



DEPARTMENT OF
ECOLOGY
State of Washington

STAFF REPORT

2013 Rulemaking for Chapter 197-11 WAC, SEPA Rules

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Introduction

The Department of Ecology is preparing this staff report to aid in understanding the proposed SEPA Rule changes to WAC 197-11. In 2012, Legislature passed 2ESSB 6406 and instructed Ecology to undertake rulemaking in 2012 and 2013. For 2013, 2ESSB 6406 directed Ecology to review and update all exemptions listed in WAC 197-11-800 (among other activities). See Chapter 1, Laws of 2012, 1st Special Session, section 301.

In response, Ecology staff have reviewed comments made during 2013 by the public, Advisory Committee members, past meeting notes, and conducted its own review of each exemption topic. The goal of this document is to list each rule section where a change is being proposed and include a narrative discussion of the rule amendments proposed. Additionally, this staff report includes analysis to support the SEPA threshold determination and environmental checklist for the proposed rule changes.

Scope of SEPA analysis of the proposed rule

Considering New Exemptions

The evaluation of probable consequences of increasing exemption levels involves more than just the number or size of the project types. The analysis includes the impact of the new exemption level within the regulatory context (including SEPA, local, state, and federal regulation) for the exemption.

Context for this SEPA analysis includes:

1. Statewide SEPA rules related to exceptions for exemption.
2. Local exceptions and geographic limitation to exemption levels.
3. Other local, state, and federal regulation that avoid, minimize and compensate for adverse impacts.

1. Statewide SEPA rules related to *exceptions* for exemptions

WAC 197-11-305(1)(b)(i) – this provision of the SEPA rules states that if some parts of a proposal are exempt, but others are not, then the whole proposal is not exempt. No changes are proposed to this segment of rule.

WAC 197-11-756 defines lands covered by water. Certain exemptions [WAC 197-11-800 (1), (2), (3), (6), and (23)] do not apply when they occur on lands covered by water.

WAC 197-11-800(1) and (2) state the minor new construction exemptions do not apply under the following scenarios: when any license governing emissions to the air or discharges to water is required.

WAC 197-11-305(1)(b)(ii) – states that a 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 may be subject to SEPA.

2. Local exceptions and geographic limitation to exemption levels - WAC 197-11-908 states that cities and counties may specify that certain categorical exemptions (including minor new construction and utilities) do not apply in one or more critical areas. Also, for certain exemptions (the “flexible thresholds”), cities and counties may select an exempt level in their SEPA procedures ordinance within the range provided in the rule (including different levels based on factors such as geography). WAC 197-11(800)(1)(c) states that local adoption of an exempt level must be supported by local conditions, including zoning or other land use plans or regulations. Additionally, certain exemptions or exempt levels are only applicable to cities or counties planning under the Growth Management Act (GMA) or within an Urban Growth Area (UGA).
3. Other local, state, and federal regulation – In addition to SEPA, other local, state, and federal regulations, permits, licenses, and approvals apply to the proposed activities (whether it is SEPA exempt or not). For construction projects, other relevant commonly required permits/approvals that address some potential impacts include: building permits, site plan approvals, clearing and grading permits, Growth Management Act (GMA) impact fees, shoreline permits, construction stormwater permits, and hydraulic project approvals.

Environmental Issues and Mitigating Factors

At the end of each of the subsequent sections, a subsection titled “Environmental Issues and Mitigating” will contain analysis relevant to the environmental analysis of the proposal rule change in support of the documentation in the environmental checklist.

WAC 197-11-158 - SEPA/GMA project review

Background: This section of the SEPA Rule was adopted in the mid-1990s and addressed SEPA/GMA integration envisioned by the regulatory reform legislation from 1995.

Proposal: Ecology has reviewed this section and has not identified issues or proposed amendments except for clarification of the section title. Proposed Amendments to Rule Section Header: 197-11-158 SEPA/GMA project review -- Reliance on existing plans, laws, and regulations.

Environmental Issues and Mitigating Factors: No issues. Proposal is a clarification.

WAC 197-11-164 – Planned Actions

Background: ESHB 1717, adopted by the 2013 legislature, allows recovery of costs for preparing a non-project EIS. In addition, the reference to the statute needs to be corrected. No other issues noted.

Proposal: Ecology is proposing to change the statutory reference in 197-11-164 (1) from 43.21C.031 to 43.21C.440 to reflect the statutory change in the section for planned actions. Ecology does not propose to amend the section to include the cost recovery provisions in ESHB 1717. Rule language is not needed to implement the legislative directive. There are other statutory provisions affecting the SEPA Rules that are not presently addressed. We have decided that, rather than set an expectation that the Rules reflect all statutory provisions, the rule language here and elsewhere would be unchanged.

Environmental Issues and Mitigating Factors: No issues. Proposal is a clarification.

WAC 197-11-235 & 238 – SEPA/GMA integration documents and monitoring

Background: These sections of the SEPA Rule were adopted in the mid-1990s and addressed SEPA/GMA integration envisioned by the regulatory reform legislation from 1995.

Proposal: Ecology has reviewed these sections and has not identified issues or proposed amendments except for clarification of some of the section titles. Proposed Amendments to Rule Section Headers:

197-11-235 SEPA/GMA integration -- Documents.

197-11-238 SEPA/GMA integration -- Monitoring.

Environmental Issues and Mitigating Factors: No issues. Proposal is a clarification.

WAC 197-11-508 & 510 – SEPA Register and Public Notice

Background: The 2013 rulemaking includes the topic of improving public notice (in SEPA or by other means). The goal is to improve processes to ensure timely notice, provide open and accessible documents, and adequate comment periods. This notice is important for:

- Affected citizens, neighbors, interested parties
- Agencies with jurisdiction, affected jurisdictions, agencies with expertise
- Tribes

The Advisory Committee discussed public notice issues and Ecology received a couple of proposals for rule amendments. There were two themes related to improving public notice processes and modernizing the outreach tools:

- a. Expanding the on-line SEPA Register to include non-SEPA documents
- b. Requiring cities and counties to submit Notice of Applications for projects exempt from SEPA, the SEPA Register.

Ecology considered several options:

1. Revise WAC 197-11-508 (SEPA Register) to provide that the register is web-based and updated daily;
2. Revise WAC 197-11-510 (Public Notice) to specify that any postings on property must be visible to the general public, perhaps from the nearest public road), and that agencies are required to maintain an interested parties list for SEPA notices; and
3. Requiring cities and counties to submit all Notices of Application under RCW 36.70B (or equivalent notice) to the SEPA Register (or some other statewide listing).

Proposal: Ecology is proposing option 1 and the second part of option 2 (agencies are to maintain an interested parties list for SEPA notices).

Environmental Issues and Mitigating Factors: No issues. The proposed rule language contains a minor improvement in public notice. The proposed change for publishing the SEPA register reflects current practices.

WAC 197-11-610 – Use of NEPA documents

Background: The current rule allows for the adoption of a NEPA environmental impact statement (EIS) or environmental assessment (EA) by a SEPA lead agency to fulfill the analysis and documentation that accompanies a SEPA threshold determination. The “adoption” of a NEPA document is required make it a SEPA “environmental document”. “Environmental document” is defined in WAC 197-11-744 and does not include NEPA documents. While the SEPA Rules encourage combining processes and reducing duplication, a SEPA lead agency must make a determination that the NEPA document is adequate for SEPA purposes. Otherwise, a state or local agency would be letting a federal agency determine what is adequate under SEPA.

Consistent with the goals of reducing duplication and reducing paperwork, Ecology proposes the inclusion of an additional NEPA document to be reviewed and adopted in lieu of preparing a separate SEPA “environmental document”. A “documented categorical exclusion” (DCE) is prepared by some federal agencies (under their agency-specific NEPA rules) to record how a proposal meets a specific type of NEPA exclusion (similar to SEPA “exemption”). The proposed SEPA rule change allows lead agencies to determine if the analysis/documentation in a NEPA DCE is sufficient to support a SEPA determination of nonsignificance (DNS).

Proposal: Ecology is proposing to allow lead agencies to determine if the analysis/documentation in a NEPA DCE is sufficient to support a DNS.

Environmental Issues and Mitigating Factors: The purpose of the DCE is to document that a specific proposal meets the requirements for an agency-specific NEPA exemption category. Conversely, the purpose of the SEPA environmental checklist is to document how a specific project in a specific location will not result in significant impacts. The DCE, because it is federal agency-specific, may not address effects on the range of elements of the environment required to be considered under SEPA. This could result in impacts that are not adequately addressed by applicable laws and regulations.

The proposed rule limits these potential problems with the following:

1. The SEPA lead agency must review and ensure that the DCE meets the requirements of SEPA review and addresses the elements of the environment under WAC 197-11-444.

2. The amendment clarifies that NEPA documents must be “adopted” under SEPA and a DNS must be issued along with the adoption of the NEPA DCE.

3. A public and interagency comment period is required for the DNS/DCE Adoption. This provides an opportunity for the SEPA lead agency to notify and receive input in the event that the DCE requires additional analysis.

WAC 197-11-756 – Lands covered by water

Background: The definition of “lands covered by water” is outdated. WAC 197-11-756 defines “lands covered by water” as “lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, marshes, and swamps.” Ecology proposes to update the definition to include a modern definition of wetlands.

Ecology has also received input regarding artificially created waters and buffers. Regarding buffers, Ecology has heard that some lead agencies consider buffers and adjacent land above the ordinary high water mark are sometimes considered by lead agencies to be included as lands covered by water. If lands are above the ordinary high water, they are not considered to be lands covered by water. Ecology proposes clarifying by adding language about buffers and adjacent land in the definition.

Proposal: Ecology is proposing to update the definition of “lands covered by water” regarding wetlands to be more consistent with Growth Management Act (GMA). The change will also clarify that artificially created wetlands are not considered lands covered by water for the purposes of SEPA review. Additionally, Ecology is proposing to clarify that buffers and adjacent lands above the ordinary high water mark are not “lands covered by water”.

Environmental Issues and Mitigating Factors: The proposed rule language includes both update and clarification. While the updated definition of wetlands appears to include an expanded definition, it is largely a clarification to reflect the interpretation of “wetland” used currently by most agencies. The language regarding artificially created waters limits the applicability to lower-value created wetland areas. Other laws (e.g. locally adopted Critical Areas Ordinances) provide protection for created wetlands. The clarifications regarding applicability to buffers and adjacent lands reflect Ecology’s interpretation of the existing rule language. However, some lead agencies may have interpreted the definition more narrowly in the past without the benefit of the clarifications. In those cases, any reduction in impacts provided by SEPA review may be lost on the adjacent lands or in buffers. However, in such cases there are other mechanisms for protecting the adjacent lands (such as the Shoreline Management Act, SMA) and for protecting buffer areas (such as Critical Areas Ordinances).

WAC 197-11-800 – Categorical Exemptions

Flexible Thresholds

Background: The statute required Ecology to increase flexible thresholds during the phase 1 (2012) rule amendment process, including differentiating between GMA and non-GMA jurisdictions as well as between Urban Growth Areas (UGA) and non-UGA areas. Many of the flexible thresholds were increased as a result of those amendments. The statute also authorized Ecology to review and update any of those phase 1 thresholds during the 2013 rule-making effort.

As of this date, very few local governments have updated their SEPA procedures to take advantage of the new levels of flexible thresholds. For those that have increased the levels, there has been very little time to determine if there are any lessons learned from the recent increases. In addition, no specific request or information has been submitted requesting an increase. The agency believes it is premature to amend those levels until more experience is obtained.

Proposal: No additional changes are proposed to WAC 197-11-800(1) related to flexible thresholds.

Environmental Issues and Mitigating Factors: No issues. No changes proposed.

WAC 197-11-800 (1) Minor New construction

Exceptions to the Exemptions

Rule Section: 197-11-800 (1) and (2)

Background: Within the minor new construction exemptions in 800 (1) and (2) there are a number of scenarios where the exemptions do not apply – or “exception to the exemptions”. It was suggested that Ecology make these more clear by listing the exceptions in list format instead within the introductory language to the subsection.

Proposal: Ecology proposes to reorganize the section ease of reading. Additionally, rezones are now proposed to be covered in 800(6), so language regarding rezones is replaced with a reference to 800(6).

Environmental Issues and Mitigating Factors: No issues. Proposal is largely a clarification.

Cultural Resources

Rule section: 197-11-800 (1)(c)

Background: The cultural and historic resource members of the Advisory Committee, and the Washington State Department of Archaeology and Historic Preservation (DAHP), proposed two sets of rule amendments to address issues related to notice for cultural and historic resources. One proposed set of amendments would create an “exception” to categorical exemptions. The exception would provide that SEPA exemptions would not apply for specific types of projects, primarily those that

involved ground disturbing activities, use of imported fill material under certain conditions, or affecting structures eligible for or listed on a historic register or survey. The language also provided that the exception would not apply if a jurisdiction had adopted a cultural resource management plan, or development regulations that addressed impacts to cultural and historic

The other set of amendments would create a “planning-level” process, rather than a permit-level process. A city or county would do advance work, in its comprehensive or other plans and/or development regulations, addressing how it would plan for treating archaeological and historic resources. Then, the SEPA Rules would provide that projects could be exempt for archaeology and the built environment if:

- Cultural resource management plan is incorporated into the GMA comprehensive plan; or
- Local ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL); and
- A data-sharing agreement with DAHP is in place

Proposal: Ecology proposes these amendments to the SEPA Rules:

1. A version of the planning-level approach. A city or county fully planning under the GMA will have to document, when adopting flexible thresholds under WAC 197-11-800(1)(c), their consideration of historic and cultural resources:
 - a. For project review, using available data regarding known and likely resources (and encouraging but not requiring a data-sharing agreement with DAHP);
 - b. Planning and permitting processes that reflect related state laws governing cultural and historic resources (e.g. RCW 27.43 on Indian graves and records, and RCW 27.53 on archaeological sites and resources); and
 - c. Including appropriate provisions in their local development regulations (e.g. standard inadvertent discovery language and pre-project cultural resources review)
2. A change in the time allowed for other parties to review local ordinances adopting new flexible thresholds; the previous 21-day review time is being extended to 60 days (WAC 197-11-800(1)(c)(iii))

Environmental Issues and Mitigating Factors: The SEPA process has tended to serve as the primary tool by which notice is provided regarding the presence of cultural and historic resources when project are proposed. Unlike other resources, there are few other regulatory mechanisms which provide notice regarding potential impacts to these resources. The addition of additional categorical exemptions thus had the potential of increasing impacts to cultural and historic resources.

Cities and counties, when considering increases in their categorical exemptions, must document in their local SEPA procedures how their local ordinances and regulations provide adequate protection. In order to limit the potential impacts to cultural and historic resources, the proposed rule requires cities and counties to document how they have addressed these resources, and minimum procedures are specified. These are:

- The use of available data and tools to identify the presence of cultural and historic
- Planning and permitting processes that acknowledge other applicable state laws addressing cultural and historic resources
- Local ordinances requiring pre-project review and the use of standard inadvertent disclosure

language

Additionally, the proposed rule increases the comment period for adopting the increased thresholds to 60-days (for all issues, including cultural resources).

Air and water discharge permits exception

Topic: Non-exemption when there are licenses governing emissions to the air or discharges to water

Rule section: 197-11-800 (1) and (2)

Background: Current language in WAC 197-11-800(1) and (2) states that the exemptions do not apply when “any license governing emissions to the air or discharges to water is required”. Some have suggested that the language excluding the exemption when additional environmental permits are required does not make sense given that the environmental permits should address the impacts associated with each type of permit. Ecology has put forward the idea that the air and water permit language is one way of describing attributes of more intensive land uses.

It is possible to distinguish between different types of permits that fall within the current language. For water discharge permits, SEPA exemption is already resolved in the statute. RCW 43.21C.0383 states that for existing discharges, the issuance, reissuance, or modification of a waste discharge permit is exempt. New discharges would be subject to SEPA. Additionally, RCW 43.21C.0383 states that construction stormwater general permits for sites less than 5 acres are exempt. Permits for sites 5 acres and larger are subject to SEPA. Prior to the statutory exemption for stormwater permits for sites under 5 acres in 2008, there was concern that some minor new construction projects previously exempt under 800 (1) or (2) would be made non-exempt by the new stormwater permits for sites less than 5 acres. Given that water discharge permit exemption/non-exemption is resolved in the statute, it would seem that there is little room for discretion in rule about which water discharge permits are exempt. The language in 800 (1) and (2) can be amended to reflect the statute. Without the change the current rule language could compel a project to undergo SEPA review due a stormwater permit, yet the permit itself would be exempt from SEPA.

For permits governing air emissions, the existing statutory and rule language does not address all types of air permits. RCW 43.21C.0381 states that decisions pertaining to the issuance, renewal, reopening, or revision of an air operating permit are exempt. The SEPA rules state that granting of variances under the state clean air act for air pollution control requirements for one year or less are exempt. The rules are silent on any other air permits. A local clean air agency has requested that Ecology retain the non-exemption language covering air permits. The clean air agency finds value in the SEPA review of sources covered in permits issue by the agency.

Proposal: Ecology proposes a language change so that only “non-exempt” licenses would trigger review for projects types in 800 (1) and (2). Proposed language also lists the “exception” scenarios and exempt licenses for clarity. The update will make the water discharge permit non-exemption to be consistent with the statute. For example, a minor new construction project involving over 5 acres of clearing/grading would still require SEPA review for the entire project due to the NPDES construction stormwater permit. The air permit would also be consistent with the rule and statute.

Environmental Issues and Mitigating Factors: The proposed rule language specifies that permits exempted by statute or rule will not be the trigger for SEPA review. While largely a clarification, a small number of proposals below the construction thresholds in 197-11-800 (1) and (2) that would have undergone SEPA review due to air or water permits will now be exempt. For such proposals, the air and water permit requirements will address any potential impacts associated with those proposals.

Address Mixed Use

Topic: Consider adding specific exemption threshold for mixed use projects (residential and commercial in one building or cluster of buildings)

Rule section: 197-11-800 (1) Minor New Construction New Section for Mixed Use

Background: Ecology suggested a new project type of “mixed use” buildings to add to the list of minor new construction exemptions. Mixed use is not addressed currently in the SEPA Rules, although it does appear in RCW 43.21c.229, Infill Development Exemption. Many new multi-family residential projects include some commercial space, but section 800(1) does not establish a clear threshold for determining what size of mixed-use building is exempt from SEPA review.

Ecology interprets the current rule language to authorize lead agencies to determine that SEPA is exempt for mixed-use projects with the residential unit numbers below the residential threshold and the commercial square footage and parking component below that applicable threshold. Ecology suggested a new project type that reflects this interpretation –and combines both the residential exemption level and the commercial threshold. The minimum or default exempt mixed-use project size includes up to 4 dwelling units, 4,000 square feet and 20 parking spaces. Cities and Counties may increase those thresholds pursuant to 800(1)(c) and (d).

Options:

1. Add the provision as proposed above regarding a new project type for mixed-use construction.
2. Do not add the previously proposed language but instead specify that local government sets the mixed-use threshold up to a combined maximum flexible level using the residential units and commercial building sizes in 800(d).
3. Add a new mixed use exemption with a lower threshold than the combination of both residential and commercial thresholds.

Proposal: Ecology proposes option 2, where local governments will set mixed use thresholds.

Environmental Issues and Mitigating Factors: The proposed rule language provides a clarification of Ecology’s interpretation of what the rule currently allows. The rule change may encourage a more explicit choice of thresholds for mixed use proposals. If a local government chooses to specify a mixed-

use proposal threshold when adopting the flexible thresholds, the documentation required for adoption will show that elements of the environment are adequately addressed.

Modify fill and excavations project type

Topic: Modify fill and excavation exemption to clarify applicability

Rule section: 800 (1) Minor New Construction

Background: The 2012 rulemaking attempted to clarify that clearing and grading associated with an exempt minor new construction project (or any other exempt project type) is also exempt regardless of quantity of fill or excavation. Ecology has heard from lead agencies and other stakeholders that there is still confusion about how to apply the excavation/fill exemption because it is listed alongside with minor new construction buildings. However, there is still a need to include a specific exemption for dirt moving activities (i.e. clearing, grading, excavation, fill) that are not connected to an existing or planned building or other facility.

Options:

1. Keep this exemption in 800(1) and replace the phrase “associated with” to “necessary for”.
2. Move this exemption to 800(2) and apply the 1000 cu yd threshold for all agencies. This should further clarify that this is not intended to be combined with other new construction project types, nor should it be used for land-clearing for landscaping or other connected activities associated with an existing facility/structure.

Proposal: Ecology is proposing option 1 with additional clarification of the applicability of this exemption.

Environmental Issues and Mitigating Factors: No issues. The proposed rule language is largely a clarification.

WAC 197-11-800 (2) Other minor new construction

Air and water discharge permits exception

Please see the topic under 800 (1).

Updating minor new construction language

Rule section: 800(2)(c) Other Minor New Construction

Background: The City of Seattle proposed amendments to the transportation-related exemptions in 800(2)(c) to clarify the applicability of existing exemptions.

- (i) installation of catch basins and culverts for the purpose of road and street improvements;

- (ii) and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders where capacity is not increased and no new right of way is required;

Comments about this proposal include the following:

1. Additional right of way may be necessary to maintain a roadbed and the mere addition of right of way should not remove exemption when no capacity is added.
2. Clarify whether culverts installed for stream crossings as part of a road project are exempt or excluded from the exemption because they are constructed on land covered by water.
3. Explain why the installation of culverts are exempt only for the purpose of street improvements
4. Additions to this proposal include a new subsection for the exemption of new boatlifts by **adding a new subsection for the** “installation of freestanding, floating, or suspended boatlifts”. The rationale provided is that WDFW does not require an HPA for the installation of boatlifts.

Proposal: Ecology is proposing amendments to this section as suggested by the City of Seattle. The current exemption language in this section includes culvert installation and the proposed amendment clarifies that it is limited to road improvements. Ecology is not proposing to add boatlifts as an additional exemption.

Environmental Issues and Mitigating Factors: No issues. The proposed rule language is largely a clarification.

Exemption for demolition of buildings

Rule Section: 197-11-800(2)(f)

Background: Currently, the rules provide an exemption for the demolition of a structure or facility that is within the construction exemption in 800(1) and (2) except for those structures or facilities listed a national, state or local register. A suggested amendment to add “eligible for listing” was included in the previous discussion draft of the rule. The “eligible for listing” language (as well as actually being listed in a register) intended to make this language consistent with the generally accepted definitions/practices for determining a historical resource that may need some protection or other mitigation prior to demolition. Concerns were raised about this proposed amendment and the ability of staff to make a determination of eligibility for an over the counter permit.

Proposal: Ecology is not proposing any amendments to this section.

Environmental Issues and Mitigating Factors: No issues. No changes are proposed to the Rules.

Installation and removal of tanks

Rule Section: 197-11-800(2)(g)

Background: Many have suggested that above-ground tanks and the removal of above and below-ground tanks be included in the SEPA exemption. Ecology suggested preliminary draft language to add these with the same size threshold, at 10,000 gallons.

Comments also included concern that tanks with explosive or flammable contents should have smaller exemption size limit require because these are dangerous and other regulations don't provide enough protection in many locations. Ecology notes that the installation or removal of tanks that are accessory to exempt structures (like individual homes and small commercial buildings) are exempt under 800(2)(d), although these tanks would likely be smaller.

In some non-residential settings (agricultural and industrial) larger tanks are commonplace. One option would be to provide different tank-size exemptions depending on whether the location is residential or nonresidential. Agricultural or industrial sites could have a larger threshold, e.g., 60,000 gallons.

Options:

1. Amend to include "installation or removal of impervious underground or above-ground tanks," and include the same 10,000 gallon threshold for both types of tanks.
2. Add above-ground tanks as in # 1 and create separate residential and non-residential exemptions for tanks with larger threshold for agricultural or industrial sites (e.g., 60,000 gallons).

Proposal: Ecology is proposing option 2 in order to both provide an above-ground tank exemption and to allow for larger tanks in appropriate industrial and agricultural locations.

Environmental Issues and Mitigating Factors: The proposed language change exempting above-ground tanks and removal of both above-ground and underground tanks may allow more tanks to be installed or removed without SEPA review. Any risk of fire or explosion from tanks is largely controlled by fire, safety, and mechanical codes. The proposed language change regarding tanks in agricultural and industrial areas allows for increased tank size more typical of activities on those sites. As with smaller tanks, risk of fire or explosion from larger tanks on industrial or agricultural sites is largely controlled by fire, safety, and mechanical codes. Additionally, retaining SEPA review for the larger tank sizes outside industrial and agricultural areas helps ensure fire and explosion risks are addressed in areas with greater populations (residential and commercial areas).

Small energy projects

Rule section: 197-11-800 (2) (l)

Background: Local government committee members proposed a new exemption for solar energy projects that are associated with a structure – "installation of a solar energy system on the roof of an existing building, at an existing parking lot, or on a closed sanitary landfill." The goal is to facilitate the

replacement or supplement of gas and purchased electricity with local solar arrays on existing facilities. This contributes to reducing greenhouse gas emissions as well as other pollutants associated with fossil fuel and large-scale hydroelectric energy production.

Many small energy projects are currently exempt under 800(2)(d) if they are considered a “small structure” or “minor facility” that is an accessory to an exempt building/project. Ecology considers energy generation as “accessory” to a building or facility if its purpose is to provide energy for that site only. Ecology also notes that the determination of significant effects cannot include a comparison or weighing of benefits of renewable energy production against the probable adverse impacts (see WAC 197-11-330(5)).

Nevertheless, the installation of solar energy panels on existing structures (as opposed to construction of new structures to house the arrays and associated equipment) results in relatively minor and temporary impacts unless there is associated land-clearing and installation of additional impervious surface.

Options:

1. Add a new subsection to 800(2)(d) or an entirely new subsection in 800 (2) to include accessory solar energy generation equipment for existing structures –even those structures that are above the minor new construction size threshold. This exemption would be limited by not increasing the existing footprint of the existing structure or facility.
2. Add a new subsection that exempts solar energy systems plus additional structures and equipment on the same parcel (perhaps limited to 500 sq/ft per City of Seattle’s proposal).
3. Continue to research this proposal and further define the impacts associated with the type, size and location of these projects.
4. Do not make any rule changes based on this proposal.

Proposal: Ecology proposes option 1, adding a new subsection to 800 (2) to create a new exemption for accessory solar energy installations on existing structures.

Environmental Issues and Mitigating Factors: The proposed language exempting solar installations on existing structures could result in minor impacts associated with the installation or permanent location of solar equipment. The language limiting the exemption to existing structures minimizes these impacts.

WAC 197-11-800 (3) Repair, remodeling and maintenance activities

Clarify in-water maintenance work, dredging, bulkheads

Background: Currently the exemption for maintenance projects specifically excludes dredging activities and “reconstruction/maintenance of groins and similar shoreline protection”. Ecology heard from lead agencies who conduct activities in water that involve minor dredging such as culvert maintenance. They recommend an expansion of the exemption to include more in-water maintenance work.

Ecology initially proposed a limit of 50 cubic yards -meaning that maintenance dredging projects of 50 cubic yards or less would be exempt from SEPA (instead of requiring SEPA review for all maintenance dredging). A brief scan of the SEPA review documents for “maintenance dredging” projects seemed to

confirm that most projects involve many hundreds and thousands of cubic yards of materials. The proposed change will not affect the major dredging projects but will help facilitate the maintenance of fish passages and other structures.

Ecology previously proposed clarifying language related to the maintenance of “shoreline protection structures”. Ecology and some other lead agencies have long interpreted bulkheads to be a type of “shoreline protection”, but the language in the rule only lists “groins” as an example. Ecology previously proposed a clarification that adds bulkheads in addition to groins as examples of the type of maintenance projects that are not exempt under 800(3)(b). Some lead agencies (Ports) objected to the interpretation and rule clarification. Ecology does not interpret this clarification as adding a new requirement.

The current language also includes “replacement of pilings” as an example of in-water maintenance projects that are exempt. One comment suggested that this be more specific and include a quantity to improve consistency across lead agencies. Ecology notes that the rule articulates that “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). Ecology could include a percentage of the structure to be replaced. In trying to add clarity, Ecology may inadvertently limit room for lead agency interpretation on this issue.

Options:

1. Qualify the maintenance dredging exception to allow up to 50 cubic yards of sediment under the exemption
2. Qualify the dredging exception to allow up to 20 cubic yards of sediment
3. Add clarification that reconstruction/maintenance of bulkheads and other “shoreline stabilization” structures are not exempt
4. Include a specific percentage of the structure to be replaced as a threshold for the maintenance exemption

Proposal: Ecology proposes to amend this section to exempt maintenance dredging of up to 50 cubic yards of sediment. Ecology proposes leaving the existing language regarding “groins and similar shoreline protection structures” unchanged. No changes are proposed to specify a percentage-based approach to the minor repair or replacement exemption language.

Environmental Issues and Mitigating Factors: The proposed language change (exempting smaller maintenance dredging) could result in water quality and fish impacts if such activities were completely unregulated. However, there are many mitigation factors. First, the exemption applies only to maintenance dredging; most dredging projects that require maintenance will have gone through a prior review, including SEPA review. Note, if the original SEPA review included future maintenance in the analysis, SEPA review may have already been completed for the future maintenance activities. Second, the original project would likely have environmental permits with conditions (e.g., HPA, 404). And third, the new maintenance proposal may still require environmental permits if not covered under the original permits. These factors plus the 50 cubic yard size limitation greatly reduce any potential impacts.

Topic: Clarify and expand maintenance exemptions –not including in-water work

Background: The current language in this section is fairly broad as long as there is no work in-water and there is no expansion. The City of Seattle requests clarity on the “intent and scope” of this exemption and proposes an additional exemption for facility expansion and building additions. WSDOT proposes to add “transportation facilities” to clarify that their maintenance activities are covered under this exemption.

The existing language of the exemption reads:

(3) 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 . . .

The term “minor alteration” is broad and can include most any kind of work except material or functional changes or expansion. This includes the projects related to landscaping maintenance (as the City mentions) and some historical restoration projects.

Seattle’s proposal broadens the exemption to include facility expansions –provided the addition does not exceed 50 percent of the floor area up to a maximum of 10,000 sq feet as long as the project is not in a critical area and is in an area where public services are available (in that case the limit is 2500 sq ft).

Technically the exemption language for facility expansions or additions is located in 800(2)(e). In that subsection, the expansion is limited to structures under the size limits of the minor new construction exemptions. Ecology notes that the current maximum flexible threshold for commercial and other buildings is 30,000 sq ft. Consequently, 800(2)(e) already authorizes fully planning cities and counties to exempt building additions up to 10,000 sq ft if the original building is 20,000 sq ft (pursuant to the City’s 50 percent increase maximum).

The City proposal to exempt larger additions on non-exempt structures was based on a different exemption (i.e. California’s CEQA).

Options:

1. Modify 800(3) to include additions and expansions pursuant to City of Seattle’s proposal plus add “transportation facilities” in addition to the “existing public and private facilities” language.
2. Modify 800(2)(e) to exempt additions and expansion pursuant to City of Seattle’s proposal
3. Add the “transportation facilities” language only
4. Retain current language in 800(3) and 800(2)(e)

Proposal: Ecology proposes option #3 to clarify that transportation facilities are included in the maintenance exemptions.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-800 (5) Purchase and sale of real property

Topic: Clarify Exemption for sale of public property

Rule section: 800(5)

Background: This section currently provides an exemption for the agency actions involving the purchase or sale of public property unless there is an “authorized public use” on the property. There is not a definition of public use and some agencies have applied this differently. Ecology has suggested a definition to help lead agencies apply this exemption more effectively and consistently. The initial proposal added the qualifier that “authorized” includes a “specifically designated preexisting, and documented” public use.

Concern was voiced that the added exception language is not necessary –possibly because SEPA review is not necessary for this types of property changes. SEPA review is required for real property transactions that may result in change of public use because of the related impacts to recreation, transportation, cultural and historic resources, housing etc.

Options:

1. Amend this subsection to define “authorized public use” with the proposed language above
2. Amend this subsection to add a different definition for “authorized public use”.
3. Do not amend this subsection
4. Remove the exception for “authorized public use” resulting in all public property transactions to be exempt.

Proposal: Ecology proposes to clarify this term and add the proposed language above (Option 1). In addition Ecology was provided additional information in comment letters and it is including easements and other lesser property interests in section (c).

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-800 (6) Land use decisions

Background: Two subsections of the WAC address whether land use decisions are categorically exempt from SEPA. The first, 197-11-800(1) (a), addresses minor new construction undertaken under the flexible thresholds. This subsection states: “The exemptions in this subsection apply to all licenses 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.” Thus, this provides that land use decisions (which are considered “licenses”) necessary to construct these construction types are exempt from SEPA review. This section is often overlooked when a lead agency evaluates whether a project is categorically exempt.

The second, WAC 197-11-800(6) (a-c), lists several specific types of land use decisions that are categorically exempt from SEPA:

- The first time property is divided by a short plat/subdivision (using the procedures outlined in RCW 58.17), unless on lands covered by water;
- Granting of variances (the SEPA Rules list the specific criteria in state law under which variances may be granted); and
- Classification of lands for current use taxation

There are several major issues related to land use decisions and SEPA categorical exemptions. One of the more significant issues is whether a specific type of permit should trigger SEPA review, or whether the permit type is not relevant and a categorical exemption should be based on the specific activity. An example is conditional or special use permits, which can capture a wide variety of potential land uses (ranging from a home occupation to a large commercial development). If the categorical exemption is based on the permit type, and conditional/special uses are not categorically exempt, then the entire range of activities authorized by conditional/special use permits would require SEPA review.

Other issues include;

- whether SEPA review for further short subdivisions should remain a requirement; and
 - whether some rezones should not be required to undergo SEPA review
1. **Proposal:** Ecology is proposing rule amendments that will exempt land use decisions for otherwise exempt projects, except some rezones (which may be exempt under certain specified criteria). Other land use decisions may also be exempt if the project being proposed will occur within existing buildings or facilities that would not change the character of the buildings/facilities in ways that would remove it from an exempt class. All variances will continue to be exempt.
 2. Several other related changes are being proposed:
 - a. Clarify that the exemption for short subdivisions includes subsequent short subdivision of lands within the same boundaries, as long as the original exempt level (tied to RCW 58.17.060) is not exceeded.
 - b. Provide that rezones required for an otherwise exempt project are exempt if certain conditions are met (including rezones in an Urban Growth Area which were anticipated and addressed in previous environmental review, and do not require a comprehensive or sub-area plan amendment)
 - c. 197-11-800(1) and (2) are revised to cross-reference the new language in 197-11-800(6).
 - d. The subsection on classification of lands for current use taxation is moved to subsection 14 (activities of agencies), and clarified to include classification and grading of forest land.

Environmental Issues and Mitigating Factors: The previous rule language identifies specific types of permits as a trigger for SEPA review. This trigger ignores the actual project being proposed, and has tended to capture many projects that would not, on their own, require environmental review. An oft-cited example is a home occupation which, on its own, often requires no construction of any kind. If a city or county decides home occupations need a conditional use permit, SEPA is automatically triggered based on the permit type.

The proposed rule changes this by providing that most land use decisions for otherwise exempt projects will not require SEPA review. This change will reduce the likelihood that projects not otherwise resulting in adverse environmental impacts will be subject to review just based on the type of permit used to authorize them. No additional impacts are anticipated to be incurred by this change.

WAC 197-11-800 (10) Activities of the state legislature

Background: This subsection exempts the activities of the state legislature. However, the subsection also states that the proposing of legislation by an agency is not exempt. Because the decision-making for legislation rests with the legislature and is based on testimony provided at legislative hearings, it is unclear that SEPA review would add anything. Additionally, it is unclear at what point in agency request legislation an agency is making a decision that constitutes an action under SEPA.

Proposal: Ecology proposes language removing the provision about proposing of legislation by an agency.

Environmental Issues and Mitigating Factors: The proposed language removes the current provision about agency request legislation. Any issues associated with agency request legislation are addressed through the legislative process.

WAC 197-11-800 (16) Local and Special improvement districts

Background: Expand exemption to include formation of all special districts or special purpose districts – that are a local government entity designated by the Revised Code of Washington (RCW) and not a city, town, township, or county. Establishing districts is procedural, but planning and project development is still subject to SEPA.

Proposal: Ecology proposes to add special purpose districts to the exemption language in 800(16).

Environmental Issues and Mitigating Factors: The proposed language only addresses the formation of districts. Any proposal by the districts would be subject to review under SEPA.

WAC 197-11-800 (19) (20) & (21) Procedural Actions, Building Codes and Adoption of Noise Ordinances – Minor Code Amendments

Background: These sections are treated together due to linkage with statutory language as explained below.

Some advisory committee members have suggested there are many minor code amendments that undergo SEPA review where SEPA does not add value. Given that every local government must make amendments to their own code and development regulations, and that many of those changes have no impact on the environment, it would appear there is merit to creating additional exemptions for this category.

Section 301 of 2ESSB 6406 directs Ecology in the 2013 rulemaking to “(iii) Create categorical exemptions for minor code amendments for which review under chapter 43.21C RCW would not be required because they do not lessen environmental protection”. Yet the topic was also addressed in Section 307 of SB 6406 (now RCW 43.21c.450 – see below) possibly creating a limitation on the rulemaking that can be accomplished without being in conflict with the statute.

In looking at the statutory language, Section 307 contained four subsections. The first two address amendment of development regulations where SEPA has already been done on a comprehensive plan or shoreline master program update. Subsection 3 addresses amendment of development regulations that provide increased environmental protection. Subsection 3 includes the clause “limited to the following”. Taken together, subsections 1 through 3 may limit whether any additional development regulation amendments can be made exempt by the SEPA Rules. Subsection 4 addresses amendments to technical codes and includes the permissive clause “including the following”.

Taken as a whole, Section 307 potentially affects three subsections of WAC 197-11-800: (19) Procedural Actions, (20) Building Codes, and (21) Adoption of Noise Ordinances (see below). In WAC 197-11-800 (19), procedural actions of government including adoption of regulations and ordinances are exempt if they contain no substantive standards regarding the environment. An exemption for text amendments to existing code or ordinances can be added as long as those changes do not make substantive changes regarding the environment. Additionally, (19) makes adoption of SEPA Procedures exempt. Amendments to SEPA procedures should continue to remain exempt. SEPA Procedures are considered to be procedural, not substantive, so should remain exempt. Additionally, it would be inconsistent with that the Legislature would ask Ecology to update the rule to expand exemption in this category while at the same time removing SEPA procedures from exemption. WAC 197-11-800 (20) currently exempts the adoption of building codes (but does not mention energy or electrical code amendment as did Section 307). Section 307 makes this subsection unnecessary as the statutory exemptions apply independent of the SEPA Rules. And WAC 197-11-800 (21) addresses adoption of noise ordinances. Because noise ordinances can be considered “development regulations”, this subsection of rule could be covered by Section 307. However, the rule exemption does reference state noise standards adopted by Ecology. Therefore, the adoption of noise ordinance should remain exempt as long as the noise ordinance is following the state standards.

RCW 43.21c.450 (current law)

Nonproject actions exempt from requirements of chapter.

The following nonproject actions are categorically exempt from the requirements of this chapter:

- (1) Amendments to development regulations that are required to ensure consistency with an adopted comprehensive plan pursuant to RCW 36.70A.040, where the comprehensive plan was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;
- (2) Amendments to development regulations that are required to ensure consistency with a shoreline master program approved pursuant to RCW 90.58.090, where the shoreline master program was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;
- (3) Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:
 - (a) Increased protections for critical areas, such as enhanced buffers or setbacks;
 - (b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction;and
 - (c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law, including the following:

- (a) Building codes required by chapter 19.27 RCW;
- (b) Energy codes required by chapter 19.27A RCW; and
- (c) Electrical codes required by chapter 19.28 RCW.

WAC 197-11-800 (current rule)

(19) Procedural actions. The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt. Agency SEPA procedures shall be exempt.

(20) Building codes. The adoption by ordinance of all codes as required by the state Building Code Act (chapter [19.27](#) RCW).

(21) Adoption of noise ordinances. The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter [70.107](#) RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (and thus requires approval of the department of ecology under RCW [70.107.060\(4\)](#)), SEPA compliance may be limited to those items which differ from state regulations.

Proposal: Ecology proposes adding an exemption in WAC 197-11-800 (19) for text amendments to existing code or ordinances as long as those changes do not make substantive changes regarding the environment. Ecology proposes to withdraw WAC 197-11-800 (20) because a broader exemption now exists in RCW 43.21c.450 covering building codes as well as all other “Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law.” Ecology will label the subsection as “reserved” so as not to renumber the remaining exemptions. Ecology considers WAC 197-11-800 (21) on noise ordinances consistent with RCW 43.21c.450, but Ecology proposes eliminating unnecessary language regarding ordinance submittal to Ecology.

Environmental Issues and Mitigating Factors: The proposed language in 197-11-800 (19) allows for text amendments that do not change environmental standards thereby limiting any potential impacts. Removing building codes in (20) results in no change as they are still exempt in statute. The change in noise ordinance exemption is a minor clarification with no issues.

WAC 197-11-800 (23) Utilities

Background: Utilities and other stakeholder proposed an expansion of the water pipe size from 8 to 12 inches under this exemption. The City of Seattle also proposed an amendment to expand exemptions for utility work done in existing facilities. “All ~~developments~~ activities within the confines of any existing electric substation, reservoir, pump station, vault, pipe, or well: Provided, that additional appropriations of water are not exempted by this subsection, but that any changes in water flow volumes, rates, and destinations resulting from those activities are exempted.”

Another proposal involves the further expansion the exemption by also including the replacement of any size pipe within the limits of developed right-of-way because there is newer installation technology can effectively limit adverse impacts. Existing pipelines and conduits located in streets/rights-of-way are usually located in environments that have already been disturbed and permanently modified.

There is support for pipe size increases but one comment suggests limiting this to UGAs, cities, and master-planned resorts, major industrial developments and fully-contained communities. The commenter argued that pipe size increases in non-urban areas can promote growth outside urban areas and therefore should have SEPA review.

Options:

1. Revise rule to increase pipe size and activities within existing facilities as listed above.
2. Revise rule to also exempt replacement pipe installation within existing streets and right of ways.
3. Also add the condition that limits one or both of the above amendments to within UGA, cities etc.

Proposal: Ecology is proposing option #1 in order to update the exemption to current industry standards for routine and relatively minor pipe installation projects.

Environmental Issues and Mitigating Factors: The proposed language exempting 12 inch water pipes is an update to reflect current practices. Impacts of larger pipe size are similar to the previous 8 inch pipe size. The continued limitation on “lands cover by water” limits potential impacts to sensitive aquatic resources. Additionally, any permits necessary for installation of water pipes may also limit any potential impacts.

WAC 197-11-800 (25) Wireless service facilities

Background: During the 2013 session, the legislature amended RCW 43.21C.0384 updating the statutory exemption for wireless service facilities (see [SHB 1183](#)). The statutory exemption contains unique language not found for other statutory exemptions - the language directs Ecology to adopt a parallel rule exemption. The original requirement for a parallel rule exemption comes from a 1996 amendment to SEPA. At that time, most of the statutory exemptions were also in rule. Ecology subsequently adopted the current language in 800 (25) to be consistent with the 1996 statutory exemption for wireless service facilities. Ecology must now update the language in 800 (25) to be consistent with SHB 1183. If Ecology were to include a separate section of rule for statutory exemptions, this exemption could be included in such a section. However, Ecology has suggested a statutory exemption section is a lower priority (see issue discussion for statutory exemptions).

Proposal: Ecology will update language to be consistent with SHB 1183. Due to the requirement for Ecology to adopt language consistent with SHB 1183, there is little room for debate about policy choices for rulemaking.

Environmental Issues and Mitigating Factors: The proposed language updates the rule exemption to match the statutory exemption. As the statutory exemption would apply regardless of the rule, there are no issues associated with the rule change.

WAC 197-11-820 - Department of Licensing

Background: There is a need to update the names of state agencies and clarify that exemptions in each section are limited to those named agencies.

Proposal: Ecology is moving forward to update the names of state agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-825 - Department of Labor and Industries

Background: There is a need to update the names of state agencies and clarify that exemptions in each section are limited to those named agencies.

Proposal: Ecology is moving forward to update the names of state agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-830 – Department of Natural Resources

Topic: Adding Rock Sales to DNR Exemptions

Rule Section: WAC 197-11-830

Background: DNR proposes to add rock sales associated with forest practices to their agency-specific exemptions. Concern was raised about the potential sale of cultural resources in the form of “rock art” and request was made to distinguish rocks from ‘rock art’, the latter of which would not be allowed. Ecology was provided additional information from DNR that identifies existing forest practice regulations that address the environmental impacts of the use.

Proposal: Ecology proposes an amendment to this section adding rock sales.

Environmental Issues and Mitigating Factors: The proposed language exempting rock sales associated with forest practices may have impacts associated with excavation of rock and hauling of material. However, impacts are similar to other impacts associated with forest practices that are exempt from SEPA. The language referencing the excavation volume thresholds in 800(1)(v) provide a limitation on the volume of the potential excavation for rock sales, thus limiting potential impacts.

WAC 197-11-835 – Department of Fish and Wildlife

Background: There is a need to update the names of state agencies and clarify that exemptions in each section are limited to those named agencies.

Proposal: Ecology is moving forward to update the names of state agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-845 – Department of Social and Health Services and Department of Health

Background: There is a need to update the names of state agencies and clarify that exemptions in each section are limited to those named agencies.

Proposal: Ecology is moving forward to update the names of state agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-850 – Department of Agriculture

Background: There is a need to update the names of state agencies and clarify that exemptions in each section are limited to those named agencies.

Proposal: Ecology is moving forward to update the names of state agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-860 – Department of Transportation

Background: Although language in WAC 197-11-800 (2) and (3) already provides an exemption for new transportation construction and maintenance of transportation facilities, more clarification was requested as part of this rulemaking. Besides new language in WAC 197-11-800 (2) and (3) clarifying that provisions in those section do indeed apply to transportation facilities, an exemption for WSDOT to maintain existing was considered for inclusion in the agency exemptions in WAC 197-11-860. The proposed language in WAC 197-11-860 consolidates many of the items listed for exemption in WAC 197-11-800 (2) and (3), but includes clauses limiting the applicability to only projects within the existing right of way and limiting expansion of transportation facilities under the maintenance exemption. The consolidation and clarification will make it easier for WSDOT to use the exemptions and will better align with exemptions in NEPA also used by the WSDOT.

Status: Ecology is proposing to include the WSDOT maintenance consolidation and clarification language in the agency exemptions in WAC 197-11-860.

Environmental Issues and Mitigating Factors: The proposed language consolidates and clarifies exemptions that apply to WSDOT maintenance activities. Some activities on land covered by water by WSDOT may now be exempt potentially resulting impacts to sensitive aquatic resources (e.g., water

quality and fish). However, WSDOT design standards and WSDOT coordination with federal, state, and local permitting agencies offset any potential impacts by addressing any impact through project design or permit conditions. Proposed language in the exemption limits the application of the exemption to within the existing right-of-way. Additionally, proposed language in the exemption limits the application to expansion of WSDOT facilities.

WAC 197-11-865 – Utilities and Transportation Commission

Background: There is a need to update the names of state agencies and clarify that exemptions in each section are limited to those named agencies.

Proposal: Ecology is moving forward to update the names of state agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-870 – Department of Commerce

Background: There is a need to update the names of state agencies and clarify that exemptions in each section are limited to those named agencies.

Proposal: Ecology is moving forward to update the names of state agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-875 – Other agencies

Background: There is a need to update the names of state agencies and clarify that exemptions in each section are limited to those named agencies.

Proposal: Ecology is moving forward to update the names of state agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-920 – Agencies with environmental expertise

Background: This section of rule provides a list of state agencies with environmental expertise organized under topics in the environmental checklist (WAC 197-11-960). This list of state agencies is outdated and requires an update.

Proposal: Ecology proposes a technical correction of the names of state agencies. There are no additions to the list of agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-936 – Lead agency for private projects requiring licensing from more than one state agency

Background: This section of rule provides a list of state agencies organized in order of priority to assign lead agency responsibility when there is a project that does not require a local permit and the project requires permits from more than one state agency. This list of state agencies is outdated and requires an update.

Proposal: Ecology proposes a technical correction of the names of state agencies shown. There are no additions to the list of agencies.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-938(c)(i)– Lead agencies for specific proposals

Background: This section of rule references forest practices and any lands platted after January 1, 1960. This criterion for forest practices was eliminated in 2011 legislation (HB1582).

Proposal: Strike the reference.

Environmental Issues and Mitigating Factors: The proposed language is a clarification. No issues.

WAC 197-11-960 – Environmental Checklist

Background: 2ESSB 6406 directed Ecology to, among other things, update the environmental checklist as part of the Phase 1 changes. Phase 1 changes were to be adopted by December 31, 2012. The specific direction for the environmental checklist was to:

- “(i) Improve efficiency of the environmental checklist; and
- (ii) Not include any new subjects into the scope of the checklist, including climate change and greenhouse gases.”

The Phase 1 rule amendments, adopted on December 28, 2012, included some changes to improve efficiency:

- For nonproject actions, part B does not have to be filled out if those questions do not contributed meaningfully to information;
- The lead agency may identify questions where the impacts are already adequately covered by existing regulatory provisions;
- Lead agencies are authorized to accept electronic submittals.

Additionally, SB 6082 in 2012 directed Ecology to update the checklist to address agricultural lands to “ensure consideration of potential impacts to agricultural lands of long-term commercial significance ... the review and update shall ensure that the checklist is adequate to allow for consideration of impacts on adjacent agricultural properties, drainage patterns, agricultural soils, and normal agricultural operations.”

Discussions during the Phase 2 rulemaking have resulted in additional proposed changes to the checklist:

- Clarify that impacts associated with invasive species can be addressed in sections 4 and 5 related to plants and animals sections.
- Updated terms and other clarifications in section 3 related to ground water withdrawals, stormwater and onsite sewage disposal systems.
- Enhancements to section 7 (environmental health) regarding hazardous materials and contamination
- Updated language in section 13 (historic and cultural preservation) to better address identification of potential historic and cultural resources that may be on a site
- Minor changes to section 14 (transportation) that addresses impacts to transportation of agricultural goods, non-motorized transportation, and other information

Proposal: Ecology is making the changes as recommended above.

Environmental Issues and Mitigating Factors: The proposed language updates specific questions within the checklist potentially resulting in better information about proposals.

WAC 173-806 – SEPA Model Ordinance

Discussion: The SEPA Model Ordinance was initially adopted by rule in 1984 and amended in 1998. Its purpose is to provide a template that local governments may use in adopting their own SEPA procedures and making the choices allowed under the SEPA statute and the SEPA Rules. It is not mandatory, but is intended to serve as guidance. Given its status, there has been discussion about whether it is necessary to have the model ordinance adopted in rule. There does not seem to be a need to have an optional guidance document adopted as a rule. Withdrawing it as a rule would mean it could be more easily revised to reflect newer information.

Proposal: Ecology proposed to repeal the Model Ordinance and intends to update it and provide it as a guidance document.

Environmental Issues and Mitigating Factors: The proposal repeals the optional model ordinance. Ecology intends to update the language in the model and offer it as guidance. Agencies will still have the option to adopt their own ordinance.

WAC 197-06 – Public Records

Background: This is an out of date rule concerning public records request made to the Council on Environmental Policy that no longer exists.

Proposal: Ecology is repealing this rule because (1) a number of the provision are specific to the Council on Environmental Policy that was established in the 1970's and no longer exists; (2)The sections related to public records have been superseded by Chapter 173-03 WAC.

Environmental Issues and Mitigating Factors: The proposal repeals an outdated rule. No issues.