

State Environmental Policy Act Categorical Exemption Revisions

Status Report, Dec 2001

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Olympia, WA 98504-7703**

[Sept 2010 Note: This status report documents how potential revisions were being considered at the time rulemaking was suspended in 2001. The report references the WAC 197-11 SEPA Rules categorical exemptions at that time. Please note that the categorical exemptions were amended in 2003 to remove the rule exemptions that repeated statutory exemptions found in RCW 43.21C SEPA. The effect of the rule changes on this report is that the SEPA Rule references may be outdated. For example, the former exemption for school closures was WAC 197-11-800(7). When the SEPA Rules were amended in 2003, the exemption for open burning became WAC 197-11-800(7). See the [2003 SEPA Handbook update](#) for more information on the 2003 SEPA Rule changes.]

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Introduction

The State Environmental Policy Act (SEPA) was enacted to require that government agencies within Washington State consider the environmental consequences prior to taking action, and gave them additional tools to address identified impacts by conditioning or denial of permits and licenses. Actions may consist of funding, licensing, conducting, or approving project actions, such as the construction of a public facility or issuing permits for a private project. Actions may also be nonproject, such as the designation of zoning or the adoption of rules, ordinances, or plans. Although nonproject actions may not have an immediate physical effect on the environment, nonproject actions regulate future project actions.

Review under SEPA is not required if there is no government action, or if the action is exempt. The categorical exemptions identify those types of proposals that have been made exempt from review under SEPA either: 1) by rule, as being unlikely to have a significant adverse environmental impact, or 2) by legislative action. The exemption may apply to a type of project, such as the construction of a single-family residence; or it may be for the action, such as the issuance of business licenses.

The original categorical exemptions were determined by committee and adopted in 1984. Since then, many changes have occurred within our state. Technical advances have changed how many projects are done, and therefore the level of impacts that result. New research may also show the cumulative damage that results from projects that were once thought of as benign. Rules have changed so that some exempt permits no longer exist, or it may be entire agencies that have vanished, consolidated, or changed their name.

Ecology received scoping comments during Aug 1998. Ad hoc committees met during 1998 and 1999.

The following section describes the various types of SEPA Rules categorical exemptions that were commented on during preliminary rulemaking, and potential alternatives.

Alternatives

1. Minor Air Permits

Currently WAC 197-11-800(1)(a) and (2)(a) require otherwise exempt minor new construction projects to undergo SEPA review when a license governing emissions to air is required (amongst other instances). It has been requested that minor air permits be made exempt, or to otherwise no longer require SEPA review solely because of the need for a minor air permit. (New major source air permits would still require SEPA review.)

Exemption of minor air permits would result in the exemption of activities such as:

- Demolition of structures that would be exempt as new construction projects¹, which appears to be both current practice (although technically incorrect) and the intent of WAC 197-11-800(2)(b)(f) as otherwise virtually no demolition project would be exempt;
- Installation of paint booths, boilers, and curing ovens;
- Installation or upgrades of air pollution control devices, i.e. bag houses, scrubbers, vapor recovery systems, etc;
- Operation of rock crushers at existing mine or construction operations; and
- Installation of dry cleaning machines.

The local air authorities that proposed this rule change maintain that current permit regulations adequately mitigate air quality impacts for the type of projects requiring only a minor air permit. A review of the SEPA documents issued in the past two calendar years for these types of proposals confirms that local air authorities have never required additional mitigation above that required by their permit regulations, by the use of SEPA substantive authority.

Other areas of potential impact from these types of projects include:

- Normal construction (or demolition) related impacts, including ground disturbance/erosion, disposal of building materials, and a temporary increase in truck traffic.
- Storage, handling, and disposal of hazardous materials (i.e. paint, solvents, asbestos, etc.)

In this instance it can be assumed that the construction related impacts from these types of proposals are within the range of those associated with other exempt minor new construction projects. The size and/or quantity of structures must be within the range, or the project is not exempt. For demolitions, a comparable number of truck trips would be needed to remove demolition debris as to deliver construction materials for a new project. There is even the potential for a decrease in impervious surfaces. Disposal needs may

¹Except for structures or facilities with recognized historical significance.

increase, but those related to construction site preparation (grading and vegetation removal) may balance these as well and it is unlikely that mitigation conditions are warranted. (For those jurisdictions that wish to require recycling or other waste reduction methods, local ordinances may be used.)

Alternatives:

1. Leave the rule unchanged;
2. Exempt minor air permits;
3. Remove the requirement for minor new construction projects to complete SEPA review if there is a discharge to air unless a major source permit is required; or
4. Exempt specific types of proposals that require a minor air permit, but not others.

2. Traffic Impacts

Currently, minor construction activities are exempt based on square footage or number of units, unless located on lands covered by water or within critical areas, or when a rezone or license to discharge to air or water is required. Small commercial facilities with large traffic impacts, such as drive-thru espresso stands, fast food restaurants, and smaller gas station/convenience stores (dependant on the size of underground storage tanks) are often exempt.

It has been proposed to add a condition for otherwise exempt minor construction projects that are high traffic generators (such as 500 vehicular trips per day or 30 trips per peak hour) to require SEPA review.

Alternatives:

1. Leave the rule unchanged;
2. Set a level of exemption for traffic generated by a project, to be applied state-wide; or
3. Allow cities and counties to designate the level for exemption within their adopted SEPA ordinances.

3. Lands Covered by Water

Several of the categorical exemptions [WAC 197-11-800(1), (2), (3), and (6)(a)] require otherwise exempt proposals to undergo SEPA review if located on “lands covered by water.” 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.”

The current definition has left open a number of questions:

- What method should be used for determining the “ordinary high water mark?”
- Are other types of wetlands, beyond marshes and swamps, also considered “lands covered by water”?

- If the land is covered by water seasonally and is currently dry, is the project exempt? How does this relate to work in the dry during scheduled “draw downs?”
- If high groundwater creates a need to dewater during excavation, should SEPA be required?
- Is a proposal that borders, but does not include, water on site exempt or not exempt?
- If water is present on some portion of the parcel, but the project impact area is far removed, should it be exempt?
- If the project has no direct contact with the land, i.e. on a bridge or actually in the water alone, does that make it exempt?
- Does “lands covered by water” stop at the bedlands, so proposals such as those involving directional drilling beneath the stream or waterbody would be exempt?

These unresolved questions have resulted in widespread inconsistencies in how the rule is interpreted and applied. It has been suggested that the definition of “surface waters of the state” under Chapter 173-201A WAC shall be referenced under the definition of lands covered by water.

“Surface waters of the state” is currently defined under Chapter 173-201A WAC as including:

“lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.” Wetlands are further defined as “areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adopted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.”

Using the definition for “surface waters” provides some clarification and brings consistency with other regulations. It would provide resolution on whether a wetland, open stormwater drainage, or a concrete reservoir are considered as “lands covered by water.” It would also resolve whether proposals are exempt that will occur “in the dry” because of seasonal fluctuations or scheduled drawdowns. The definition refers to the “ordinary high water mark”, which is not effected by seasonal changes or drawdowns, but only by long-term changes to the bedlands, outlets, or sources, etc.²

Use of the surface waters definition would not resolve the issues related to proximity. The purpose of requiring a proposal to undergo SEPA review because of its proximity to

² Some types of minor construction proposals that may appropriately be done “in the dry,” without the need to mitigate impact under SEPA, could be specifically exempted under those conditions.

lands covered by water is to both: A) protect the waterbody's functions and values (water quality, water quantity, flood control, fish and wildlife habitat, recreation, aesthetics, etc.); and B) to minimize potential impacts of the waterbody on the development (flooding, erosion, salt water intrusion in fresh water wells, etc.).

With this in mind, criteria for exemption might address actions related to new activities (including construction, placement or demolition of structures), on-going or temporary, on or adjacent to lands covered by water, within any designated setbacks thereof, or within sufficient proximity to such lands that the lead agency at its discretion chooses to assess the potential impact of the proposal. This would clearly include activities directly above or below surface waters, such as work on a bridge or beneath bedlands although some of these activities may be specifically exempted.

This would not eliminate the problems associated with determining a waterbody's ordinary high water mark. The ordinary high water mark is defined in WAC 173-22-030(11) as "on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department."

Further criteria is provided for each type of water body, but the greatest problem is the attempt of man to draw hard lines in nature where there are seldom hard lines rather than gradients. There are the difficulties in interpreting indicators, such as species of vegetation growing in locations it's not expected to be found in or scoured banks that may be the result of an uncommon spring melt or from a 100-year storm event rather than "ordinary" high water. Add to this extreme seasonal variance and the simple lack of "ordinary" conditions in recent years, and the problems become apparent in what had first appeared to be a simple exercise.

By allowing flexibility within a predetermined range to decide if the proximity of a proposal to lands covered by water warrants SEPA review, determining the exact location of the ordinary high water mark may often be unnecessary. Expanding the range would reduce the need even further. Removing the limit completely would also eliminate the need completely, but would make the exemption almost meaningless.

The final issue as to whether a proposal that requires dewatering because of high groundwater is also addressed by the use of the "surface waters of the state" definition related to "lands covered by water." If the site were classified as a wetland, the proposal would require review under SEPA. The proposal would not require SEPA review because of high groundwater, although other conditions including proximity to surface waters may require it.

Alternatives:

1. Leave the rule unchanged;
2. Make use of the definition of “surface waters” under Chapter 173-201A WAC in defining “lands covered by water;” or
3. Make use of the definition of surface waters in defining lands covered by water and include criteria related to proximity. Upper limits may be set at 100, 200 or 300 feet from the ordinary high water mark.

4. Residential Construction

The construction of four residential units or less is currently exempt from SEPA review under most situations.³ This coincides with short plat minimums (between four and nine lots, depending on jurisdiction), and also accommodates small multi-family residential uses. Cities and counties have the option to raise the exemption level to as many as 20 dwelling units under WAC 197-11-800(1)(c)(i).

It has been proposed to A) raise the minimum exemption level to ten dwelling units, or to B) raise the minimum exemption limit to 10 dwelling units within designated urban growth areas⁴ (UGAs). For suggestion B, areas outside UGAs would remain with a flexible threshold of between 4 and 20 dwelling units, as designated by the city or county. Neither proposal would limit the ability of any city or county to raise the threshold to as many as 20 dwelling units within their jurisdiction.

Construction of multi-family and single-family housing has two types of impacts:

- Short-term construction related impacts, such as erosion of disturbed soils; temporary increased truck traffic, noise, and track-out of soils.
- Long term impacts from lost vegetation and habitat, increased impervious surfaces, increased traffic particularly during peak hours, stormwater and groundwater contamination from cars and yard maintenance activities, and increased need for public utilities, services, and facilities.

Planning activities performed by jurisdictions planning under the Growth Management Act (GMA) includes how utilities and other public service needs will be addressed for residential development within UGAs.

Raising the minimum threshold removes some flexibility of jurisdictions to designate the level at which they feel local conditions justify exemption, or conversely the level at which they wish the freedom to impose mitigation. Detailed planning and development ordinances, such as may be adopted under GMA, could minimize the need for additional review and mitigation.

³ WAC 197-11-800(1)(a) and (2)(b) exclude instances where the minor new construction requires a rezone, is located on lands wholly or in part covered by water, or where a license governing emissions to air or discharges to water is required. (Changes and/or additions to these conditions may be altered in this rule revision.)

⁴ An urban growth area is where a city, planning under the Growth Management Act (GMA), has designated that expansion of urban development shall occur.

The quality and adequacy of existing plans and ordinances varies widely statewide, even within GMA jurisdictions. Requiring GMA jurisdictions to further rely on their development ordinances may encourage them to make valuable improvements, but this is not ensured.

Alternatives:

1. Leave the rule unchanged;
2. Raise the minimum threshold to 10 dwelling units for all jurisdictions; or
3. Raise the minimum threshold to 10 dwelling units within UGAs.

5. School and Commercial Construction

The construction of 4,000 square feet of office, school, commercial, recreational, service or storage building(s) on a site is currently exempt from SEPA review³. Cities and counties have the option to raise the exemption threshold to as much as 12,000 square feet. It has been requested that the minimum threshold be raised to the level most cities and counties have adopted.

Alternatives:

1. Leave the rule unchanged;
2. Raise the minimum threshold;

6. Industrial Construction

Currently the construction of up to 4,000 to square feet of office, school, commercial, recreational, service or storage building(s) on a site is exempt from SEPA review under most instances³. Cities and counties have the option to raise the exemption threshold to as much as 12,000 square feet. It has been requested to exempt the construction of industrial buildings with the same restrictions as commercial building construction.

The impacts related to construction of a school or commercial building are comparable to those associated with construction of an industrial building. It would appear that the use of the building is the source of concern, if industrial construction was purposely rather than unintentionally excluded from the exemption.

³WAC 197-11-800(1)(a) and (2)(b) exclude instances where the minor new construction requires a rezone, is located on lands wholly or in part covered by water, or where a license governing emissions to air or discharges to water is required. (Changes and/or additions to these conditions may be altered in this rule revision.)

⁶WAC 197-11-800(1)(a) and (2)(b) exclude instances where the minor new construction requires a rezone, is located on lands wholly or in part covered by water, or where a license governing emissions to air or discharges to water is required. (Changes and/or additions to these conditions may be altered in this rule revision.)

Some uses are identical within the industrial and commercial designations. For example warehouse space is constructed and used within both commercial and industrial zones. The zone designation itself does in no way influence the impacts. In fact as “storage” facilities are currently exempt, warehouse buildings would qualify for exemption in both zones, if other conditions are met.

Other industrial uses, such as manufacturing or processing, would occur only in the industrial zones. A manufacturing facility would have traffic impacts related to employees coming to and from work, delivery of materials, and the exit of product. A commercial facility would have traffic impacts of employees coming to and from work, delivery of goods, and the arrival and exit of customers for those goods. Traffic impacts will vary from one facility to another, but would most likely fit within the range of that of commercial development of comparable size.⁷

Light and glare issues are also likely to be comparable. All night lighting of parking lots is common for both commercial and industrial facilities.

Industrial uses oftentimes involve discharges to air or water that must be permitted. WAC 197-11-800(1)(a) and (2)(a) require otherwise exempt minor construction projects to undergo SEPA review when there is a licensed discharge to air or water. Therefore industrial projects would still require SEPA review if a license to discharge to air or water were required for the facility.

Noise may be an issue at an industrial facility more than a commercial facility. This is one reason industrial zones are generally set apart from residential areas to the extent possible. State and local noise ordinances restrict the level of noise within residential areas relative to the hour of the day or night, but allow much higher levels in other areas.

Alternatives:

1. Leave the rule unchanged;
2. Exempt industrial facilities under the same size limitations and conditions as exempt commercial development.

7. Parking Lots (Consolidation)

Currently the construction of parking lots for 20 automobiles or less is exempt alone or in conjunction with minor new construction projects for a school, office, recreational or commercial facility, etc. [WAC 197-11-800(1)(b)(iii) & (iv)]. In both instances, cities and counties have the option of raising the threshold for an exempt parking lot to accommodate as many as 40 automobiles. It has been requested that the two exemptions for parking lots be consolidated.

⁷ Consideration of adding a condition related to traffic is also being considered under this rule revision in Issue 2.

Consolidating the exemption of parking lots to a single location simplifies the rule. The change will not effect how the rule is applied, unless cities or counties have adopted different threshold levels for the two sections.

Alternatives:

1. Leave the rule unchanged; or
2. Consolidate the exemption of parking lots (individual and accessory) in a single location and provide reference as necessary.

8. Parking Lots (Impervious Surfaces)

The construction of a parking lot for 20 or less automobiles is currently exempt from SEPA review, and cities and counties have the option to raise the exempt threshold to space for as many as 40 automobiles. It has been requested that the parking lot threshold be converted from numbers of automobiles to square footage of impervious surface.

The current rule leaves a number of problems. Lead agencies do not know how to apply the exemption when the proponent doesn't mark stripes on the lot, and a similar sized lot is not exempt if intended for other types of vehicles. It would also be convenient for agencies to use this exemption for other small paving projects, as the impacts are generally similar.

Impacts related to creation of impervious surfaces include increased stormwater runoff and contamination, possible lost vegetation, as well as short-term construction related impacts.

Expanding the exemption to include other types of lots and paving projects, will increase the number of projects exempted. The impacts of the new types of projects are comparable to the construction of smaller parking lots, which is currently exempt.

Alternatives:

1. Leave the rule unchanged;
2. Convert the exemption for parking lot construction to square footage of impervious surface.

9. Landfill and Excavation

WAC 197-11-800(1)(b)(v) exempts any landfill or excavation of 100 cubic yards or less throughout the lifetime of the fill or excavation. Cities and counties have the option to raise this threshold to as much as 500 cubic yards.

It has been requested that the minimum threshold for landfill and excavation to be reduced to 50 cubic yards or less. Cities and counties would still have the option of

raising the threshold to as much as 500 cubic yards. This of course includes the option of adopting the level at 100 cubic yards to maintain the current minimum level.

Reducing the minimum threshold level to 50 cubic yards for landfills and excavations would be more environmentally protective than the current rule. Still, the categorical exemptions are intended to facilitate the implementation of the rule by exempting those projects from SEPA review that are unlikely to cause significant adverse environmental impacts or warrant mitigation under SEPA.

Pierce County, for one, begins implementing mitigation under their fill and grading permit regulations at the 50 cubic yard level. Many jurisdictions lack permit regulations with comparable levels of environmental protection. Reducing the minimum threshold level provides greater flexibility to cities and counties to adopt a threshold that addresses the needs and conditions within their jurisdiction.

Alternatives:

1. Leave the rule unchanged;
2. Reduce the minimum threshold for exempt grade and fill projects to 50 cubic yards, still allowing agencies to raise the threshold to as much as 500 cubic yards.

10. Additions to Reviewed Structures

Currently additions to existing structures are only exempt if the total square footage of the buildings on site, including the addition, is less than the threshold for minor new construction. It has been requested that minor additions to structures that have undergone previous SEPA review also be made exempt.

The construction of additions to existing structures have construction-related and may also create new impervious surface. The size of the addition determines to a large extent the magnitude of the associated impact. Impacts, particularly those related to impervious surfaces, are also influenced by the existing development on the site, as many impacts are cumulative.

Alternatives:

1. Leave the rule unchanged;
2. Exempt additions totaling up to 5 percent of the square footage contained in an existing structure that has already undergone SEPA review;
3. Exempt additions totaling up to 5 percent of the square footage contained in an existing structure that has already undergone SEPA review, but not more than 2,000 square feet;
4. Exempt additions totaling up to 10 percent of the square footage contained in an existing structure that has already undergone SEPA review, but not more than 2,000 square feet; or

5. Exempt additions totaling up to 10 percent of the square footage contained in an existing structure that has already undergone SEPA review, if the addition would if alone also qualify for exemption under the local jurisdiction's flexible thresholds as minor new construction.⁸

11. Archaeological and Historical Sites

WAC 197-11-800(2) exempts a number of minor new construction activities associated with roadways and accessory structures; additions, modifications, or replacement of exempt structures when they do not remove it from an exempt class; demolition of exempt structures; installation of underground storage tanks; etc. The demolition exemption is conditioned to require SEPA review for structures or facilities with recognized historical significance. It has been requested that an additional condition be added that would require SEPA review for all activities listed in WAC 197-11-800(2) if associated with a structure or site of recognized historical or archaeological significance.

Additions or alterations could have a significant impact on structures with recognized historical significance. Depending on location, it is possible for any type of construction project to impact archaeological sites, but protection for these sites is already in place.

Alternatives:

1. Leave the rule unchanged;
2. Include conditions protecting historical structures and archaeological sites for the entire section; or
3. Include protection of historical structures in the section pertaining to additions, alterations, or replacement of existing structures.

12. Paving Existing Roads and Alleys

WAC 197-11-800(2)(c) exempts many minor road and street improvement activities. Many of these would include paving, such as widening a highway, correction of substandard curves and intersections, reconstruction of roadbeds, and the addition of bike lanes. Paving of existing roads and alleys is not specifically mentioned but the list is not comprehensive. It has been requested to specifically include the paving of existing roads and alleys as an exempt action.

The existing rule is unclear. It is likely that many jurisdictions have considered the paving of existing roads and alleys as exempt activities. Others may have completed SEPA review for this type of activity rather than risk lack of compliance. Clarification of this "gray area" would improve the consistency in how the rule is applied in all jurisdictions, statewide.

⁸ Provision should also be made for exemption of minor additions to industrial facilities if no exemption is created for minor new construction for industrial uses (see Issue 6).

Exempting the paving of existing roads and alleys would have a comparable impact to other exempt activities. If the existing surface is packed dirt or gravel, there would be some increase related to impervious surfaces, although each of these surfaces also has decreased permeability. Widening roads and adding bike lanes or auxiliary lanes (for localized purposes weaving, climbing, speed change, etc.), which are all exempt, also involve an increase in impervious surfaces.

Alternatives:

1. Leave the rule unchanged;
2. Include paving of existing roads and alleys as examples under an exemption for creation of impervious surfaces (see Issue 8); or
3. Include paving of existing roads and alleys as examples of exempt road-related actions.

13. Minor New Rights-of-Way

The need for additional right-of way causes some otherwise exempt minor road improvement projects to require SEPA review. Specifically, these are: 1) the correction of substandard curves and intersections; 2) widening a highway by less than a single lane; and 3) adding auxiliary lanes for localized purposes (weaving, climbing, speed change, etc.). It has been requested that otherwise exempt, minor road improvement projects remain exempt if they require only a minor amount of new right-of-way.

Minor transportation improvement projects that involve the acquisition of new right-of-way may have two types of impacts associated to the acquisition: 1) those related to the expansion of the transportation corridor into an area that is sensitive to impact from the project, and 2) those related to the loss of alternate use(s)—both existing and potential. This is of course in addition to the construction-related impacts that they share equally with currently exempt, minor road improvement projects.

This exemption of minor road improvements does not apply to projects that take place wholly or in part on lands covered by water. Other environmentally sensitive areas such as steep slopes should be designated as critical areas by cities and counties under the Growth Management Act (GMA). This exemption is amongst those that may be made void by local ordinance within critical areas, requiring otherwise exempt proposals to undergo SEPA review.

Does the loss of alternate land uses on a small amount of property warrant SEPA review? By setting the quantity low, the impacts to potential uses may be minimized, but this may not be true of existing uses. To a homeowner who would lose a mature hedge or row of trees that provides a noise and visual buffer to their property, the loss may be significant. Locations where structures lie in close proximity to the road may also be significantly impacted.

Alternatives:

1. Leave the rule unchanged;
2. Exempt minor road-related projects that require a small amount of new right-of-way (based on square footage);
3. Exempt minor road improvements that require a minor amount of new right-of-way when not subject to an existing use;
4. Exempt minor road improvements that require a minor amount of new right-of-way, if the seller made no objection to the acquisition.

14. Drainage Facilities

WAC 197-11-800(2)(c) exempts the installation of catch basins and culverts when they constitute a minor road or street improvement and do not take place wholly or in part on lands covered by water. It has been requested that the installation of storm drains and other drainage facilities related to the roadway be made exempt when consistent with the current edition of the Department of Ecology's "Stormwater Management Manual for the Puget Sound Basin."

Installation of stormwater conveyance systems and their components have two types of environmental impact: 1) Construction-related impacts during installation, and 2) long-term impacts associated with inappropriate or inadequate facilities.

Construction impacts related to erosion and vegetation disturbance are likely to be at a comparable level to other minor road improvements that are currently exempt.

Long-term impacts associated with inappropriate or inadequate facilities may be minimized by compliance with Ecology's current Stormwater Management Manual for the Puget Sound Basin. This document is updated periodically to address new knowledge and technology related to stormwater management. The manual is less applicable to Eastern Washington conditions but should provide a conservative level of environmental protection.

Also note, that while the conveyance of natural waterways beneath roads and other surface-level structures should be considered with great care to protect fish passage, water quality and other values, this exemption does not apply to work within natural watercourses. (See Issue #2, Lands Covered by Water)

Alternatives:

1. Leave the rule unchanged;
2. Exempt the installation of stormwater conveyance systems and their components when compliant with the Department of Ecology's current Stormwater Management Manual for the Puget Sound Basin.

15. Historical Significance

The demolition of any structure or facility, the construction of which would be exempted by WAC 197-11-800(1) or (2) is exempt, except for those structures or facilities with recognized historical significance. It has been requested that “recognized historical significance” be defined as “listed or under consideration for listing on a state or local historical register, or a site of archaeological significance.”

Defining “recognized historical significance” reduces ambiguity and improves consistency on how the rule is interpreted and implemented statewide. Some flexibility is lost in that some agencies may interpret current wording to include structures or facilities that members of the public perceive to have historical significance but that have not been listed or proposed for listing.

Alternatives:

1. Leave the rule unchanged; or
2. Define “recognized historical significance” as “listed or under consideration for listing on a state or local historical register, or a site of archaeological significance.”

16. Demolition of Wireless Service Facilities

The construction of some personal wireless service facilities as delineated by WAC 197-11-800(27) is exempt from SEPA review. Although WAC 197-11-800(2)(f) exempts the demolition of those structures that would be exempt as minor new construction under Issues (1) and (2), Issue (27) is not included. It has been requested that the demolition be made exempt for personal wireless service facilities that are exempt as new construction.

The demolition of a cellular tower, associated equipment cabinets, and possible removal of a concrete pad and/or fencing would have minor impact related to the demolition of four residential units, or a 10,000 square foot barn, both of which are currently exempt.

Alternatives:

1. Leave the rule unchanged;
2. Exempt the demolition of cellular towers that would be exempt as new construction.

17. Above Ground Tanks

Installation of underground storage tanks with a capacity of 10,000 gallons or less is exempt, but all above ground storage tanks require SEPA review if a permit is needed. It has been requested that the installation of above ground tanks that meet the Uniform Fire Code when accessory to a single-family residence be made exempt. Requests have also

been received for the exemption of above ground tank installation with a capacity of up to 1,000 gallons, and up to 3,000 gallons.

Installation of above ground storage tanks has less construction-related impacts than the installation of underground storage tanks, which are currently exempt. All fuel storage tanks have some capacity to leak from damage, decay, or misuse; resulting in contamination of ground or surface waters, or soils. Mitigation may include double-walled construction or other secondary containment, or leak detection systems. Fuel storage also brings a risk of fire and explosion, with above ground storage having a much higher risk. Tank capacity is a strong factor in the potential for significant impact and need for mitigation.

Alternatives:

1. Leave the rule unchanged;
2. Exempt the installation of above ground tanks that meet the Uniform Fire Code when accessory to a single-family residence;
3. Exempt the installation of above ground storage tanks with a capacity of up to 1,000 gallons (preferred); or
4. Exempt the installation of above ground storage tanks with a capacity of up to 3,000 gallons.

18. Underground Storage Tanks

The installation of impervious underground storage tanks, having a capacity of 10,000 gallons or less, is exempt under WAC 197-11-800(2)(g). It has been requested that the installation of underground fuel storage tanks having a capacity of 12,000 gallons or less, or whatever is determined to be the typical tank capacity of modern gas stations, be made exempt.

The installation of underground fuel storage tanks will have normal construction related impacts (ground disturbance, loss of vegetation, etc., see Appendix A on page **Error! Bookmark not defined.**) and impacts from operation. Increased tank size will increase fairly proportionately the quantity of construction impacts. The operation of underground fuel storage tanks with current standards has far less impact than the operation of tanks meeting the standards in place during the 1970's. Double walling, as well as other current leak and vapor protection changes have more than compensated for the risks related to increased tank capacity in modern gas stations. Increased capacity may in fact reduce the frequency of refilling by tanker truck and minimize the related impacts.

Other impacts related to tank capacity, may include increased traffic impacts (although more closely related to the number of pumps), which may be addressed under Issue 2.

A contractor for underground storage tank installation was questioned as to typical tank capacity for new gasoline stations. He stated that the typical station had one 20,000-

gallon tank, separated into a 12,000 and an 8,000-gallon section. A large capacity station has two 20,000-gallon tanks, with one tank typically separated into sections.

Alternatives:

1. Leave the rule unchanged;
2. Exempt the installation of underground storage tanks with total capacity on site of 12,000 gallons or less;
3. Exempt the installation of underground storage tanks with total capacity on site of 20,000 gallons or less; or
4. Exempt the installation of underground storage tanks with a total capacity on site of 40,000 gallons or less.

19. Street Vacation

WAC 197-11-800(2)(h) exempts the vacation of streets and roads. It has been requested that the language be changed so that the exemption is for right-of-way and easement vacation.

The change in language is somewhat broader than the existing exemption, as the vacation of utility corridors, access easements, etc. would also be exempt. The type and level of impact in each instance would be similar to what is currently exempt.

Alternatives:

1. Leave the rule unchanged; or
2. Change the language to exempt the vacation of right-of-way and easements.

20. Monitoring Devices

The installation of hydrological measuring devices is exempt from SEPA review, regardless of whether or not on lands covered by water. It has been requested that the exemption be expanded to include the installation of noise and air quality monitoring devices.

Construction or placement of structures within a waterbody should be avoided whenever possible to protect water quality, fish and habitat. It is recognized that there are instances where this placement is necessary to satisfy the function of the structure—in this case to monitor activities on the water (port, marina, etc.).

The impact associated with the installation of noise and air quality monitoring devices is minimal because of the size and nature of the structure, even on lands covered by water. It is also similar to the impact associated with the installation of hydrological measuring devices, which is currently exempt.

Alternatives:

1. Leave the rule unchanged; or
2. Exempt the installation of noise and air quality monitoring devices, regardless of whether or not on lands covered by water.

21. Fences

The construction of fences accessory to any building or facility exempted as minor new construction [WAC 197-11-800(1) and (2)] is exempt. It has been requested that all fence construction be made exempt.

The installation of fencing generally has minimal environmental impact unless disruptive to fish and wildlife passage. Fences can also have great safety and environmental benefits, such as when surrounding transformers, swimming pools, school yards, and/or industrial sites or containing livestock, in particular when barring livestock from entering waterbodies.

If the exemption does not apply on lands covered by water, clearly fish passage is protected. Minimizing the impact to wildlife is more difficult. Even within urban areas, some wildlife have chosen to make their home, despite continued fragmentation of habitat. Further blockage of wildlife passage between remaining islands of habitat reduces the likelihood that many species will continue to thrive within the urban setting. Perhaps this is mitigated by the reduction of urban sprawl that the Growth Management Act has attempted to curb by concentrating development within urban growth areas, thereby protecting rural and wilderness areas.

Rural development is typified by ranches and farms, raising livestock and/or crops. Fencing is a necessary component of these uses. Although they may constitute a detriment to wildlife passage, they may also be viewed as providing a protective barrier between wilderness and developed areas.

Alternatives:

1. Leave the rule unchanged;
2. Exempt the construction of fences;
3. Exempt the construction of fences within urban growth areas; or
4. Exempt the construction of fences outside of urban growth areas.

22. Minor Construction on Lands Covered by Water

No new construction on lands covered by water is exempt, with the exception of those private projects only needing a hydraulic project approval. Under the current rule the review of projects such as placement of mobile office or storage structures on an existing dock has been required. It has been requested that minor new construction on lands

covered by water that involves no increase in impervious surfaces, no new water coverage, no work in the water, and no new discharge be made exempt.

SEPA review has been required for construction activities on lands covered by water to protect the functions and values of our waterbodies and to ensure the potential impacts of the waterbody on the project are considered. Construction-related impacts from ground disturbance (erosion) and vegetation removal (water quality, fish and wildlife habitat), as well as impacts associated with the creation of new impervious surfaces (runoff) are all of strong concern in these areas. When these types of impacts are avoided, such as with the placement or construction of small structures on existing impervious surfaces, adverse impact is expected to be minimal.

Alternatives:

1. Leave the rule unchanged; or
2. Exempt minor new construction on lands covered by water that involves no increase in impervious surfaces, no new water coverage, no work in the water, and no new discharge to air or water.

23. Minor Bridge Repair

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). It has been requested that the minor repair of bridges, when there involves no work in the water, be included as an exempt maintenance project.

Bridge repair and maintenance can involve the removal or application of paint, application of creosote, and/or the use of grease or solvents. Each of these substances poses a threat to water quality and fish, unless methods are in place to ensure they do not reach the water.

Alternatives:

1. Leave the rule unchanged;
2. Exempt minor bridge repair; or
3. Exempt minor bridge repair when protection is in place to prevent potential pollutants from entering the water.

24. Maintenance Dredging

Dredging is not exempt [WAC 197-11-800(3)(a)], but the exemption of the use of chemical or mechanical means to maintain public park and recreational lands [WAC 197-11-800(25)(i)] has been used by some agencies to exempt maintenance dredging of boat ramps.

It has been requested that maintenance dredging projects to return berths to their pre-existing design depth and to maintain boat ramps be clearly made exempt..

Dredging can involve a number of impacts related to both the removal and disposal of material. They include water quality impacts from turbidity, impacts on fish and aquatic animals including spawning grounds, destruction of native plant communities, and alteration of natural currents. If the material is contaminated with petroleum products and/or other hazardous materials, disturbance can redistribute the material in the water column at the dredging site and further complicate disposal issues.

Neither boat ramps nor berths provide ideal habitat for fish or aquatic animals, including spawning. Previous disturbance and on-going activities make them unlikely siting for thriving native plant communities. Near-shore locations and the need for relatively quiet waters for either type of facility means the alteration of natural currents is unlikely to be significant at the dredging site—particularly if a limit was made on the volume of dredged material that would be exempt.

Disposal impacts can be mitigated by use of a designated in-water disposal site or by putting the dredged spoils to a beneficial use that has undergone previous review. Beneficial uses may include erosion control programs, including beach nourishment and/or construction of groins.

When contamination is present, detailed review may be necessary to determine dredging and disposal methods to minimize impact.

Alternatives:

1. Leave the rule unchanged;
2. Exempt maintenance dredging to pre-existing design depth; or
3. Exempt maintenance dredging to pre-existing design depth, when no contamination is present and dredge spoils are disposed of at an approved disposal site or put to beneficial use.

25. Water Rights

Appropriations of 50 cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy; and 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 is exempt [WAC 197-11-800(4)]. It has been requested that the exempt level of water appropriations be lowered.

The legislature has exempted the appropriation of 50 cubic feet of ground or surface water for the purpose of agricultural irrigation, when done without government subsidy (RCW 43.21C.035). This cannot be altered, except by legislative or judicial action.

Alternatives:

1. Leave the rule unchanged;
2. Exempt only the appropriation of 50 cubic feet per second of ground or surface water for the purpose of agricultural irrigation, when done without government subsidy .

26. Property Purchase, Sale or Lease

WAC 197-11-800(5) exempts the following agency real property transactions: a) The purchase or acquisition of any right to real property. 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. 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.

WAC 197-11-800(25) exempts agricultural leases covering 160 contiguous acres or less; new leases for grazing on a single section of land or less; all grazing leases on lands that have been subject to a grazing lease within the previous 10 years; and leases for school sites, Christmas tree harvesting, brush picking, and for the placement of mooring buoys designed to serve pleasure craft.

WAC 197-11-830(7) and (8) further exempt the sales of timber from public land as designated by rule by the Department of Natural Resources, and leases for mineral prospecting under RCW 79.01.616 or 79.01.652 except on aquatic lands under state control.

It has been requested that 1) all leases be made exempt, and, in opposition, 2) the exemption of all real property transactions be removed. A request has also been received that WAC 197-11-800(25) be altered so that 1) actual grazing must have taken place on the land within the previous 10 years (and not just subject to a grazing lease) for a subsequent lease to be exempt, 2) the time period be reduced to three years, 3) that the exemption of new grazing leases be removed; and 4) the exemption of agricultural leases for 160 contiguous acres or less be removed.

Impacts associated with leases include

Alternatives:

1. Leave the rule unchanged;
2. Alter the language in WAC 197-11-800(25) to require that actual grazing have taken place during the previous ten years for a subsequent grazing lease to be exempt
3. Exempt grazing leases for land that has been subject to a grazing lease within the previous three years;
4. Remove the exemption for new grazing leases;
5. Remove the exemption of agricultural leases;
6. Exempt all leases; or
7. Remove the exemption of any real property transactions.

27. Change of Use

The existing exemptions make no mention of proposals that involve little to no construction, but only a change of use. Therefore within those jurisdictions that require a change-of-use permit or its equivalent for new uses of an existing structure, SEPA review has also been needed. It has been requested that changes of use be made exempt.

Many change-of-use proposals would be exempt as new construction projects, where because of construction activities the impacts would be much greater. In other instances, new discharges to air or water will result from the proposal or a rezone is required. It may be determined that minor air permits do not warrant additional review (see Issue #1). Although there are no direct impacts from rezoning a parcel, changing the allowed uses can have a significant effect on neighboring properties. In addition, although currently not addressed for minor new construction proposals, dramatic increases in traffic generated by a proposal can have a significant impact (see Issue #3).

Alternatives:

1. Leave the rule unchanged;
2. Exempt changes of use; or
3. Exempt changes of use that do not involve a rezone, new discharge to air or water, or a material increase in traffic.

28. Dedicatory Language

WAC 197-11-800(6)(a) exempts the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060 except on lands covered by water, but not including further short subdivisions or short platting within a plat or subdivision previously exempted from SEPA review.

It has been requested that a subsection be added exempting the amendment of dedicatory language, but not the drawing, on the face of a final plat, final short plat, or final binding site plan. The dedicatory language relates to ownership and therefore has no associated environmental impact to address under SEPA.

Alternatives:

1. Leave the rule unchanged; or
2. Exempt the revision of dedicatory language, but not the drawing, on the face of a final plat, final short plat, or final binding site plan.

29. Land Divisions

WAC 197-11-800(6)(a) exempts the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060 except on lands covered by

water, but not including further short subdivisions or short platting within a plat or subdivision previously exempted from SEPA review.

It has been requested that divisions of land as set forth in RCW 58.17.040(3) related to divisions of land made by testamentary provision, and (6) for restricted boundary lot adjustments be made exempt.

Alternatives:

1. Leave the rule unchanged; or
2. Exempt divisions of land as set forth in RCW 58.17.040(3) for divisions of land made by testamentary provision, and RCW 58.17.040(6) for restricted boundary lot adjustments

30. Outdoor Burning

WAC 197-11-800(8) exempts open burning and the issuance of any license for open burning, but not the adoption of plans, programs, objectives, or regulations by any agency incorporating general standards in respect to open burning. It has been requested that the terminology be changed from “open burning” to “outdoor burning” to match the definitions used in Ecology’s Outdoor Burning Rule, Chapter 173-425 WAC. Changing the terminology to match Ecology’s Outdoor Burning Rule, provides consistency. As this will maintain the exemption as originally intended, there will be no change in impact.

Alternatives:

1. Leave the rule unchanged; or
2. Change “open burning” to “outdoor burning”.

31. Hydroelectric Projects

WAC 197-11-800(10) exempts the granting or denial of water quality certifications under the Federal Clean Water Act. It has been requested that the exemption of water quality certifications for hydroelectric projects be removed.

Hydroelectric projects are often major projects requiring an environmental impact statement under the National Environmental Policy Act (NEPA) for significant environmental issues. Although the state may currently comment on the NEPA document, if the state permit is exempt from SEPA, the state has no regulatory authority to require mitigation and may only deny the permit based on the more limited authority of permit regulations.

Alternatives:

1. Leave the rule unchanged; or
2. Remove the exemption of water quality certifications for hydroelectric projects.

32. Building Codes

WAC 197-11-800(21) exempts the adoption by ordinance of all codes as required by the state Building Code Act. It has been requested that the language be changed to “as authorized by the state Building Code Act.”

Alternatives:

1. Leave the rule unchanged; or
2. Exempt the adoption of all codes as authorized by the state Building Code Act.

33. Noise Ordinances

WAC 197-11-800(22) exempts the adoption by cities and counties of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from the regulations adopted by the Department of Ecology under The Noise Control Act, Chapter 70.107 RCW. It has been requested that the exemption be extended to all agencies adopting noise ordinances, and to change the exemption language from “which do not differ from” to “that do not conflict with” to allow for stricter standards to be set.

Although it would be rare for an agency other than a city or county to adopt noise ordinances, special districts (ports, etc.) are interested in being granted the same privilege of exemption extended to cities and counties. As a rule adopted by a special district cannot supercede the city or county authority, they may be only more or equally stringent and therefore more or equally protective. No additional adverse impact would result from a noise ordinance adopted by a special district.

In turn, adoption of noise ordinances that do not conflict with the regulations adopted by Ecology would by necessity be more or equally as stringent and therefore equally or more environmentally protective.

Alternatives:

1. Leave the rule unchanged;
2. Exempt the adoption by agencies of noise ordinances that do not differ from the regulations adopted by the Department of Ecology under chapter 70.107 RCW;
3. Exempt the adoption by cities and counties of noise ordinances that do not conflict with the regulations adopted by the Department of Ecology under chapter 70.107 RCW; or
4. Exempt the adoption by agencies of noise ordinances that do not conflict with the regulations adopted by the Department of Ecology under chapter 70.107 RCW.

34. Utility Line Relocation

Relocation of utility lines is exempt from SEPA review only when the relocation is required by another governmental body [WAC 197-11-800(24)]. It has been requested

that the relocation of utility lines be made exempt without the necessity of having another agency require the action.

The relocation of utility lines has construction-related impacts. Abandoning existing line(s) and replacing in kind would have less ground disturbance and therefore less impact than relocating existing line. Having another agency require the action does not change the level of impact.

Alternatives:

1. Leave the rule unchanged;
2. Exempt the relocation of utility lines, except on lands covered by water, without reference to another governmental body requiring the action.

35. Utility Line Installation

Except on lands covered by water, the installation of communication lines; storm water, water and sewer lines eight inches or less; electric lines with 55,000 volts or less (and under-grounding of any size electric line); and natural gas distribution lines, as well as many related facilities and appurtenances are exempt from SEPA review [WAC 197-11-800(24)].

Several revisions related to utility line installation have been requested: A) To exempt the installation of storm water lines up to 12 inches; B) To exempt the installation of storm water, water, and sewer lines up to 16 inches within urban growth areas; C) To exempt the installation of all new and replacement utility lines when detailed in an existing publicly reviewed plan; D) To exempt the installation of utility lines (i.e. cables and potable water) crossing above water on an existing structure; and E) To exempt the installation of utility lines under bedlands when directional drilling is used.

Installation of underground utility lines involves digging a trench significantly larger than the line to be laid. The equipment used in most cases will broaden the area of disturbance beyond the trench.

Increased capacity can have indirect impacts related to encouraged growth and development, much as the initial extension of public utilities to a new service area. These indirect impacts are examined during comprehensive planning within cities and counties planning under the Growth Management Act. Other jurisdictions may complete appropriate planning and review voluntarily.

Other direct impacts that may occur after installation are the result of failed or damaged lines. Some examples are sewer and natural gas lines where a leaking or broken pipe can cause an environmental health risk or danger of fire or explosion.

Crossing of waterbodies also poses special problems. As it is clear that utility lines must often cross waterbodies, exemption of the method(s) that are most appropriate would encourage their use and minimize impact.

Dredging to bury a cable or pipeline within the bedlands of a lake, river, or bay can result in loss of native vegetation and habitat, disturbance of spawning grounds, and water quality impacts. Buried cables and pipelines are provided some protection from future disturbance. A leak or break in the line is difficult to repair and may be difficult to detect before serious degradation has occurred for some types of utilities. The leak taking place within a waterbody can compound the impact and make clean up difficult.

Placing the cable or pipeline on the surface of bedlands reduces the impact to vegetation, habitat, spawning grounds, and water quality. As this method leaves the cable or pipeline unprotected, damage of the line becomes more likely. Repair remains difficult but more easily managed than for a buried line. Detection of a leak or break may again be difficult to detect for some utilities before serious degradation has occurred.

Installing utility lines beneath the bedlands by directional drilling can reduce impacts related to work in water, but impacts associated with clearing and grading can be expected in the upland areas.

Crossing on an existing structure has minimal impacts during installation, but may pose problems if a leak occurs for some types of utilities. As the line remains above water, leaks are more likely to be detected quickly and are more easily repaired.

Alternatives:

1. Leave the rule unchanged;
2. Exempt utility line installation on lands covered by water when directional drilling beneath the bedlands is used;
3. Exempt utility line installation on lands covered by water when attached to an existing structure; or
4. Exempt the installation on lands covered by water of non-polluting utilities when no digging, drilling, or dredging is involved within 25 feet inland from the ordinary high water mark.

36. Sand, Gravel, and Rock Sales

There are a number of exemptions under “Natural Resource Management,” WAC 197-11-800(25), related to forest practices, grazing leases, agricultural leases, issuance of easements for existing roads, development of recreational sites, etc. WAC 197-11-800(5), which is discussed in Issue #26 (Property Purchase, Sale Or Lease), also exempts the sale, transfer or exchange of any publicly owned real property, but only if it is not subject to an authorized public use. It has been requested that the sale (but not the extraction) of sand, gravel and rock be made exempt. This would allow existing, operating publicly-owned quarries and processing facilities that are the source for public

proposals to sell small or surplus quantities of material, without having to complete the SEPA process for the sale.

The impacts associated with the sale of these resources (the extraction and processing activities being covered in earlier review) is restricted to the loss of this resource for use in public proposals. To the degree that the source material is depleted by these sales, the need to acquire other sources is increased. (It is assumed that transportation impacts would be comparable to those generated by the same materials being trucked for use in public proposals, although the exact timing is likely to vary by days, weeks, or even years.)

Alternatives:

1. Leave the rule unchanged;
2. Exempt the sale of sand, gravel, and rock;
3. Exempt the sale of sand, gravel, and rock in limited quantities.

37. Bough Harvesting

Currently the removal of firewood, harvesting of Christmas trees, and the picking of brush is exempt from SEPA review. It has been requested that bough harvesting be included as an exemption.

The activity involves removing lower boughs from evergreen trees, typically in state timberlands. These in turn are used to make wreaths and swags. Procedures are in place so that the harvest has no material effect on the health of the trees.

Alternatives:

1. Leave the rule unchanged; or
2. Exempt bough harvesting.

38. Temporary Uses

It has been requested that temporary uses that will have no material effect on the environment be made exempt. Specifically, the exemption of filming on state lands under these conditions has been requested, as undergoing SEPA review for granting of license to make nature films on state lands often causes delays that preclude filming the intended event.

Currently uses that have been exempted when no permanent construction is required include: Operation of amusement devices, rides and entertainment activities [WAC 197-11-800(14)(c)]; and charitable or retail sales and service activities [WAC 197-11-800(14)(d)].

Leases may also be considered temporary uses, although often permanent or near-permanent changes result. Examples include leases for gravel or mineral extraction, or the lease of property on which permanent structures are constructed.

Films may involve significant construction and/or alteration of the environment. Stunts, special effects, and construction of movie sets can have a significant impact. In contrast the setting up of temporary blinds to film nature in a natural setting has a very minimal impact.

When all structures are temporary in nature (in particular, no foundation is laid) and the site is left at or near its original condition (vegetation either undisturbed or having been replaced, etc.), then the effects of the proposal are also temporary and limited to the duration of the project. These short-term effects may result within the areas of light and noise, temporary traffic impacts, and disturbance of fish and wildlife dependant on the location and the nature of the project. Mitigation may include limiting the timing or duration of the use.

Alternatives:

1. Leave the rule unchanged;
2. Exempt filming on state lands;
3. Exempt filming on state lands when there will be no material effect on the environment;
4. Exempt temporary uses on state land when there will be no material effect on the environment; or
5. Exempt temporary uses on state land of no more than a 21-day duration when there will be no material effect on the environment with an allowance for agencies to adopt a longer time period, up to 180 days, within their SEPA ordinances.

39. Park and Recreational Land Maintenance

WAC 197-11-800(i) exempts the periodic use of chemical or mechanical means to maintain public park and recreational land.⁹ It has been requested that repositioning large woody debris within a watercourse, beach sanding, and the clearing of boat ramps and culverts as examples of exempt maintenance activities.

The impacts of boatramp maintenance dredging are discussed under issue #24. Repositioning large woody debris within a watercourse would require a hydraulic project approval (HPA) from Washington Department of Fish and Wildlife (WDFW). WDFW maintains that the potential impacts to water quality, fish and wildlife can be fully mitigated for this activity within the existing regulations for the HPA. Clearing of culverts in natural watercourses benefits fish and wildlife habitat but can have a

⁹ Chemicals used must be approved by Washington Dept of Agriculture and applied by licensed personnel. The exemption does not apply to the use of chemicals within watersheds that are controlled for the purposes of drinking water quality in accordance with WAC 248-54-660.

temporary adverse impact on water quality. An HPA is required for this activity and existing regulations can mitigate water quality impacts.

Although of beneficial use for both recreation and erosion control, beach sanding can have an adverse impact on native vegetation, fish and wildlife habitat, and future down-current navigation. The level and type of impact will vary from site to site, and may be effected by timing and other factors that can be mitigated.

Alternatives:

1. Leave the rule unchanged;
2. Include the clearing of culverts and repositioning large woody debris within a watercourse as examples of exempt maintenance activity; or
3. Include beach sanding as an example of an exempt maintenance activity.

40. Road Easements

WAC 197-11-800(25)(j) exempts the issuance of rights-of-way, easements, and use permits to use existing roads in non-residential areas. It has been requested that 1) the stipulation that the roads must be in non-residential areas be removed; and 2) the exemption be expanded for the granting of easements even if no road exists, as long as normal public uses of the property are maintained.

A new road would involve short-term construction related impacts, such as loss of vegetation and erosion, and long-term impacts from the creation of new impervious surfaces and those related to use. Granting use of existing roads would be solely use-related.

If unconnected with a larger proposal that in its self is not exempt, granting of use alone is unlikely to generate high volumes of traffic. An exception would be if the roadway provides new access to an existing commercial or industrial center or facility, or it becomes a new arterial.

Alternatives:

1. Leave the rule unchanged;
2. Exempt the issuance of all rights-of-way, easements, and use permits for the use or construction of roads, as long as normal public uses of the property are maintained;
3. Exempt the issuance of all rights-of-way, easements, and use permits to use existing roads;
4. Exempt the issuance of rights-of-way, easements, and use permits to use existing roads with limitations on traffic impacts as addressed under issue #2; or
5. Exempt the issuance of all rights-of-way, easements, and use permits for the use or construction of roads, as long as normal public uses of the property are maintained, with limitations on traffic impacts as addressed under Issue #2. [Note that this would not exempt the actual construction of a road, if not otherwise exempt.]

41. Recreational Prospecting

WAC 197-11-830(8) exempts the Department of Natural Resources leases for mineral prospecting under RCW 79.01.616 or 79.01.652, except on aquatic lands under state control, and not including subsequent contracts for mining. It has been requested that the exemption be expanded to include activities on aquatic lands by exempting permits for recreational mineral and placer prospecting, when only hand and non-motorized tools will be used. Another request would make the exemption more restrictive by including municipal watersheds within the area that the exemption does not apply.

The Department of Natural Resources (DNR) does not currently regulate small scale mineral prospecting, but anticipates that a permitting program pertaining to state lands may be developed in the future. Recreational mineral collecting and gold panning is a popular hobby, and DNR may expect to issue several hundred of this type of permit statewide if the program is developed.

When mineral prospecting will occur in the water, a hydraulic project approval from Washington Department of Fish and Wildlife (WDFW) is required. If the activity fits into the strict limitations set in the application is filed. The “Gold and Fish” pamphlet contains restrictions on the watercourse, timing, number of persons at the site, methods used, size and location of extraction, and has provisions WDFW “Gold and Fish” pamphlet, the pamphlet qualifies as the HPA and no for the presence of eggs or fry, replacement of aggregate/bed materials/tailings, and disposal of hazardous materials, etc. All restrictions are intended to protect fish and their habitat, which includes water quality, water and riparian vegetation, stream flow, food supply, spawning grounds, etc.

Deviations from the Gold and Fish pamphlets mandates, such as a change in location, timing, equipment, or method to be used are reviewed individually by WDFW, and require a separate written HPA or a written supplement in conjunction with the Gold and Fish pamphlet. Minor exceptions in location or timing may be applied for by phone or in writing, and would be covered by the written supplement, if approved. Other exceptions require the submission of a Joint Aquatic Resource Permit Application (JARPA), and if approved, will result in a separate HPA with restrictions on specific timing, location, and equipment restrictions.

Other agencies may regulate mineral prospecting on state lands in some instances:

- Cities and counties administer the Shoreline Management Act through local shoreline master plans. Areas are identified where activities can and cannot be conducted and permits may be required.
- Washington Department of Ecology oversees the Shoreline Management Act and administers water quality standards and water rights.
- The U.S. Corps of Engineers may require suction dredge operators to obtain a Section 404 permit, under the Federal Clean Water Act of 1977.

- The U.S. Bureau of Land Management regulates exploration and mining activities in many areas, not all of them federally owned¹⁰. Short-term, low-impact, "casual use" activities are allowed without permitting, including all instream activities allowed by the "Gold and Fish" pamphlet.
- National Marine Fisheries Service and the US Fish and Wildlife Service have the responsibility of ensuring that activities will not harm or destroy members of species listed as threatened or endangered under the Endangered Species Act, and may require Incidental Take Permits.

Alternatives:

1. Leave the rule unchanged; or
2. Exempt the issuance by DNR of permits or leases for small scale mineral and placer prospecting on state lands, where only hand and non-motorized tools will be used; or
3. Exempt small scale mineral and placer prospecting where only hand and non-motorized tools will be used in compliance with the current "Gold and Fish" pamphlet.

42. CZM Consistency Certifications

WAC 197-11-855(3) exempts the granting or denial by the Department of Ecology of certifications of consistency pursuant to the Federal Coastal Zone Management Act (16 USC 1451). It has been requested that this exemption be removed.

Alternatives:

1. Leave the rule unchanged; or
2. Remove the exemption for certifications of consistency with the Federal Coastal Zone Management Act.

43. Water Quality Modifications

WAC 197-11-855(4) exempts the issuance of short-term water quality standards modifications for minor projects where only turbidity violations would occur and for less than a 14 day duration, a hydraulic project approval is issued for the proposal, and beneficial uses of the waterbody are not significantly impaired. As the Department of Ecology no longer issues short-term water quality modifications for any type of proposal, it has been requested that this exemption be removed.

Alternatives:

1. Leave the rule unchanged; or
2. Remove the exemption for short-term water quality standard modifications.

¹⁰ It is not certain whether the US Bureau of Land Management has authority on state lands.

44. Engineering Reports

WAC 197-11-855(5) exempts the Department of Ecology's approval of engineering reports when such approval allows preparation of plans and specifications, but not when it would commit the department to approving the final proposal. It has been requested that this exemption be removed.

Alternatives:

1. Leave the rule unchanged;
2. Remove the exemption for approvals of engineering reports.

45. Transportation

It has been requested that the exemptions for transportation projects granted to Washington Department of Transportation under WAC 197-11-860 be extended to local agencies that have similar road-related actions. WAC 197-11-860 currently exempts the following:

1. Approval of the annual highway safety work program involving the highway-related safety standards pursuant to 23 USC 402;
2. Issuance of road approach permits and right-of-way rental agreements;
3. Establishment of changing speed limits of 55 miles per hour or less;
4. Revisions of existing access control involving a single property owner;
5. Issuance of a "motorist information signing permit," granting a private business person the privilege of having a sign on highway right-of-way which informs the public of the availability of his or her services;
6. Issuance of permits for special units relative to state highways;
7. Issuance of permits for the movement of over-legal size and weight vehicles on state highways;
8. Issuance of encroachment permits for road approaches, fences, and landfills on highway right-of-way; and
9. Issuance of permits for utility occupancy of highway rights-of-way for use for distribution (as opposed to transmission).

It has also been requested that the stipulation on item #4 above be removed that exempts revisions of existing access controls only when there is a single property owner, as the number of property owners involved would not influence the level of environmental impact.

It is important to determine whether the above actions related to highways translate to an equivalent action related to local roads, and if so, whether the impact remains the same.

46. Biosolids

[It has been requested that an exemption be added for land application of biosolids that meets federal and state standards.]

47. Conservation Easements

[It has been suggested that actions associated with easements for the conservation or preservation of property in its natural state be exempted.]

48. Permit Exemptions

There has been ongoing confusion as to whether a permit exemption qualifies as an action, and therefore requires SEPA review. A permit exemption is issued by an agency for some types of routine projects for which the agency chooses not to have a formal permitting process, but only when the project meets certain restrictions. Some feel that these restrictions are the equivalent of permit conditions and therefore the exemption should be considered a permit. Others argue that if a project complies with the restrictions on the exemption, that they are exempt from a permit and there is no government action to initiate the SEPA process.

To foster clarity and consistency, it has been requested that this issue be resolved in this rule revision process by clearly exempting permit exemptions.

Alternatives:

1. Leave the rule unchanged;
2. Clearly include permit exemptions that contain conditions as actions that require SEPA review if the proposal is not otherwise exempt;
3. Exempt permit exemptions; or
4. Exempt projects qualifying for a local permit exemption.

49. Geoduck Harvesting

It has been requested that the granting of permits, licenses, or leases for the commercial harvesting of geoduck be made exempt. Two environmental impact statements (EIS) have been issued for geoduck harvesting by commercial water-jet method:

1. The Puget Sound Commercial Geoduck Fishery Management Plan and EIS, issued by Washington Departments of Fisheries and Natural Resources in 1985; and
2. The Puget Sound Commercial Geoduck Fishery Draft Supplemental EIS, issued by the Department of Natural Resources in 2001 (this document has not been finalized).

Alternatives:

1. Leave the rule unchanged (no action); or
2. Exempt the granting of permit, license, or lease for the purpose of commercial harvesting of geoduck.

50. Stormwater Management Manual

The Department of Ecology publishes the *Stormwater Management Manual for the Puget Sound Basin*. Cities and counties within the Puget Sound Basin are encouraged to adopt the current manual into their development regulations, to assure implementation of appropriate stormwater management in new proposals. It has been requested that this adoption be made exempt.

Alternatives:

1. Leave the rule unchanged;
2. Exempt the adoption by agencies of the Department of Ecology's current version of the *Stormwater Management Manual for the Puget Sound Basin*.