC 197-11-800(2)(f):** The last bullet of proposed revisions would result in the loss of numerous historically significant structures which have yet to be evaluated. This proposal should be eliminated. "Recognized historical significance" should be clearly defined in WAC 197-11-700 so that reviewers clearly understand its meaning.
9. **WAC 197-11-800(2)(g):** The removal of USTs should be specifically addressed here, or in a Guidebook.

Thank you for consideration of our comments.

Sincerely,



Bob Landles
Land Use Manager

cc: Kathie Joyner, Public Works



123 FIFTH AVENUE • KIRKLAND, WASHINGTON 98033-6189 • (206) 828-1100 • TTY (206) 828-2245

June 9, 1997

Neil Aaland, AICP
Washington Department of Ecology
P.O. Box 47703
Olympia, WA 98504-7703

Dear Mr. Aaland:

RE: SEPA CATEGORICAL EXEMPTIONS

We have the following comments on the SEPA categorical exemptions:

1. WAC 197-11-800(1)(b), (2), (3), etc. Clarify what is meant by "lands covered by water." Does this mean: a) lands directly overlain by water (creek bed, lake bottom), b) lots which abut or contain a stream, lake, etc., regardless of distance to the natural feature, or c) lands overlain by water together with lands in close proximity to the lake or stream (buffers, for example)? We have dealt with this question approximately 8 times over the past year.
2. WAC 197-11-800(2)(e). Clarify when additions, modifications to, or replacement of minor new construction "will not change the character of the building or facility in a way that would remove it from an exempt class." Does this mean that if an addition increases the square footage enough to move the building into the non-exempt class, then the facility is non-exempt, or is the language more subjective? In other words, if a 10,000 square foot building is doing a 200 square foot addition, does it automatically become non-exempt or do we have the discretion to look at the character of the building or facility and make a judgment about exemption? Too, if the addition was non-exempt, would SEPA be completed just for the addition or for the whole, already-constructed, previously exempt building? We have dealt with this question approximately 6 times over the past year.
3. WAC 197-11-800(3). Clarify when subsequent additions/modifications to non-exempt projects must go through SEPA. This section states that repair, remodeling, maintenance, or minor alteration are exempt if "no material expansions or changes in use beyond that previously existing" are involved. But does "material" in this case refer to

physical expansion or substantive or "important" expansion? We have dealt with this question approximately 4 times over the past year.

4. WAC197-11-800(15)(b). Add "and fees" to this categorical exemption so that the exemption reads, "the assessment and collection of taxes and fees." Although we have assumed that fee collection (for zoning permits, building permits, etc.) was exempt as an agency activity, clarification would be helpful.

If you have any questions about these comments, please do not hesitate to give me a call at (425)828-1259.

Sincerely,

PLANNING AND COMMUNITY DEVELOPMENT

Lauri Anderson

Lauri Anderson, AICP
Planning Supervisor



123 FIFTH AVENUE • KIRKLAND, WASHINGTON 98033-6189 • (206) 828-1100 • TTY (206) 828-2245

June 20, 1997

Neil Aaland, AICP
Washington Department of Ecology
P.O. Box 47703
Olympia, WA 98504-7703

Dear Mr. Aaland:

RE: SEPA CATEGORICAL EXEMPTIONS

To follow up on our conversation last week, below are our recommendations for resolution of the points raised in our June 9 letter:

1. WAC 197-11-800(1)(b), (2), (3), etc. Clarify what is meant by "lands covered by water."

We recommend that "lands covered by water" include lands overlain by water together with designated buffer areas (streams and stream buffers, wetlands and wetland buffers, etc.). Since activities within the buffer may directly affect the environmental feature, impacts in the buffer area should also be evaluated.

2. WAC 197-11-800(2)(e). Clarify when additions, modifications to, or replacement of minor new construction "will not change the character of the building or facility in a way that would remove it from an exempt class."

We recommend that increased square footage alone not trigger non-exempt status. For example, if a 150 square foot addition is proposed to an existing 3,900 square foot office building (thereby increasing the total square footage to 4,050 which is over the current 4,000 square foot categorical exemption threshold for office buildings), we believe that the character and impacts of the change should be assessed and a judgment made about exemption.

To ensure that "changing the character" is interpreted consistently, criteria for making this judgment should be developed. Criteria could include a percentage threshold (for example, the addition shall not exceed the standard by more than 10%), a limit to the

number of additions proposed within a given period of time (for example, no more than one minor addition may be made to a structure within any five year period), or a more general criterion about impacts (for example, the addition or modification shall not create any new or more significant adverse impacts).

In cases where it is determined that an addition or modification does trigger SEPA, it is our opinion that SEPA should be completed for the whole, already-constructed, previously exempt structure, rather than just the new addition.

3. WAC 197-11-800(3). Clarify when subsequent additions/modifications to non-exempt projects must go through SEPA. This section states that repair, remodeling, maintenance, or minor alteration are exempt if "no material expansions or changes in use beyond that previously existing" are involved.

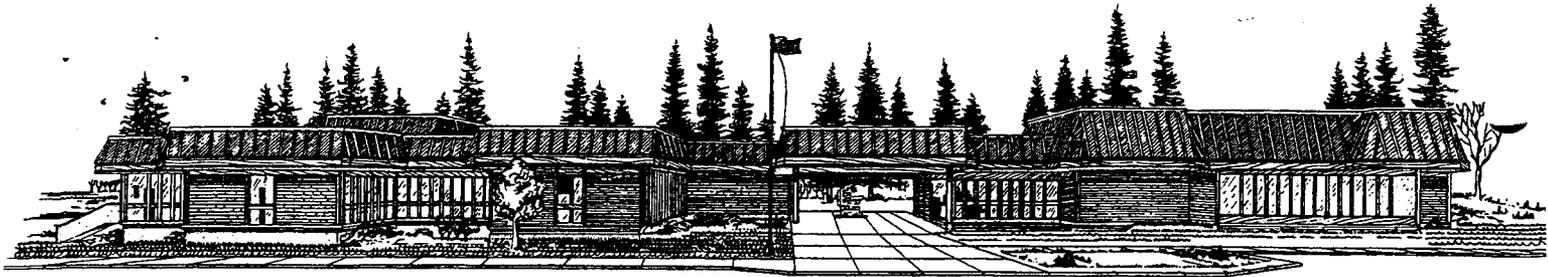
We recommend that "material" mean "significant," not "physical." Criteria for making this judgment would again be helpful (please see the discussion under Section 2, above).

Sincerely,

PLANNING AND COMMUNITY DEVELOPMENT

Lauri Anderson

Lauri Anderson, AICP
Planning Supervisor



CITY OF LYNNWOOD

PHONE (206) 775-1971

PLANNING DEPARTMENT

June 13, 1997

FAXED
6/13/97
DATE

Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
PO Box 47703
Olympia WA 98504-7703

RE : SEPA CATEGORICAL EXEMPTIONS: COMMENTS

Dear Mr. Aaland:

The City of Lynnwood Environmental Review Committee routed a referral that included a summary of SEPA categorical exemptions in WAC 197-11-800 and the Department of Ecology handout asking for comments on exemptions to all City departments for their comments.

The attached list includes all the comments I have received to date. In a quick review of the comments received, I did not notice any that recommended making substantive changes to the exemptions. The comment by W. Hill, Building Official to raise the exempt levels for dwelling units and building floor area can be accommodated within the existing flexible threshold allowances for minor new construction. The comment by the Finance Department refers to the summary of exemptions I attached with the referral.

I hope these comments are of value to you in your review of SEPA categorical exemptions.

If you have any questions, please do not hesitate to contact me at (425) 670-6652.

Respectfully,

CITY OF LYNNWOOD

Darryl Eastin, AICP
Senior Planner
For the Environmental Review Committee

DE/kw

(26)

DIRECT ALL CORRESPONDENCE TO CITY OF LYNNWOOD P.O. BOX 5008 LYNNWOOD, WA 98046-5008

CITY HALL / COUNCIL CHAMBERS
19100 44TH AVENUE WEST
FAX (206) 771-6144

PLANNING / PARK ADMIN.
19000 44TH AVENUE WEST
FAX (206) 771-6585

FIRE DEPT. HEADQUARTERS
18800 44TH AVENUE WEST
FAX (206) 771-7977

POLICE / MUNICIPAL COURT
19321 44TH AVENUE WEST
POLICE FAX (206) 672-6835

RECREATION CENTER
18900 44TH AVENUE WEST
FAX (206) 771-1363

Comments From City Departments & Other Agencies

File Name : SEPA CATEGORICAL EXEMPTIONS		File # ---
Executive Department	No reply.	
Building Division	I would like to raise the exempt levels to 20 dwelling units and 20,000 sq. ft. buildings. (W. Hill - 6/3/97)	
Police Department	The language here (see red tag) (page attached) might be revised to replace "differ from" with "conflict with." This would allow a City to adopt quieter noise limits than DOE if desired (unless the standard is worded as it is to prevent that) but not permit higher limits. As it is written, City codes would have to be identical to DOE codes. This is not all bad, as it places the burden of justifying the standards on DOE, not us. (S. Crichton - 6/10/97)	
Fire Department	No reply.	
Parks & Recreation Department	Reviewed; no comment. (B. Evans - 5/29/97)	
Finance Department	Please update the business and other regulatory licenses section to reflect WAC 197-11-800(14)(a)-(i). See attached. (V. Heilman for P. Menter - 6/10/97)	
Planning Department	Reviewed; no comment. (Darryl Eastin - 6/12/97)	
Public Works Department	No comment. (H. Dahm - 6/12/97)	

(27)



MEMORANDUM

TO: Neil Aaland, Department of Ecology
FROM: Pete Friedman, City of Mill Creek *PF*
DATE: April 21, 1998
SUBJECT: **SEPA CATEGORICAL EXEMPTIONS**

Neil, as we discussed last week, I am of the opinion that future changes to the SEPA rules should include a clarification on land use actions tied to the actual development and not to the permit or license. In other words, if a development falls within the exemption criteria due to size, number of parking spaces, not located on lands covered by water, etc then the development should be exempt whether it is a Variance, Short Plat, Conditional Use or whatever.

As you know, according to WAC 197.11.800(6) minor land use actions currently list Variances and Short Plats (with qualifications for land covered by water) as exempt from SEPA. However, a Conditional Use Permit or Binding Site for a commercial development that is less than 4,000 square feet with less than 20 parking spaces would not be exempt. If this were simply a building permit then it would be exempt. Another example would be requiring a SEPA checklist and threshold determination for a Conditional Use that takes place in an existing structure that is below the exemption threshold.

In summary, I'm not all that concerned with the current exemption thresholds as much as the disparity in reviewing different developments based on the permit type or name. Thanks for considering these comments.

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City of
OLYMPIA

P.O. Box 1967, Olympia, WA 98507-1967

June 12, 1997

Mr. Neil Aaland, AICP
Washington Department of Ecology
PO Box 47703
Olympia, WA 98504-7703

Dear Mr. Aaland:

Thank you for the notice seeking public comments regarding your review of the categorical exemptions of the SEPA rules. On behalf of the Olympia Department of Community Planning and Development, I'm pleased to offer the following suggestions. In general you will find that we seek clarification of the exemption provisions, and only rarely are real changes in order. Except as noted all references are to WAC 197-11-800.

Please incorporate the various statutory exemptions, such as annexations, into the rule. The City of Olympia reviews two to five annexation proposals each year and routinely finds that the lack of a stated exemption in the rules leads to confusion.

With regard to minor new construction, please clarify whether a "notice of construction" permit from an air pollution control authority is a "license governing emissions to the air." If it is, then provision should be made for exempting demolitions of single-family homes and other small independent clean-up actions, since virtually every demolition requires such a "notice." Olympia issues up to a dozen such permits annually.

Clarify whether the minor new construction exemption encompasses projects where some part of the project may not be exempt. For example, is single-family home construction exempt if more than 100 cubic yards of material will be excavated? The current phrase reads, "To be exempt under this subsection, the project must be equal to or smaller than the exempt level." This phrase is somewhat ambiguous, i.e., if smaller than one exempt level but not another, is the project exempt?

Amend(1)(b)(iii) by adding the words "no more than" after "for" to clarify that the parking provision is also a threshold ceiling.

Convert the parking lot exemption at (1)(b)(iv) to square feet of impervious surface. In general the environmental impact is from paving, not striping. The current threshold can encourage inefficient use of space. In addition, an impervious surface exemption would

COUNCIL

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Mayor

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CITY MANAGER

Richard C. Cushing

29



City Council
City Manager
City Attorney

753-8450
753-8447
753-8449

Community Planning & Development
Fire
Human Resources

753-8314
753-8348
753-8442

Police
Public Works
Area Code

753-8300
753-8362
(360)

Mr. Neil Aaland
June 12, 1997
Page Two

provide a standard for "minor road and street improvements" where short pieces of roadway are being constructed. The City of Olympia reviews ten to twenty small street projects each year either in association with short plats, or where right-of-way is being opened, which are of minimal environmental impact but for which no exemption is clearly provided.

Provide an exemption for minor additions or modifications to previously reviewed projects. See (2)(e). Please consider a phrase such as "or which does not exceed 10% of the existing building or facility in any five-year period." Where small additions are being added to large existing structures, the lack of such an exemption commonly leads to pressure to abuse the "minor alteration ... involving no material expansion" provision of (3).

Consider providing an exemption for adoption of minor land use regulations implementing a Growth Management Act comprehensive plan. Olympia issues a half-dozen DNS's each year for minor amendments of our regulations and standards.

Expand the exemption for small underground tanks at (2)(g) to encompass above ground tanks. Although not explicitly exempt, Olympia has interpreted the comparable size of above ground tank to be "minor new construction."

Move (2)(h), "the vacation of streets and roads" to (5). Vacation is not a construction issue. As located this exemption is hard to find and has sometimes been overlooked.

Closely examine the utility exemptions at (24). First, an update is needed to reflect micro cells and similar cellular phone facilities already statutorily exempt. Second, please provide a definition of "distribution" versus "transmission" lines for natural gas. See WAC 480-93-005(17). This latter issue rarely arises but is significant when it does.

Provide local jurisdictions with an option to lower the commercial exemption level (1)(b)(iii) for high traffic generators. Many small jurisdictions, including Olympia, still use SEPA authority as a primary means of mitigating traffic impacts. However, some small projects with little or no parking, such as a convenience store, small gas station, or fast-food restaurant with drive-through, can generate exceptional levels of traffic movement. I suggest language be added such as, "Cities, towns, or counties may lower this exempt level to encompass construction of a building which when occupied is likely to result in 500 or more new vehicle trips per day (according to the most recent version of the ITE trip generation manual)." Include the parenthetical phrase for clarity at your option. In Olympia, this provision could capture one or two projects each year.

Mr. Neil Aaland
June 12, 1997
Page Three

When evaluating these and other comments regarding the SEPA exemption levels, please consider that the "notice of application" provisions of RCW 36.70B are tied to these levels. See RCW 36.70B.140(2). When a project is not exempt, additional time for such notice and commensurate delays in action will result.

The opportunity to comment on this issue has been appreciated. I'm available to discuss these suggestions, and comments submitted by others, at your convenience.

Sincerely,



TODD STAMM
Environmental Review Officer
Community Planning and Development

C:\WPWIN60\WPDOCS\TSE\EXEMPT.LET

Memorandum

To: Categorical Exemptions File
From: Neil Aaland, Senior Planner *NA*
Date: 01/26/98
Re: Categorical Exemptions – building code

Todd Stamm called last week with a request for considering another categorical exemption change.

WAC 197-11-800(26) exempts adoption of building codes “as required by the building code act.” However, most jurisdictions make some changes to the act, and do not adopt the act specially as required. This is authorized by the act. It poses the question as to whether this adoption is NOT exempt from SEPA if they differ at all from the Act.

His suggestion: modify as follows: “as authorized by the building code act.”



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City of Port Townsend
Building and Community Development
540 Water Street, Port Townsend, WA 98368
360/385-3000 FAX 360/385-4290



June 13, 1997

Neil Aaland, Senior Planner
DOE, Environmental Review Section
PO Box 47703
Olympia, WA 98504-7703

RE: Revisions to WAC 197-11 - SEPA Categorical Exemptions

Dear Neil,

Please consider the following addition to the SEPA exemptions:

New Exemption

Where existing standard regulations enforced through permit conditions would avoid or reduce potentially adverse significant impacts to a level of nonsignificance, a project may be exempt from SEPA.

Type of Activity or project proposed as a new exemption

Development projects (roads, buildings, utility extensions) which are subject to standard erosion control and sedimentation control, construction noise and traffic control, etc. such that no significant impact would be created - Our city requires compliance with the Department of Ecology Stormwater Management Manual for the Puget Sound Basin for all development proposals. Thus impacts to earth, water, and air are often avoided through compliance with our standards.

Number of projects

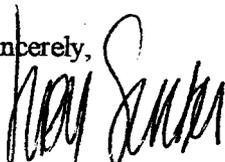
Approximately 1/2 of the projects reviewed by this department.

Rationale

Both Regulatory Reform and SEPA discourage duplicative efforts. Noticing requirements are costly (\$250.00). Where standard conditions would avoid significant impacts is a DNS necessary?

Thank you for your consideration.

Sincerely,


Judy Sufter

33

City of Port Townsend
Building & Community Development
Waterman & Katz Building
181 Quincy Street, Suite 301
Port Townsend, WA 98368
(360) 379-3208 --Fax 379-6923

August 19, 1998

Mr. Neil Aaland
SEA Program
PO Box 47703
Olympia, WA 98504-7703

RE: Request for Comments on Scope of EIS for Amendments to SEPA Categorical Exemptions

Dear Mr. Aaland:

In preparation for an upcoming SEPA workshop I formulated a few questions. I am forwarding two of my questions to you in hopes that the pending amendments will clear up the confusion!

Question 1:

Regarding exemptions....it's my understanding that a short plat (up to nine units) is exempt (6) Minor land use decisions. Would a proposed short plat, say for eight lots, still be exempt if:

- A. The applicant proposes to construct a single-family home on each lot (i.e. construction of eight residential structures)? Or would that exceed the threshold under (1)(a)(I) *the construction or location of any residential structures of four dwelling units*? I've heard exemption (1)(a)(I) is aimed at multi-family structures and does not apply to single-family development, true or false?.....or;
- B. Construction of a two-lane road and/or extension of utility lines greater than eight-inches in diameter would be necessary to service the plat....or;
- C. Development would require a Class IV -Conversion, FPA permit?

Question 2

Under ASB5714 --Forest Practices Classification and Regulation--, it is my understanding that virtually all forestry activities conducted within a designated UGA will be classified as Class IV Conversions. By December 31, 2001, local jurisdictions will be charged with processing the required FPA. Since Class IVS are not exempt from SEPA, would local governments be taxed with conducting SEPA review of activities that would otherwise be exempt? For example, developer applies for FPA for the purpose of constructing three single-family homes?

Sincerely,

Judy Surber

34



May 29, 1997

Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
PO Box 47703
Olympia, WA 98054-7703

Subject: Comments on Categorical Exemptions Under SEPA

Dear Neil:

The following comments are grouped according to type of change proposed, listing individual exemptions with explanations following in the order specified.

WORDING REVISIONS

⇒ **WAC 197-11-800(2)(e)**

- Wording Revision/Deletion
- Small building additions to existing buildings over 4,000 square feet.
- Revisions to this subsection should address or include exemptions for small additions to existing buildings. For example, "Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section *OR additions which themselves would be exempt as stand alone projects to buildings that have already completed the SEPA process* ~~when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from the exempt class.~~"
- Small building additions to existing buildings are often a timely project to process in that it often calls for a revisiting of review that has already been done. Currently, any addition to a building of which the total (existing building and addition) is less than 4,000 square feet is SEPA exempt. However, even very small additions to existing buildings over 4,000 square feet which have already gone through SEPA are not exempt. The existing language regarding the character of additions is somewhat ambiguous and should be clarified or deleted.

⇒ **WAC 197-11-800(2)(g)**

- Wording Revision
- Underground and above ground tank installation.
- "The installation of impervious *above ground* or underground tanks."
- Tank installation and operation is governed by the Uniform Fire Code which requires plan review and permits for ANY tank installation of 60 gallons and above. Cleanup of contaminated material is governed by MTCA. These regulations mitigate any

potential impacts resulting from tank installation. Therefore, the SEPA process does not seem to have any value in the review process. In addition, this exemption does not address above ground tanks and can therefore be interpreted as requiring SEPA for any above ground tank installation. This subsection should be revised to exempt all underground and above ground tanks regardless of capacity.

⇒ **WAC 197-11-800(3)**

- Wording Revision
- Interior remodels less than 4,000 square feet involving a change of use.
- This subsection should be revised to include or address interior remodels of less than 4,000 square feet which involve a change of use. For example, "*Repair, remodeling and maintenance activities*. The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing *unless the existing structure is under 4,000 square feet*, except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks)."
- Currently, interior remodels involving changes of use are not SEPA exempt. However, new construction under 4,000 square feet is exempt under subsection (1)(b)(iii). Some consistency would be provided within the categorical exemptions if such a revision is made.

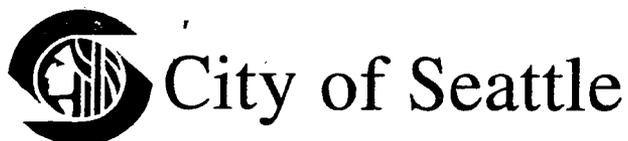
⇒ **WAC 197-11-800(24)(b)**

- Wording Revision
- Storm water projects.
- Please consider amending this section to allow for "larger" storm water projects to be exempt. For example, "All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines *twelve* inches or less in diameter."
- Nearly all storm sewer lines need to be larger than 8-inches since the design criteria requires them to convey larger flows based upon storm events. Twelve inch storm sewer lines do not have the same impacts as 12" sewer and water lines.

NEW EXEMPTIONS

⇒ **WAC 197-11-800(6)(a,b,c)**

- New Exemption
- Minor land use decisions processed by local governments.
- A new subsection could be added: "(d) Other minor land use decisions as specified in local governments' SEPA regulations."
- In addition to the three specific exemptions listed in this subsection (variances, short plats, and open space), there are many other minor land use decisions processed by



City of Seattle

Norman B. Rice, Mayor
Executive Department - Office of Management and Planning
Judy Bunnell, Director

June 12, 1997

Neil Aaland
Department of Ecology
Environmental Review Section
PO Box 47703
Olympia, WA 98504-7703

Dear Mr. Aaland:

In its roles as both regulator and service provider, the City of Seattle engages SEPA in many ways every day, and over the years we have identified ambiguities and apparent missed intentions in the SEPA Rules. We are very pleased that the Department of Ecology has opened this opportunity for us to convey our observations to you.

SEPA is not always an easy tool to work with; nonetheless, it is a very valuable means for informing both decision makers and citizens about the consequences of public actions. Because we recognize its importance, we are not recommending any amendments that would significantly alter the scope of projects that fall under SEPA review. The attached sheets contain the City's recommended amendments to the SEPA Rule. We believe that all of our recommendations are in keeping with the original intent of SEPA, and we trust that you will agree that the amendments we propose are both useful and necessary.

I know you have worked with Margaret Klockars of the City Attorney's office. Tom Hauger on my staff has been working with Margaret and representatives of other City departments to compile the attached recommendations. If you have questions about the proposals, please feel free to call either of them. Tom's number is (206) 684-8380.

Thank you for your consideration. Please keep us informed about the process that will continue to consider these and other recommendations you receive.

Sincerely,

A handwritten signature in black ink, appearing to be 'Judy Bunnell', with a vertical line to the right of the signature.

Judy Bunnell

attachment

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Seattle Municipal Building, 600 Fourth Avenue, Seattle, WA 98104-1826
Tel: (206) 684-8080, TDD (206) 684-8118, FAX: (206) 233-0085

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City of Seattle
PROPOSED AMENDMENTS TO WAC 197-11-800

Residential structures: Developments with multiple buildings.

WAC SECTION: 197-11-800 (1)(b)
TYPE OF CHANGE: wording revision
DETAILED DESCRIPTION: Clarify that exemption standards apply in the same manner to developments with multiple buildings on a single site.
PROPOSED LANGUAGE: “(i) The construction or location of any one or more residential structures with a total of four dwelling units.”

...
“(iii) The construction of ~~an~~ one or more office, school, commercial, recreational, service or storage ~~structure building or~~ structures with a total of 4000 square feet of gross floor area...”

RATIONALE: Exemption in the WAC applies to “the construction or location of any residential structures of four dwelling units.” Presumably the construction of multiple buildings on a site, with a total of more than four, but no more than four in each building, is not meant to be exempt. Impacts from a development would be no less where the development is split into multiple buildings. This is not clear from the language, however.

Minor additions to non-exempt buildings or developments

WAC SECTION: 197-11-800 (2)(e)
TYPE OF CHANGE: wording revision
DETAILED DESCRIPTION: Clarify under what circumstances an addition to an existing structure doesn't require SEPA review
PROPOSED LANGUAGE: “(e) Additions or modifications to or replacement of any building or facility, ~~exempted by subsections (1) and (2) of this section~~ provided any additional floor area or dwelling units, in conjunction with other floor area or dwelling units built or added during the previous five-year period, do not exceed levels which would be exempt as a separate development, and further provided EITHER that when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class OR that such addition or modifications within the previous five-year period, will not result in more than a 20 percent increase in the number of dwelling units or floor area of nonresidential use, over that previously existing.”

RATIONALE: The current exemption expressly covers additions or modifications to existing buildings *that themselves qualify for an exemption*, so long as the addition or modification doesn't remove the building from the exempt class. The current language doesn't address the situation where an existing building would not qualify for an exemption, and a very minor addition is proposed. Under a literal application of the language of the WAC, if the SEPA exemption level for a building in an industrial zone is 12,000 square feet, and an existing building has a floor area of 13,000 square feet, then a 75-square-foot shed addition to that building would trigger SEPA review. We would like to have clearer authority to exempt minor additions like this to buildings that themselves would not be exempt.

The recommendations about considering all additions over a five year period and a 20% limitation on the amount of increased size over that period is to prevent circumvention of SEPA review through a series of incremental additions. This is similar to the limitation on successive short plats.

Lot Boundary Adjustments

WAC SECTION: 197-11-800 (6)(a)
TYPE OF CHANGE: new exemption
DETAILED DESCRIPTION: Clarify that approval of lot boundary adjustments and binding site plans, as well as short subdivisions, are exempt, except on lands covered by water.
PROPOSED LANGUAGE: "6(d) Lot boundary adjustment, when no part of the modified lots is covered by water."
RATIONALE: Short plats are expressly exempted, except on lands covered by water. This provision should also exempt lot boundary adjustments, which have fewer impacts than short plats.

Minor additions or modifications over water.

WAC SECTION: 197-11-800 (3)
TYPE OF CHANGE: wording revision or new exemption
DETAILED DESCRIPTION: Provide exemption for minor additions to, or alterations changing the envelope of, structures over water.
PROPOSED LANGUAGE: "(3)...except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures, or minor remodeling or alteration creating no new water coverage, may be exempt (examples include repair or replacement of pilings, ramps, floats, or mooring buoys, or minor repair, alteration or maintenance of docks)..."

RATIONALE: The exemption in Subsection (2)(e) specifically does not apply to modifications, however minor, to structures over water. Likewise, the exemption for “repair, remodeling, maintenance and minor alteration” of additions to structures and facilities, in Subsection (3), is limited, over water, to “minor repair and replacement,” and, strictly read, does not allow *any* exterior modifications without SEPA review. Long-term environmental impacts from such proposals are clearly insignificant, and potential short-term impacts during construction are adequately addressed by other regulations, such as “best management practices” provisions under the Shoreline Management Act.

Tanks

WAC SECTION: 197-11-800 (2)(g)
TYPE OF CHANGE: wording revision or new amendment
DETAILED DESCRIPTION: Specify exemption level for above-ground tanks, and modify exemption level for underground tanks to reflect preemption of SEPA authority.
PROPOSED LANGUAGE: “(2)(g) The installation of impervious underground tanks having a capacity of 10,000 gallons or less, or that are subject to control under the Model Toxics Control Act.; also the installation of above-ground tanks having a capacity of 1,000 gallons or less.”

RATIONALE: An exemption is provided for installation of underground tanks with a capacity of 10,000 gallons or less. No provision is made for installation of above-ground tanks. It is currently our practice to perform SEPA review on above-ground installations of greater than 1000 gallons. We do not perform SEPA review for tanks in fully enclosed buildings. The current WAC gives no guidance on this. It could be argued that *any* above-ground installation requiring approval would require SEPA under current language. Underground tank exemption should be modified to reflect situations where local review is pre-empted by MTCA.

There are state and federal standards for above-ground tanks, and Seattle has been imposing conditions based on those other standards, to address concerns such as containment of leakage. However, it is not really local government’s responsibility to enforce or apply the other agencies’ standards.

Changes of Use

WAC SECTION: 197-11-800 (3)
TYPE OF CHANGE: wording revision
DETAILED DESCRIPTION: Clarify authority of local jurisdiction to develop standards for determining whether a change in use of an existing building or site is sufficiently “material” to warrant SEPA review.



PROPOSED LANGUAGE: (3)...“The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansion or material changes in use beyond that previously existing; or, if the use is to be materially changed, the floor area or number of dwelling units in the new use would be exempt as new construction under subsection (1); except that where undertaken wholly or in part”

RATIONALE: Clearly some changes in use of existing buildings or sites, sufficient to require a new use permit, are not momentous enough to merit SEPA review, whereas other changes, involving large areas and between uses that differ significantly, do merit SEPA review. Seattle currently addresses this through a Director’s Rule, identifying broad categories of uses and requiring SEPA review where there is a change to another category, and the floor area involved is greater than the SEPA exemption threshold for the applicable zone.

Non-project actions

WAC SECTION: 197-11-800 (20)
TYPE OF CHANGE: wording revision
DETAILED DESCRIPTION: Clarify that non-substantive changes to code provisions which contain substantive provisions do not trigger SEPA review.
PROPOSED LANGUAGE: “[t]he proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program ~~relating solely to governmental procedures and containing no~~ that does not change any substantive standard respecting use or modification of the environment”

RATIONALE: This would extend an exemption to code changes that involve sections which contain substantive standards, if the change doesn’t affect those standards. It could also exempt comprehensive plan amendments that have no substantive effect, such as updating inventories, minor language changes, or even moving existing language (such as shoreline policies) into a comprehensive plan.

Telecommunications

WAC SECTION: 197-11-800 (24)(a)
TYPE OF CHANGE: increased specificity
DETAILED DESCRIPTION: Clarify applicability of exemptions to antennas and other telecommunication facilities -- generally the goal would be to exempt any telecommunication facility other than what in Seattle parlance we call “major transmission facilities” (TV and fm towers).

PROPOSED LANGUAGE: “(a) All communication lines, and minor communication utilities including such as cable TV facilities, wires, cables or communication equipment accessory to residential uses, two-way, land-mobile, and cellular communication facilities, point-to-point microwave antennas, FM translators, and FM boosters with under ten watts transmitting power, but not including communication towers or relay stations FM and AM radio and UHF and VHF television transmission towers or relay earth stations.”

RATIONALE: The WAC, and our ordinance, exempt “all communications lines, including cable TV, but not including communication towers or relay stations.” These terms are not defined, and there are many kinds of antennas that would not be considered “communication towers” or “relay stations.” The matter is complicated by the recent state legislation to exempt certain cellular facilities from SEPA review. The FCC has also adopted new standards preempting our review of certain antennas, or precluding review on the basis of radio-frequency impacts.

We understand that Ecology is considering generating an amendment to reflect new state laws that preclude SEPA review of certain communication utilities. The proposal reflects the new state laws, but doesn't necessarily provide badly-needed clarification. We think our language may provide some of that clarity. We also think it makes more sense to amend the existing provision that applies to communication facilities, rather than tacking on a separate new subsection.

Tree-cutting Permits

WAC SECTION: 197-11-800 (6) or (25)(a)

TYPE OF CHANGE: New exemption

DETAILED DESCRIPTION: Provide exemption for vegetation and tree-removal permits.

PROPOSED LANGUAGE: “Approval of vegetation and tree removal permits authorized by City or County Critical Areas Ordinance adopted in compliance with the Growth Management Act.”

FREQUENCY: 30-50 per year

RATIONALE: Seattle's Critical Areas Ordinance requires environmental studies sufficient to determine impacts from tree removal, and impose appropriate mitigating measures. Under these circumstances, SEPA review is redundant.

Sale, transfer or exchange of publicly owned real property

WAC SECTION: 197-11-800 (5)(b) and (c)

TYPE OF CHANGE: wording revision

(42)

DETAILED DESCRIPTION: Clarify exemption for transfer of publicly owned real property.

PROPOSED LANGUAGE: “(b)The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to currently in an authorized public use.

(c) The lease of real property ~~when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.”~~

RATIONALE: The term “subject to” is ambiguous. The proviso must be trying to assure that if property in public use is to be sold, the loss of that use will be evaluated. However, “subject to” could mean contingent on something later, so that property that is now vacant is subject to being put to public use at some future time. Surely that is not what is intended. Similarly, the concern on leased property is presumably related to the activities on the property, not to the act of leasing, which in itself causes no environmental impacts.

Decision to Fund a Proposal

WAC SECTION: 197-11-800 15(c)

TYPE OF CHANGE: new exemption

DETAILED DESCRIPTION: to exempt funding decisions

PROPOSED LANGUAGE: (15)(k) An agency decision to fund an activity, if (i) the activity would not be an action or would be categorically exempt if undertaken by the agency, or (ii) the activity is an action that is not categorically exempt and would require approval of one or more licenses or permits and the approval of those licenses or permits would be an action requiring environmental review.

FREQUENCY: 15 per year

RATIONALE: Decisions to fund, for instance, non-profit organizations to build low-income housing, do not in themselves modify the environment. The private developer may need to obtain loans or grants from several different agencies. In some cases, the project may be exempt because of the number of units being proposed. Where the number of units exceeds the threshold, reviewing the permits for the project will provide SEPA review at a more meaningful time, since more of the project's details will be available at that time.

Approval of a Capital Improvement Program

WAC SECTION: 197-11-800(15)(c)

TYPE OF CHANGE: clarification of existing language

DETAILED DESCRIPTION: Clarify exemption for adoption of Capital Improvement Plan

(43)

PROPOSED LANGUAGE: “(15)(c) The adoption of all budgets, including capital budgets and capital improvement programs, and agency requests for appropriation...”

FREQUENCY: one per year

RATIONALE: Adoption of a capital improvement plan is similar to other budget decisions in that it does not necessarily commit to a particular, identifiable project. Rather, it is often the beginning point of a process that includes site selection, design and construction. It is at those later phases of the process, where environmental review is most appropriate. The proposed language would acknowledge current practice.

Traffic signals

WAC SECTION: 197-11-800(2)(b)

TYPE OF CHANGE: clarification of existing language

DETAILED DESCRIPTION: Clarify exemption for traffic signals and signal systems

PROPOSED LANGUAGE: “(2)(b) The construction and/or installation of commercial on-premise signs, and public signs and signals, including traffic signals and signal systems.”

RATIONALE: Seattle currently treats traffic signals as exempt, assuming that by “public signs” the WAC intended to exempt signs that restrict traffic movement and that traffic signals, because they form the same function, are similarly exempt. This suggested amendment would clarify the Rule’s intent.

Storm Drainage Systems

WAC SECTION: 197-11-800(2)(c)

TYPE OF CHANGE: clarification

DETAILED DESCRIPTION: extend to urban drainage systems a similar exemption that is provided for rural systems

PROPOSED LANGUAGE: “(2)(c) ...installation of catch basins and culverts, and storm drains and other drainage facilities related to the roadway, and reconstruction of existing...”

RATIONALE: The current exemption language may be overly specific because the terms it uses describe very particular types of structures for accommodating drainage. In urban areas, culverts and catch basins are less likely to be used than are other kinds of storm drain facilities. The additional language clarifies that the exemption is equally applicable for these more urban systems.

Sizes of Utility Pipes

WAC SECTION: 197-11-800(24)(b)

44

TYPE OF CHANGE: expansion of existing exemption
DETAILED DESCRIPTION: increasing the diameter of water and storm drain pipes that are considered exempt
PROPOSED LANGUAGE: "(b) All storm water lines twelve inches or less in diameter, sewer lines eight inches or less in diameter and all facilities, equipment, hookups or appurtenances related to them; in incorporated cities within urban growth areas covered by adopted comprehensive plans, water lines sixteen inches or less in diameter and all facilities, equipment, hookups or appurtenances related to them.

FREQUENCY: 2-4 water lines per year

RATIONALE: In Seattle, the minimum diameter of storm line is 10 inches, and 12-inch lines are common. For water lines, one of the major environmental concerns associated with extension is the amount of additional growth that might be precipitated by the extension. Under GMA, cities within urban areas are the locations designated to receive additional growth and through their plans have accepted the need to provide specific utilities and capital facilities. The installation of a 16-inch water line in one of these locations would not inordinately increase the amount of growth that could occur with the urban growth area.

Bike, Pedestrian Trails

WAC SECTION: 197-11-800(2)(c)

TYPE OF CHANGE: expansion of existing exemption

DETAILED DESCRIPTION: Conversion of former railroad beds to bicycle or pedestrian paths

PROPOSED LANGUAGE: The construction or installation of minor road and street improvements... ~~and~~ reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes, and conversion of former railroad beds to bicycle or pedestrian paths.

RATIONALE: SEPA already exempts addition of bikelanes to existing roadways, where there can be significant traffic-related impacts. It seems logical to extend that exemption to the use of existing rights-of-way that do not have the same traffic conflicts or impacts.



98000

DEPARTMENT OF
CONSTRUCTION SERVICES
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3343
(509) 625-6300
FAX (509) 625-6349

JOHN BJORK, P.E., M.B.A.
DIRECTOR
CITY ENGINEER

ROBERT EUGENE
BUILDING OFFICIAL

JIM R. SMITH, P.E.
DESIGN ENGINEER

October 21, 1998

NEIL AALAND
WASHINGTON STATE DEPARTMENT OF ECOLOGY
ENVIRONMENTAL COORDINATION SECTION
PO BOX 47703
OLYMPIA WA 98504-7703

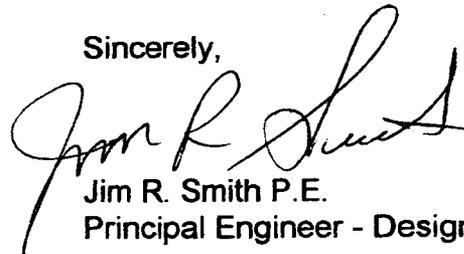
Dear Mr. Aaland:

I attended the recent SEPA seminar at Cheney Cowles Museum in Spokane, and found it to be quite informative. You may recall that one of my staff engineers, Dick Raymond asked you a question regarding LID paving projects and how they relate to the categorical exemption rules. You asked the City to submit any proposed revisions to you not later than the end of October this year.

Attached is a summary of our proposed revisions/additions. Please note that we are requesting consideration for two situations: (1) utility work within existing roadway rights of way, wherein existing stormwater, water and sewer lines are being abandoned and replaced with similar sized facilities; and (2) new local access roadway and alley paving performed as municipal local improvements under Chapter 35.43 RCW.

We look forward to DOE's response on this matter.

Sincerely,



Jim R. Smith P.E.
Principal Engineer - Design

JRS/sd

Enclosure: Proposed SEPA Revisions

cc: Katy Allen, P.E., Director - Capital Programs
Charlie Dotson, Director - Planning

misc\sepa revisions

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Proposed SEPA Revisions

Introduction

The City of Spokane would like to propose revisions to WAC Chapter 197-11, Part Nine, Categorical Exemptions. We feel that there may be reason to include other types of work which, while perhaps implicit, are not specifically identified in WAC. These types of work are:

1. Utility work within existing roadway rights of way, wherein existing storm water, water and sewer lines are being abandoned and replaced with similar sized facilities.
2. New local access roadway and alley paving performed pursuant to the provisions of Chapter 35.43 RCW regarding municipal local improvements.

Discussion

Replacement of existing infrastructure is occurring at an increasing pace as older sewer and water lines begin to fail. Oftentimes, it is only necessary to replace such lines with lines of the same nominal size, but utilizing newer, and often more apropos materials. In this case, a SEPA checklist is for the most part not applicable, because the work is taking place in existing rights of way, proximate to the failed or failing line; and the work is not growth related, but merely a means of maintaining existing or designed capacity.

Current wording in sections 197-11-800(3) and 197-11-800(24) create ambiguity when addressing replacement of existing storm water, water, and sewer lines greater than 8" diameter. The City currently interprets 197-11-800(3) as providing an exemption of projects that replace existing lines and meet the intent of "no material expansions or changes of use". We request that wording related to replacement projects be added to clarify this intent.

WAC 197-11-800(2)(c) covers categorical exemptions (CE) for other minor new construction as enumerated therein. This section includes "...widening of a highway by less than a single lane width when capacity is not significantly increased and now new right of way is required...*installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations)*, including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and *pedestrian walks and paths...*" (emphasis added).

The typical residential road or alley paving LID (Local Improvement District) is undertaken to improve an existing gravel or dirt roadway, most often to alleviate the production of fugitive dust, to correct drainage problems and/or to add sidewalks (i.e. pedestrian walks and paths). As with the replacement of existing sewer and water lines, a SEPA checklist for paving of residential roads and alleys is largely not applicable. The work is typically not growth related, and traffic is only local.

The improvement of such traveled ways usually involves only minor amounts of excavation; preparation and grading of the subgrade; installation of drainage structures; construction of the roadway pavement; and installation of sidewalks and curbing. All of these items are provided for separately in §197-11-800(2)(c). However, the language "... (existing curb to curb) ..." presumably prevents including the construction of the new residential roadways or alleys as CE, because in their existing conditions, no curbing exists. This seems to be inconsistent.

Roadway and alley projects which are funded in accordance with the Local Improvement District (LID) process are subject to public hearings under Title 35, RCW. As such, all LIDs undergo public scrutiny by the involved stakeholders. This would seem to obviate the need to process a SEPA. Additionally, it is typical to include all administrative costs with the LID charges. Preparing and processing a SEPA checklist, particularly for a small one block residential LID paving project, often represents a significant portion of the overall administrative burden. Because these administrative costs are included in the overall cost of the LID, it is incumbent upon us to implement whatever practicable means available to reduce the burden to the stakeholders who are paying for the project.

Recommendations

We request that the following language (or something similar) be included in WAC 197-11-800:

1. Add the following new section under 197-11-800(2):
 - (k) The construction of local access roadway and alley improvements pursuant to the provisions of Chapter 35.43 RCW regarding municipal local improvements and where no new right-of-way is required or where only minor right-of-way is required to accommodate the radii of intersecting streets.
2. Revise section 197-11-800(3) to include language addressing replacement. (Suggested changes in italics)
 - (3) **Repair, remodeling, maintenance, and replacement activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, *replacement*, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water.....



City of Tacoma
Public Works Department

June 13, 1997

Neil Aaland
Department of Ecology, Environmental Review Section
PO Box 47703
Olympia, WA 98504-7703

RE: REVISION OF SEPA CATEGORICAL EXEMPTIONS

The City of Tacoma appreciates the opportunity to make comments regarding possible changes to section 197-11-800 of the *Washington Administrative Code*. The following is a list of changes that the City would like to have considered.

WAC197-11-800(24)(b) relating to utilities

We propose a change in language which would allow storm water, water and sewer lines to be exempt, regardless of size, if that facility is to be located within a dedicated right-of-way which has had the benefit of SEPA review during the dedication and construction. Proposed language change would be:

"All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to (1) lines 10 inches or less in diameter; or (2) lines to be located within dedicated right-of-way."

Rational:

- ⇒ WAC197-11-030 encourages agencies to "reduce paper work and the accumulation of extraneous background data". At the time of right-of-way dedication, environmental impacts are considered. These considerations extend to the impacts of utilities which are expected to be conveyed within the right-of-way.
- ⇒ Due to growth, all main lines are now 10" in diameter in the City of Tacoma.
- ⇒ It is estimated that 10 utility projects a year require SEPA review.

WAC197-11-800(2)(g) relating to installation of impervious underground tanks.

We propose that the installation or removal of impervious underground tanks be exempt from SEPA review. Proposed language:

"The installation or removal of impervious underground tanks."

Rational:

- ⇒ The installation of underground tanks are regulated at a state level by the Department of Ecology. Locally there is potential for regulation by Puget Sound Air Control Agency, the Tacoma-Pierce County Health Department, the City of Tacoma Public Works Department and the City of Tacoma Fire Department. Each agency has regulations that mitigate potential impacts to the environment. Additional SEPA review seems to be redundant.

(49)

- ⇒ No checklists have been submitted within the last 18 months for the purpose of installing just tanks. One checklist has been reviewed for tank removal since 1995. Environmental impacts of tanks associated with new services stations are reviewed as part of environmental review of the service station.

WAC197-11-800(25) relating to natural resource management

We propose the addition of an exemption for the application of recycled biosolids for the purpose of fertilizing land. Proposed language:

"Periodic use of recycled biosolids for the purpose of maintaining public or private lands."

Rational:

- ⇒ The application of recycled biosolids is regulated by local health departments to ensure compliance Department of Ecology standards for application.
- ⇒ WAC173-308 supports land application of biosolids for beneficial use.
- ⇒ We have processed six checklists in the last 18 months in various counties and have not had any response.
- ⇒ The SEPA process has not been utilized other than reiterating the applicants requirements to meet local and state laws.

WAC197-11-800(20) relation to procedural actions

We propose exempting substantive code changes which implement the comprehensive plan.

Rational:

- ⇒ Environmental review is completed during the comprehensive planning process. Any code change that is in compliance with the comprehensive plan should not produce environmental impacts other than those discussed at the planning stage.
- ⇒ SEPA review of substantive code changes in compliance with the comprehensive plan is redundant.
- ⇒ Six checklists have been processed within the last 18 months and we have had no response in raising environmental impacts not already considered during comprehensive plan review.
- ⇒ The processing of checklists has provided little value in comparison to staff time.

Thank you for the opportunity to provide the above comments.

Sincerely



Gary Pedersen, Division Manager
Public Works Department, Building and Land Use Services Division



CHELAN COUNTY

DEPARTMENT OF PUBLIC WORKS
COURTHOUSE, 350 ORONDO AVENUE
WENATCHEE, WASHINGTON 98801
TELEPHONE 509/664-5415

PETER A. RINGEN, P.E.
DIRECTOR/COUNTY ENGINEER

April 30, 1997

Mr. Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
Post Office Box 47703
Olympia, WA 98504-7703

RE: Categorical Exemptions

Dear Mr. Aaland:

Thank you for the opportunity for comment on possible revision to categorical exemptions under the State Environmental Policy Act (SEPA). My schedule has not allowed preparation of comments in the format and to the level of detail you requested, please accept the following:

WAC 197-11-860 in the 1984 SEPA handbook provides for certain exemptions to the Washington State Department of Transportation (WSDOT). I believe the code needs to extend to local agencies such as cities and counties, which have very similar or parallel road related activities.

One of the needs of local agencies is delivery of timely and environmentally responsible road projects to the public while minimizing cost to the taxpayer. From my perspective and understanding, it sometimes appears that SEPA process unnecessarily adds cost to a project with no apparent benefit to the environment. An example is a minor pedestrian improvement, such as shoulder widening or addition of a sidewalk, which requires acquisition of a small amount of right-of-way. My understanding is that once right-of-way acquisition comes into the project scope, categorical exemption no longer applies. It would be helpful to have definition in the code of some reasonable threshold for triggering SEPA review when right-of-way is to be acquired.

The opportunity to streamline SEPA is an important issue to those of us in local agencies working to deliver needed improvements to the public. I encourage you to make direct contact with the County Road Administration Board for their input on this review, if you have not done so already. Another valuable contact is the King County Department of Transportation, Road Services Division.

(51)



Neil Aaland, DOE
April 30, 1997
page 2

Thank you again for the opportunity to comment. Please notify this office of the outcome of your efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pete A. Ringen', with a long horizontal flourish extending to the right.

Pete A. Ringen, P.E.
Director/County Engineer

PR:pg

pc: Board of County Commissioners
Eric Berger, Executive Director, County Road Administration Board
Harold Taniguchi, Acting Manager, King County Road Services Division
Jon Harrington, Chelan County Planning Director
Butch Hills, Project Development Coordinator



**King County
Road Services Division**

Department of Transportation
Yesler Building
400 Yesler Way, Room 400
Seattle, WA 98104-2637

008

April 23, 1997

Neil Aaland, Senior Planner
Department of Ecology
Environmental Review Section
Post Office Box 47703
Olympia, WA 98504-7703

RE: SEPA Categorical Exemption Revisions

Dear Mr. Aaland:

Thank you for the opportunity to participate in the Washington State Department of Ecology review of the categorical exemptions in WAC 197-11 (SEPA Rules). The Engineering Services Section of the King County Department of Transportation Road Services Division designs and constructs roads and bridges located in unincorporated King County. As SEPA lead agent for these public works projects, our projects are generally reviewed by our in-house Environmental Unit. Many of our routine maintenance and small works projects are categorical exemptions under SEPA. We wish to make several suggestions for changes, clarifications, and revisions in the SEPA Rules that would result in increased efficiencies for our environmental review and permitting processes.

WAC 197-11-800(2)(c)

As written, many of the exemptions listed in this section do not apply when new right-of-way is required. We believe that the intent of this exclusion is directed toward significant land purchases along a transportation corridor. We support this intent. However, many road improvement projects, particularly intersection improvement projects, require the purchase of a relatively minor amount of new right-of-way, often affecting only one or two property owners, and often at a very small scale. Acquisition of approximately 100 square feet is not uncommon. This results in the need to issue a threshold determination for relatively minor street improvements.

In addition, we often acquire rights to the property in the form of an easement, rather than new right-of-way. We believe that this type of acquisition should be subject to a similar degree of exclusion as that which applies to new right-of-way.

Also, the exemption for "correction of substandard intersections" contains the new right-of-way exclusion; however, the exemption for "channelization and elimination of sight restrictions at intersections" does not contain a new right-of-way exclusion. This leads to confusion, because the word "channelization" is interpreted quite broadly within the transportation industry, and can be synonymous with "correction of substandard intersections".

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Therefore, we recommend that the wording throughout this section be changed from "within existing right-of-way" or "when no new right-of-way is required" to "when significant right-of-way or easement acquisition is not required". We believe the environmental impacts associated with this revision are not significant. Compensation and mitigation of impacts to the land owner are handled through the property acquisition process.

Also, in the same subsection, add the language, "all culvert replacements whether undertaken on lands covered by water or not", after the phrase "installation of catch basins and culverts". We replace many culverts each year which have water that may be classified as a "stream" flowing through them. The impacts of such culvert replacements are mitigated through the hydraulic permit application process and local ordinances and do not require the substantive provisions of SEPA to mitigate for their impacts.

We would also like to request the addition of language to create a separate category for minor bridge repair involving no work in water (i.e. repair of, or replacement of, specific bridge members including but not limited to bridge decks, pile caps, timber bracing, and bridge back walls) where all construction debris can be contained. If this language can not be added as a separate category under WAC 197-11-800 (2), we propose adding an additional exemption to cover these activities. This type of work is always of short duration and containable so that there are no impacts to the stream.

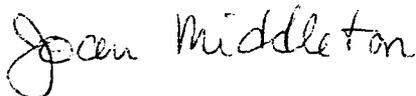
Finally, there is no exemption for emergency work conducted by public works agencies and perhaps there should be. This language could easily be inserted in this same section.

WAC 197-11-800 (numerous sections)

Many categorical exemptions can not be used when working "wholly or in part on lands covered by water". To our knowledge, "lands covered by water" is not defined, and is subject to varying interpretations. We believe that lakes, perennial streams, and marine waters clearly meet this definition. Intermittent streams and wetlands may or may not meet this definition. Although we are not offering a specific wording revision, we believe that the clarification by the Department of Ecology would be useful and appropriate.

This would conclude our agencies' comments and suggestions for review by the Department of Ecology. We look forward to hearing from you and having the opportunity to further participate in the rule-making process. If you have any questions or comments, please feel free to contact me at (206) 296-8747 or by e-mail at "joan.middleton@metrokc.gov". Thank you for taking the time to review our suggestions.

Sincerely,



Joan Middleton
Senior Environmental Engineer

jlm:jp

(54)

cc: Lydia Reynolds, Manager, Project Support Services



King County
Office of Cultural Resources
Arts Commission
Landmarks and Heritage Commission
Public Art Commission
506 Second Avenue, Room 1115
Seattle, WA 98104-2311
(206) 296-7580
(206) 296-8629 FAX
(206) 296-7580 V/TDD

Mr. Neil Aaland, Senior Planner
Washington State Department of Ecology
Environmental Review Section
PO Box 47703
Olympia, WA 98504-7703

Dear Mr. Aaland:

Thank you for the opportunity to comment on the existing categorical exemptions in WAC 197-11, the SEPA Rules. Although it has not been of concern to our office in the past, recently an "interested party" appealed the designation of a property as a King County landmark on the grounds that designation is a land use decision and no SEPA determination had been made. The King County Prosecutor advised us that the statute is unclear and he would not provide an opinion as to whether or not landmark designation requires a SEPA determination. *In order to clarify the issue, we propose that WAC 197-11-800 include landmarking and related historic preservation activities as categorical exemptions under (6) Minor land use decisions or (20) Procedural actions, or as a new separate category, (27) Historic preservation.* This would not, of course, exempt large development projects from SEPA review if they contain historic elements.

Exemption should be limited to preservation activities conducted by agencies certified by the State Office of Archaeology and Historic Preservation (OAHP) as Certified Local Governments per the National Historic Preservation Act. The activities to be categorically exempted should include the following:

- designation of landmarks;
- listing of historic properties on an historic resource inventory;
- review of proposed changes to landmark properties;
- environmental review of properties listed on an historic resource inventory; and
- adoption of historic preservation ordinances, commission rules and procedures, and administrative rules that protect historic resources.

Although local governments do not list properties on the National or State Registers of Historic Places, by inference these activities should also be exempted.

Proposed language

The following language should be added to WAC 197-11-800 as categorical exemptions under (6) Minor land use decisions, (20) Procedural actions, or as a new separate category, (27) Historic preservation:

Historic preservation activities. Historic preservation activities conducted by local governments through Certified Local Government agencies shall be exempt. Listing of properties in the State Register of Historic Places and in the National Register of Historic Places shall be exempt.

Frequency of activity

Annually this office has designated up to twelve historic properties as landmarks, reviews and issues between ten and twenty certificates of appropriateness (the regulatory component of landmarking) for proposals to alter or demolish landmarks; adds between ten and one hundred properties to the Historic Resource Inventory; and reviews between twenty and thirty development proposals affecting inventoried historic resources. Preservation agencies in other local governments may be more or less active.

OAHF has recognized nearly two dozen urban and rural agencies statewide as Certified Local Governments.

Rationale

Historic preservation activities protect resources identified as significant and sensitive under SEPA, usually by maintaining existing conditions. To make such governmental actions subject to SEPA review is unnecessary and burdensome, since the great majority of such actions cause no significant adverse environmental impacts. Most preservation agencies, in both urban and rural areas, currently operate on the assumption that preservation activities are already exempt because of this self-evident argument.

Landmark designation does not preclude modification of a property, but rather insures that changes which are made respect and preserve the values inherent in the historic resource. This is accomplished through design review, a review process that occurs prior to the regular building permit process. It is extremely unlikely that any changes to a landmark approved by a landmarks commission would exceed the SEPA threshold for minor new construction. Virtually all proposed changes requiring review fall under exemption (3) Repair, remodeling and maintenance activities. In any event, necessary SEPA review, if any, would be included in the subsequent building permit process. All permits, for landmark and non-historic properties alike, are subject to SEPA review in the permitting process unless exempted.

Listing of historic properties in an inventory is exempt under 197-11-800 (18) Information and research, but it is unclear whether such data collection is exempt if it could lead to review and comment on development permits affecting inventoried properties. As with review of proposed changes to landmarks, review of proposed changes to inventoried properties is directed at preserving existing conditions, which embody important historic resource values, and should be exempted.

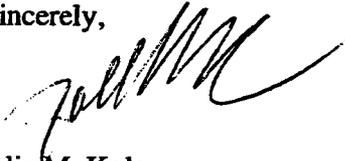
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Historic preservation commissions and boards routinely adopt standards and guidelines to guide their decision making. For example, the U.S. Secretary of Interior's Standards for the Rehabilitation of Historic Buildings are frequently adopted to guide design review decisions. Adoption of such guidelines and other procedural actions should not require SEPA review.

Adoption of the above-proposed exemption is necessary for clarification historic preservation activities within the SEPA process. The exemption would eliminate potential costly, slow and burdensome SEPA review that would not produce any environmental or public benefits. The impacts of the proposed exemption would be equivalent in both urban and rural areas, although fewer rural areas have historic preservation programs.

Thank you for considering this proposed exemption. If you have questions regarding these comments or need additional information, please call me at (206) 296-8689.

Sincerely,



Julie M. Koler
Historic Preservation Officer

JMK:kas

cc: David Hansen, Acting State Historic Preservation Officer, Office of Archeology and
Historic Preservation
Marilyn Cox, Chief, SEPA Section, Department of Development and Environmental
Services
Leonard Garfield, Manager, Office of Cultural Resources
Charlie Sundberg, Preservation Planner



**King County
Office of Cultural Resources**

**Arts Commission
Landmarks and Heritage Commission
Public Art Commission**

506 Second Avenue, Room 1115
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(206) 296-7580
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(206) 296-7580 V/TDD

August 26, 1998

Mr. Neil Aaland, Senior Planner
Washington State Department of Ecology
Environmental Review Section
PO Box 47703
Olympia, WA 98504-7703

RE: Scoping Notice for EIS on SEPA Categorical Exemptions

Dear Mr. Aaland:

Thank you for the opportunity to comment on DOE's consideration of categorical exemptions under SEPA. We look forward to participating in the public meeting schedule for September 30 in Seattle.

In previous comments, we recommended that WAC 197-11-800 include landmarking and related historic preservation activities as categorical exemptions. Activities to be categorically exempted should include:

- designation of landmarks;
- listing of historic properties on an historic resource inventory;
- design review of proposed changes to landmark properties;
- environmental review of properties listed on an historic resource inventory; and
- adoption of historic preservation ordinances, commission rules and procedures, and administrative rules that protect historic resources.

This recommendation is abbreviated in your chart summarizing previous comments.

In addition to this exemption, we strongly recommend that various current exemptions be modified to reduce their adverse effects. Numerous actions that are now exempt can have extensive inadvertent or intentional adverse effects on significant historic resources. These include school closures, short plats, utility construction, personal wireless communications antennae, etc., which may be direct, indirect or cumulative and may be located on or off-site.

A new clause should be added to 197-11-800 (1) (a) Minor new construction, (2) (a) Other minor new construction, (6) Minor land use decisions (excepting 10 d, classification of land for current use taxation), (24) Utilities, (25) Natural resources management, (27) Personal wireless services facilities

Except when such actions would adversely affect properties, including archaeological sites, listed or eligible for listing on the Washington Heritage

SEPA Exemptions
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Register or on the local register of a certified local government (CLG) recognized by the State Office of Archaeology and Historic Preservation

In section 197-11-800 (2) (f) "With recognized historical significance" should be defined as:

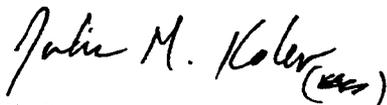
"properties, including archaeological sites, listed or eligible for listing on the Washington Heritage Register or on the local register of a certified local government (CLG) recognized by the State Office of Archaeology and Historic Preservation."

CLG status requires that local governments adopt historic resource eligibility criteria substantially equivalent to those of the national and state registers. A requirement for listing on the state register would cause needless and dangerous delay and effort to protect resources of equivalent significance.

Since SEPA is implemented locally and local jurisdictions that are CLGs have certified historic preservation programs, the recommended broader definition is consistent with the intent of the law and simplifies regulatory confusion by integrating local regulations, Goal 13 of the Growth management Act and SEPA. It would also prevent significant resources from inadvertent destruction simply because they are not yet listed on the Washington Heritage Register. The number of properties that would be affected by these changes is very small, but this a class of very sensitive resources that are not adequately protected at present, particularly at the state level.

If you have questions regarding these comments or need additional information, please call me at (206) 296-8689.

Sincerely,



Julie M. Koler
Historic Preservation Officer

JMK:kas

cc: Greg Griffith, Preservation Planner, Office of Archeology and Historic Preservation
Lauren McCroskey, National Register Program Manager, Office of Archeology and Historic Preservation
Marilyn Cox, Chief, SEPA Section, Department of Development and Environmental Services
Charlie Sundberg, Preservation Planner



King County

Department of Development and Environmental Services
Land Use Services Division
900 Oakesdale Avenue, Southwest
Renton, WA 98055-1219

November 10, 1998

State Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Attn: Neil Aaland

Subject: Comments for proposed changes to categorical exemptions under SEPA

Dear Mr. Aaland:

Thank you for the opportunity to participate in the expanded scoping for the Department of Ecology's review of categorical exemptions under the State Environmental Policy Act (SEPA). These comments reflect the September 23, 1998 compilation of suggested amendments to or deletions of existing categorical exemptions, issued by DOE as part of the expanded scoping process.

We hope that you will consider the following comments when finalizing the environmental impact statement scope:

1. WAC 197-11-800(24)(g) categorically exempts utility distribution lines from SEPA review. SEPA does not provide a specific definition for distribution or transmission lines. Please include a legal description or adopt a set of state/federal guidelines for distribution and transmission lines, as part of the review of categorical exemptions under SEPA.
2. SEPA requires environmental review of all proposed actions on lands wholly or in part covered by water. The descriptor, "lands wholly or in part covered by water" lacks specificity thus is cumbersome to administer. We suggest removal of the words, "in part" and inclusion of more precise language to exempt proposed actions that meet certain criteria. For example, some proposed normally exempt actions are reviewed under SEPA, even though the project's disturbance area would not fall within the 100 year flood plain or contain surface water bodies. Using this example, even if the overall property contains a surface water boundary or a 100 year flood plain but the proposed project disturbance area does not contain these features, then the proposed action would be categorically exempt from SEPA review.

(6)

3. SEPA categorical exemptions do not reflect permit exemptions authorized at the local level. We suggest the addition of a categorical exemption for all proposed actions that meet local jurisdiction's requirements for a permit exemption.
4. SEPA categorical exemptions do not currently address above ground tanks. We suggest the addition of a categorical exemption for above ground tanks that meet specific threshold requirements, i.e. those tanks that fall below certain capacity and/or size criteria.
5. Second generation short plats should be categorically exempt under SEPA.

Sincerely,



Rich Hudson, Acting SEPA Official

cc: Robert Derrick, Director
Mark Carey, Manager LUSD
Sophia Byrd, Code Coordinator

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King County
Road Services Division
Department of Transportation
Yesler Building
400 Yesler Way, Room 400
Seattle, WA 98104-2637

October 28, 1998

Neil Aaland, Senior Planner
Department of Ecology
Environmental Review Section
Post Office Box 47703
Olympia, WA 98504-7703

RE: Scope of Environmental Impact Statement for
Proposed Revisions to WAC 197-11 (SEPA Categorical Exemptions)

I understand that under your expanded scoping process for the referenced EIS, you are accepting comments on new scoping topics until October 31, 1998 and that you also continue to accept comments on previously-identified topics. In reviewing the proposed revisions to WAC 197-11 and comments received to date, which were distributed at one of your recent workshops, we offer the following comments in addition to comments we previously submitted:

1. WAC 197-11-855(3) and (5) - We disagree with comments requesting deletion of these sections and do not support including those proposed revisions within the scope of analysis covered by the EIS. In our opinion, issuance of a CZM consistency determination, an action currently exempted by subsection (3), does not need a public review process such as SEPA. The CZM determination alone does not provide authority to alter shorelines or to begin construction and does not appear to set a precedent for issuance of other permits or approval. Projects for which a CZM determination would be required would also most likely require other permits that trigger NEPA and/or SEPA review.

It is unclear which type of engineering reports are actually referred to in subsection (5); however, as with CZM determinations, approval of an engineering report does not appear to set a precedent for review under SEPA or to indicate approval or disapproval of a permit. Any permit process or legislation to implement the results of such an engineering report would be likely to trigger SEPA review. The current exemptions for these two processes seem appropriate.

2. WAC 197-11-855(1) - As a technicality, does not use of the term "issuance" indicate a new permit? The last portion of the section states that the exemption does not apply to a new source discharge. This language appears to provide an internal conflict.

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Neil Aaland
October 28, 1998
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3. WAC 197-11-880 – Although we strongly support the inclusion of this section within WAC 197-11, it appears that the language has potential to be construed too broadly. We suggest you add “*in order to*” after “*chapter*” and delete the comma.
4. Under Suggested New Exemptions Section, the third suggestion reads: “*Add exemption for designating historic landmarks and related historic preservation activities*”. We do not agree that an exemption for this type of activity would be appropriate. Designation of some structures, such as bridges, has potential to create significant adverse impacts to public safety and traffic if those structures are proposed for rehabilitation or replacement. We believe that the public’s interest would best be served by having all phases of that historic designation process open to public review and comment through SEPA. If this issue is included within the scope of the EIS, please include evaluation of the potential impacts mentioned above.

Thank you for the opportunity to participate in scoping for this SEPA environmental impact statement. Please let me know if I can provide additional detail on any of the comments above. I can be reached at (206) 296-8779 or kathy.fendt@metrokc.gov. We look forward to reviewing the Draft EIS when available.

Sincerely,



Kathleen G. Fendt
Lead Environmental Engineer

KF:mr

cc: Vicki Shapley, Supervising Environmental Engineer, Road and Environmental Services Unit

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S P O K A N E C O U N T Y

DIVISION OF LONG RANGE PLANNING
JOHN W. MERCER, AICP,
ASSISTANT DEPUTY DIRECTOR

PUBLIC WORKS DEPARTMENT
DENNIS M. SCOTT, P.E., DIRECTOR

Neil Aaland, AICP, Senior Planner
DOE, Environmental Review
PO Box 47703
Olympia, WA 98504-7703
May 9, 1997

Dear Neil: *Neil*

We offer the following with respect to possible modifications of the Categorical Exemptions of WAC 197-11-800.

A. ADD A NEW SUBSECTION as WAC 197-11-800(d):

(d) Amend the definition of "alteration" to include the drawing of the face of a: (i) final plan; (ii) final start plan; (iii) final drainage site plan.

- In Spokane Co, these alterations/amendments are typically very minor; but, by law are done by resolution of the Bd of Commissioners, thus qualifying as a license. If such amendment would be significant, then SEPA can be invoked.
- The three documents above are legally defined in RCW 58.17.020.
- Spokane Co does about 10-15 of these per year.
- Spokane Co has either ignored these as a practical matter and has observed only the slightest impacts associated with these actions.
- Inclusion of this as an exemption ensures a smoother processing of this minor procedure, with no adverse environment impacts.

B. ADD A NEW SUBSECTION as WAC 197-11-800(e):

(e) Amend the definition of "division" to include: (i) divisions of land in RCW 58.17.020 (b) (5) and (6).

- In Spokane Co, these divisions are typically very minor and of little or no significance and/or have been the subject of a prior SEPA review. If such a division would be significant, then SEPA can be invoked.
- Spokane Co does about 250 of these per year.
- Inclusion of this as an exemption ensures a smoother processing of this minor procedure.

C. ADD A NEW SUBSECTION as WAC 197-11-800(f):

(f) Amend the definition of "alteration" to include: (i) alterations of land within an urban growth area including rezoning, and (ii) alterations outside of such an urban growth area including rezoning, when such alterations are done in the manner described in RCW 58.17.020 (b) (5) and (6) and are not included in the definition of "division" as provided under this subsection.

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- Most jurisdictions have subdivision ordinances that regulate formal subdivision of land up to a certain size of parcel. For instance, divisions of land up to 10 acres in size may be included as a standard subdivision or a short subdivision. Parcels larger than that are sometimes picked up with a large lot subdivision ordinance.
- In Spokane Co, large tract divisions of land outside of the full subdivision and short subdivision process are very large in number, involving vast aggregate quantities of land, almost always without formal SEPA review and, until recently, with very few design standards. From 1990-1995, in Spokane Co, 1,685 such division actions created 4,336 parcels, on land area approximately equal to the size of the City of Spokane (126 sq. mi.), and about 62 miles of private roads. Nearly 79% of these parcels were between 5 and 20 acres in size.
- The above suggested regulation allows very few divisions to fall through the cracks without some attention from SEPA. It also catches some cumulative impacts.

D. AMEND EXISTING SUBSECTION WAC 197-11-800(24)(b)

(b) All storm water, water . . . related to lines [REDACTED] inches or less in diameter.

- In Spokane Co (and we believe fairly commonly in most jurisdictions), the break point for local lines verses regional collector systems is 12-15 inches. Gradients common to our area support 12 inches verses 8 inches. Similarly, it is common for a basic 8 inch system to have a few 12 inch sections in it, thus making the entire installation subject to SEPA.
- The above situations fit an estimated 20 projects each year.
- Additionally, Spokane Co storm water drainage systems which route runoff to dry wells or to storm water disposal swales typically use 12 inch pipes.
- There was no estimate of numbers of these storm water situations per year; except to say that the number is large, due to the 'sole source' designation of the local aquifer.

E. AMEND EXISTING SUBSECTION WAC 197-11-800(1)(a)

(1) The exemptions is this . . . except when a rezoned [REDACTED] conditional use permit or any license . . . is required. [REDACTED] ~~except that local government may specify by implementing ordinance or resolution which conditional uses are exempt.~~

- In our jurisdiction (and we believe fairly commonly in most jurisdictions), the structure permitted by a conditional use permit (CUP) may be exempt by size or any of the other ways that *minor new construction* may be exempt. Such a structure may (and has so in the past) contain a use which should be reviewed under SEPA. We have been challenged by some past applicants as to why we are using SEPA when the *structure* qualifies as *minor new construction*; the argument being that *all licenses* (including the CUP) are exempt [WAC 197-11-800(1)(a)] from SEPA. Empowering local government to include all or some CUPs as exceptions to the categorical exemption process puts local government clearly back in control.
- Spokane Co considers about 9-12 CUPs per year.
- As an example, a commercial composting facility had such minor structures on it that it was argued that the CUP should be exempt. It would have been much cleaner to simply point to the ordinance and say that CUPs are not categorically exempt unless specified by the zoning code.
- NOTE: Similar language also appears in WAC 197-11-811(2), suggesting an amendment there, too.

F. AMEND EXISTING SUBSECTION WAC 197-11-800(3)

(3) Repair, remodeling . . . replacement of structures ~~qualifying as normal maintenance and repair pursuant to RCW 36.70A.030(1)(b)~~ may be exempt ~~from the requirements of~~ replacement of piling, ramps, floats or mooring buoys, or ~~floats, ramps, floats, or mooring buoys~~ or docks, ~~if they are~~ the following maintenance . . . this subsection:

- In Spokane Co, the matters of shoreline exempt and SEPA exempt have always presented some conflict and confusion. The above suggestion seems consistent with the existing exemption language and clearly links the exemption to the specific language of the shoreline WAC, thus eliminating any confusion. It still preserves the exception to the exemption by retaining the language of (3)(a) - (c).
- Spokane Co handles about 15-20 verbal or written maintenance and repair shoreline exemptions, about a dozen of which qualify as having a SEPA exemption 'call' made with regard to them.
- By their nature, a large majority of these will not have a substantial impact upon the environment; but, if any of them do, there always exists the duty/ability to invoke SEPA.

G. AMEND EXISTING SUBSECTION WAC 197-11-756

WAC 197-11-756 Lands covered by water. "Lands covered by water" means . . . lakes, ponds, and artificially impounded waters ~~and wetlands as defined in RCW 36.70A.030(1)~~ ~~and wetlands as defined in RCW 36.70A.030(1)~~ Certain . . . Part Nine.

- The term "lands covered by water" is used several places to describe areas/circumstances in which certain categorical exemptions do not apply. To the extent that the term "lands covered by water" is vague and not current with the level of sophistication now afforded to wetland protection and regulation. WAC 197-11-756 should be clarified with respect to wetlands, possibly, as suggested here, by reference to the definition of *wetlands* as set forth in the GMA regulation of RCW 36.70A.030(17).
- It is difficult to determine the number of calls related to "lands covered by water" Spokane Co makes per year; but, it is likely in the two to three dozen range.
- It is likely that use of the above recommended clarifying language of RCW 36.70A will cause more lands to be subject to SEPA than may now be the case. This should translate into a positive impact with respect to the environment.

If you have questions regarding this report/recommendation, please contact me at (509) 324 3210 or by e-mail at 'tmosher@spokanecounty.org'

SPokane County Public Works Department
Dennis Scott, P.E., Director


By: Thomas G. Mosher, AICP, Senior Planner
Division of Long Range Planning

- c: Bruce Rawls
Ross Kelley
John Pederson
Brenda Sims
Jim Red
Kevin Cooke
Tammie Williams
Jeff Forry

(66)



STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION
111 21st Avenue S.W. • P.O. Box 48343 • Olympia, Washington 98504-8343 • (360) 753-4011
June 11, 1997

Mr. Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
P.O. Box 47703
Olympia, Washington 98504-7703

Dear Mr. Aaland:

On behalf of the Washington State Office of Archaeology and Historic Preservation (OAHP) I am writing in regard to proposed changes to categorical exemptions in WAC 197-11. More specifically, I want to express support and concurrence for the comments submitted to you by Julie Koler, King County Historic Preservation Officer, in her letter of April 28, 1997.

In her letter, Ms. Koler expressed support for specifically exempting listing of properties in the National Register of Historic Places, the State Register (now Washington Heritage Register) and preservation activities conducted by local governments. I support this proposed change in the SEPA rules. As designation and other preservation activities conducted by local governments have little (positive) if any environmental impacts, subjecting these actions to review would be an inefficient use of public resources.

Thank you for the opportunity to comment on changes to the SEPA rules. Should you have any questions, please feel free to contact me at 753-9116.

Sincerely,


Gregory Griffith
Comprehensive Planning Specialist

GAG

cc: Julie Koler

(67)



STATE OF WASHINGTON

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
Office of Archaeology and Historic Preservation

420 Golf Club Road SE, Suite 201, Lacey • PO Box 48343 • Olympia, Washington 98504-8343 • (360) 407-0752
Fax Number (360) 407-6217

August 26, 1998

Mr. Gordon White
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Re: Comments on Amendments to List
of Categorical Exemptions under
SEPA Rules

Dear Mr. White:

The Washington State Office of Archaeology and Historic Preservation (OAHP), a program unit within the Department of Community, Trade, and Economic Development (DCTED), is in receipt of the Scoping Notice for the Environmental Impact Statement on the review of categorical exemptions under the State Environmental Policy Act (SEPA). On behalf of OAHP, office staff including State Archaeologist Rob Whitlam and myself, have reviewed the Scoping Notice to assess potential impacts on archaeological, historic, and traditional cultural places. As a result of this review, I am submitting the following comments:

- In regard to paragraph 2 (f) on page seven about the demolition of any structure or facility, I support the exemption and continuing excepting historic structures. However, I recommend that the current language ("... except for structures or facilities with recognized historical significance") be revised. In application, this phrase has resulted in confusion. I also recommend against changing the phrasing to what is suggested in the table ("... structures listed on the state historical registry") which may result in more confusion. I recommend consultation with OAHP and other interested parties to develop helpful language. However, to begin the dialogue, I recommend language something like the following:

...except for properties listed in, or determined eligible for listing in, the National Register of Historic Places and/or the Washington Heritage Register and/or a register of historic places formally recognized by a local (city, county) jurisdiction, or a tribal nation. This exception shall include properties documented in the inventories of the state historic preservation office, a tribal preservation office, and/or formally recognized local historic preservation program.

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Mr. Gordon White
August 26, 1998
Page Two

Discussion: The above language is suggested in order to acknowledge that efforts to recognize historic properties is conducted at all levels of government. The OAHP administers the National Register of Historic Places and the Washington Heritage Register in cooperation with federal and local governments. Many local governments also maintain a local register of historic places. All levels of government maintain inventories of historic properties which have been surveyed within their jurisdiction. Although there is frequent overlap of designated and inventoried properties, duplication is not always the case since local jurisdictions have the freedom to establish and interpret their own criteria for recognizing historic properties.

- In paragraph 7 on page 10 regarding school closures, I recommend adding an exception to schools designated as historically significant or eligible for designation as historic. Although a plan, program or decision for closure of a historic school does not directly affect the school structure, such an action does lead to the sale, abandonment, demolition or other threat to the school building. Such an action should be reviewed in instances where there is potential historic significance attached to the school building(s).
- In paragraph 27 on page 17 regarding personal wireless service facilities, I recommend adding an exception in sub-paragraph 27 (a) (ii) to include local designated historic properties including historic districts. Wording for the exception may read something like the following:

(ii) Includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence, a school, or a historic property designated by a local jurisdiction, and does not contain a residence or school...

It should be made clear within the exemptions that the term "historic property" includes buildings, structures, sites, districts, and objects.

- Finally, I support the suggested new exemption for designating historic landmarks and related historic preservation activities as listed on page 27. As mentioned above, I recommend that the language for this exemption be carefully crafted in order to avoid confusion in actual application.

Mr. Gordon White
August 26, 1998
Page Three

Thank you for the opportunity to review this action. I welcome the opportunity to further discuss the above comments and recommendations. Please feel free to contact me at 407-0766 or email at gregg@cted.wa.gov.

Sincerely,


Gregory Griffith
Comprehensive Planning Specialist

GAG

Cc: Neil Aaland
Julie Koler, King County Historic Preservation Office



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office, 3190 - 160th Ave S.E. • Bellevue, Washington 98008-5452 • (206) 649-7000

March 11, 1997

Mr. Neil Aaland, Senior Planner
Department of Ecology
Environmental Review Section
P.O. Box 47703
Olympia, WA 98504-7703

Re: SEPA Categorical Exemptions
Proposed Revisions

Dear Mr. Aaland:

In response to your notice about proposed changes to the SEPA categorical exemptions, I would like to propose that the Department of Ecology delete an existing exemption. The existing exemption has to do with engineering report approvals.

WAC 197-11-855(5), which lists actions exempt from SEPA, reads as follows:

“Approval of engineering reports, when such approval allows preparation of plans and specifications, but not when it would commit the (Department of Ecology) to approving the final proposal.”

By definition, SEPA actions are required before important project decisions are made. Engineering reports, also by definition, are those engineering documents in which important, basic decisions are made, including selection of a preferred alternative, location of any proposed facility, and the sizing of that facility. Furthermore, once Ecology approval has been granted for an engineering report, there is no state statute or regulation which permits the agency to reopen or revoke the basic planning decisions made in that approval, prior to the project being built.

With these basic considerations in mind, WAC 197-11-855(5) makes no sense at all. Indeed, I have yet to talk with any attorney, inside or outside the agency, who claims to know what this exclusion means. It has been a source of confusion ever since it was first written.

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Mr. Neil Aaland, Senior Planner

Page 2

March 11, 1997

This regulatory exclusion has resulted in one of our Centennial Clean Water Fund (CCWF) grant projects becoming mired down in a confusing web of contradictions, to the point that the project presently is unable to proceed, and we (Department of Ecology) are unable to approve it.

The specific project is the Clinton Facility Plan and the grantee responsible for this project is Island County. To abbreviate a complex situation, the County Hearing Examiner ruled that this facility plan is exempt from SEPA under the exclusion discussed above, and ordered the County to withdraw the SEPA documents which it had filed on the project. We are unable to approve the document for two important reasons:

1. Because we feel that SEPA is required prior to the important (and in this case, highly controversial) decisions being made, and
2. Because the document was also submitted as a facility plan to satisfy federal engineering requirements, and as such must address not only SEPA but also NEPA, the federal act.

In summary, the exclusion described in WAC 197-11-855(5) appears to have no practical application, and has been a source of confusion and a serious detriment to certain projects. As such, it is my recommendation that WAC 197-11-855(5) be deleted from this regulation.

Sincerely,

David Nunnallee

David A. Nunnallee, P.E.
Facility Manager,
Northwest Region, Dept. of Ecology

DAN:dan:tm

Aaland, Neil

From: Rubey, Jane
Sent: Friday, February 27, 1998 5:01 PM
To: Aaland, Neil
Subject: SEPA Exemptions

Congratulations - with your last name starting with (2) A's you sure don't have to wait for anybody in the alphabetical line and it's just a delight to call you up in the e-mail address book. Good Job! - we R's are envious :)

Now... the real business. Here's my comments on the exemptions revision we talked about.

Reviewing the exemptions I find a number of existing areas that could address the issue of grant funds for preserving land through acquisition. I'm not sure which one(s) would be the best for modification however, or whether a new exemption - possibly specific to watershed protection and recovery might be warranted. Anyway, the subsections are: (5) Purchase or sale of real property, (16) Financial assistance grants, and/or (25) Natural resources management.

The issue that has arisen for me is the need to complete a SEPA checklist on a totally benign project that is seeking to simply "preserve" land in its natural condition in perpetuity. Ecology is providing grant funds under CZM 306 (a) for a portion of the acquisition cost. At this point no formal activity is being proposed for the land, it is simply being purchased.

This is the first time in several years that Ecology has undertaken a grant funded project of this sort, simply due to past reductions in available funding. However, we, as an agency and as state government, are experiencing a shift in awareness. The operational paradigm for resource management has moved to protecting watershed ecological health through community actions to preserve and restore key lands. With the issue of salmon listings under ESA forthcoming, we are about to move into an agency-local community partnership such as we have never seen before in the area of recovering habitat. Federal funding sources have already begun to align with restoring watershed health, and as state funds follow on the heels of salmon listings, Ecology will come to play a major role as a granting arm for community actions.

I contend that when the community sponsored action is solely to preserve land for the health of species and watersheds - an action that has no significant adverse impact on the environment - yet under current conditions has quite a significant positive impact - the SEPA checklist and determination process adds no benefit and is just another 'hoop' in the way of good action.

I propose that we provide some new language in the exemptions to allow for - not just state and not just DNR acquisitions, but - all other community-based acquisition activities that seek solely to preserve habitats and watershed health. Crafting that language would be an activity I would be pleased to participate in. :) Thanks.

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REVIEW OF CATEGORICAL EXEMPTIONS UNDER SEPA

File # 9804819

July 1998 draft

Comments By Gary Kruger

Page	Section	Comments
6	(v)	Local governments ought to have the authority to lower the threshold to 50 cubic yards to address local conditions.
6	(2)(b)	Should include pedestrian signals in those traffic signals excluded
7	(2)(c)	The exemption should be allowed only for those project that have been designed consistent with the 1992 edition of the "Stormwater Management Manual for the Puget Sound Basin", and successor editions or other regional or statewide stormwater management manuals promulgated by Ecology or other stormwater management manuals deemed technically equivalent by Ecology
14	New Section	Add: The adoption of the 1992 edition of the "Stormwater Management Manual for the Puget Sound Basin", and successor editions or other regional or statewide stormwater management manuals promulgated by Ecology or other stormwater management manuals deemed technically equivalent by Ecology
23	(4)	Delete, Ecology no longer issues water quality mods.

*Suggest a separate section similar to Building Codes

TO: Neil Aaland
FROM: Marvin Vialle 
RE: Categorical Exemptions
DATE: October 30, 1998

This is to request that the issue of categorically exempting the installation of fiber optics lines be included in the on-going SEPA Rule amendments. Currently, these lines are excluded unless they contain a portion that is on lands covered by water. Standard practice for water crossings is by boring under the beds of streams, or in some cases hanging them from a bridge. I would suggest that a "programmatic" study of the potential adverse impacts be made to ascertain whether some or all of these would meet the requirements for a categorical exemptions.

75



10/10

State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Habitat Management Program: 600 Capitol Way N, Olympia, Washington 98501-1091 - (360) 902-2534

June 13, 1997

Mr. Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
Post Office Box 47703
Olympia, Washington 98504-7703

Dear Mr. Aaland:

As part of your current review of the SEPA Rules regarding categorical exemptions, the Washington Department of Fish and Wildlife (WDFW) proposes to consolidate the exemptions for the former Departments of Fisheries and Game listed in WAC 197-11-835 and 840. A previous draft of language for this change was submitted in a letter dated April 29, 1997. Since that time, however, the language has undergone additional review by legal staff, and WDFW now proposes the following language instead.

PROPOSED NEW LANGUAGE TO REPLACE WAC 197-11-835 AND 840:

WAC 197-11-xxx Department of fish and wildlife. The following activities of the department of fish and wildlife are exempted:

- (1) The establishment of hunting, trapping, fishing or shellfish removal seasons, bag or catch limits, and geographical areas where such activities are permitted.
 - (2) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice as defined in RCW 76.09.050 and regulations thereunder.
 - (3) Hydraulic project approvals where there is no other agency with jurisdiction requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels that have been naturally abandoned within the twelve months previous to the hydraulic permit application.
 - (4) All licenses authorized to be issued by the department except the following:
 - (a) Fish farming licenses, or other licenses allowing the cultivation of aquatic animals for commercial purposes except for clam farm and oyster farm licenses;
 - (b) All clam farm licenses and oyster farm licenses where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands;
 - (c) Licenses for the mechanical and/or hydraulic removal of clams, including geoducks;
- and,

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Mr. Neil Aaland
June 13, 1997
Page 2

(d) Any license authorizing the discharge of explosives in water.
WAC 197-11-800 (14)(i) shall apply to allow possible exemption of renewals of the above licenses.

- (5) The routine release or transfer of hatchery fish, game birds, and animals or the reintroduction of endemic or native species into their historical habitat, where only minor documented effects on other species will occur.
- (6) The issuance of falconry permits.
- (7) Artificial wildlife feeding.
- (8) The issuance of scientific collector permits.
- (9) Minor repair work to be done by hand tools. Examples include:
 - (a) Maintenance of fish screen or intake structures; or
 - (b) Silt and debris removal from boat launches, docks, and piers.
- (10) Collection of fish and wildlife for research.

The intent of these changes is simply to consolidate the existing language to reflect the merged agency, and not to modify any of the existing categorical exemptions detailed in these sections.

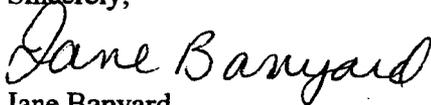
In addition, WDFW also proposes the following exemption for possible inclusion in this section for your review:

Routine Maintenance of Existing Facilities, including work in lands covered by water. Language: Normal, routine maintenance of existing facilities, including repair and replacement of structures wholly within the original footprint, are exempt provided that the original installation had SEPA review or was in operation prior to the passage of SEPA.

Justification: The original SEPA review must presume that a facility will be operated and maintained. For WDFW, this would include fish culture facilities, net pens and boat launches that do not meet the normal maintenance exemption because they are on lands covered by water. At culture facilities, this would include all intakes, traps and other structures that may be remote from the station.

If you have any questions with regard to these proposed changes, call me at (360) 902-2575.

Sincerely,



Jane Banyard
SEPA Coordinator

JB:jb

cc: Gordy Zillges

(77)



010

State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Habitat Management Program: 600 Capitol Way N, Olympia, Washington 98501-1091 - (360) 902-2534

April 29, 1997

Mr. Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
Post Office Box 47703
Olympia, Washington 98504-7703

Dear Mr. Aaland:

As part of your current review of changes to the SEPA Rules regarding categorical exemptions, the Washington Department of Fish and Wildlife proposes a minor housekeeping revision. Currently, categorical exemptions for the former Departments of Fisheries and Game are listed in two separate sections, WAC 197-11-835 and 840, respectively. We propose consolidating the two sections to reflect the merged Department of Fish and Wildlife. It is not our intent at this time to modify the categorical exemptions detailed in these sections. The proposed language below is intended to simply consolidate the existing language into one new section. If, in your review, you find that any of the original exemptions have been inadvertently modified, please let me know.

WAC 197-11-xxx Department of fish and wildlife. The following activities of the department of fish and wildlife are exempted:

- (1) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.
- (2) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice as defined in RCW 76.09.050 and regulations thereunder.
- (3) Hydraulic project approvals where there is no other agency with jurisdiction requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels that have been naturally abandoned within the twelve months previous to the hydraulic permit application.
- (4) All clam farm licenses and oyster farm licenses, except where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands.
- (5) All other licenses (other than those excepted in (2) and (3) above) authorized to be issued by the department as of December 12, 1975 except the following:
 - (a) Fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;

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(b) Licenses for the mechanical and/or hydraulic removal of clams, including geoducks; and,

(c) Any license authorizing the discharge of explosives in water.
WAC 197-11-800 (14)(i) shall apply to allow possible exemption of renewals of the above licenses.

(6) The routine release or transfer of hatchery fish, game birds, and animals or the reintroduction of endemic or native species into their historical habitat, where only minor documented effects on other species will occur.

(7) The issuance of falconry permits.

(8) The issuance of all hunting or fishing licenses, permits or tags.

(9) Artificial game feeding.

(10) The issuance of scientific collector permits.

(11) Minor repair work to be done by hand tools. Examples include:

(a) Maintenance of fish screen or intake structures; or

(b) Silt and debris removal from boat launches, docks, and piers.

(12) Collection of fish and wildlife for research.

If you have any questions, please give me a call at (360) 902-2575.

Sincerely,

Jane Banyard

Jane Banyard
SEPA Coordinator

JB:jb

cc: Gordy Zillges

WAC 197-11-800(1) (b) currently reads:

The following types of construction shall be exempt except when undertaken wholly or partly on lands covered by water:

(iv) The construction of a parking lot designed for twenty automobiles.

(V) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; . . .

We recommend that these limits be deleted. A construction project should be evaluated based on the environmental impacts not on an arbitrary quantity limitation.

If the construction project meets the following criteria it should be exempt regardless of the number of parking stall or the amount of fill required:

The action does not have significant impacts as described in WAC 197-11-794, does not require the acquisition of more than a minor amount of strips of right of way, and such acquisitions will not require any commercial or residential displacement; the action does not involve a determination of adverse effect by the State Historic Preservation Officer; the action will not require any work in wetlands, or any work encroaching on a regulatory floodplain or any work affecting the base floodplain elevations of a watercourse or lake; the action will not involve any work in, across, or adjacent to a river designated as a Washington State Wild and Scenic River; the action will not affect access control; the action does not involve any hazardous material sites; the action conforms to the Air Quality Implementation Plan which is approved by the Environmental Protection Agency in air quality non-attainment areas; the action is consistent with the state Coastal Zone Management Plan; the action occurs where there are no impacts to listed threatened or endangered species

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WAC 197-11-800 (2)(c) currently reads:

(2) Other minor new construction. The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water(unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:

(c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing right of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed changes, etc.), where capacity is not significantly increased and no new right of way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed(existing curb to curb in urban locations), including adding or widening shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

We recommend that the wording be changed to:

(2) Other minor new construction. The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water(unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:

Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes, provided the action does not have significant impacts as described in WAC 197-11-794, does not

(61)

require the acquisition of more than a minor amount of strips of right of way, and such acquisitions will not require any commercial or residential displacement; the action does not involve a determination of adverse effect by the State Historic Preservation Officer; the action will not require any work in wetlands, or any work encroaching on a regulatory floodplain or any work affecting the base floodplain elevations of a watercourse or lake; the action will not involve any work in, across, or adjacent to a river designated as a Washington State Wild and Scenic River; the action will not affect access control; the action does not involve any hazardous material sites; the action conforms to the Air Quality Implementation Plan which is approved by the Environmental Protection Agency in air quality non-attainment areas; the action is consistent with the state Coastal Zone Management Plan; the action occurs where there are no impacts to listed threatened or endangered species; the action will not include the use of a temporary road or detour unless the detour satisfies the following conditions: provisions are made for local traffic, through-traffic business will not be adversely affected, the detour will not, to the extent possible, interfere with any local special event or festival; the detour will not change the environmental consequences of the action, there is no substantial controversy associated with the detour.

This interpretation of WAC 197-11-800 is consistent with NEPA and CFR 771.117. This is an effort to streamline environmental regulations by keeping both state and federal regulations consistent.

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WASHINGTON STATE DEPARTMENT OF
Natural Resources

JENNIFER M. BELCHER
Commissioner of Public Lands
KALEEN COTTINGHAM
Supervisor

July 8, 1997

Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
PO Box 47703
Olympia, WA 98504-7703

Dear Neil:

Attached are comments from the Department of Natural Resources in response to the Preposal Statement of Inquiry filed with the Code Reviser's Office on January 22, 1997 amending the SEPA rules regarding SEPA categorical exemptions. The DNR submitted draft comments on this same proposal on June 20, 1997. Please replace the draft comments with the attached final comments. Thank you very much for your patience while we were able to finalize our comments.

The DNR appreciates the opportunity to comment as SEPA has become increasingly important in both workload and substantive decision making in DNR. We have attempted to recommend exemptions that are consistent with the intent to exempt activities that are not "potential major actions significantly affecting the quality of the environment." (Reference 43.21C.110 RCW) We have also raised several questions in our comments, the answers for which have become critical to DNR's interpretation and consistent application of SEPA to our programs.

The Department of Natural Resources is looking forward to working with DOE and we are pleased to offer our assistance as this process develops. I can be reached at 902-1633 or e-mail at DDAA490@wadnr.gov or David.Dietzman@wadnr.gov.

Thanks again for the opportunity to participate in this important process.

Sincerely,

Dave Dietzman,
SEPA Center Manager

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DNR Comments regarding Categorical Exemptions to SEPA

General Statement

Through a Preproposal Statement of Inquiry, the Department of Ecology has invited comments regarding changes to SEPA categorical exemptions. Below are DNR's recommendations for categorical exemption changes. DNR recognizes that this is only a Preproposal Statement of Inquiry and, as such, is not a notice of rule making under the Administrative Procedure Act. As such, DNR expects to participate fully if or when any actual rule changes to SEPA are proposed. DNR also wishes to participate during the development of the proposed changes to the SEPA categorical exemptions.

Recommended SEPA Categorical Exemption Changes

1. Adding sales of sand, gravel and rock as a categorical exemption.

This amendment would exempt sales of sand, gravel and rock subject to current categorical exemptions in SEPA.

Proposed language:

WAC 197-11-800 (25) should be amended to include the following:

Any sale of sand, gravel and rock, subject to WAC 197-11-800(1)(b)(v) or WAC 197-11-800(1)(c)(v).

Number of such actions per year:

- ▶ Fifteen.

Why this action should be exempted:

- ▶ SEPA is currently required for all sales of sand, gravel and rock. This includes sales where the excavation of the material is exempt from SEPA.
- ▶ Certain excavations are exempt under SEPA, because of the small impact of the action and/or because the activity is taking place on forest lands. The removal of less than 100 to 500 cubic yards of material, depending on the county, city and/or zone, are exempt from SEPA under WAC 197-11-800 (1)(b)(v) and WAC 197-11-800 (1)(c). All excavations in Class I, II, III Forest Practices are exempt from SEPA under WAC 197-11-800 (1)(b)(v). This proposed exemption incorporates the excavation size restrictions cited above.

2. Adding the issuance of permits for recreational mineral and placer prospecting as a categorical exemption.

This amendment would exempt the issuance of recreational mineral prospecting and placer permits when only hand and non-motorized tools are permitted. It would allow the issuance of one year permits for recreational mineral prospecting or recreational placer mining exempted from SEPA when the use of motorized equipment for the activity is prohibited by the permit.

In general, recreational mineral prospecting includes picking up rocks, using a rock hammer or crowbar and similar hand tools to collect rocks and minerals. Placer mining is limited to non-motorized tools such as gold pans, mini-rocker boxes and non-motorized sluice boxes. Permits may be for a specific site or for any "open" area as determined by the department and permitted by "Gold and Fish" (published by the Washington Department of Fish and Wildlife). Permits that allow activities that include motorized equipment, such as dredges or motorized sluice boxes, would not be considered "recreational" activities.

Proposed language:

WAC 197-11-800(25) should be amended to include the following:

Issuance of mineral prospecting and/or placer permits for recreational purposes when only hand and non-motorized tools will be used, subject to WAC 197-11-800(1)(b)(v) or WAC 197-11-800(1)(c)(v).

Number of such actions per year:

- ▶ DNR does not currently issue such permits or leases, but anticipates that such agreements may be issued in the future. Recreational mineral collecting and gold panning is a popular hobby, and the department could expect to issue several hundred of these permits state wide if the program is developed.

Why this action should be exempted:

- ▶ Picking up rocks and minerals, or using a rock hammer or a crow bar does not require any permits, does not have a potential for significantly affecting the environment, and does not deplete the mineral resource base on state owned land. A "Gold and Fish" publication from the Washington Department of Fish and Wildlife is required to be in the possession of a recreational prospector for panning, mini-rocker boxes, and non-motorized small sluice boxes.

3. Adding the issuance of permits for noncommercial fossil collecting as a categorical exemption.

The proposed amendment would allow the issuance of permits or leases for the noncommercial collection of fossils.

Proposed language:

WAC 197-11-800(25) should be amended to include the following:

Issuance of permits or leases for the noncommercial collection of geologically related fossils, subject to WAC 197-11-800(1)(b)(v) or WAC 197-11-800(1)(c)(v).

Number of such actions per year:

- ▶ Few such permits have been issued and it is not expected that there will be many such permits in the future. No leases have been let for the collection of fossils. Guidelines have been proposed to permit such activities on DNR-managed lands.

Why this action should be exempted:

- ▶ Most such permits would be let to individuals and groups conducting scientific research. Such work would have little potential for significantly affecting the environment and would effect small areas of land.
- ▶ The exemption is for plant and animal fossils and does not include archeological remains or cultural resources.

4. Clarification of current exemptions for mineral prospecting and coal contracts.

The RCW reference in WAC 197-11-830 should be amended to clarify the exemption for contracts for coal mining.

The reference to RCW 79.01.652 in WAC 197-11-830 (8) refers to coal mining contracts and leases. Coal mining contracts are for one year to conduct geologic investigations. The leases are the long term agreements that require an environmental review under SEPA before they are issued. The opposite is true for mineral prospecting leases and mining contracts. Because RCW 79.01.652 is "lumped" with RCW 79.01.616 the terms contract and lease are by reference interchanged. This exemption language needs to be changed in order to clarify its meaning. The current language could be interpreted to exempt coal leases, issued under RCW 79.01.652, which allow exploration and development of coal mines and require SEPA for the one year coal option contract which allows only limited exploration. This clarification will ensure that SEPA is required for mining contracts under RCW 79.01.616 and coal leases under RCW 79.01.652.

Proposed language:

WAC 197-11-830 should be amended as follows:

(8) Except on aquatic lands under state control, leases for mineral prospecting under RCW 79.01.616 or 79.01.652, but not including issuance of subsequent contracts for mining.

(9) Coal option contracts under RCW 79.01.652, but not including issuance of subsequent coal leases for mining.

Number of such actions per year:

- ▶ None, although DNR could issue such contracts in the future.

Why this action should be exempted:

- ▶ The action is already exempted, but this change clarifies that exemption.

5. Adding bough harvesting as a categorical exemption.

This addition would create a categorical exemption for bough harvesting under WAC 197-11-800(25) subject to (not exceeding) the forest practices exemption for Class 1, 2 and 3 forest practices in WAC 197-11-800(25)(a).

Bough harvesting is an activity where branches 12-36 inches are cut from standing trees. Most often the ends of the branch are taken rather than the entire branch. The harvested branches, called boughs, are used by the Christmas Greens industry to manufacture wreaths, door swags and table decorations. Harvesting of all of the boughs on a tree is not allowed by any Pacific Northwest landowner unless the harvested tree is to be removed as part of a thinning program.

Proposed language:

WAC 197-11-800(25)(e) should be amended as follows:

Issuance of leases or sales for Christmas trees, bough harvesting or brush picking, subject to the forest practices exemptions in WAC 197-11-800(25)(a).

Number of actions per year:

- ▶ The sale or lease for the purpose of bough harvesting is a standard practice by the Department of Natural Resources. Average yearly activity has been 10-16 regional sales (more than

(8)

\$1,000 in value) and 25 direct sales (less than \$1,000 in value).

- ▶ With the increase in the direct sale maximum as authorized by the 1997 legislature, it is expected that regional sales will reduce to 8-10 per year but direct sales increase to 40 per year.

Why this action should be exempted:

- ▶ A number of similar practices which have greater environmental, scenic and silvicultural impacts are already exempt include, but are not limited to, the following: Class I forest practices for (a) culture and harvest of Christmas trees and seedlings and (b) commercial thinning and pruning. Christmas tree harvesting requires the entire tree to be removed. Bough harvesting never allows complete removal, unless it is related to a thinning salvage, which is also exempt. The relationship between bough harvesting and pruning is similar, yet different. Pruning requires the entire branch to be cut from a tree. Bough harvesting seldom cuts the entire branch. Normal specifications for how high in a tree a pruner or bough harvester may cut in a tree are almost identical.
- ▶ Cutting contracts contain mandatory bough limits. The contract specifications are written to ensure no damage is done to the tree or harvest location. An example of contract cutting provisions mandatory in all 1997 DNR bough contracts:

H-10 Cutting provisions

- a. On full crown trees 19 feet and taller, boughs may be cut from the lower ~~2/3~~^{1/3} of the tree.
- b. On trees from 8-18 feet tall, boughs may be cut from the lower 1/2 of the tree.
- c. Trees less than 8 feet tall shall have no boughs cut.
- d. No boughs over 40 inches long shall be cut from any tree.
- e. On each limb cut above 4 feet, at least one 14-inch green branch must remain.
- f. On harvestable trees, from the ground to a height of 4 feet, boughs may be cut to any length and as close to the trunk of the tree as desired, providing no damage is done to the trunk.
- g. Climbing trees is permitted, provided that no damage to the trunk of the tree or branches will occur. Spikes are not permitted.



H-11 Sale Area Harvest Conditions

- a. No wheeled or tracked vehicles may be operated off existing roads without prior written approval from the Contract Administrator.
- b. Camping may be authorized by written approval from the Contract Administrator.
- c. Cutting trails for the purpose of removing boughs from the sale unit may be authorized with prior written approval by the Contract Administrator.

H-120 Harvesting Equipment

Forest products sold under this contract shall be harvested by hand clippers, loppers or pole pruners. No saws are allowed except to clear roads or trails as granted in writing by the State.

H-220 Protection of Residual or Adjacent Trees

Purchaser shall take necessary care to avoid damage to residual or adjacent trees.

- ▶ No potential for significant adverse environmental impacts have been identified with bough harvesting by private industry, the U.S. Forest Service, DNR or Danish foresters (who manage a yearly 100 million dollar bough harvest program).
- ▶ Bough harvesting has no relevant statutory provisions or court decisions.
- ▶ Environmental impacts would be the same in rural and urban settings. However, bough harvesting almost never occurs in urban settings.
- ▶ There has been no known public objection to boughs harvested on DNR trust land. There have been news releases, television and radio segments about DNR bough harvesting and all of the known responses have been supportive.
- ▶ The categorical exemption of bough harvesting would meet the intent and interest of WAC 197-11-030. It would reduce paperwork, and eliminate the time necessary to prepare checklists or environmental reviews.

6. **Clarification of outdoor burning as a categorical exemption.**

This change would clarify SEPA's open burning categorical exemption to match the intent of the drafters of the current rule (WAC 197-11-800 (8)).

Proposed Language:

WAC 197-11-800(8) should be amended as follows:

Open burning Outdoor burning. Open burning Outdoor burning, including silvicultural burning and burning to improve or maintain fire dependent ecosystems. and the issuance of any license for open such burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open such burning shall not be exempt.

Number of actions per year:

- ▶ Over 7,000 silvicultural burning permits are issued each year.

Why this action should be exempted:

- ▶ When DOE developed the SEPA rules in 1984, DOE rules defined Open Burning as "... the combustion of material in an open fire ... Open burning means the same as open fire or outdoor burning." In 1992, DOE revised its Open Burning rules to define Open Burning as "... all forms of outdoor burning *except* ... silvicultural burning, agricultural burning, recreational fires, ceremonial fires, burning to improve or maintain fire dependent ecosystems." See WACs 173-425-020, -030(9). As the definitions exist now, burning regulated by DNR could be interpreted as **not** exempt from SEPA. This was not the intent when the SEPA rule was written in 1984, nor was it DOE's intent to change the effect of the open burning SEPA exemption when the definition was revised in 1992. The intent was merely to clarify that DNR rather than DOE has the authority to regulate silvicultural burning, recreational fires, and burning to improve or maintain fire dependent ecosystems. The wording of WAC 197-11-800 (8) should be amended to clarify the intent of the SEPA exemption to cover all forms of outdoor burning.
- ▶ DNR's Smoke Management Plan and any revisions thereto will require SEPA.
- ▶ Complying with SEPA for all silvicultural burning would be difficult, and impossible for recreational fires on forest land.

7. Adding issuance of temporary use licenses as a categorical exemption

Specific Exemption:

WAC 197-11-800(25)

This rule amendment would exempt from SEPA certain natural resource management activities: organized non-motorized recreational activities or events, individual non-motorized recreational activities, educational tours, commercial -guide/outfitter uses, commercial filming, collection of scientific data or survey information and performance of environmental tests.

Proposed Language:

WAC 197-11-800(25) should be amended to read as follows:

(l) Issuance of licenses for the following purposes: organized non-motorized recreational activities or events, individual non-motorized recreational activities, educational tours, commercial guide/outfitter uses, commercial filming, collection of scientific data or survey information and performance of environmental tests.

(m) Issuance of licenses for the use of trees or stumps for logging tailholds, or the use of existing landings for parking, staging or helispots.

Number of such actions per year:

Approximately 100-125 temporary use authorizations per year.

Why these actions should be exempted:

- ▶ The activities listed are, by their nature, unlikely to have the potential for significant adverse environmental impacts:
 - Such activities are most often limited in scale. They are usually performed in small groups or groups which are dispersed. They are normally performed intermittently or under limited time periods. These factors tend to limit the intensity of the activities and hence the magnitude of their environmental impact.
 - Such activities are unlikely to cause adverse environmental impacts in excess of those created by existing uses. To a greater or smaller extent, these uses exist on public lands whether or not a license is issued. Issuing licenses for their use will cause no greater harm than already exists, nor increase the frequency of the

activities. Issuing licenses will in fact have the benefit of landowners monitoring and controlling such uses.

- ▶ Some of the activities listed under this proposed amendment do not currently have licensing programs. Establishing new licensing programs or public use management plans may be subject to SEPA. If new DNR plans or programs qualify, then the department will perform SEPA.
- 8. Exempting the issuance of certain grants under the Jobs for the Environment program.**

WAC 197-11-800(25) should be changed to exempt the issuance of grants for certain environmental restoration projects under the Jobs for the Environment program.

Proposed Language:

The following subsection to WAC 197-11-800(25) should be added:

(l) Issuance of grants for environmental restoration projects under the Jobs for the Environment Program, unless such projects involve the removal of fifty or more cubic yards of streambed materials or involve realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels that have been naturally abandoned within the twelve months previous to the start of the restoration project.

Number of actions:

- ▶ DNR issues approximately 20-30 JFE grants per biennium.

Why this exemption should be added:

- ▶ This proposed exemption's limiting language parallels current SEPA exemptions for Hydraulic Project Approvals under WAC 197-11-835(3) and WAC 197-11-840(7).
- ▶ As JFE's projects are explicitly designed to provide environmental restoration, it is unlikely that such projects will have significant adverse environmental impacts.
- ▶ Exempting these activities would provide certainty and would avoid unnecessary SEPA review, increasing program efficiency and effectiveness.

9. Issues regarding the intent, interpretation and application of WAC 197-11-305.

In 1993, the Court of Appeals ruled in Snohomish County v. State that otherwise exempt Class I, II and III Forest Practices applications were subject to the limitations of WAC 197-11-305. Prior to that ruling, DNR had assumed that WAC 197-11-305 did not limit the forest practices exemption because that exemption is created by statute. The Court, however, concluded otherwise. Since 1993 DNR has been struggling to apply the limitations of WAC 197-11-305 to forest practices applications.

Recent judicial and administrative decisions concerning the applicability of WAC 197-11-305 have identified a need for a consistent interpretation of this SEPA rule and its application to already-existing exempt actions. Although DNR believes that WAC 197-11-305 is intended to avoid segmentation of proposals where segments can combine to increase the environmental impact of the activities, several issues have not been definitively decided by the courts. For example, if a project requires two governmental approvals that cover essentially the same activities in the same area, does that mean that the activities covered by one permit constitute a "segment" of the overall proposal under WAC 197-11-305's language?

One way of solving inconsistencies is the amendment of WAC 197-11-305 to clarify its scope and meaning. In order to do this, it will be necessary during DOE's rule development process to answer the following questions:

- 1) How does an agency determine pursuant to WAC 197-11-305 that a proposal is a segment of another proposal? and
- 2) Once it is determined that a proposal is a segment of a proposal how does an agency determine if a series of actions are physically or functionally related?

The phrase "physically or functionally related" found in WAC 197-11-305 is not defined, although a similar phrase is used in WAC 197-11-060 to define when proposals are closely related. On several occasions we have been referred by DOE to the language in WAC 197-11-060 as one possible guideline for making this determination. One approach that should be considered is whether amending WAC 197-11-305 by adding an express referral to the language found in WAC 197-11-060(3)(b) will clarify the intent of "physically or functionally related".

DNR is undergoing a thorough review of the application of WAC 197-11-305 to its programs. Because of the complex nature of this issue, and the rule's application to a number of DNR programs, this review is taking a significant amount of time. While the department is not prepared to present specific language at this time for clarifying WAC 197-11-305, we are offering our assistance to work closely with DOE during this rule development process to develop language to clarify the intent and application of this rule.

Inman, Rebecca

From: David Palazzi [DPAL490@gwgate.wadnr.gov]
Sent: Wednesday, December 16, 1998 2:40 PM
To: rinm461@ecy.wa.gov
Subject: SEPA Categorical Exemptions

Rebecca, thanks for hearing me out regarding my questions and possible consideration for a categorical exemption at this late date.

DNR's Aquatic Resources Division is the SEPA lead for the state's commercial geoduck clam harvest. For every harvest we send out a SEPA notice of harvest. No comments are requested. Our management plan and EIS have been long been adopted for the fishery. We also send out a harvest notice to the tribes in the regions where we will be harvesting as part of the regional geoduck management plans.

My questioning if we should be exempt from SEPA is based on the following: the state has an adopted management plan and EIS for the geoduck fishery, the method for harvesting geoduck, the environmental standards and harvest quotas remain the same for every harvest and it is a year round tribal and state commercial fishery. The tribes and state share the geoduck resource on a 50/50 percentage basis. Can the geoduck fishery be considered for categorical exempt from SEPA?

thanks for your help. dp

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RECEIVED

JUN 19 1997

DEPARTMENT OF ECOLOGY
ENVIRONMENTAL REVIEW

STATE OF WASHINGTON

WASHINGTON STATE PARKS AND RECREATION COMMISSION

7150 Cleanwater Lane • P.O. Box 42650 • Olympia, Washington 98504-2650 • (360) 902-8500

FAX (360) 753-1594 • Internet Address: <http://www.parks.wa.gov>

TDD (Telecommunications Device for the Deaf): (360) 664-3133

June 12, 1997

Mr. Neil Aaland, AICP
Washington Department of Ecology
PO Box 47703
Olympia, WA 98504-7703

Dear Mr. Aaland;

Thank you for the opportunity to comment on the proposed revisions to the State Environmental Policy Act Categorical Exemptions, W.A.C. 197-11-800. State Parks administers and co-manages approximately 250,000 acres of land in 246 locations. The natural resource management of our lands as well as repair and maintenance of recreational facilities at these properties is an ongoing process. Over the years we have struggled with the requirements of SEPA for seemingly innocuous projects and been amazed at the exempt levels for other projects with potential for significant adverse impacts.

Below I have listed the exemptions referenced in bold/italics and followed the reference with State Parks' concerns according to the format provided under the April 1997 Focus. State Parks commends Ecology's decision to revise the original SEPA Categorical Exemptions to better fit today's environmental reality, and offers the following for your consideration:

W.A.C. 197-11-800 Categorical Exemptions

(1)(b)(v) *Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.*

Change Proposed - wording revision (clarification)

Proposed Language

Revise exemption to read "*Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder, unless otherwise exempted by this section.*"

Actions/Biennium - N/A

95



Rationale

If construction of a parking lot designed for twenty automobiles requires the excavation or fill of quantities greater than 100 cubic yards, category (1)(b)(iv) would conflict with category (1)(b)(v). The wording change would help clarify the inherent contradiction of conflicting categories.

(2)(c) *Other minor new construction. The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection);*

(c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

Change Proposed - (1) wording revision (deletion)

Proposed Language

remove "... and no new right of way is required, ..."

Actions/Biennium

One action this year.

Categorical Exemptions Under the State Environmental Policy Act - Review Comments
State Parks Comments **Page 3**

Rationale

When adding auxiliary lanes, a new right of way does not change the class of an action in terms of impacts, and should not change exemption status for certain projects. The threshold should be dependent upon the size of the development (*where capacity is not significantly increased*). Because the threshold of the development is already built into the exemption (though it could be quantified), no new language is required.

Change Proposed - (2) wording revision (clarification)

Proposed Language

add "on lands seasonally or periodically covered by water" to read "*installation of catch basins and culverts on lands seasonally or periodically covered by water,*"

Actions/Biennium

Unknown.

Rationale

The best design for culverts and catch basins will use natural drainage patterns. Areas that require drainage management can involve lands wholly or partly covered by water. There appears to be a contradiction with this exemption because installation of catch basins and culverts on lands covered by water is not exempt. By adding language that exempts the installation of catch basins and culverts on lands seasonally or periodically covered by water, this exemption will better reflect why culverts and catch basins are built (i.e., there is a need to channel water that exists on the site).

(2)(g) *The installation of impervious underground tanks, having a capacity of 10,000 gallons or less.*

Change Proposed - deletion/addition

Proposed Language

Remove "underground tanks" replace with "above ground storage tanks" or simply add "above ground storage tanks to read "*The installation of impervious underground or above ground storage tanks, having a capacity of 10,000 gallons or less.*"

Actions/Biennium

Removal of 20 UGSTs, replaced with 20 AGSTs during the 1995/1997 biennium. 21 UGSTs are proposed to be replaced this biennium with 21 AGSTs.

Rationale

Recent research regarding impervious underground storage tanks (UGSTs) indicates they are not as impervious as once thought. When a major project is planned on a piece of property, a Level 1 Environmental Analysis is usually required. This analysis requires a data search of UGSTs within a certain area of the property. If SEPA was required for all UGSTs, the SEPA record would supplement existing sources of UGST locations and it would be easier to locate UGST locations. Above ground storage tanks (AGSTs), however, are not currently considered exempt; yet, with appropriate neutral colors, AGSTs can have less impacts than UGSTs. This exemption should be changed to apply only to AGSTs, or at least should include them.

- (3) *Repair, remodeling and maintenance activities. The following activities shall be categorically exempt except: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:*
- (a) Dredging;*
 - (b) Reconstruction/maintenance of groins and similar shoreline protection structures; or*
 - (c) Replacement of utility cables that must be buried under the surface of the bedlands. Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.*

Change Proposed - (1) wording revision (deletion)

Proposed language

"Repair, remodeling and maintenance activities. The following activities shall be categorically exempt except:"

Actions/Biennium - N/A.

98

done
last
time

Rationale

The word "except" in this sentence is confusing.

Change Proposed - (2) wording revision (addition)

Proposed Language

This exemption should include language that more closely mirrors NWP #3 that allows for "changes or deviations in the structures, configuration or filled area due to changes in materials, construction techniques or current construction codes or safety standards which are necessary to make repairs, rehabilitation or replacement, so long as the environmental effects resulting from such repairs, rehabilitation or replacement are minimal." The change in language should apply to all projects, whether or not covered by water.

Actions/Biennium

Unknown.

Rationale

This change will stream-line federal permits and SEPA exemptions for improvements made in technology. This exemption would also provide an incentive for contractors to use newer materials with less impacts to the environment (e.g., concrete piles instead of creosote treated wood).

Change Proposed - (3) wording revision (addition)

Proposed Language

Categorical exemption #3 has a provisor that states "... *except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement may be exempt (examples include...*" The examples should be inclusive of all "minor repair or replacement" work completed on lands covered by water which are categorically exempt from SEPA to avoid confusion of the exemption level.

Actions/Biennium

Unknown.

(99)

Rationale

There is too much room for interpretation in this exemption without an inclusive set of examples. Also, some repair activities at the same level as other minor repair work listed, that are not specifically mentioned under this provisor, may not be considered exempt by all project reviewers (e.g., repair/maintenance of boardwalks in wetlands or on lands covered by water.)

Change Proposed - (4) wording revision (clarification)

Proposed Language

A distinction must be made between **dredging**, not allowed under categorical exemption #3, and (24)(f) and (25)(I); "*Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition*", and "*Periodic use of chemical or mechanical means to maintain public parks and recreational land,*" respectively. Either specifically exempt minor dredging activity (see NWP #19) required for maintenance of boat ramps, culverts and draineways, or clarify (24)(f) and (25)(I) as to what "*mechanical means to maintain...*" represents.

Actions/Biennium

Unknown.

Rationale

Culvert maintenance, clearing drainage ditches, and/or clearing materials from boat ramps can be considered dredging by a project reviewer and mechanical means to maintain land by another. This distinction should be clarified so the exemptions complement rather than contradict each other.

Change Proposed - (5) wording revision (addition)

Proposed Language

"...except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). If work is to be accomplished during sceduled drawdowns on lands normally covered by water, the exempt level shall be the same as the level of work listed above for lands not covered by water. The following maintenance activities shall not be considered exempt under this subsection: ..."

Actions/Biennium

Approximately 20 repair/replacement activities per biennium.

Rationale

Many stretches of the Columbia and Snake Rivers are drawn down to facilitate dam repair and maintenance work. Drawdowns provide an excellent opportunity to perform repair/maintenance on recreational facilities otherwise inaccessible to maintenance crews (e.g., fill holes adjacent to boat launches created by prop wash, resand beaches, pile replacement/anchoring.) Including an exempt level for repair/maintenance work to be accomplished in the dry on lands normally covered by water in this section would assist the maintenance crews ability to review, report, apply for necessary permits and perform work in one drawdown cycle.

- (4) *Water rights. The following appropriations of water shall be exempt, the exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation:*
- (a) *Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.*
 - (b) *Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of ground water, for any purpose.*

Change Proposed - word revision (deletion/addition)

An appropriation of 50 cfs in a small river represents a potentially significant adverse impact to the environment. This exemption should be changed to reflect percentages of instream flows so that it may apply to all rivers alike.

- (14)(d) *Business and other regulatory licenses. The following business and other regulatory licenses are exempt:*
- (d) *All licenses to operate or engage in charitable or retail sales and service activities, including but not limited to peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.*

Change Proposed - wording revision (addition)

Proposed Language

State Parks is claiming categorical exemption for the issuance of permits for filming in state parks under this category because the exemption is not all inclusive. It would help to clear confusion if this exemption was changed to include more activities that fit the exempt status.

Actions/Biennium

Approximately 20 per biennium.

Rationale

State Parks reviews all film permits to assure proposed activities do not adversely impact park visitors, natural resources, or property used during filming. Filming in a State Park is minor in nature and should be addressed by SEPA specifically.

(24)(f) *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.*

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

Change Proposed - wording revision (addition)

Proposed Language

“Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition” should include amount of material that can be dredged from storm water facilities. This threshold should be consistent with exemption (1)(b)(v).

Categorical Exemptions Under the State Environmental Policy Act - Review Comments
State Parks Comments

Page 9

Actions/Biennium

Unknown.

Rationale

(See rationale for (1)(b)(v) and ((3) - proposed change 3) above.)

- (25)(a)** *Natural resources management. In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:*
(a) All Class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder.

Change Proposed - wording revision (clarification)

Proposed Language

Recent conversations with DNR indicate that this exemption reflects the issuance of forest practice permits not the action of forest practices as defined by RCW 76.09.050. DNR has specific criteria to determine exempt levels for class I, II, III forest practices. This categorical exemption should reflect DNR's thresholds.

Actions/Biennium

Unknown.

Rationale

This exemption should reflect the expertise of DNR's SEPA unit.

- (25)(b)** *(b) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.*

Change Proposed - wording revision (addition)

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Proposed Language

“Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been grazed within the previous ten years.”

Actions/Biennium

Unknown.

Rationale

The issuance of grazing leases on lands that have been grazed, not necessarily under a lease, should be considered exempt. State Parks has purchased land that was historically grazed for decades with an understanding between the previous landowner and State Parks that grazing would continue on the land. Under the strictest interpretation of this category, State Parks must issue a SEPA determination before issuing a grazing lease for the same property, often times for activities less impacting than the original grazing practice.

(25)(I) *(I) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.*

Change Proposed - wording revision (addition)

Proposed Language

Periodic use of chemical or mechanical means to maintain public park and recreational land should be clarified. State Parks has used this exemption to include activities on lands wholly or partially covered by water. Repositioning of woody debris within a watercourse, beach sanding, clearing material off of boat launches and clearing culverts should be listed as examples under this category.

Actions/Biennium

Unknown.

Rationale

(See rationale for (1)(b)(v) and ((3) - proposed change 3) above.)

(25)(j) (j) *Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.*

Change Proposed - wording revision (deletion/addition)

Proposed Language

This exemption should be changed to: "*Issuance of rights of way, easements and use permits to use existing roads in non-residential areas so long as the activity does not interfere with normal public use of the property.*"

Actions/Biennium

67 License/permits/easements for the 95-97 Biennium.

Rationale

The use of existing roads does not reveal level of impact. However, whether or not the activity interferes with normal public use of the property does reveal impact and should be considered.

Thank you for considering these changes. If you would like to discuss specific comments, please feel free to call me at 902-8629.

Sincerely,



Bill Koss, Assistant Manager,
Environmental Programs

cc: Al Jacobson, Acting Programs Management Chief
Regional C & M Superintendents
Terry Patton, Environmental Planner, Horticulture
Javier Figueroa, Lands Agent, Research and Long Range Planning
Mark Schulz, Eastern Region Environmental Specialist
John Purcell, Western Region Environmental Specialist



**Washington State
Department of Transportation**

Sid Morrison
Secretary of Transportation

Transportation Building
P.O. Box 47300
Olympia, WA 98504-7300

June 13, 1997

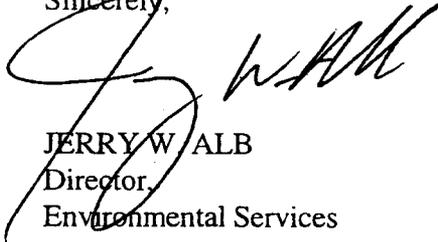
Neil Aaland
Department of Ecology, Environmental Review Section
PO Box 47703
Olympia WA 98504-7703

Dear Mr. Aaland:

Thank you for the opportunity to participate, as an agency of government, in the review of the State Environmental Policy Act categorical exemptions. The Washington State Department of Transportation (WSDOT) is committed to assuming a leadership role in meeting the challenge of developing processes to address transportation needs in a cost effective and environmentally responsible manner. To that end, WSDOT is working to integrate and streamline the environmental regulations while maintaining the integrity of both the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA). Part of that endeavor is to provide for consistency between federal and state regulations.

In an effort to provide for timely and cost-effective environmental compliance and review I respectfully submit the following comments to the SEPA Exemptions as described in WAC 197-11-800. These recommended changes conform to CFR 771.117 and enable both SEPA and NEPA to be consistent with one another, thus eliminating repetitious and overlapping documentation and reducing the review time required to satisfy the environmental regulations.

Sincerely,

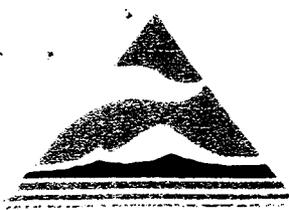


JERRY W. ALB
Director,
Environmental Services

JK:dm
Enclosure

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02



PUGET SOUND AIR POLLUTION CONTROL AGENCY
KING COUNTY ▲ KITSAP COUNTY ▲ PIERCE COUNTY ▲ SNOHOMISH COUNTY

March 14, 1997

Neil Aaland
Air Quality Program
Department Of Ecology
PO Box 47703
Olympia WA 98504-7703

Dear Mr. Aaland:

WSR 97-03-130
Pre-Proposal Statement of Inquiry
Possible Amendments to SEPA Rules

The Puget Sound Air Pollution Control Agency (PSAPCA) appreciates the opportunity to comment on the Ecology's review of the categorical exemptions to SEPA.

We suggest that Ecology categorically exempt minor new source review permits for air emissions issued pursuant to Chapter 70.94 RCW, the Washington Clean Air Act. We do not consider these actions to be "potential major actions significantly affecting the quality of the environment."

Ecology and local air pollution authorities issue a total of about one thousand, mostly minor, air permits each year. PSAPCA issued 687 permits during 1996. Many do not require permits from any other agencies. Others, involving minor new construction, cannot be exempted from threshold determination under WAC 197-11-800(1)(a) and (2) solely because they require an air discharge permit.

Accordingly, PSAPCA suggests that Ecology define the types of air permitting activities that constitute "potential major actions significantly affecting the quality of the environment" as those that involve a "significant net increase in emissions" as defined under WAC 173-400-030(67) or require a "second tier analysis" as defined under WAC 173-460-020(16).

Ecology and local air pollution authorities are required under WAC 173-400-171 and WAC 173-460-090 to provide public notice prior to the approval or denial of these permits. These emission thresholds are also consistent with the federal Clean Air Act and the major new source review programs established under 40 CFR Part 51.

One option for exempting minor air permit from threshold determination would be to amend WAC 197-11-800 as follows:

(26) Issuance of minor air permits. The issuance of air permits by ecology or local air pollution control authorities pursuant to RCW 70.94.152 and WAC 173-400-110, except for those which qualify as a "significant net increase in emissions" under WAC 173-400-030(67) or require a "second tier analysis" under WAC 173-460-090.

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Dennis J. McLerran, Air Pollution Control Officer
B O A R D O F D I R E C T O R S

Commissioner, Kitsap County
Member at Large
Mayor, Everett

Mayor, Bremerton
Snohomish County Council
King County Executive

Mayor, Tacoma
Mayor, Seattle
Pierce County Executive

The provisions of WAC 197-11-800(1)(a) and WAC 197-11-800(2) could also be amended as follows:

(1) *Minor new construction - Flexible thresholds.*

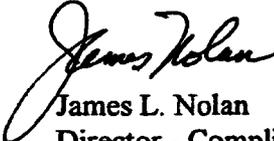
(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any non-exempt license governing the emissions to the air or discharges to water is required.....

(2) *Other minor new construction.* The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any non-exempt license governing emissions to the air or discharges to water is required.....

These changes would allow other licensing agencies to proceed with actions that have little or no air quality significance but still require an air permit.

PSAPCA is very interested in working with Ecology on this issue and other SEPA issues relating to air quality. If we can be of any help, please feel free to contact me at (206) 689-4053 or Dave Kircher at (206) 689-4050.

Sincerely,

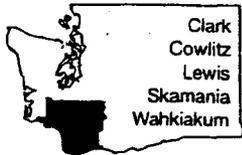

James L. Nolan
Director - Compliance

JLN:ls

Enclosure

cc: Joe Williams, Ecology

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Southwest Air Pollution Control Authority

1308 NE 134th Street • Vancouver, WA 98685-2747
(360) 574-3058 • Fax: (360) 576-0925
TDD Accessible

022

June 6, 1997

Mr. Neil Aaland, Senior Planner
Department of Ecology
Environmental Review Section
P O Box 47703
Olympia, WA 98504-7703

Subject: Comments Pertaining to Categorical Exemptions under the State Environmental Policy Act (SEPA) Rules

Dear Mr. Aaland:

We appreciate the opportunity to comment on Ecology's review of the categorical exemptions to SEPA.

We suggest that Ecology categorically exempt minor new source review permits for air emissions issued pursuant to Chapter 70.94 RCW, the Washington Clean Air Act. We do not consider these actions to be "potential major actions significantly affecting the quality of the environment."

Ecology and local air pollution authorities issue a total of about one thousand, mostly minor, air permits each year. SWAPCA issues approximately 150 of these permits per year. Many do not require permits from any other agency. Those involving minor new construction that do not require permitting or SEPA review by another agency cannot be exempted by SWAPCA based on a threshold determination under WAC 197-11-800(1)(a) and (2) solely because they require an air discharge permit.

Accordingly, SWAPCA agrees with PSAPCA's comments in suggesting that Ecology define for SEPA purposes the types of air permitting activities that constitute "potential major actions significantly affecting the quality of the environment" as those that involve a "significant net increase in emissions" as defined under WAC 173-400-030(67) or require a "second tier analysis" as defined under WAC 173-460-020(16). However, even under this proposal there is nothing additional to be achieved by subjecting even these types of activities to the SEPA process that is not already addressed under RCW 70.94. RCW 70.94 provides for protection of the environment and assurance that there be no significant impact to the environment as a result of air emissions. Any such impacts have to be mitigated under the provisions of RCW 70.94. Subjecting these projects to additional paperwork, review processes, and time constraints for no perceived potential environmental impact is not warranted under regulatory streamlining statutes enacted by the Washington Legislature and the Paperwork Reduction Act.

Ecology and local air pollution authorities are required under WAC 173-400-171 and WAC 173-460-090 to provide public notice prior to the approval or denial of permits that have a net significant increase in emissions. These emission thresholds are also consistent with the federal Clean Air Act and the major new source review programs established under 40 CFR Part 51.

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Mr. Neil Aaland

Page 2

One option for exempting minor air permits from threshold determination would be to amend WAC 197-11-800 as follows:

(9)(c) The issuance of minor new source review air permits by ecology or local air pollution control authorities pursuant to RCW 70.94.152, WAC 173-400-091, 110, 112, 113, 114, WAC 173-460-040, WAC 173-490-090, and sources covered under WAC 173-491 are exempt except for those which qualify as a "significant net increase in emissions" under WAC 173-400-030(67) or require a "second tier analysis" under WAC 173-460-090.

The provisions of WAC 197-11-800(1)(a) and WAC 197-11-800(2) could also be amended as follows:

- (1) *Minor new construction - Flexible thresholds.*
 - (a) The exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any non-exempt license governing the emissions to the air or discharges to water is required....
 - (2) *Other minor new construction.* The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any non-exempt license governing emissions to the air or discharges to water is required....

These changes would allow other licensing agencies to proceed with actions that have little or no air quality significance but still require an air permit.

SWAPCA is very interested in working with Ecology on this issue and other SEPA issues relating to air quality. If we can be of help, please feel free to contact me or Paul Mairose at 360-574-3058, ext. 30.

Sincerely,



Paul Mairose, P.E.
Chief Engineer

(10)



June 13, 1997

Mr. Neil Aaland, AICP
Washington State Department of Ecology
P.O. Box 47703
Olympia, WA 98504-7703

Re: SEPA Categorical Exemptions – Opportunity to Amend

Dear Mr. Aaland:

Thank you for the opportunity to review the State Environmental Policy Act (SEPA) Categorical Exemptions. The Port of Seattle has reviewed the SEPA Categorical Exemptions (WAC 197-11-800 through -890) and has the following comments:

1. WAC 197-11-800
Proposed Exemptions within Designated Urban Growth Areas (SHB 1474)

New Exemption: In most cases, it appears that Ecology uses their discretion to raise minimum exempt levels to maximum exempt levels under WAC 197-11-800 (1), Minor New Construction – Flexible Thresholds, and add a new division of land exemption. Where no maximum exempt level is indicated, the minimum cannot be exceeded. These amendments will apply to the Port of Seattle, due to its location within an Urban Area. The Port of Seattle would be in favor of increasing the minimum exempt landfill/excavation quantity.

Type of Construction *	Existing Exemptions		SHB 1474	
	Minimum	Maximum	Minimum	Maximum
Residential	4 units	20 units	10 units	20 units
School, commercial, storage buildings, etc.	4,000 sq ft and 20 parking spaces	12,000 sq ft and 40 parking spaces	8,000 sq ft and 40 parking spaces	12,000 sq ft and 40 parking spaces
Parking lots	20 spaces	40 spaces	40 spaces	---
Landfill/excavation	100 cu yd	500 cu yd	500 cu yd	---
Division of land			9 lots	---

* Except when undertaken wholly or partly on lands covered by water.



2. WAC 197-11-800 Categorical Exemptions

Minor New Construction

(1)(b) "The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water"

Wording Revision: It is unclear from reading this statement whether it is intended to include "wetlands" in the definition of "lands covered by water," or perhaps certain categories of wetlands. The Port requests clarification of this statement. The Port would suggest that Ecology search the Categorical Exemptions section in its entirety, since this language appears more than once. See also: WAC 197-11-800 (24), Utilities.

3. WAC 197-11-800 Categorical Exemptions

Minor New Construction

(1)(c) "Cities, towns or counties . . ."

Wording Revision: The Port suggests that the language of this subsection be amended to read "*Cities, towns, counties, or special use districts (e.g., port districts, school districts)* . . . " Port and school districts frequently have their own SEPA resolutions (implementation guidelines) and act as their own lead agencies.

The Port also suggests that Ecology search WAC 197-11 in its entirety, since the "*cities, towns and counties*" language appears in several places. Within the Categorical Exemptions section, see also: WAC 197-11-800 (22), Adoption of Noise Ordinances.

4. WAC 197-11-800 Categorical Exemptions

(1) Minor New Construction - Flexible Thresholds and (2) Other Minor New Construction

New Exemption: In general, the Port is often required to go through expensive and time-consuming reviews of minor actions with no significant environmental effects and issue Determination of No Significance's (DNSs) simply to meet the procedural requirements. To be meaningful, the SEPA process should focus on issues that need review and agency attention. Recent examples of minor actions at the Port of Seattle that did not have significant impacts but required a DNS include:

- DNS for the Pier 66 satellite down-link (its 12.5-foot diameter exceeded the 12-foot maximum for categorical exemption by six inches),
- Minor changes in use allocation within the Pier 66 mixed-use project to meet Port and tenant requirements,

- Minor work (such as installation of four pilings) at Pier 48.

The Port believes that the projects listed above qualify as "...those types which are not major actions significantly affecting the quality of the environment" (See RCW 43.21C.110) and are consistent with relevant statutory provisions and court decisions. The Port would like to see an attempt to include minor changes such as those listed above in the categorical exemptions.

5. **WAC 197-11-800 Categorical Exemptions**
 - (3) **Repair, Remodeling and Maintenance Activities**
 - (a) **Dredging**

New Exemption: Dredging is not categorically exempt in the existing SEPA guidelines. The Port would like to request exemption for berth maintenance dredging with some maximum threshold quantity. The exemption might include a caveat such as: "... where activities with the potential to contaminate sediments have not occurred since the berth area was last dredged."

The Port believes that berth maintenance dredging receives adequate mitigating conditions through permit requirements, and therefore doesn't need separate SEPA review. Note that this type of exemption would be similar with the Department of Game (now Fisheries and Game) exemption from silt and debris removal from boat launches, docks and piers (WAC 197-11-840[9b]).

6. **WAC 197-11-800 Categorical Exemptions**
 - (15)(j) "The activities of school districts . . ."

Wording Revision: There is no comparable subsection pertaining to the activities of port districts. The Port would be interested in language regarding routine activities that would be appropriately exempt from SEPA review.

7. **WAC 197-11-835 Department of Fisheries, WAC 197-11-840 Department of Game**

Clarification: The Port would like to know whether Ecology will combine these sections, since these two agencies have now been combined.

Thank you again 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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Sincerely,

Barbara Hinkle px

**Barbara Hinkle
Health Safety and Environmental Management
Port of Seattle**

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Port of Seattle

October 28, 1998

Neil Aaland
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Aaland;

Thank you for the opportunity to participate in the Department of Ecology's review of categorical exemptions under SEPA. I would like to request that Ecology establish an ad-hoc group to provide input and advice on technical issues related to proposals that would affect ports. Eric Johnson, Washington Public Ports Association, has indicated that he also supports such a committee and will assist in identifying individuals to participate.

Please contact Signe Gilson (206/632-3882) to discuss the next steps in this process.

Sincerely,

Barbara Hinkle,
Senior Environmental Specialist

**WASHINGTON
PUBLIC
PORTS**
ASSOCIATION



BY FACSIMILE
(original mailed)

October 30, 1998

Port of Allyn
Port of Anacortes
Port of Bellingham
Port of Berton
Port of Bremerton
Port of Brewster
Port of Camas-Washougal
Port of Centralia
Port of Chehalis
Port of Clallam County
Port of Clarkston
Port of Columbia
Port of Coupeville
Port of Dewatto
Port of Douglas
Port of Edmonds
Port of Ephrata
Port of Everett
Port of Friday Harbor
Port of Garfield
Port of Grandview
Port of Grapeview
Port of Grays Harbor
Port of Hoodport
Port of Ilwaco
Port of Ilwaco
Port of Indianola
Port of Kahlslus
Port of Kalama
Port of Kennewick
Port of Keyport
Port of Kingston
Port of Klickitat
Port of Longview
Port of Lopez
Port of Manchester
Port of Mattawa
Port of Moses Lake
Port of Olympia
Port of Othello
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Port of Pend Oreille
Port of Peninsula
Port of Port Angeles
Port of Port Townsend
Port of Poulsbo
Port of Quincy
Port of Ridgefield
Port of Royal Slope
Port of Seattle
Port of Shelton
Port of Silverdale
Port of Skagit County
Port of Skamania County
Port of South Whidbey Island
Port of Sunnyside
Port of Tacoma
Port of Tahuya
Port of Tracyton
Port of Vancouver
Port of Wahkiakum Co. #1
Port of Wahkiakum Co. #2
Port of Walla Walla
Port of Warden
Port of Waterman
Port of Whitman County
Port of Willapa Harbor
Port of Woodland

Mr. Neil Aaland
Environmental Review Section
Department of Ecology
PO Box 47703
Olympia, WA 98504-7703

Dear Mr. Aaland, *Neil*

The Washington Public Ports Association is interested in working with the Department of Ecology as it reviews categorical exemptions under the State Environmental Policy Act (RCW 43.21C). Public port districts have a great deal of experience with SEPA, and can draw on this experience to suggest improvements to the current list of categorical exemptions.

In particular, we are interested in discussing modifications to the existing process that will result in a more understandable and streamlined process, accompanied by the same level of environmental protection. Obvious categories to address include minor maintenance dredging, small-scale excavations, and small building modifications.

We would like to meet with you and your staff to talk more about how you would like us to proceed in this effort. You may reach me at (360) 943-0760, or at ericj@washingtonports.org.

Yours truly,

WASHINGTON PUBLIC PORTS ASSOCIATION

Eric D. Johnson
Environmental Affairs Director

c: Lloyd Cahoon, Port of Port Townsend
Barbara Hinckle, Port of Seattle

Executive Committee
Jack Fabulich
President
Jim Knapp
Vice President
John Love
Secretary
Wendy Paulin
Treasurer
Paige Miller
Past President
Paul Vick
Past President

Patrick Jones
Executive Director

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Signe Gilson, A.I.C.P.
4218 Astworth Avenue North
Seattle, WA 98103
206/632-3882 phone
206/547-1803 FAX

.....
facsimile transmittal

To: Rebecca Inman, Ecology Fax: 360/407-6904

From: Signe Gilson Date: December 11, 1998

Re: List of Proposed SEPA Exemptions

cc: Pages: 2

Urgent For Review Please Comment Please Reply Please Recycle

Notes: Attached are the Categorical Exemption revisions the WPPA would like to pursue. In quickly comparing these against the July 28 list of scoping comments already received, it looks like all of them are included. There are others on the July 28 list that the WPPA may support as well. Thanks.

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.....

1. **Minor new construction - Flexible thresholds [WAC 197-11-800(1)(c)]**

Cities, towns or counties may adopt higher exemption thresholds up to a maximum specified (e.g., 500 cubic yards excavation, 12,000 square foot buildings, etc.). Add "special districts (e.g., port districts, school districts, sewer/water districts)" as agencies that can adopt flexible thresholds up to the stated maximums.

2. **Other minor new construction [WAC 197-11-800(2)(e)]**

Additions, modifications to, or replacement of buildings or facilities exempted by subsections (1) Minor new construction, and (2) Other new construction, are exempt. Revise the exemption to include minor additions and modifications to certain non-exempt facilities. Such additions and modifications could include heating and cooling equipment, ADA compliant ramps, washrooms, transformer vaults, mechanical penthouses, etc.

3. **Other minor new construction [WAC 197-11-800(2)(i)]**

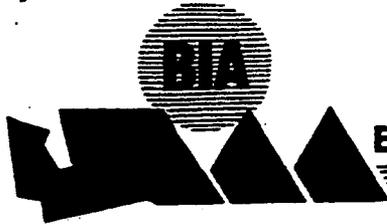
Installation of hydrological measuring devices is currently exempt. Add an exemption for installation of noise and air quality monitoring devices.

4. **Repair, remodeling and maintenance activities [WAC 197-11-800(3)]**

Facility alterations involving "no material expansion" or "changes in use" are exempt. Provide examples of non-material expansions and examples of alterations not considered changes in use.

5. **Repair, remodeling and maintenance activities WAC 197-11-800(3)(a)**

Maintenance dredging is not currently exempt. Revise to exempt dredging undertaken to achieve a depth that previously existed and when dredged material is disposed at an approved site.



Building Industry Association of Washington

Post Office Box 1909 • Olympia, WA 98507 • 1-800-228-4229 • FAX (360) 352-7801 • www.biaw.com

PRIORITY LEGISLATIVE ISSUES FOR 1998

SEPA Categorical Exemptions

Judy Walker

The cost of complying with State Environmental Policy Act regulations is a tremendous burden to producing affordable housing in Washington State. These regulations are unnecessary and often redundant on small developments.

BIAW supports legislation to expand SEPA categorical exemptions for the following types of projects:

- ▶ 20 or fewer residential dwelling units in the Urban Growth Area
- ▶ Commercial structures 8,000 square feet or less in UGA
- ▶ Parking lots of 40 or fewer spaces for automobiles
- ▶ Excavation of 500 cubic yards or less
- ▶ Division of land into nine lots or less

Inventory of Buildable Land

While Washington's population is steadily increasing, the amount of land available for housing has steadily decreased because of the Growth Management Act. The GMA requires local government to plan for growth, but does not say how this growth will be accommodated.

BIAW believes local government should inventory all buildable lands so the state's population can be adequately housed. Although this inventory has begun in most areas, BIAW supports measures requiring local government to take action to provide more buildable land if it is determined through an annual inventory that an inadequate amount of buildable land is available.

Infrastructure Financing/Elimination of Impact Fees

Infrastructure as a whole in Washington State is lacking. Not only are our roads and highways failing to meet adequate standards, but so are our schools, parks and water and sewer systems. While BIAW supports efforts to adequately fund schools and infrastructure, it would be foolish to support increasing funds for local government without first eliminating local governments' ability to charge impact fees. Impact fees have become a millstone around the neck of affordable housing. Fees can total as much as \$10,000 to \$18,000 per house.

Infrastructure financing will be separated into three issues for the upcoming session.

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- **School Impact Fees**

BIAW will introduce legislation to provide more money for school construction and eliminate school impact fees. BIAW's proposal would give local government the option of keeping 10% of the State portion of the Real Estate Excise Tax in exchange for local elimination of school impact fees. In this biennium, the REET will generate roughly \$570 million. The additional infrastructure dollars (\$57 million) will far outweigh what local jurisdictions collect through impact fees. Currently, school districts collect \$14 to \$20 million per biennium in impact fees.

- **Transportation Impact Fees**

BIAW opposes transportation impact fees and concurrency and supports meeting transportation needs through traditional sources of funding such as the Motor Vehicle Fuel Tax and the Motor Vehicle Excise Tax.

- **Utility Hook-Up Charges**

BIAW opposes the imposition of utility hook-up charges in excess of actual physical cost and supports rate based funding for utility capital expansion and utility hook-ups for new residential development. BIAW will introduce legislation on this issue.

HB 1649 - Growth Management Act Reform

Washington State's Growth Management Act (GMA) is beginning to have a devastating impact on affordable housing. The GMA has created an artificial land supply shortage throughout the state. And, with the GMA Hearing Boards draconian decisions to override local government's control over the planning process, the GMA is being used to stop growth, not manage it.

BIAW will attempt to pass comprehensive GMA reform legislation which does the following:

- ▶ limits the regulation of critical areas
- ▶ requires cities to provide water and sewer without conditioning a permit application
- ▶ establishes time certain dates for the issuance of permits
- ▶ requires local government to approve permits (outside urban growth areas) for single family residences if the applicant has approved water, sewer/septic tank system

HB 1148 - Growth Management Hearing Boards

When the GMA passed in 1990, the Legislature drafted express provisions that encouraged local control and "bottom up" planning. All comprehensive plans were presumed to be valid upon adoption. The GMA Hearing Boards have usurped the role of the Legislature by making public policy and have interfered with the role of local government in the planning process. To date, the

three GMA Hearing Boards have invalidated in total or in part comprehensive plans of eleven Washington Counties.

BIAW supports HB 1148 which will remove the Boards' authority to invalidate comprehensive plans.

Unemployment Compensation

In the 1998 legislative session, non-seasonal employers will attempt to increase unemployment compensation rates on the construction industry and other seasonal employers. While unemployment compensation rates for the construction industry are high compared to non-seasonal employers, the rates for construction are not as high as they could be because of subsidization throughout the state employer base. The unemployment rate for non-seasonal is relatively low, but is higher because of this subsidization.

Non-seasonal employers will support legislation in 1998 to lower their unemployment rates. Unfortunately, this would be at the expense of seasonal employers. BIAW, the agricultural and commercial construction industries, believe that before rates are increased, the system must first be reformed. Because of Washington's liberal benefits structure, the state has the 4th most expensive unemployment system in the nation. A tax shift between the seasonal and non-seasonal employers would not only be unfair, but would be senseless without first reforming the current unemployment system. BIAW will oppose any increase in unemployment compensation premiums until benefits are paid on actual wages.

Environmental Law Support Associates

Peter Goldman, Director/Attorney at Law
705 Second Avenue
Hoge Building, Suite 1200
Seattle, WA 98104
Phone: (206) 223-4088
Fax: (206) 223-4280
E-mail: pgenvsupp@telebyte.com

June 4, 1997

Neil Aaland, Senior Planner
Department of Ecology
Environmental Review Section
PO Box 4773
Olympia, WA 98504-7703

Re: DOE SEPA Rules, WAC 197-11

Dear Mr. Aaland:

Thank you for the opportunity to comment on the DOE's recent Preproposal Statement of Inquiry regarding its SEPA rules, WAC 197-11.

In conjunction with the Sierra Club Legal Defense Fund, Environmental Law Support Associates represents the Alpine Lakes Protection Society (ALPS) in an appeal of a forest practice permit granted to Plum Creek Timber Company for a section of land (Scatter Creek) directly adjacent to the Alpine Lakes Wilderness area. We just completed a four-day hearing on this matter before the Forest Practices Appeals Board (FPAB).

During this hearing, the parties extensively briefed and argued the scope of environmental review offered by WAC 197-11-305. In short, let me say this: were it not for WAC 197-11-305, ALPS would not have had an opportunity to bring to the FPAB's attention the significant adverse impacts on recreation and wildlife that are likely to be the result of Plum Creek's proposed forest practice. Accordingly, for the reasons that follow, I urge the DOE not to limit or modify WAC 197-11-305 review, as requested in a letter dated April 29, 1997 from the Washington Forest Protection Association (WFPA).

At the outset, because I assume you are very familiar with the rule, I will only briefly summarize the operation of WAC 197-11-305. Furthermore, because my experience with WAC 197-11-305 has been in the context of forest practice law, I will confine my analysis to this subject area.

The SEPA statute gives the DOE the authority to categorically exempt categories of governmental actions from SEPA. RCW 43.21C.110

(121)

(a). In the case of forest practices, both SEPA and the Forest Practices Act (FPA) exempt Class I, II, and III forest practices from SEPA review by statute. RCW 43.21C.037 (1); 76.09.050. The FPA requires the Forest Practices Board (FPB) to promulgate rules classifying the different types of forest practices. RCW 76.09.050 (1).

Under these regulatory definitions, a Class III is any forest practice other than Class I, II and IV. At the same time, by statute, Class III's must not "have a potential for a substantial impact on the environment;" if they do, they are not exempt from SEPA. RCW 76.09.050 (1).

If the question for the DNR in every forest practice case was whether a proposed forest practice could significantly and adversely affect the environment, WAC 197-11-305 might not be as critical to environmental protection in forest practice cases. However, the Forest Practice Rules contain several provisions which administratively convert Class IV-Special forest practices into Class III forest practices regardless of actual impacts. For example, all forest practices conducted in areas which have undergone a "watershed analysis" become Class III.

Because it sweeps virtually all forest practices that are conducted within watershed administrative units into categorically-exempt Class III status, the Class IV-Special rule as written severely abridges meaningful environmental review of forest practice applications. For example, in our case (ALPS v. DNR and Plum Creek, FPAB 97-4), Plum Creek conducted a watershed analysis in the Upper Cle Elum Watershed. This fact alone converted its forest practices application from Class IV-Special to Class III. If not for WAC 197-11-305, which the Forest Practice Board adopted (WAC 222-10-050), ALPS would never have had the opportunity to show the FPAB the potentially adverse impact of this project on at least some aspects of the environment.

Fortunately, the FPAB in our case held that WAC 197-11-305 permitted ALPS to show that Plum Creek's proposed forest practice could have a significant adverse impact on aesthetics, recreation and wildlife (but not fish, water quality or capital resources). We argued that the effects of Plum Creek's road and subsequent timber harvest warranted review under WAC 197-11-305. The Board agreed that WAC 197-11-305 envisioned this very scenario:

We see no intent by the Legislature to disregard the impact on the environment which review under WAC 197-11-305 may disclose from time to time. To the contrary, the application of WAC 197-11-305 is consistent with the statutory framework which confines SEPA exemptions to

those forest practices which will not have the potential for substantial impact on the environment.

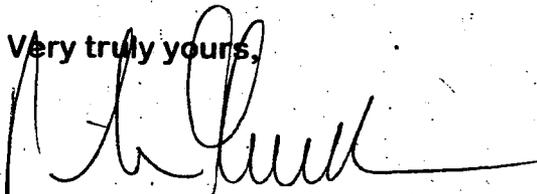
The Board's finding is correct. The Legislature never intended forest practices which could pose a significant adverse effect on the environment to be categorically exempt from SEPA. Thus, WAC 197-11-305 provides a critically important, albeit incomplete, safety valve to ensure that no such forest practice escapes SEPA review.

Bill Wilkerson's letter to you, dated April 29, 1997, states that WAC 197-11-305 exceeds the authority of the DOE because an administrative rule cannot impose SEPA review on actions which the Legislature has categorically exempted. In the case of forest practices, this is incorrect. As stated above, what is and what is not a Class III forest practice is an administrative decision governed by rules promulgated by the Forest Practices Board. If the FPB has the authority to decide what is and what is not a Class III application, it likewise has the authority to promulgate a rule permitting SEPA review when categorically exempt activities collectively present a risk of harm to the environment. Moreover, as previously discussed, the Legislature never intended any forest practices that may have significant adverse effects on the environment to be statutorily or administratively exempt from SEPA.

In summary, please do not be misled by those writing on behalf of the timber industry to "clarify" SEPA rule 197-11-305. Their true motivation appears to be to completely exempt forest practices, even those which may significantly affect the environment, from SEPA review. This runs counter to the Legislature's express determination that forest practices which may significantly and adversely affect the environment warrant SEPA review. And it would also silence groups, such as ALPS, which strive to inform administrative agencies of forest practices that may harm the environment.

I appreciate your attention to these facts. Please feel free to contact me if you have any questions.

Very truly yours,



Peter Goldman



ALPINE LAKES
protection society

Len Gardner
521 N. 74th St.
Seattle, WA 98103
206-783-6666

July 8, 1997

Neil Aaland, Senior Planner
Department of Ecology,
Environmental Review Section
P.O. Box 47703
Olympia, WA 98504-7703

Re: DOE SEPA Rule WAC 197-11-305

Dear Mr. Aaland:

I am writing on behalf of the Alpine Lakes Protection Society (ALPS). ALPS is a regional conservation organization dedicated to the protection of the outstanding natural qualities of the Alpine Lakes region (generally, the Cascade mountains between I-90 and highway 2). Founded in 1968, ALPS played a key role in the passage of the legislation that created the Alpine Lakes Wilderness in 1976. ALPS is now, and always has been, an all-volunteer group, operating with no staff and no office.

I understand that the DOE is currently reviewing the categorical exemptions in WAC 197-11 and that the comment period for this process closed on June 17, 1997. Because I have only recently learned of this process, I was unable to comment for ALPS by the closing date. Peter Goldman of Environmental Law Support Associates, however, did send in comments, referring to ALPS' recent experience in an appeal of a forest practice application in a roadless area adjacent to the Alpine Lakes Wilderness.

ALPS considers this rule review to be highly important and wishes to be updated of further developments. In addition, we would like to be informed of any future opportunity to comment or testify, if that should arise, in this regard.

Yours very truly,

Alpine Lakes Protection Society

Len Gardner,
ALPS Immediate Past President

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J. Terry Lewis
Director
Community Affairs

The Boeing Company
P.O. Box 3707 MS 14-49
Seattle, WA 98124-2207

April 30, 1997

Neil Aaland, Sr. Planner
Department of Ecology
Environmental Review Section
P. O. Box 47703
Olympia, Washington 98504-7703

BOEING

Re: SEPA Categorical Exemptions

Dear Mr. Aaland:

The Boeing Company is pleased that the Department of Ecology has opened the SEPA categorical exemptions for public comment and review. Many of these exemptions are long outdated and need to be reexamined in light of the increasing environmental review being conducted as comprehensive and subarea plans are adopted under the Growth Management Act and the wide expansion of development regulations that adequately mitigate project-specific environmental impacts previously addressed by SEPA.

Generally, we recommend that activities whose environmental impacts are addressed by development regulations be made exempt from SEPA to eliminate the current duplication that exists when a particular project or activity is subject not only to the requirements of development regulations, but also to additional review under SEPA. There is no justification for this duplication. SEPA should be reserved for projects that require an EIS.

Specifically, we recommend that the DOE adopt these changes and additions to the SEPA categorical exemptions:

WAC 197-11-720 Categorical Exemption

This section defines a categorical exemption as a "type of action, specified in these rules, which does not significantly affect the environment (RCW 43.21C.110 (1)(a)); . . ."

The statutory authority for this rule, RCW 43.21C.110 (1)(a) provides:

- (a) Categories of governmental actions which are not to be considered as potential major actions significantly affecting the quality of the environment, including categories pertaining to applications for water

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right permits pursuant to chapters 90.03 and 90.44 RCW. The types of actions included as categorical exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment. The rules shall provide for certain circumstances where actions which potentially are categorically exempt require environmental review. An action that is categorically exempt under the rules adopted by the department may not be conditioned or denied under this chapter. (Emphasis added.)

The phrase "significantly affecting the quality of the environment" is the same phrase in RCW 43.21C.030 that is used as a description of those types of actions that require the preparation of an environmental impact statement:

... (2) All branches of government of this state, including state agencies, municipal and public corporations, and county shall:

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) The environmental impact of the proposed action;

(Emphasis added.)

Thus, while "categorical exemptions" have been limited to the most insignificant of activities, SEPA itself authorizes the exemption for all activities except those "significantly affecting the quality of the environment"--the same activities that require an EIS.

As a result, the definition of categorical exemption contained in the regulations at WAC 197-11-720 should be amended to conform to the statutory language. It would then read:

"Categorical exemption" means an action which does not significantly affect the quality of the environment.

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With this change, no listing of specific activities would be required; only those activities that "significantly affect the quality of the environment" and that, as a result, require an EIS, would be subject to SEPA.

Thus the essential inquiry would be to determine "does this action require an EIS?" That issue can be addressed in a checklist format (not necessarily the existing SEPA checklist), but the result would also determine whether SEPA would continue to apply to the project.

The only actions that would be subject to SEPA would be those actions that require an EIS. This change alone would eliminate the duplicative review of most projects under development regulations and SEPA. It would allow SEPA to be used for those significant projects whose impacts fall outside those examined in GMA plans and development regulations.

* * * * *

If, however, separate activities are to be enumerated, we have these comments:

WAC 197-11-800 Minor New Construction--Flexible Thresholds

a. Generally, the exemptions in subparagraph (1)(b) should be tied to environmental impacts that significantly affect the quality of the environment.

If the exemptions are to remain in the existing format, we recommend that these exemptions be modified to read:

WAC 197-11-800 (1)(b)(iii). The construction of an office, school, commercial, recreational, service or storage building ((with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles)) or parking lot that does not significantly affect the quality of the environment.

(v) any landfill or excavation ((of 100 cubic yards throughout the total lifetime of the fill or excavation)) that does not significantly affect the quality of the environment; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulation thereunder.

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- b. The current exemptions include:
1. fills or excavation up to 100 cubic yards (WAC 197-800(1)(b)(v))
 2. certain utility actions (WAC 197-11-800(3)(c); 197-1800(24))

In some jurisdictions, however, these are read together to exempt those utility actions that do not exceed 100 cubic yards of fill or excavation

The limitations, and the combining of exemptions, make these exemptions of little value.

c. Further, if these exemptions are to be stated in detail, they should be identified by environmental impacts, rather than size. For example, parking areas could be made exempt dependent upon the number of trips or square feet of impervious surface required, not the number of automobile parking spaces. The critical variable should be those usually important in determining whether an action "significantly affects the quality of the environment."

Rather than focus on single elements, however, we recommend that an approach be adopted something along the lines of the Corps of Engineers Nationwide Permit system for wetlands. That is, exemptions should be granted to entire "actions" or "projects" that can satisfy certain conditions. For example, any utility project might be exempt if it did not involve:

1. a trench more than 48" wide
2. backfill to be accomplished within 7 days
3. excavated material to be covered with impervious material.

A manufacturing use might be exempt if it did not involve:

1. a building of more than 100,000 square feet;
2. impervious surface of no more than 10 acres;
3. average daily vehicle trips of no more than 50 trips per gross acres.

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d. The "use" categories described in (b)(iii) should be stated in more detail. For example, "commercial uses" is a very broad category that might involve any level from heavy to minimal retail customer traffic. Further detail and differentiation between these uses would allow greater precision in identifying the appropriate exemption. Specifically, we recommend that these exemptions follow standard land use classifications such as those in the Standard Land Use Coding Manual.

WAC 197-11-800(2) Other Minor New Construction

a. Subsection (f) denies the exemption "for structures or facilities with recognized historical significance." That phrase is ambiguous and should be changed to deny the exemption only for structures or facilities that are listed on the state historical registry.

b. Subsection (g) exempts underground storage tanks of 10,000 gallons or less. That exemption should be expanded to exempt all storage tanks of double-wall construction. Permits are required for tank installation or removal, and their use must be regularly tested.

c. Subsection (h) exempts property, boundary, or surveyor markers, but not fences. Fences should also be exempt.

WAC 197-11-800(3) Repair, Remodeling, and Maintenance Activities

a. This provision exempts minor remodeling and maintenance activity, but denies the exemption to "material expansions or changes in use beyond that previously existing. . ." This exemption should be expanded to allow expansions of facilities and structures that do not exceed the threshold of exemptions for new construction. For example, under the current regulations, an expansion of an existing facility to park an additional 20 automobiles should be exempted, just as it would be if it were new construction.

b. Subsection 3(a) denies this exemption to dredging activities. Maintenance dredging is regulated by the Corps of Engineers. No additional protection is gained by duplicative review under SEPA; maintenance dredging should be exempted.

c. Subsection (3)(b) denies the exemption to the reconstruction or maintenance of groins and similar shoreline protection structures. These activities are also closely regulated by the Corps of Engineers and require a shoreline substantial development permit as well as a

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hydraulic project approval. Such heavily regulated activities do not need separate and duplicative SEPA review and should be exempted.

WAC 197-11-800(14) Business and Other Regulatory Licenses

~~SECRET~~

This section provides exemptions for a number of licenses, but Subsection (b) denies the exemption to building permits. Projects that meet the requirements of the applicable building code and need only a building permit should not be required to undergo separate SEPA review. A project is always reviewed for compliance with applicable development regulations; if it meets all other requirements, it should be permitted. If all that is required for construction is a building permit, it necessarily follows that the project is in full compliance with all land use and other permitting requirements. Building permits should be exempt from SEPA.

WAC 197-11-800(24) Utilities

a. This section exempts a number of utility-related activities, but it exempts relocation of utilities only when required by other governmental bodies. That limitation should be deleted. The authority for these exemptions is to exempt activities which have no substantial environmental impact. As written, these rules apparently presume that relocation required by governmental body has no impact, while relocation by anyone else could have impact. That differentiation, based on the source of the activity, is not an authorized basis for the exemption or the limitation; the limitation should be deleted.

b. Utility actions that do not significantly affect the quality of the environment should be exempted.

New Exemptions

In addition to the modifications recommended above, a number of new exemptions should be added:

a. Any activity that requires, and is subject to, a state, regional (PSAPCA) or federal permit or approval should be exempt from SEPA review. Again, when separate permits are required and separate conditions imposed under independent regulating programs, no SEPA review should be required.

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b. Temporary uses or structures should be exempt from SEPA review. Short-lived uses or structures should not be required to undergo SEPA review.

c. Individual projects that meet the requirements of a planned action ordinance, as authorized by RCW 43.21C.030, should be exempt from SEPA review. As provided by the statute, the planned actions ordinance and the entire designated class of actions to be designated "planned actions" must undergo SEPA analysis. Once completed, it should not be repeated for individual project actions that meet the established criteria for the designated class of "planned actions."

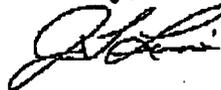
d. Demolition activities should be exempt from SEPA review.

e. Remediation activities performed under the state Model Toxic Control Act or the federal Comprehensive, Environmental, Response, Compensation and Liability Act should be exempt from SEPA review. Such activities are highly regulated; additional SEPA review adds no value.

* * * * *

Again, The Boeing Company appreciates the opportunity to provide you with its comments on SEPA exemptions. We strongly urge that you endorse the approach we have suggested and eliminate SEPA review for actions that do not significantly affect the quality of the environment. At the very least, the rules should eliminate SEPA review where environmental protection has been assured by existing development regulations.

Cordially,



cc: Gerald L. Bresslour
John B. Crull
Lori L. Pitzer
Frank L. Figg
Elizabeth J. Warman
Richard E. McCann

(131)

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August 28, 1998

Mr. Gordon White
Program Manager
Shorelands and Environmental
Assistance Program
300 Desmond Drive SE
Lacey, WA 98506

**Re: DOE Review of SEPA Categorical Exemptions/Comments on
Scope of EIS**

Dear Mr. White:

We represent The Boeing Company. On behalf of Boeing, we write to respond to Ecology's recent request for comment on the scope of the EIS for amendment of SEPA categorical exemptions, dated July 28, 1998. As we understand it, the focus of this initial round of comments is on the proposed scope of the EIS, not on the substance of the exemptions themselves. Accordingly, our comments are limited to the following general points:

1. SEPA regulations require that EISs for nonproject actions include a discussion of alternatives. WAC 197-11-442. How will the EIS meet this requirement? Will the environmental impacts of proposed amendments (such as those listed in the matrix provided with the scoping notice) be treated as alternatives to the existing exemptions, or will some other methodology be used? We would appreciate clarification on this aspect of the proposed scope.

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[03003-0369/SB982400.146]

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2. Among the review criteria proposed in the scoping document are several related to whether development within GMA urban growth areas can be treated differently than development outside those areas (i.e., "Is the new or revised categorical exemption consistent with relevant statutory provisions and court decisions?"; "Will the potential environmental impacts be the same in various locations?"; Are all of the potentially significant site specific environmental impacts from the type of project or activity considered and adequately addressed separately from the SEPA process?"; and "Is there public concern about the type of activity or project that would be exempt?"). We strongly support reduction and/or amendment of categorical exemptions to reflect the additional environmental review and regulation within urban growth areas now required pursuant to GMA.

Boeing will be following this issue with interest and intends to comment on the substance of individual categorical exemptions during the second round of written comments following the three public information meetings in September. Please confirm, therefore, that John Crull, The Boeing Company, P.O. Box 3707, M/S 2R-26, Seattle, Washington 98124-2207, and me are included on your EIS mailing list.

Very truly yours,

Laura N. Whitaker
(wz)
Laura N. Whitaker

LNW:waz

cc: Neil Aaland
John Crull

(133)



Building Industry Association of Washington

Post Office Box 1909 • Olympia, WA 98507 • 1-800-228-4229 • FAX (360) 352-7801 • www.bia.wa.gov

June 12, 1997

Neil Aaland
Senior Planner
Department of Ecology, Environmental Review Section
P.O. Box 47703
Olympia, WA 98504-7703

Dear Mr. Aaland:

The Building Industry Association of Washington (BIAW) is a trade association comprised of over 7,000 companies involved in the home building industry in Washington, employing over 209,000 workers in the state. BIAW members rely heavily on the categorical exemptions established in WAC 197-11 and, therefore, have a great interest in the Department of Ecology's review and potential revision of SEPA categorical exemptions.

One of the primary issues addressed by BIAW this legislative session was SEPA categorical exemptions in the form of HB 1474. BIAW continues to strongly support expanding exemptions under WAC 197-11-800 for minor new construction as follows:

- (1) Construction of or location of any residential structures of ten or fewer dwelling units;
- (2) Construction of an office, school commercial, recreational, service, or storage building with eight thousand or fewer square feet of gross floor area, and with associated parking facilities designed for forty or fewer automobiles;
- (3) Construction of a parking lot designed for forty or fewer automobiles;
- (4) Division of land into nine or fewer lots or parcels; and
- (5) Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation.

Because these higher exemption levels are still within those currently allowed, BIAW anticipates that these exemptions may still be increased to the maximum level by a city or county by ordinance or resolution.

Maintaining housing affordability and protecting the natural environment are both identified as two of the thirteen goals in the Growth Management Act. Expanding categorical exemptions for minor new construction and minor land use decisions will streamline agency review of *routine* development proposals thereby making housing more affordable for first-time home buyers. Not only will expanded exemptions make housing more affordable, but employment will increase by allowing more small and intermediate sized builders, who cannot afford the time and cost of SEPA review, to enter the market place.

Likewise, affordable housing is promoted by increasing the number of lots that fall under the SEPA categorical exemptions. Quite simply, small parcels of land are more economically converted to new housing lots when the time consuming SEPA process is avoided. The result is that housing units can be created more inexpensively because small lots will now be available for cost-effective development and small builders are able to enter (and remain in) the market. More importantly, local agencies will save crucial funds with the ability to process applications more efficiently to reduce the current backlog of projects to review.

Many jurisdictions, including Seattle, have already taken advantage of raising these exemption levels because SEPA review is superfluous for such minor development, particularly in light of the extensive environmental review undertaken by cities and counties during the comprehensive plan process. The Growth Management Act requires the preparation of sophisticated comprehensive plans and implementing ordinances, i.e., critical areas, zoning, storm drainage, and development standards. These ordinances address in detail the minimum and maximum thresholds for development projects and the associated mitigation requirements. Frequently, SEPA documents simply refer to these ordinances for the appropriate mitigation. Because environmental impacts are already determined, requiring additional review within urban growth areas is unnecessary and redundant.

Many cities have taken it upon themselves to treat up to 9-lot divisions as short subdivisions to meet the demand of growth and cost effective development. For example, local jurisdictions within Thurston, King and Snohomish Counties have increased the thresholds for short platting from four lots to nine. It does not make sense to treat a land division of nine lots as a short plat yet require SEPA review while in the neighboring jurisdiction a short plat is also nine lots and land division of nine or fewer lots has been deemed exempt from SEPA review. Consistency is one of the cornerstones of regulatory reform.

One concern that is commonly raised is that by allowing greater exemptions from SEPA, critical areas and the natural environment will not receive the same degree of environmental protection. However, increasing SEPA exemptions will not compromise compliance with other local ordinances. If a project is categorically exempt from SEPA but has an on-site wetland, the local jurisdiction's critical areas ordinance still applies, including protection and mitigation requirements.

Expanding SEPA categorical exemptions is supported on all levels, including the Governor. In a letter to the King and Snohomish County Masterbuilders dated October 9, 1996, Governor Locke clearly expressed his intent to simplify the SEPA process:

As Governor I intend to continue this emphasis on bringing predictability, reducing delay and simplifying the regulatory process. Specifically, I am very interested in removing unnecessary layers of regulation at the state and local level which inhibit development approved under adopted local GMA comprehensive plans. When comprehensive plans evaluate and address the impact of a proposed development, and incorporate necessary mitigation into local development regulations, then environmental review and the permitting process should be streamlined and simplified.

Similarly, the Supreme Court recently emphasized the importance of SEPA categorical exemptions in Dioxin v. Pollution Control Hearings Board, holding:

The entire purpose of the system of categorical exemptions is to avoid the high transaction costs and delays that would result from case by case review of categorically exempt types of actions that do not have a probable significant adverse environmental impact.

BIAW strongly urges the Department to raise the SEPA categorical exemptions at least by the amounts indicated above. Making more minor land development and construction exempt from the redundant environmental review process will promote affordable housing, efficient urban growth, and desperately needed regulatory reform.

Sincerely,



Jodi C. Walker
Legal Counsel

Aaland, Neil

From: biaw_legal@mail.tss.net
Sent: Friday, August 28, 1998 3:24 PM
To: 'naal461@ecy.wa.gov'
Subject: Scoping Notice for EIS on SEPA Categorical Exemptions

August 28, 1998

Neil Aaland
Senior Planner
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Neil:

I wanted to respond to the Determination of Significance and Scoping Documents for SEPA Categorical Exemptions distributed in July. Having reviewed the suggested changes to Categorical Exemptions, I am pleased to see that not only have several clarifications been proposed, but also many reasonable expansions that would further the regulatory reform effort initiated by ESHB 1724.

At this time, I do not have specific comments on "alternatives, mitigation measures, probable significant adverse impacts, and licenses or other approvals that may be required," as I believe these issues will be further developed with the draft EIS, public comments thereto, and through the ad-hoc work group process.

I would like to restate that BIAW's interest lies primarily in increasing the exemption levels for minor new construction. However, several additional areas listed in the scoping document will affect our members, including "Repair, remodeling and maintenance activities," "Other minor new construction," "Water rights," "Business and other regulatory licenses," "Utilities," as well as several of the "Suggested New Exemptions." I note these areas because BIAW would like to provide input on these proposals, either through the ad-hoc groups or any other advisory process. Not only can we supply technical information, but we also can relate the impact the proposed exemption changes have on the building and development industry. Although many of the proposed changes may seem relatively minor, they have potentially major impacts on the ability to build and supply low-cost housing, an issue of ever-increasing importance in our state.

Please contact me if I can be of assistance. Otherwise, I will see you at the informational meeting on September 23rd.

Sincerely,

Jodi C. Walker
Legal Counsel

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April 25, 1997

Neil Aaland, Senior Planner
Department of Ecology,
Environmental Review Section
P.O. Box 47703
Olympia, WA 98504-7703

Re: Rule Making Involving Categorical Exemptions

Dear Mr. Aaland:

We are writing in response to the notice of possible rule making involving amendments to the SEPA rules for categorical exemptions, Ch. 197-11 WAC. Given the significant statutory changes involving land use planning that have occurred since the SEPA rules were first adopted in 1984, a comprehensive review of the SEPA rules, including the section involving categorical exemptions is needed.

There are two categorical exemptions which should be deleted from the list of categorical exemptions in Ch. 197-11 WAC because they have been codified as statutory SEPA exemptions. Those two categorical exemptions are: (1) WAC 197-11-800(25)(a), the exemption for Class I, II and III forest practices, and (2) WAC 197-11-855(1), the exemption for issuance, reissuance or modification of any waste water permit that contains conditions no less stringent than federal effluent limitations and state rules. The statutory SEPA exemptions for Class I, II, and III forest practices are contained in RCW 43.21C.037(1) and RCW 76.09.050(1). The statutory SEPA exemption for waste discharge permits is contained in RCW 43.21C.0383.

The inclusion of a categorical exemption for Class I, II, and III forest practices has caused some confusion. Categorical exemptions are subject to the limitations contained in WAC 197-11-305, and one court has arguably held that WAC 197-11-305 can be applied to the statutory exemption for Class I, II, and III forest practices. *Snohomish County, et al. v. State of Washington, et. al.*, 69 Wn. App. 655, 850 P.2d 546 (1993).

The limitations contained in WAC 197-11-305 cannot be used to limit the statutory exemptions for forest practices and waste discharge permits. The Department of Ecology clearly

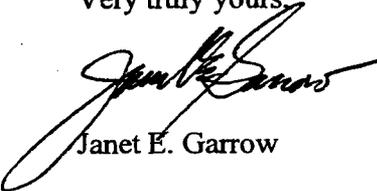
Neil Aaland, Senior Planner
April 25, 1997
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does not have the authority to adopt SEPA categorical exemption rules which limit the effect of statutory SEPA exemptions. *Carnitas v. Dept. of Social and Health Services*, 123 Wn. 2d 391, 869 P.2d 28 (1994).

In addition, the Washington Supreme Court's recent decision in *Dioxin/Organochlorine Center et al. v. Boise Cascade Corp., et al.*, No. 63262-6 (March 6, 1997) recognized that the Legislature's recent adoption of a statutory exemption for waste discharge permits preempted the existing categorical exemption contained in the SEPA rules. In its Motion to Dismiss the appeal, the Department of Ecology advised the Court that the validity of the categorical exemption for waste discharge permits was a moot issue because any permits issued by Ecology after the effective date of the statutory exemption were exempt from SEPA.

For these reasons, the categorical exemptions for Class I, II, and III forest practices, and waste discharge permits should be repealed. If you have any questions regarding these comments, please do not hesitate to call.

Very truly yours,



Janet E. Garrow

cc John Hempelmann



Coalition of Washington Communities

85 East Roanoke Seattle, WA 98102 Phone/Fax: (206) 322-5463

June 12, 1997

Neil Aaland, Senior Planner
Department of Ecology
P.O. Box 47703
Olympia, WA 98504-7703

RE: SUGGESTIONS FOR THE STATE'S REVIEW OF SEPA EXEMPTIONS

Dear Mr. Aaland:

We are pleased to provide the attached suggestions for the current review of SEPA exemptions. The Department of Ecology is to be commended for making clear that this process not only will consider new or larger exemptions, but will also review the current exemptions for possible reduction or elimination.

The attached comments focus on existing exemptions for construction projects, transportation access changes, and public land sales; we suggest that all of these exemptions be tightened up. Unfortunately, loopholes now exist in SEPA that are allowing major actions and significant environmental impacts to go unanalyzed and without opportunity for public review. SEPA cannot do its job if it misses key government decisions.

We are aware that some comment letters you will be receiving propose major new exemptions or the expansion of existing ones. We urge the Department of Ecology to manage the current policy review in a way that ensures careful examination of proposals to reduce or eliminate certain existing exemptions.

The Coalition of Washington Communities, a statewide alliance of neighborhood advocates, has worked throughout the 1990s to defend the State Environmental Policy Act and other laws that protect citizen access and neighborhood livability. The Seattle Community Council Federation, the state's oldest neighborhood federation, helped campaign for the original passage of SEPA and is increasingly active in state issues. Both organizations join in presenting the attached two pages of comments.

Sincerely,

Christopher K. Leman
Chair [cleman@oo.net]

NEED TO REDUCE OR ELIMINATE SOME SEPA EXEMPTIONS

Background. As originally passed in 1971, the State Environmental Policy Act (SEPA) applied to all government decisions. In 1983 the law was amended to permit the Department of Ecology to exempt certain types of government actions from the requirement for environmental analysis. Cautionary language in SEPA makes it clear that these exemptions are more conditional than categorical ("The types of actions included as categorical exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment."), but this language has not proven sufficient to prevent exemptions from extending to some projects that clearly should be subject to SEPA requirements.

Because much recent discussion has restricted itself to proposals for the widening of SEPA exemptions, we offer here the rest of the story--gaps in SEPA caused by exemptions that should be closed, or should not be opened further. As outlined below, certain currently exempted projects can have significant negative environmental impacts that need SEPA analysis and public process.

Construction exemptions should be conditional, not categorical. The current exemptions (which some have proposed to widen) exempt construction projects that involve a certain number of residential units, square footage, parking places, and excavation yardage. But because the physical size and context (not certain arbitrarily chosen dimensions) of a project determine its environmental impact, exempted projects may actually be major actions in their own right. Some exempted office or apartment buildings--and even the occasional billionaire's house--can, by their sheer size or location, impose substantial impacts on air and water quality, habitat, traffic and parking, noise, and so on. A parking lot, subdivision, or excavation can have dramatic environmental impact if located near a sensitive natural or waterfront area or a congested street.

The existing exemptions for construction projects should not be widened; rather, they should be made conditional on their not exceeding certain thresholds of environmental impact. One of these conditions would be that there be no nearby projects that would add to the exempt project's cumulative impact. Another condition would be that the project not exceed any one of several specific environmental thresholds that the permitting agency would be required to lay out in its regulations.

Changes in transportation access regarding a single property owner. The size of a project should determine whether a transportation access change should be exempted from SEPA.

Unfortunately, transportation access changes are now exempt if a single property owner is involved--even if the single property owner is the owner of a large shopping mall. This exemption should be eliminated, or it should be conditioned on the change not triggering a certain number of additional traffic movements that the permitting agency would be required to lay out in its regulations.

Sale, transfer, or exchange of public property. Current language requires SEPA analysis only if the property is "subject to an authorized public use." This exemption should be eliminated. Any disposal of public land--not just land "subject to an authorized public use" should be handled under SEPA procedures. If there are no obvious environmental consequences, the SEPA checklist will make this clear and SEPA will have been satisfied.

The above are just some of the current SEPA exemptions that the Department of Ecology should close or reduce as a part of its current SEPA review.

Prepared by the Coalition of Washington Communities and the Seattle Community Council Federation. For background, contact Chris Leman (206) 322-5463; cleman@oo.net.

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April 24, 1997

Neil Aaland, Senior Planner
Washington Department of Ecology
Environmental Review Section
P.O. Box 47703
Olympia, WA 98504-7703

Re: Revision of SEPA Categorical Exemptions

Dear Mr. Aaland:

Thank you for the opportunity to provide comments in regard to revisions to the State of Washington's, State Environmental Policy Act (SEPA) categorical exemptions. I am writing to you today as a private citizen concerned with the future viability of Washington's natural heritage.

The SEPA regulations represent the front-line of defense for protecting Washington's overall environmental quality and the natural resources that we as a society desire to conserve and pass on to future generations. Our state continues to grow both in terms of human population numbers and in the intensity of land conversion and development. Unless our environmental regulations keep step with changing conditions, the threats to environmental quality and our natural heritage become more intractable. It is with the preceding in mind that I offer the comments below.

I have organized my comments into two areas of concern. First, because the definition of "environmentally sensitive area" and its regulatory application have such a profound effect on when a categorical exemption can or cannot be applied, I offer some suggestions to improve the regulatory consistency of the definition and its application. Second, I will comment on two existing categorical exemptions and provide a rationale to justify their deletion or modification.

Definition of "Environmentally Sensitive Area" (WAC 197-11-748) and its Application (WAC 197-11-908)

To acquire a more complete understanding of the definition of an environmentally sensitive area, a user must refer to WAC 197-11-908 as well as to WAC 197-11-748. In WAC 197-11-908 it states:

Environmentally sensitive areas shall be those within which the exemptions listed in the next subsection could have a significant adverse impact, including but not limited to areas with unstable soils, steep slopes, unusual or unique plants or animals, wetlands, or areas which lie within floodplains.

This expanded definition is similar to the definition of "critical areas" provided in RCW 36.70A.030(5) as part of the Growth Management laws. "Environmentally sensitive area" and "critical areas" are used with a similar regulatory purpose in mind. The purpose of both SEPA and the Growth Management Act (GMA) would be furthered if these two definitions and their applications could be integrated such that they function equivalently. I recommend redefining "environmentally sensitive area" to make it explicitly consistent with "critical areas" as defined under GMA.

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WAC 197-11-800(25)(b): Issuance of Grazing Leases

I recommend deleting the exemption for new grazing leases covering a section of land or less and modifying the wording of the second part of the exemption to allow an exemption only for land that has been grazed subject to a lease within the previous three years.

Thus WAC 197-11-800(25)(b) should be rewritten to state: "Issuance of grazing leases for land that has been subject to a grazing lease within the previous three years."

Also, WAC 197-11-908(2) should be revised to include the revised categorical exemption as one a county / city with jurisdiction may select as not applying within a designated environmentally sensitive area.

WAC 197-11-800(25)(d): Issuance of Agricultural Leases

I recommend deleting the agricultural lease categorical exemption in its entirety.

Rationale for Recommended Categorical Exemption Revisions

As I am most familiar with the shrub-steppe ecosystem of eastern Washington, I will use information associated with this region to justify my recommendations. In a recent report by Noss et al. (1995)¹, two conclusions of the authors stand out:

- native shrub- and grassland-steppe within Washington and Oregon is an endangered ecosystem, in that it has experienced between an 85 % to 98 % decline since European settlement
- ungrazed sagebrush-steppe in the Intermountain West is a critically endangered ecosystem, in that it has experienced greater than a 98 % decline since European settlement.

Hard evidence corroborates these conclusions. For example, different sets of satellite imagery data suggest that about 60 % or more of the original cover of steppe vegetation in the Columbia Basin region of Washington and Oregon has been lost, primarily to agriculture (with some contribution from urban development) (DOE-RL, 1996)². Much of the remainder of the original native vegetation is in a degraded condition, mostly as a result of domestic livestock grazing.

The current categorical exemptions for agriculture and livestock grazing leases are somewhat different. Indeed, grazing activities are granted a greater degree of exemption from environmental review than are agricultural activities [Note that currently under WAC 197-11-908(2), counties / cities with jurisdiction cannot remove a grazing lease categorical exemption for an environmentally sensitive area but can remove one for an agricultural lease.]. It is obvious that agricultural activities completely remove any native vegetation that may be present; however, grazing activities can seriously degrade native ecosystems (if not themselves result in the removal of

¹ Noss, R. F., E. T. LaRoe III, and J. M. Scott. 1995. Endangered Ecosystems of the United States: A Preliminary Assessment of Loss and Degradation. Biological Report 28. U.S. Department of the Interior, National Biological Service, Washington, D.C.

² U.S. Department of Energy, Richland Operations Office (DOE-RL). 1996. Appendix C: Hanford's biological resources in a regional context. In Draft Hanford Site Biological Resources Management Plan. DOE/RL 96-32, Rev. 0. DOE-RL, Richland, Washington.

Neil Aaland
April 24, 1997
Page 3

native vegetation). Fleischner (1994)³ provides an in-depth review of the negative consequences of livestock grazing on native ecosystem integrity.

By granting arbitrary land area exemptions for grazing and agricultural leases, the current SEPA regulations effectively ignore the cumulative impacts these activities already have had on Washington's natural heritage. Moreover, they enable piecemeal additional impacts whose additive cumulative impacts are not adequately evaluated. Additionally, provision of a ten year period within which all previously approved grazing leases can be reinstated without further environmental review (if any even occurred in the first place) is excessive. At current rates of land conversion, the appropriate context in which the cumulative impacts of a grazing lease can be evaluated changes rapidly.

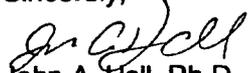
Implementation of SEPA requirements should not necessarily result in a development action being stopped; however, implementation should enable society to appropriately evaluate the consequences of its actions and to help it decide when to make or not to make trade-offs that affect the quality of the environment. Agriculture and livestock grazing are the two most pervasive land-use activities that impact the natural resources of Washington's Columbia Basin; however, the current SEPA categorical exemptions do not reflect their significance.

Summary of Recommendations

The categorical exemptions for new grazing leases [WAC 197-11-800(25)(b)] and agricultural leases [WAC 197-11-800(25)(d)] should be deleted. The reinstatement, without further environmental review, of a grazing lease on land previously grazed under a lease should be limited to three years [WAC 197-11-800(25)(b)]. Moreover, this categorical exemption should be subject to county / city removal of applicability for an environmentally sensitive area under WAC 197-11-908(2). Finally, "environmentally sensitive area" (WAC 197-11-748 and 908) should be redefined such that it is explicitly consistent with the definition of "critical areas" in RCW 36.70A.030(5).

Thank you again for an opportunity to provide comments on an area of environmental regulations that is of extreme importance to the citizens of Washington and their environment. Once Ecology has had time to review all submitted comments and to decide on a rule-making, I would appreciate a response that indicates Ecology's resolution of my specific comments. If you have any questions as to the content of my comments, please feel free to contact me.

Sincerely,


John A. Hall, Ph.D.
1301 Buena Ct.
Richland, WA 99352
509-946-6615
JAlanHall@aol.com

cc: Josh Baldi, Washington Environmental Council
Rick Leaumont, Lower Columbia Basin Audubon Society
Jay McConnaughey, Washington Department of Fish and Wildlife
Phil Mees, Benton County Planning Department

³ Fleischner, T. L. 1994. Ecological costs of livestock grazing in western North America. Conservation Biology 8:629-644.

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Law Offices
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April 28, 1997

Peter J. Eglick
Attorney At Law

Neil Aaland, Senior Planner
Department of Ecology, Environmental Review Section
P.O. Box 47703
Olympia, WA 98504-7703

Re: Review of SEPA Categorical Exemptions

Dear Mr. Aaland:

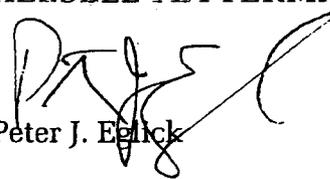
I am an attorney who specializes in environmental land use matters. As such, I have been dealing with the SEPA Rules since their inception.

In general, the SEPA Rules' categorical exemptions should be narrowed, not broadened. They already allow many projects with adverse environmental impacts to escape review.

Please put me on your mailing list for all further notices and proceedings connected with the Department's review and possible revision of categorical exemptions.

Sincerely,

HELSELL FETTERMAN LLP



Peter J. Eglick

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HOOD CANAL ENVIRONMENTAL COUNCIL

America's Unique Heritage

P. O. BOX 87 SEABECK, WASHINGTON 98380

12 June 97

MEMORANDUM FOR NEIL AALAND, SENIOR PLANNER, ENVIRONMENTAL REVIEW SECTION, DEPARTMENT OF ECOLOGY

Subj: CATEGORICAL EXEMPTIONS, WAC 197-11, PART NINE

Dear Mr. Aaland:

Please accept these comments regarding potential changes to the SEPA categorical exemption rules, WAC 197-11, Part Nine.

1. **General Exemptions.** Exemptions for general development (housing units, other buildings, parking lots, etc.) are found at 197-11-800(1). The 1997 Legislature attempted to dramatically increase the mandatory minimum exemption level by passing SHB 1474. Governor Locke vetoed SHB 1474. His veto message explains, in part, why it is inappropriate to increase the mandatory minimum exemptions. His veto message says in part:

*Substitute House Bill No. 1474 would increase the categorical exemptions from threshold determination and environmental impact statement requirements for development activities within urban growth areas. Although this legislation would increase the certainty and timeliness of small to medium-sized development projects within urban growth areas where growth is to be encouraged, it does so at too high a price. One of my goals regarding land use issues is to increase the discretion and flexibility afforded to local governments. This bill would have the opposite effect by imposing a top down, one-size-fits-all approach to SEPA review of projects below a certain state-established threshold size. Furthermore, this bill could have the unintended effect of precluding a local government from administratively applying substantive protection measures for critical areas regulations required under the

Growth Management Act, or from assessing impact fees for roads, schools, or other impacts on these projects."

The attempted exemption in SHB 1474 of subdivision of land into up to nine parcels, without any protection against repeated subdivision (cf. WAC 197-11-800(6)(a)), is particularly unwarranted.

The increased optional exemptions allowed by WAC 197-11-800(1)(c) are required to be "supported by local conditions, including zoning or other land use plans or regulations." This provision should not be weakened in any way. In fact, it would clarify and strengthen this reference to explicitly add citation to GMA requirements such as critical areas ordinances, and natural resource land designation and protection ordinances.

2. Forest Practices. SEPA exemptions for forest practices are covered by WAC 197-11-800(25)(a), which states in its entirety:

"...the following natural resources management activities shall be exempt:

(a) All Class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder."

The relevant portion of the cited statute (Forest Practices Act) provides:

"(1) The [forest practices] board shall establish by rule which forest practices shall be included within each of the following classes: ...

Class IV: Forest practices...

(d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW."

The Forest Practices Board in turn has defined the various classes of forest practices (Classes I, II, III and IV-Special and IV-General) at WAC 222-16-050. Further, the Board has explicitly adopted WAC 197-11 as applicable to forest practices. WAC 222-16-050. Therefore, WAC 197-11-305, the exceptions to the categorical exemptions, are applicable to forest practices, regardless of their superficial classification as exempt under WAC 222-16-050. Since the definitions of SEPA exempt forest practices have

been adopted by administrative agency (Forest Practices Board) the incorporation of the WAC 197-11-305 exceptions is not an attempt to overrule legislative mandate, and any argument to the contrary is without legal merit.

It is our experience that the SEPA exemptions afforded by the Forest Practices Board are in fact overly broad; they permit to proceed without any SEPA review many forest practices that have caused, and continue to cause, significant adverse impact on public resources (fish, water, wildlife, capital assets). Any argument that forest practices should be allowed even broader SEPA exemptions (such as total avoidance of the applicability of WAC 197-11-305) than already permitted is contrary to the spirit of SEPA, as well as being devoid of factual merit.

HCEC opposes any proposal to expand SEPA exemptions for forest practices.

3. Water Rights. WAC 197-11-800(4) contains extremely broad SEPA exemptions for water withdrawals and associated HPA, shoreline and local permits necessary to divert the water. These exemptions are indefensible, especially in light of Ecology's recent decisions denying numerous requests for new water right permits throughout the state. Perhaps the most clearly unjustified exemption is for withdrawals of ground water up to 2,250 gallons per minute. This is 3,240,000 gallons per day, and contrasts with the controversial exemption from the water code of 5,000 gallons per day! RCW 90.44.050. We strongly urge you to reduce these exemptions to a justifiable level, or, at the least, differentiate exemptions in basins or aquifers that are already over appropriated from those that aren't. Further, exempting major construction projects from any SEPA review simply because they have to do with water withdrawals is without factual justification.

4. Sale of Public Lands. WAC 197-11-800(5) exempts certain public land transfers. We are particularly concerned with subsection (b): "The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to an authorized public use." First, the "but" clause is incomprehensible to us; it should be made clear what is meant. Second, it is the change in use of public land that is important, not ownership. Subsection (c) recognizes this distinction. For example, where a state agency is selling or otherwise transferring title and it is clear that a change of use is contemplated, the exemption should not apply. A current example that we are aware of is the Department of Fish and Wildlife transfer of wildlife lands for use by the Mission Ridge ski area in Chelan County.

5. Release of Hatchery Fish. WAC 197-11-835(6) and 840(8) exempt the release of hatchery fish. The Pollution Control Hearings Board has recently ruled that releases of Atlantic Salmon are to be considered a pollutant of state waters. The 197-11 exemptions fail to make any distinction between native and introduced species; the latter should not be exempted under any circumstances. The reference to "hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice" should be narrowed to provide for independent exercise of judgment by the Department of Fish and Wildlife where an activity in waters of the state has the potential for significant adverse impacts on fish and aquatic habitat. This change would be consistent with the independent exercise of authority by local jurisdictions under the Shoreline Management Act with respect to any substantial activity adjacent to shorelines of the state. The two sections (WAC 197-11-835 and 840) should be merged in conformance with the merger of the two agencies into the Department of Fish and Wildlife.

6. Coastal Zone Management Act. "Granting or denial of certification of consistency pursuant to the Federal Coastal Zone Management Act" is exempt under WAC 197-11-855(3). This exemption should be eliminated. The most recent example of which we are aware is the determination by Ecology on May 6, 1997 that the City of Tacoma's Cushman Hydroelectric Project is inconsistent, but accompanied by a refusal to take any further action. Such a major decision has great environmental implications, and should not be exempt from consideration under SEPA.

Thank you for the opportunity to comment. Please keep us informed of opportunities to comment and proposals for action with respect to this and any other part of the SEPA regulations at the address below.

For the Board,



Vern Rutter

Director

NE 3681 Tahuya River Rd

Tahuya, 98588

vrutter@hurricane.net



Aaland, Neil

From: PJ1000@aol.com
Sent: Friday, October 30, 1998 4:47 PM
To: naal461@ecy.wa.gov
Subject: SEPA categorical exemptions

Dear Mr. Aaland:

I am writing to express my interest in participating in one or more of the subgroups you have organized during the EIS SEPA Categorical Exemption Review and also to suggest several additional issues to include in your review of the existing exemptions

The subgroups that I am interested in being involved with are the Minor land use decisions group and the Historic Preservation group. Please let me know how I might be involved in these two subgroups (While I am also interested in the Port district subgroup - I believe that I will have access to the subgroup proposed to work on Port district issues through my work at the Port of Seattle).

I also have two suggestions for you to include in your review of categorical exemptions:

1. If someone has not already requested it - I would like to suggest that the categorical exemptions be updated to provide for the increased technology and perhaps updated machinery and equipment used in the communications industries. I just had a call from a client yesterday that described an action to me that I think should deserve an exemption. A television station wants to relocate their satellite dish 276 ft. from the back of their building to the rooftop. The diameter of the dish is 15 ft (3 ft. more than allowable). Everyone at the city office agreed that it was a situation where their hands were tied - they didn't think SEPA was required but they have to require it due to the regulations.

2. I wanted to make clear that I would like to request that DOE re-think whether all projects occurring overwater like those above should automatically be required to have a SEPA review. You may already have included this but it wasn't clear to me from the list of suggestions thus far whether the minor new construction categorical exemptions was suggested to be revised for those projects occurring overwater (for example, the hotels, piers, fill, etc. that are built over water along Elliott Bay in Seattle). I am specifically thinking of a project that occurred over fill on an existing pier and required a SEPA review because of the cement foundation footings required for the trailers. A description of the project is as follows:

The Port of Seattle (Port) proposes to relocate two office trailers and add a third trailer to the Pier 90 portion of Terminal 91. Trailer A-100 currently houses Port of Seattle Terminal 91 Chill Facility operations management staff. Trailer A-500 houses a tenant that is part of the Chill Facility operations staff. The Port is proposing to make these trailers permanent and add a third trailer to house an additional three to four operations staff. The Port is proposing to relocate trailer A-400 to the north of its existing location, and relocated office trailer A-500 from its existing location to where trailer A-400 is currently located. An additional trailer, A-501, would be added to the site near the relocated trailer A-500. The Port is also considering the possibility of replacing trailer A-400 with a new triple-wide trailer. Permanent foundations would be constructed under all three trailers. The foundations would consist of shallow spread footing with a bearing capacity of 2,000 lbs. per square foot.

(151)

I would like to request that some attempt be made to exempt projects such as that described above. This means that there would have to be a new category created that provided for those minor actions occurring over water that by deleting the phrase in WAC 197-11-800 () (b) :except when undertaken wholly or partly on lands covered by water.

Thank you for your consideration and for the opportunity to comment.

Pam Xander
Xander & Associates
4338 NE 57th St.
Seattle, WA 98015
(206) 784-3191



504 East 14th, Suite 200 P.O. Box 719, Olympia, WA 98507-0719 (360) 943-3100 1-800-562-6024 FAX (360) 357-6627

August 28, 1998

Mr. Neil Aaland, Senior Planner
Washington Department of Ecology
Shorelines and Environmental Assistance Program
PO Box 47703
Olympia, WA 98504-7703

RE: Scoping of Categorical Exemptions Under SEPA

Dear Mr. Aaland:

The Washington Association of REALTORS® is pleased to provide comments on the scoping of Ecology's review of categorical exemptions under the State Environmental Policy Act. These comments are intended to address only the scoping documents released by Ecology, not the specific merits of existing or proposed categorical exemptions.

The scoping documents address a number of our key concerns regarding categorical exemptions to SEPA. These include categorical exemptions for minor land use decisions, minor new construction, repair, remodeling, and maintenance activities, and water rights.

Actions that are categorically exempt from SEPA are still be subject to other statutes affecting land use in Washington, including the Growth Management Act and the Subdivision Act. During the Legislature's consideration both of categorical exemptions to SEPA and the integration of SEPA with GMA, a primary objective has been to increase consistency and reduce duplication between the statutes. For instance, state platting regulations provide cities the option of increasing the number of lots allowed in a short plat from four to nine lots. Because of this option, a four lot short plat in one city would be eligible for a categorical exemption under SEPA while an eight lot short plat in another city may not be. The scoping document should explicitly state where SEPA exemptions may create inconsistencies among jurisdictions or with other statutes. This way, discussion over the merits of a particular SEPA exemption will be conducted in light of how that exemption relates to other statutes.

In addition, the likely listing of Puget Sound chinook salmon under the Endangered Species Act will induce a number of actions by jurisdictions throughout Washington. The Stillaguamish Chinook Recovery/Conservation Plan, prepared as a component of the August 27, 1998 draft Tri-County ESA plan, includes a bulletpoint relating the SEPA documentation. This brings up a few issues. First, how will SEPA review apply to projects or actions that have already run the gauntlet through local agencies or planning groups, tribes, state agencies, and then NMFS? Secondly, what type of resources are available to review actions related to ESA recovery. In addition, I wonder whether a programmatic approach to SEPA review of ESA recovery projects would be possible. This would allow expedited review of recovery projects that have already received the stamp of approval from NMFS or the Office of Salmon Recovery under a 4(d) rule approved by NMFS, while lessening the administrative burden that will accompany ESA recovery planning.

The Washington Association of REALTORS® looks forward to participating in the process of revising categorical exemptions to SEPA.

Sincerely,



**Bill Clarke, Assistant Director
Legal & Environmental Affairs**



WASHINGTON ENVIRONMENTAL COUNCIL

June 12, 1997

Neil Aaland
Senior Planner
Environmental Review Section
P.O. Box 47703
Olympia, WA 98504-7703
[Also sent by email to <naal461@ecy.wa.gov>]

Re: Categorical Exemptions, WAC 197-11, Part Nine

Dear Mr. Aaland:

Please accept these comments regarding potential changes to the SEPA categorical exemption rules, WAC 197-11, Part Nine.

1. General Exemptions. Exemptions for general development (housing units, other buildings, parking lots, etc.) are found at 197-11-800(1). The 1997 Legislature attempted to dramatically increase the mandatory minimum exemption level by passing SHB 1474. Governor Locke vetoed SHB 1474. His veto message explains, in part, why it is inappropriate to increase the mandatory minimum exemptions. His veto message says in part:

Substitute House Bill No. 1474 would increase the categorical exemptions from threshold determination and environmental impact statement requirements for development activities within urban growth areas. Although this legislation would increase the certainty and timeliness of small to medium-sized development projects within urban growth areas where growth is to be encouraged, it does so at too high a price.

One of my goals regarding land use issues is to increase the discretion and flexibility afforded to local governments. This bill would have the opposite effect by imposing a top down, one-size-fits-all approach to SEPA review of projects below a certain state-established threshold size. Furthermore, this bill could have the unintended effect of precluding a local government from administratively applying substantive protection measures for critical areas regulations required under the Growth Management Act, or from assessing impact fees for roads, schools, or other impacts on these projects.

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SPOKANE
(509) 328-5077

- Admiralty Audubon
- Alpine Lakes Protection Society
- Alt-Trans
- American Association of University Women
- American Oceans Campaign
- Association of Bainbridge Communities
- Black Hills Audubon Society
- Blue Mountain Audubon Society
- Capitol Bicycling Club
- Cascade Bicycle Club
- Center for Environmental Law and Policy
- Center for Wildlife Conservation
- Citizens Against Woodstove Fumes
- Citizens for Clean Air
- Citizens for Sensible Development
- Citizens to Save Puget Sound
- Clark County Citizens in Action
- Clark County Natural Resources Council
- Clark-Skamania Fly Fishers
- Clean Air Coalition c/o American Lung Association
- Columbiana Bioregional Education Project
- Consumers United for Food Safety
- Coville County Natural Resources Council
- Dawn Watch
- Dishman Hills Nat'l Area Assoc.
- Dolphin Database
- Earth Save Seattle
- East Lake Washington Audubon
- Everett Garden Club
- Evergreen Islands
- Federation of Fly Fishers, Steelhead Committee
- Floating Homes Association
- Four Creeks Community Assoc.
- Friends of Chocomaet
- Friends of Cypress Island
- Friends of Discovery Park
- Friends of Northshore
- Friends of Sumas Mountain
- Friends of the Columbia Gorge
- Friends of the Methow
- Friends of the San Juans
- Habitat Watch
- Hood Canal Environmental Council
- Isaiah Alps Trails Club
- Kettle Range Conservation Group
- Kitsap Audubon Society
- Lower Columbia Basin Audubon
- Marine Environmental Consortium
- Methow Valley Citizens Council
- Mount Rainier National Park Associates
- Mountaineers

- Nisqually Delta Association
- North Cascades Audubon
- North Cascades Conservation Council
- North Central Washington Audubon Society
- North University Garden Club
- Northwest Bicycle Federation
- Northwest Conservation Act Group
- Northwest Fly Anglers
- NW Steelhead and Salmon Council Trout Unlimited
- Oak Harbor Garden Club
- Okanogan Highlands Alliance
- Olympic Environmental Council
- Olympic Park Associates
- Olympic Peninsula Audubon Society
- Organization to Preserve Agricultural Lands (OPAL)
- Palouse Clearwater Environmental Institute
- Peed O'Neil Environmental Team (POET)
- Point Roberts Heron Preservation Committee
- PRO - Salmon
- Protect the Peninsula's Future
- The Ptarmigan
- Puget Soundkeeper Alliance
- Rivers Council of Washin
- Save a Valuable Environment
- Save Lake Sammamish
- Save Our Summers
- Seattle Audubon Society
- Seattle Citizens for Quality Living
- Seattle Shorelines Coalition
- Sierra Club - Upper Columbia Riv
- Skiatzi Alpine Club
- Skiatzi Audubon Society
- Spoilane Audubon Society
- Spoilane Mountaineers
- Spoilane Progressive Alliance
- Tahoma Audubon Society
- Tacoma Audubon Society
- Washington Council, Federation of Fly Fishers
- Washington Falconer's Association
- Washington Fly Fishing Club
- Washington Kayak Club
- Washington Native Plant Society
- Washington State Lakes Protection Association
- Washington Toxic Coalition
- Washington Trollers Association
- Waste Action Project
- Watershed Defense Fund
- Washington Environmental Alliance for Voter Education (WEAVE)
- Wenatchee Valley Fly Fishers
- Wetlands of West Hylebos
- Yakima Valley Audubon Society

The attempted exemption in SHB 1474 of subdivision of land into up to nine parcels, without any protection against repeated subdivision (cf. WAC 197-11-800(6)(a)), is particularly unwarranted.

The increased optional exemptions allowed by WAC 197-11-800(1)(c) are required to be "supported by local conditions, including zoning or other land use plans or regulations." This provision should not be weakened in any way. In fact, it would clarify and strengthen this reference to explicitly add citation to GMA requirements such as critical areas ordinances, and natural resource land designation and protection ordinances.

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The relevant portion of the cited statute (Forest Practices Act) provides:

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Class IV: Forest practices...

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The Forest Practices Board in turn has defined the various classes of forest practices (Classes I, II, III and IV-Special and IV-General) at WAC 222-16-050. Further, the Board has explicitly adopted WAC 197-11 as applicable to forest practices. WAC 222-10-050. Therefore, WAC 197-11-305, the *exceptions* to the categorical exemptions, are applicable to forest practices, regardless of their superficial classification as exempt under WAC 222-16-050. Since the definitions of SEPA exempt forest practices have been adopted by administrative agency (Forest Practices Board) the incorporation of the WAC 197-11-305 exceptions is *not* an attempt to overrule legislative mandate, and any argument to the contrary is without legal merit.

Washington Environmental Council has lengthy experience with forest practices and SEPA. It is our experience that the SEPA exemptions afforded by the Forest Practices Board are in fact overly broad; they permit to proceed without any SEPA review many forest practices that have caused, and continue to cause, significant adverse impact on public resources (fish, water, wildlife, capital assets). Any argument that forest practices should be allowed even broader SEPA exemptions (such as total avoidance of the applicability of WAC 197-11-305) than already permitted is contrary to the spirit of SEPA, as well as being devoid of factual merit.

WEC opposes any proposal to expand SEPA exemptions for forest practices.

3. *Water Rights.* WAC 197-11-800(4) contains extremely broad SEPA exemptions for water withdrawals *and* associated HPA, shoreline and local permits necessary to divert the water. These exemptions are indefensible, especially in light of Ecology's recent decisions denying numerous requests for new water right permits throughout the state. Perhaps the most clearly unjustified exemption is for withdrawals of ground water up to 2,250 gallons per minute. This is 3,240,000 gallons per day, and contrasts with the controversial exemption from the water code of 5,000 gallons per day! RCW 90.44.050.

We strongly urge you to reduce these exemptions to a justifiable level, or, at the least, differentiate exemptions in basins or aquifers that are already over appropriated from those that aren't. Further, exempting major construction projects from any SEPA review simply because they have to do with water withdrawals is without factual justification.

4. *Sale of Public Lands.* WAC 197-11-800(5) exempts certain public land transfers. We are particularly concerned with subsection (b): "The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to an authorized public use." First, the "but" clause is incomprehensible to us; it should be made clear what is meant. Second, it is the change in *use* of public land that is important, not ownership. Subsection (c) recognizes this distinction. For example, where a state agency is selling or otherwise transferring title and it is clear that a change of use is contemplated, the exemption should not apply. A current example that we are aware of is the Department of Fish and Wildlife transfer of wildlife lands for use by the Mission Ridge ski area in Chelan County.

5. *Release of Hatchery Fish.* WAC 197-11-835(6) and 840(8) exempt the release of hatchery fish. The Pollution Control Hearings Board has recently ruled that releases of Atlantic Salmon are to be considered a pollutant of state waters. The 197-11 exemptions fail to make any distinction between native and introduced species; the latter should not be exempted under any circumstances.

The reference to "hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice" should be narrowed to provide for independent exercise of judgment by the Department of Fish and Wildlife where an activity in waters of the state has the potential for significant adverse impacts on fish and aquatic habitat. This change would be consistent with the independent exercise of authority by local jurisdictions under the Shoreline Management Act with respect to any substantial activity adjacent to shorelines of the state.

Neil Aaland, Dept. of Ecology
June 12, 1997

Page 4

The two sections (WAC 197-11-835 and 840) should be merged in conformance with the merger of the two agencies into the Department of Fish and Wildlife.

6. *Coastal Zone Management Act*. "Granting or denial of certification of consistency pursuant to the Federal Coastal Zone Management Act" is exempt under WAC 197-11-855(3). This exemption should be eliminated. The most recent example of which we are aware is the determination by Ecology on May 6, 1997 that the City of Tacoma's Cushman Hydroelectric Project is inconsistent, but accompanied by a refusal to take any further action. Such a major decision has great environmental implications, and should not be exempt from consideration under SEPA.

Thank you for the opportunity to comment. Please keep me informed of opportunities to comment and proposals for action with respect to this and any other part of the SEPA regulations.

Sincerely,



Toby Thaler
Legal Program Director

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Environmental Law Support Associates

Peter Goldman, Director/Attorney at Law
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E-mail: pgenvsupp@telebyte.com

Neil Aaland
Senior Planner
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

August 3, 1998

Dear Mr. Aaland:

Thank you for your recent letter (undated) in which you invite comments as to the scoping of the proposed amendments to certain SEPA rules. I represent the Washington Environmental Council in regard to the Department of Ecology's possible changes to WAC 197-11-305. Also, as I mentioned in my letter of June 4, 1997, I specialize in forest practices law and, accordingly, I am extremely interested in any changes to WAC 197-11-305 that may affect this subject area.

In this letter, I would like to make two points. The first pertains to language in your scoping memorandum. The second has to do with my suggestions for scoping.

In Page 4 of your scoping memorandum, you make the following statement about WAC 197-11-305: "Clarify that 305 does not apply to statutorily exempt actions." This statement is simply not accurate in the case of forest practices and such "clarification" could prevent citizens from asserting that multiple connected proposed forest practices in the same watershed could, cumulatively, significantly and adversely affect the environment. Let me explain.

First, some background. In 1974, the Washington State Legislature enacted the Washington Forest Practices Act (FPA), which is codified at RCW Ch. 76.09. The FPA, which regulates forest practices on private and state-owned land, created the Forest Practices Board (FPB). RCW 76.09.030. The FPB's statutory duties are essentially two-fold: (1) to promulgate forest practice regulations that accomplish the purposes and policies of the FPA and establish the minimum standards for forest practices (RCW 76.09.040 (1)); and (2) to establish rules for classifying proposed forest practices according to the extent to which the proposed forest practices could result in damage to a public resource. RCW 76.09.050. With respect to the latter, the FPA specifically directs the FPB to develop classification rules for four (4) categories, I, II, III, and IV. Class IV forest practice applications are those which "have a potential for a substantial impact on the environment and therefore require an evaluation by the department [of Natural Resources] as to whether or not a detailed environmental impact statement must be prepared pursuant to the state environmental

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Neil Aaland
July 30, 1998
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policy act (SEPA). RCW 76.09.050 (1). Class I, II, and III forest practice applications are exempt from SEPA EIS review. RCW 76.09.050 (1); RCW 43.21C.037 (1).

The FPA does not itself specify which forest practices fit into which classes. Rather, it authorizes the FPB to make this determination through rule making. RCW 76.09.050 (1). The FPB rule classifying those forest practices that have a potential for a substantial impact on the environment, and are therefore subject to SEPA procedures, is set forth in WAC 222-16-050 (1). This rule, referred to as the "Class IV-Special rule," covers a limited range of forest practices, including, for example, logging or road-building in critical wildlife habitat and forest practices on steep, slide-prone slopes above certain waterways and wetlands. WAC 222-16-050 (1) (a)-(i).

When a landowner proposes a forest practice within a particular watershed, DNR will classify it according to the FPB's rules. If, under these rules, the proposed forest practice is Class I, II, or III, no SEPA review will be possible. However, it is possible (and quite common) in the case of forest practices that the cumulative effect of multiple "exempt" forest practices within a particular watershed could have a probable significant adverse effect on a particular watershed. If that is the case, then both the FPA and the forest practice rules would require SEPA review because, as set forth above, these laws require proposals which could significantly and adversely affect the environment to undergo SEPA review. Thus, the question is how this SEPA review can be conducted.

This is where WAC 197-11-305 comes into play. This provision permits the agency (DNR) or the Forest Practices Appeals Board (in the case of an appeal) to look at the "statutorily exempt" forest practice application and determine whether the current application, in conjunction with other "segments" of the proposal (e.g., previous forest practice applications or future ones in the same watershed) could significantly and adversely affect the environment, thereby requiring SEPA review of the current proposal under both the FPA and the FPB's rules. In this manner, contrary to your scoping memorandum, 305 does apply to "statutorily exempt actions." This is why the statement in your scoping memo concerns me.

As to scoping, I strongly suggest that DOE contact and elicit information from individuals, such as myself, who have relied on WAC 197-11-305 to provide needed environmental review for forest practice applications that might erroneously not be reviewed for their adverse impacts under SEPA. I further advise DOE to contact members of the FPB or their staff to determine how WAC 197-11-305 can be written

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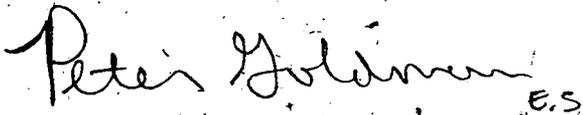
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so that the cumulative effects of multiple forest practice applications within the same watershed can be taken into account by the use of this provision.

Finally, you should be advised that whether, and to what extent, WAC 197-11-305 can be applied in connection with a Class III forest application is currently before the Washington Court of Appeals, Division One on an appeal brought by Plum Creek Timber Company. Both a Superior Court judge and the Forest Practices Appeals Board have ruled that the provision can be applied. I would be glad to fill you in on the status of these cases if this information would be helpful.

Please feel free to contact me for more information. I would be pleased to help you develop a WAC 197-11-305 rule that is consistent with the statutory scheme and which serves to protect the environment from cumulative "exempt" forest practice applications.

Sincerely,



Peter Goldman
E.S.

Peter Goldman

cc: David Mann, Bricklin & Gendler
Joan Crooks & Toby Thaler, Washington Environmental Council



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April 29, 1997

Neil Asland, Senior Planner
Department of Ecology
Environmental Review Section
PO Box 4773
Olympia, WA 98504-7703

Subject: DOE SEPA Rules, WAC 197-11
Preproposal Statement of Inquiry

Dear Mr. Asland:

The Washington Forest Protection Association (WFPA) submits these comments in response to the Department of Ecology's (DOE) recent Preproposal Statement of Inquiry regarding its SEPA Rules, WAC 197-11.

WFPA members own and manage approximately five million acres of commercial forestland, close to two-thirds of such lands in Washington. They include large and small companies, families, and individual members. WFPA has worked closely with state agencies on forest management issues since 1908, and in recent years has worked closely with the DOE on many issues relating to forest practices.

We suggest three clarifications in the DOE SEPA Rules, each relating to the categorical exemptions created by statute and the relationship of those statutory exemptions to the DOE cumulative effects "recapture" rule. These comments are designed to help alleviate confusion and misunderstandings regarding some of the statutory exemptions.

1. WAC 197-11-305: THE DEPARTMENT OF ECOLOGY'S LIMITED "RECAPTURE RULE" DOES NOT APPLY TO ACTIONS THAT THE STATE ENVIRONMENTAL POLICY ACT ITSELF STATUTORILY EXEMPTS FROM EIS REQUIREMENTS.

WAC 197-11-305 "recaptures" certain projects and agency actions that, by DOE rule, otherwise would be categorically exempt from the EIS-related portions of SEPA. It should be amended to clarify that neither WAC 197-11-305(1)(a) nor WAC 197-11-305(1)(b) apply to activities that are exempted from EIS-related procedures by specific

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provisions of SEPA itself. In short, DOE's recapture rule applies to proposals and actions that are categorically exempt by reason of administrative rules adopted by DOE, but not to those that are categorically exempt by reason of SEPA provisions adopted by the Legislature. There has been some confusion on this because WAC 197-11-305 cross-references "the provisions in Part Nine of these rules" (WAC 197-11-800 to -890), which include both the administratively created exemptions and some of those created by statute. We believe it is helpful for Part Nine to include a comprehensive list of all categorical exemptions, but DOE's recapture rule cannot operate to repeal, modify or restrict categorical exemptions adopted by the Legislature.

The Legislature has exempted various types of projects and agency actions from SEPA entirely or, more commonly, from the EIS-related SEPA procedures. The following are statutorily exempt from SEPA entirely:

- **RCW 43.21C.210**, Certain actions during a state of emergency exempt from SEPA (adopted in 1981)
- **RCW 43.21C.220**, Incorporation of city or town exempt from SEPA (adopted in 1982)
- **RCW 43.21C.222**, Annexation by city or town exempt from SEPA (adopted in 1994)
- **RCW 43.21C.225**, Consolidation and annexation of cities and towns exempt from SEPA (adopted in 1985)
- **RCW 43.21C.230**, Development and adoption of housing finance commission plans required under ch. 43.180 RCW (adopted in 1983)
- **1996 Wash. Laws Ch. 4 § 4**, Restoration and redevelopment of an unfinished nuclear energy facility (adopted in 1996)

The following are exempt from SEPA's EIS-related procedures, but remain subject to other provisions of SEPA:

- **RCW 43-21C.035**, certain irrigation projects decisions (adopted in 1974)
- **RCW 43.21C.037**, Class I, II and III forest practices (adopted in 1981, reconfirming a parallel provision in the forest practices act, RCW 76.09.050)
- **RCW 43.21C.038**, school closures (adopted in 1983)
- **RCW 43.21C.0381**, decisions pertaining to air operating permits (adopted in 1995)
- **RCW 43.21C.0382**, watershed restoration projects (adopted in 1995)
- **RCW 43.21C.230**, development and adoption of housing finance commission plans required under ch. 43.180 RCW (adopted in 1983)

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- **1996 Wash. Laws ch. 322, § 2**, siting approvals of specified personal wireless service facilities (adopted in 1996)

In addition to these SEPA exemptions, several other exemptions have existed but are now expired. *See, e.g.,* RCW 43.21C.500 (pertaining to Mount St. Helens emergency recovery operations).

The statutory categorical exemptions are fundamentally different than the categorical exemptions created by DOE rules. Because agencies are granted their rule-making authority by the Legislature, it is axiomatic that agency rules cannot repeal or be inconsistent with the statute under which they are adopted. Therefore, DOE's SEPA rules cannot effectively repeal, alter, modify or limit these statutory exemptions, which are part of SEPA itself, the source of DOE's authority to adopt any SEPA rules. Further case by case "recapture" of activities exempted by statute may be inconsistent with a recent state Supreme Court decision on categorical exemptions, *Diocin/Organochlorine Center v. Boise Cascade Corp.*, 131 Wn.2d.345 (3/6/97).

Nevertheless, there has been some confusion and misunderstanding regarding the relationship between DOE's recapture rule, WAC 197-11-305, and the SEPA statutory exemptions. This confusion could be reduced or resolved entirely by amending WAC 197-11-305 to make clear that, whenever this rule otherwise would conflict with a statutory EIS exemption, SEPA is controlling and the administrative recapture rule yields.

2. WAC 197-11-800(25)(A): THE CATEGORICAL EXEMPTION FOR CLASS I, II AND III FOREST PRACTICES WAS CREATED BY STATUTE RATHER THAN DOE RULE.

WAC 197-11-800(25)(A), One of the categorical exemptions set forth in Part Nine of the SEPA Rules, provides that:

Natural Resources management. In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

- (a) All Class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder.

This reflects a statutory exemption adopted by the Legislature in SEPA, RCW 43.21C.037, and the Forest Practices Act, RCW 76.09.050(1). Accordingly, it would remain in effect even if it were deleted from WAC 197-11-800. However, nothing in WAC 197-11 indicates whether this exemption was created by statute rather than by administrative rule.

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As a matter of convenience and information, WAC 197-11-800(25)(a) should remain in the DOE SEPA Rules. That is the first place most people are likely to look to see if particular kinds of projects and agency actions are exempt from EIS requirements, so the DOE SEPA Rules might be misleading or confusing if WAC 197-11-800(25)(a) was not included in the list of categorical exemptions. However, the public also should be aware that this exemption was created by statute and therefore has a different legal status than administrative exemptions created by the DOE rule. For example, as mentioned above, this exemption is not subject to DOE's recapture rule, WAC 197-11-305, because agency rules cannot effectively repeal or modify statutes. Similarly, persons wanting to challenge categorical exemptions created by DOE rule could argue that they are not authorized by, or consistent with, SEPA; but persons wanting to challenge one of the statutory exemptions would have to argue that the Legislature acted improperly in creating it. Including such a clarifying comment would help the public understand the relationship of the rules to the statute and reduce the likelihood of unnecessary future conflict and litigation.

3. WAC 197-11-835 AND-840: THE DEPARTMENT OF ECOLOGY'S CATEGORICAL EXEMPTIONS FOR DEPARTMENT OF FISH AND WILDLIFE ACTIONS SHOULD BE CLARIFIED.

WAC 197-11-835 and WAC 197-11-840 should be combined to reflect the merger of the Departments of Fisheries and the Department of Wildlife (formerly Department of Game) into the Department of Fish and Wildlife.

Once combined, the rules currently set forth at WAC 197-11-835(2) and WAC 197-11-840(6) should include a notice that the categorical exemption for hydraulic project approvals for activities incidental to Class I, II and III forest practices is among the statutory exemptions as distinguished from administrative exemptions created by DOE rule.

Thank you for the opportunity to comment on the Preproposal. We do, of course, wish to be notified of subsequent developments and to participate further in any reviews of the DOE SEPA Rules.

If you have any questions about these comments, please call me at (360) 352-1500.

WASHINGTON FOREST PROTECTION ASSOCIATION

By Bill Wilkerson
Bill Wilkerson
Executive Director