

## What comments have been received on the scope of this EIS?

**September 23, 1998**

**NOTE: The formal comment period on the scoping notice began on July 28, 1998 and ended on August 28, 1998. New suggestions received during that period are shown in *italics***

### Suggested Amendments to or Deletions of Existing Categorical Exemptions

<p><b>WAC 197-11-305 Categorical exemptions.</b> (1) If a proposal fits within any of the provisions in Part Nine of these rules, the proposal shall be categorically exempt from threshold determination requirements (WAC 197-11-720) <i>except as follows:</i></p> <p style="padding-left: 40px;">(a) The proposal is not exempt under WAC 197-11-908, critical areas.</p> <p style="padding-left: 40px;">(b) The proposal is a segment of a proposal that includes:</p> <p style="padding-left: 80px;">(i) A series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not; or</p> <p style="padding-left: 80px;">(ii) 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. If so, that agency shall be the lead agency, unless the agencies with jurisdiction agree that another agency should be the lead agency. Agencies may petition the department of ecology to resolve disputes (WAC 197-11-946).</p> <p style="padding-left: 40px;">For such proposals, the agency or applicant may proceed with the exempt aspects of the proposals, prior to conducting environmental review, if the requirements of WAC 197-11-070 are met.</p> <p style="padding-left: 40px;">(2) An agency is not required to document that a proposal is categorically exempt. Agencies may note on an application that a proposal is categorically exempt or place such a determination in agency files.</p>	<ul style="list-style-type: none"> <li>● Provide guidance on how to determine that a proposal is a segment of another proposal, and how an agency determines if a series of actions are physically or functionally related (suggested to clarify the applicability of this subsection to otherwise exempt Class I, II and II Forest Practices applications per 1993 Court of Appeals decision in <u>Snohomish County vs. State.</u>)</li> <li>● Do not limit or modify 305 review (particularly in relation to forest practices).</li> <li>● Clarify that 305 does not apply to statutorily exempt actions.</li> <li>● Clarify that forest practices should not be exempt if other portions of a project are not exempt.</li> <li>● Remove statutory exemptions from rules, specifically forest practices – 305 should not apply to statutory exemptions.</li> </ul>
<p><b>WAC 197-11-800 Categorical exemptions.</b> The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305</p>	
<p><b>(1) Minor new construction--Flexible thresholds.</b></p> <p style="padding-left: 40px;">(a) 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</p>	<ul style="list-style-type: none"> <li>● Clarify whether all facets of project exempt under one of the criteria is also exempt; e.g. is a single family home which includes more than 100 cubic yards of</li> </ul>

<p>air or discharges to water is required. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency.</p>	<p>grading/filling exempt?</p> <ul style="list-style-type: none"> <li>• Clarify either that "notice of construction" from air authority is not a "license governing emission to the air", or that demolition of single-family homes and other small clean-up actions is exempt</li> <li>• Amend: "except when a rezone or any <u>non-exempt</u> license governing emissions to the air or discharges to water..."</li> <li>• Clarify whether the exception for rezones in line 3 also applies to conditional use permits.</li> <li>• <b><i>Consider whether rezones required to bring zoning into compliance with comprehensive plans should lose their exemption if a subsequent permit is required</i></b></li> </ul>
<p>(b) The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:</p>	<p>Clarify what is meant by "lands covered by water" (<i>NOTE: this request for clarification applies wherever this phrase is used in the SEPA Rules.</i>). <i>Specific requests for clarification include whether the following are considered "lands covered by water":</i></p> <ul style="list-style-type: none"> <li>• <i>Work under the bed of a water body (e.g. drilling for a fiber optic cable or other utility line)</i></li> <li>• <i>Work on a bridge, if the work is not occurring in the water but above it.</i></li> <li>• <i>Docks – bulkheads (are they covered by the elimination in 197-11-800(3)(b) of the exemption for "groins and similar shoreline protection structures"?)</i></li> <li>• <i>Installation-replacement of culverts</i></li> <li>• <i>Drainage ditches</i></li> </ul>
<p>(i) The construction or location of any residential structures of four dwelling units.</p>	<ul style="list-style-type: none"> <li>• Clarify that this means a <i>total</i> of four units.</li> <li>• Increase to a total of ten units.</li> </ul>
<p>(ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply</p>	

to feed lots.	
<p>(iii) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles.</p>	<ul style="list-style-type: none"> <li>• Clarify that this means a <i>total</i> of 4000 sq. feet.</li> <li>• Increase to 8,000 square feet and 40 spaces for automobiles.</li> <li>• Delete the parking threshold for associated parking. Parking requirements for buildings differ by use, some 4000 square foot buildings may require more than 20 spaces.</li> <li>• Clarify that the square footage and parking thresholds are not both required for the exemption: "...and with associated parking facilities designed for <u>no more than</u> twenty automobiles."</li> <li>• Add: "Cities or counties may lower this exempt level to encompass construction of a building which when occupied is likely to result in 500 or more new vehicle trips per day."</li> <li>• <i>Clarify that this does not exempt industrial (commercial only)</i></li> <li>• <i>Consider deleting the reference to parking here, since it is already covered by (1)(b)(iv).</i></li> </ul>
<p>(iv) The construction of a parking lot designed for twenty automobiles.</p>	<ul style="list-style-type: none"> <li>• Increase to 40 spaces.</li> <li>• Delete and substitute with an exemption that is based on the environmental impacts, not on an arbitrary quantity limitation (performance standard type of exemption).</li> <li>• Convert to square feet of impervious surface.</li> </ul>
<p>(v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.</p>	<ul style="list-style-type: none"> <li>• Raise landfill threshold to 500 cubic yards.</li> <li>• Clarify that fill or excavation of more than 100 cubic yards is exempt if being done for otherwise exempt activities (e.g. parking lot less than 20 spaces).</li> <li>• Delete and substitute with an exemption that is based on the environmental impacts, not on an arbitrary quantity limitation (performance standard type of exemption).</li> </ul>

	<ul style="list-style-type: none"> <li>● Clarify how this interacts with the exemption in 2(d) for "...grading, excavating and filling necessary for any building or facility exempted by subsections (1) and (2)."</li> <li>● <i>Local government should have the ability to lower the threshold to 50 cubic yards.</i></li> </ul>
<p>(c) Cities, towns or counties may raise the exempt levels to the maximum specified below by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904) and sent to the department of ecology. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:</p> <ul style="list-style-type: none"> <li>(i) 20 dwelling units.</li> <li>(ii) 30,000 square feet.</li> <li>(iii) 12,000 square feet; 40 automobiles.</li> <li>(iv) 40 automobiles.</li> <li>(v) 500 cubic yards.</li> </ul>	<ul style="list-style-type: none"> <li>● Raise the minimum and maximum thresholds to the levels proposed in SHB 1474 [1997 legislation that did not pass]:</li> <li>● 10 – 20 dwelling units;</li> <li>● 8000 sq ft/40 spaces – 12,000 sq ft/40 spaces</li> <li>● 40 spaces</li> <li>● 500 cubic yards</li> <li>● Add "special use districts (e.g. port districts, school districts" as agencies that can adopt flexible thresholds.</li> <li>● Add reference to GMA requirements (e.g. critical areas ordinances).</li> <li>● Raise exemption levels for lands within a municipality in compliance with GMA.</li> </ul> <p>(iii): Raise threshold to 20,000 square feet.</p> <p>(iii): Delete parking threshold for associated parking.</p> <p>(v): Raise landfill threshold to 10,000 cubic yards.</p>
<p>(2) <b>Other minor new construction.</b> The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:</p>	
<ul style="list-style-type: none"> <li>(a) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.</li> <li>(b) The construction and/or installation of commercial</li> </ul>	<ul style="list-style-type: none"> <li>b. Clarify that traffic signals and signal systems are exempt.</li> </ul> <p><i>(b) Include pedestrian signals as exempt.</i></p>

<p>on-premise signs, and public signs and signals.</p>	
<p>(c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.</p>	<ul style="list-style-type: none"> <li>● Reorganize this section for clarity. Too confusing.</li> <li>● Delete reference to "and no new right of way is required..." regarding adding auxiliary lanes; amend as follows: "<u>installation of catch basins and culverts on lands seasonally or periodically covered by water</u>"</li> <li>● Extend to urban drainage systems the exemption that is provided for rural systems by exempting "storm drains and other drainage facilities related to the roadway..."</li> <li>● <i>This proposed expansion of the exemption should apply only to those projects that are consistent with Ecology's 1992 "Stormwater Management Manual for the Puget Sound Basin".</i></li> <li>● Extend the exemption to "conversion of former railroad beds to bicycle or pedestrian paths."</li> <li>● Delete and substitute with an exemption that is based on the environmental impacts, not on an arbitrary quantity limitation (performance standard type of exemption).</li> <li>● Add exemption for projects which require minor right-of-way purchase</li> <li>● Exempt culvert replacements</li> <li>● Exempt minor bridge repair when no work in the water</li> </ul>
<p>(d) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.</p>	
<p>(e) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.</p>	<ul style="list-style-type: none"> <li>● Add clear authority to exempt minor additions to buildings that would not themselves be exempt.</li> <li>● Exempt minor additions to previously reviewed projects</li> </ul>

	<ul style="list-style-type: none"> <li>• Clarify what constitutes "changing the character" of a building or facility</li> </ul>
<p>(f) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance.</p>	<ul style="list-style-type: none"> <li>• Exempt all demolitions, except of historic structures.</li> <li>• Exempt demolitions up to 12,000 square feet of commercial/industrial, and up to 20 multi-family residences</li> <li>• Exempt demolition of towers for antennas covered in 800(24)</li> <li>• Change "recognized historical significance" to structures listed on the state historical registry</li> </ul>
<p>(g) The installation of impervious underground tanks, having a capacity of 10,000 gallons or less.</p>	<ul style="list-style-type: none"> <li>• Add "above ground tanks" to the exempt category.</li> <li>• Exempt above ground tanks less than 1000 gallons.</li> <li>• Change exemption level for underground tanks where local review pre-empted by MTCA.</li> <li>• Exempt the installation of impervious above ground or underground tanks.</li> <li>• Exempt all tanks of double-wall construction.</li> <li>• Reconsider size of tanks being exempted – raise level to conform to typical tank size for service stations</li> <li>• <i>Raise to 12,000 gallons</i></li> <li>• <i>Define "capacity" as including all tanks on site</i></li> </ul>
<p>(h) The vacation of streets or roads.</p> <p>(i) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.</p> <p>(j) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.</p>	<p>(h): Move this exemption to 800(5) since this is not a construction issue.</p> <p>(j): Exempt fences.</p>
<p><b>(3) Repair, remodeling and maintenance activities.</b> The following activities shall be categorically exempt: The</p>	<ul style="list-style-type: none"> <li>• Clarify authority of local jurisdiction to develop standards for determining whether</li> </ul>

<p>repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:</p>	<p>a change in use of an existing building or site is sufficiently "material" to warrant SEPA review.</p> <ul style="list-style-type: none"> <li>● Add language that more closely mirrors NWP #2, that allows for "changes or deviations in the structures, configurations or filled area due to changes in materials, construction techniques or...codes or safety stands...so long as the environmental effects...are minimal".</li> <li>● Make the list of examples in line 8 (within parentheses) an all-inclusive list; list ALL the exempt activities to avoid confusion.</li> <li>● Provide exemption for minor additions to, or alterations changing the envelope of, structures over water.</li> <li>● Exempt work that will be done during normal drawdowns of waterbodies.</li> <li>● Clarify that repair and maintenance on lands covered by water are exempt if an HPA is exempt under 835(3) or 840(7)</li> <li>● Revise: "involving no material expansions or changes...<u>unless the existing structure is under 4,000 square feet;</u>..."</li> <li>● Delete the list of examples and substitute "...replacement of structures <u>qualifying as normal maintenance and repair pursuant to WAC 173-27-040(2)(b) may be exempt...</u>"</li> <li>● Clarify that planned upgrades of existing utility facilities within existing public or private utility rights-of-way are "minor alterations"</li> <li>● Clarify "minor" versus "major" repair or maintenance etc.</li> </ul>
<p>(a) Dredging;</p>	<ul style="list-style-type: none"> <li>● Either specifically exempt minor dredging activity required to maintain boat ramps, culverts and drainageways, or clarify (24)(f) and (25)(I) as to what "mechanical means to maintain..." represents.</li> <li>● Add exemption for berth maintenance dredging (with some maximum threshold quantity).</li> </ul>

<p>(b) Reconstruction/maintenance of groins and similar shoreline protection structures; or</p> <p>(c) Replacement of utility cables that must be buried under the surface of the bedlands. Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.</p>	<ul style="list-style-type: none"> <li>● Exempt groins and similar shoreline protection structures</li> <li>● <i>Clarify that bulkheads are a "similar shoreline protection structure" and should not be exempt</i></li> </ul>
<p>(4) <b>Water rights.</b> The following appropriations of water shall be exempt, the exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation:</p> <p>(a) Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.</p> <p>(b) Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of ground water, for any purpose.</p>	<p><i>Clarify that the exemption for "distribution" does not include storage</i></p> <p><i>Explore why intake structures were originally exempted, and consider removing exemption.</i></p> <p>Reduce exemption levels in this section.</p> <p>(a) Change exemption for 50 cubic feet per second or less to be instead a percentage of instream flows</p> <p><i>(a) see 43.21C.035 – irrigation for agriculture</i></p>
<p>(5) <b>Purchase or sale of real property.</b> The following real property transactions by an agency shall be exempt:</p> <p>a. The purchase or acquisition of any right to real property.</p> <p>(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.</p> <p>(c) The lease of real property when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.</p>	<p>Delete this entire exemption for real property transactions.</p> <p>(b) and (c): Clarify exemption for transfer of publicly owned real property.</p> <p>(b): Clarify the "but" clause; change in use is more important than ownership.</p> <p><i>(b) Clarify what is considered an "authorized public use"; give examples.</i></p> <p>(c): Delete everything after "The lease of real property."</p>
<p>(6) <b>Minor land use decisions.</b> The following land use decisions shall be exempt:</p>	<ul style="list-style-type: none"> <li>● Consider revising this exemption to relate to the actual development, not the type of license required. For example, many conditional use permits are for otherwise exempt activities, so the requirement of a CUP should not nullify the exemption.</li> <li>● Add exemption for vegetation and tree-removal permits in critical areas.</li> <li>● Exempt "other minor land use decisions as</li> </ul>

	<p>specified in agency's SEPA procedures."</p> <ul style="list-style-type: none"> <li>● Add exemption for adopting minor land use regulations implementing a GMA comprehensive plan.</li> <li>● Add subsection for "Amending the dedicatory language, but not the drawing, on the face of a final plat, final short plat, or final binding site plan."</li> <li>● Exempt "divisions of land as set forth in RCW 58.17.040(3), (4), (5) and (6)."</li> <li>● Exempt 8 or fewer new divisions of land within a UGA and 4 or fewer new divisions outside the UGA under certain circumstances</li> </ul>
<p>(a) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, but not including further short subdivisions or short platting within a plat or subdivision previously exempted under this subsection.</p>	<ul style="list-style-type: none"> <li>● Clarify what is meant by "lands covered by water."</li> <li>● Add exemption for lot boundary adjustments.</li> <li>● Change exemption to "Division of land into nine or fewer lots or parcels" to conform with short plat option (up to 9 lots).</li> <li>● Delete short plat exemption altogether as a result of Noble Manor Supreme Court decision (1997)</li> </ul>
<p>(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.</p> <p>(c) Classifications of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.</p> <p>(d) Annexation of territory by a city or town.</p>	
<p>(7) <b>School closures.</b> The adoption and implementation of a plan, program, or decision for the closure of a school or schools shall be exempt. Demolition, physical modification or change of a facility from a school use shall not be exempt under this subsection.</p>	
<p>(8) <b>Open burning.</b> Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall</p>	<p>Clarify to match the Open Burning rule (WAC 173-425-020 and cover all forms of outdoor burning.</p>

not be exempt.	
<p>(9) <b>Clean Air Act.</b> The following actions under the Clean Air Act shall be exempt:</p> <p>(a) The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.</p> <p>(b) The issuance, renewal, reopening, or revision of an air operating permit under RCW 70.94.161.</p>	<ul style="list-style-type: none"> <li>● Add exemption for "minor new source review permits for air emissions.</li> <li>● Define types of air permitting activities that constitute "potential major actions significantly affecting the quality of the environment"</li> </ul>
<p>(10) <b>Water quality certifications.</b> The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.</p>	<ul style="list-style-type: none"> <li>● Remove exemption for certifications required for a hydroelectric project</li> <li>● Amend exemption to require SEPA review except when granting, waiving or denying water quality certification of hydroelectric projects licensed by FERC</li> </ul>
<p>(11) <b>Activities of the state legislature.</b> All actions of the state legislature are exempted. This subsection does not exempt the proposing of legislation by an agency (WAC 197-11-704).</p>	
<p>(12) <b>Judicial activity.</b> The following shall be exempt:</p> <p>a. All adjudicatory actions of the judicial branch.</p> <p>(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.</p>	
<p>(13) <b>Enforcement and inspections.</b> The following enforcement and inspection activities shall be exempt:</p> <p>(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.</p> <p>(b) All inspections conducted by an agency of either private or public property for any purpose.</p> <p>(c) All activities of fire departments and law enforcement agencies except physical construction activity.</p> <p>(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and</p>	

<p>chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.</p> <p>(e) Any suspension or revocation of a license for any purpose.</p>	
<p>(14) <b>Business and other regulatory licenses.</b> The following business and other regulatory licenses are exempt:</p> <p>(a) All licenses to undertake an occupation, trade or profession.</p> <p>(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.</p> <p>(c) All licenses to operate or engage in amusement devices and rides and entertainment activities, including but not limited to cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.</p> <p>(d) All licenses to operate or engage in charitable or retail sales and service activities, including but not limited to peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.</p> <p>(e) All licenses for private security services, including but not limited to detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.</p> <p>(f) All licenses for vehicles for-hire and other vehicle related activities, including but not limited to taxicabs, ambulances, and tow trucks: <i>Provided</i>, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.</p> <p>(g) All licenses for food or drink services, sales, and distribution, including but not limited to restaurants, liquor, and meat.</p> <p>(h) All animal control licenses, including but not limited to pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.</p> <p>(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.</p>	<p>(b) Exempt building permits.</p> <p>(d) Include issuing permits for filming in state parks as an exempt activity.</p>
<p>(15) <b>Activities of agencies.</b> The following administrative, fiscal and personnel activities of agencies shall</p>	<p>Add new subsection for agency decisions to fund activities that are not an "action", or would be</p>

<p>be exempt:</p> <p>(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.</p> <p>(b) The assessment and collection of taxes.</p> <p>(c) The adoption of all budgets and agency requests for appropriation: <i>Provided</i>, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.</p> <p>(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.</p> <p>(e) The review and payment of vouchers and claims.</p> <p>(f) The establishment and collection of liens and service billings.</p> <p>(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.</p> <p>(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.</p> <p>(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.</p> <p>(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection (see also WAC 197-11-800(7)).</p>	<p>categorically exempt if undertaken, or are not exempt but the actual license or permit required is not exempt.</p> <p>(b): Exempt "assessment and collection of taxes <u>and fees.</u>"</p> <p>(c): Add reference to Capital Investment Plans where the decision to undertake projects has previously been made in general system plans such as transportation or utility plans.</p> <p>(c): Clarify that adopting a capital improvement plan is exempt, because it does not necessarily commit to a particular project at that phase.</p> <p>(j) Add similar exemption for routine activities of ports.</p> <p>(j) change "of" to "or"</p>
<p>(16) <b>Financial assistance grants.</b> The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.</p>	
<p>(17) <b>Local improvement districts.</b> The formation of local improvement districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880.</p>	
<p>(18) <b>Information collection and research.</b> Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been</p>	

<p>approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)</p>	
<p>(19) <b>Acceptance of filings.</b> The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.</p>	
<p>(20) <b>Procedural actions.</b> 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.</p>	<ul style="list-style-type: none"> <li>● Clarify that non-substantive changes to code provisions which contain substantive provisions do not trigger SEPA review.</li> <li>● Exempt substantive code changes which implement a comprehensive plan.</li> </ul>
<p>(21) <b>Building codes.</b> The adoption by ordinance of all codes as required by the state Building Code Act (chapter 19.27 RCW).</p>	<p>Change from "as required by the building code act" to "as authorized by the building code act". This will allow jurisdictions that make allowed changes to the code to still exempt the adoption of building codes.</p>
<p>(22) <b>Adoption of noise ordinances.</b> 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.</p>	<ul style="list-style-type: none"> <li>● Add "special use districts (e.g. port districts, school districts" as agencies that can adopt noise-related standards.</li> <li>● Change from "differ from" to "conflict with" to allow adoption of quieter noise limits.</li> </ul>
<p>(23) <b>Review and comment actions.</b> Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.</p>	

<p>(24) <b>Utilities.</b> The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.</p> <p>(a) All communications lines, including cable TV, but not including communication towers or relay stations.</p> <p>(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.</p> <p>(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (more than 55,000 volts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.</p> <p>(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.</p> <p>(e) All developments within the confines of any existing electric substation, reservoir, pump station or well: <i>Provided</i>, That additional appropriations of water are not exempted by this subsection.</p> <p>(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: <i>Provided</i>, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.</p> <p>(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.</p> <p>(h) All grants of franchises by agencies to utilities.</p> <p>6. All disposals of rights of way by utilities.</p>	<p>General:</p> <ul style="list-style-type: none"> <li>● Exempt all utility construction where it is included in an adopted utility plan, and it is undertaken within the existing improved portion of a public street right-of-way, or other right-of-way in which no change in vegetation or topography will result from the installation.</li> <li>● Clarify what is meant by "lands covered by water."</li> <li>● Delete reference to relocation being exempt "only when required by other governmental bodies".</li> <li>● Exempt utility line installation under bedlands when directional drilling is used.</li> </ul> <p>(a): Clarify applicability of exemptions to antennas and other telecommunication facilities.</p> <p>(b): Change exemption from eight inches or less to twelve inches for storm water lines; and in incorporated cities within urban growth areas, increase exemption for water lines to sixteen inches.</p> <p>(b) Raise exemption level to ten inch lines and exempt lines to be located within dedicated right-of-way.</p> <p>(c): Do not change anything that reduces current language flexibility.</p> <p>(d): Clarify difference between distribution vs. transmission lines for natural gas.</p> <p>(d): Exempt interstate transmission lines.</p> <p>(f): Make this exemption consistent with (1)(b)(v), and include the amount of material that can be dredged from storm water facilities.</p>
<p>(25) <b>Natural resources management.</b> In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:</p> <p>(a) All Class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder.</p> <p>(b) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.</p>	<p>Add the following as exempt activities:</p> <ol style="list-style-type: none"> <li>a. Sales of sand, gravel and rock</li> <li>b. Issuing permit for recreational mineral and placer prospecting</li> <li>c. Issuing permit for noncommercial fossil collecting</li> </ol>

<p>(c) Licenses or approvals to remove firewood.</p> <p>(d) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.</p> <p>(e) Issuance of leases for Christmas tree harvesting or brush picking.</p> <p>(f) Issuance of leases for school sites.</p> <p>(g) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.</p> <p>(h) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.</p> <p>(i) Periodic use of chemical or mechanical means to maintain public park and recreational land: <i>Provided</i>, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.</p> <p>(j) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.</p> <p>(k) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.</p>	<p>d. Bough harvesting</p> <p>e. Issuing temporary use licenses (e.g. non-motorized events, commercial filming)</p> <p>f. Issuing grants under the Jobs for the Environment program (e.g. certain environmental restoration projects)</p> <p>(a): Clarify the exemptions for class I, II and III forest practices to be consistent with DNR's criteria for determining exempt levels.</p> <p>(b): Revise to indicate that whether the land has been grazed, rather than merely leased, is the criterion for exemption</p> <p>(b): Delete exemption for new leases</p> <p>(d): Delete.</p> <p>(i): Clarify "periodic use of chemical or mechanical means to maintain public park and recreational land"; list as examples repositioning woody debris within a watercourse, beach sanding, clearing material off boat launches and clearing culverts.</p> <p>(j) Clarify that the activity should not interfere with normal public use of the property.</p>
<p>(26) <b>Watershed restoration projects.</b> Actions pertaining to watershed restoration projects as defined in RCW 89.08.460(2) are exempt, provided, they implement a watershed restoration plan which has been reviewed under SEPA (RCW 89.08.460(1)).</p>	
<p><b>27.</b> (27) <b>Personal wireless service facilities.</b></p> <p>(a) The siting of personal wireless service facilities are exempt if the facility:</p> <p>(i) is a microcell and is to be attached to an existing structure that is not a residence or school and does not contain a residence or a school;</p> <p>(ii) Includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence or school and does not contain a residence or school, and the existing structure to which it is to be attached is located in a commercial, industrial, manufacturing, forest, or agriculture zone; or</p> <p>(iii) Involves constructing a personal wireless service</p>	

<p>tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.</p> <p>(b) For the purposes of this subsection:</p> <p>(c) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.</p> <p>(ii) "Personal wireless service facilities" means facilities for the provision of personal wireless services.</p> <p>(iii) "Microcell" means a wireless communication facility consisting of an antenna that is either:</p> <p>(A) Four feet in height and with an area of not more than five hundred eighty square inches; or</p> <p>(B) If a tubular antenna, no more than four inches in diameter and no more than six feet in length.</p> <p>(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).</p>	
<p><b>WAC 197-11-810 Exemptions and nonexemptions applicable to specific state agencies.</b> The exemptions in WAC 197-11-820 through 197-11-875 relate only to the specific activities identified within the named agencies. These exemptions are in addition to the preceding sections of this part and are subject to the rules and limitations of WAC 197-11-305. The categorical exemptions in WAC 197-11-800 apply to all agencies, including those named in WAC 197-11-820 through 197-11-875 unless the general exemptions are specifically made inapplicable by one of the following exemptions.</p>	
<p><b>WAC 197-11-820 Department of licensing.</b> All licenses required under programs administered by the department of licensing as of December 12, 1975 are exempted, except the following:</p> <p>6. Camping club promotional permits under chapter 19.105 RCW.</p> <p>(2) Motor vehicle wrecker licenses under chapter 46.80 RCW; WAC 197-11-800 (14)(I) shall apply to allow possible exemption of renewals of camping club promotional permits and motor vehicle wrecker licenses.</p>	
<p><b>WAC 197-11-825 Department of labor and industries.</b> All licenses required under programs administered by the department of labor and industries as of December 12,</p>	

<p>1975 are exempted, except the issuance of any license for the manufacture of explosives or the adoption or amendment by the department of any regulations incorporating general standards respecting the issuance of licenses authorizing the storage of explosives under chapter 70.74 RCW. The adoption of any industrial health or safety regulations containing noise standards shall be considered a major action under this chapter.</p> <p>[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-825, filed 2/10/84, effective 4/4/84.]</p>	
<p><b>WAC 197-11-830 Department of natural resources.</b> The following actions and licenses of the department of natural resources are exempted:</p> <p>6. Forest closures, shutdowns and permit suspensions due to extreme unusual fire hazards.</p> <p>(2) Operating permits to use power equipment on forest land.</p> <p>(3) Permits to use fuse on forest land.</p> <p>(4) Log patrol licenses.</p> <p>(5) Permits for drilling for which no public hearing is required under RCW 79.76.070 (geothermal test drilling).</p> <p>(6) Permits for the dumping of forest debris and wood waste in forested areas.</p> <p>(7) Those sales of timber from public lands that the department of natural resources determines, by rules adopted pursuant to RCW 43.21C.120 do not have potential for a substantial impact on the environment.</p> <p>(8) Except on aquatic lands under state control, leases for mineral prospecting under RCW 79.01.616 or 79.01.652, but not including issuance of subsequent contracts for mining.</p> <p>[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-830, filed 2/10/84, effective 4/4/84.]</p>	<p>6. Clarify the exemption for mineral prospecting and coal contracts</p>
<p><b>WAC 197-11-835 Department of fisheries.</b> The following activities of the department of fisheries are exempted:</p> <p>(1) The establishment of seasons, catch limits or geographical areas for fishing or shellfish removal.</p> <p>(2) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice as defined in RCW 76.09.050 or regulations thereunder.</p> <p>(3) Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of game)</p>	<p>Delete and replace with language to reflect consolidation of departments of fisheries and game. (Note: Draft language has been provided by department of fish and wildlife and will be available at public meetings)</p> <p>DFW has also proposed a new exemption within their section for routine maintenance of existing facilities, including work in lands covered by water.</p> <p>Other suggestions:</p>

requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels which have been naturally abandoned within the twelve months previous to the hydraulic permit application.

(4) All clam farm licenses and oyster farm licenses, except where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands.

(5) All other licenses (other than those excepted in (2) and (3) above) authorized to be issued by the department as of December 12, 1975 except the following:

6. Fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;

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

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

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

[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-835, filed 2/10/84, effective 4/4/84.]

- Do not exempt introduced species (suggested by recent PCHB case finding that accidental releases of Atlantic salmon are a "pollutant");
- Reference to HPA exemptions for forest practices should be narrowed to provide for independent exercise of judgment by DFW
- HPA exemption for forest practices should be identified as a statutory exemption

**WAC 197-11-840 Department of game.** The following activities of the department of game are exempted:

(1) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.

(2) The issuance of falconry permits.

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

(4) Artificial game feeding.

(5) The issuance of scientific collector permits.

(6) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice as defined in RCW 76.09.050 and regulations thereunder.

(7) Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of fisheries) requiring a nonexempt permit, except for proposals involving

Delete and replace with language to reflect consolidation of departments of fisheries and game. (Note: Draft language has been provided by department of fish and wildlife and will be available at public meetings).

DFW has also proposed a new exemption within their section for routine maintenance of existing facilities, including work in lands covered by water.

removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels that have been naturally abandoned within the twelve months previous to the hydraulic permit application.

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

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

- (a) Maintenance of fish screen or intake structures; or
- (b) Silt and debris removal from boat launches, docks, and piers.

(10) Collection of game fish and wildlife for research.

[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-840, filed 2/10/84, effective 4/4/84.]

**WAC 197-11-845 Department of social and health services.** All actions under programs administered by the department of social and health services as of December 12, 1975, are exempted, except the following:

(1) The adoption or amendment by the department of any regulations incorporating general standards for issuance of licenses authorizing the possession, use and transfer of radioactive source material under RCW 70.98.080, except that the issuance, revocation or suspension of individual licenses thereto shall be exempt. However, licenses to operate low level burial facilities or licenses to operate or expand beyond design capacity, mineral processing facilities or their tailings areas whose products or byproducts have concentrations of naturally occurring radioactive materials in excess of exempt concentrations, as specified in WAC 402-20-250, shall not be exempt.

(2) The approval of a comprehensive plan for public water supply systems servicing one thousand or more units under WAC 248-54-065.

(3) The approval of engineering reports or plans and specifications under WAC 248-54-085 and 248-54-095, for all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet located in new rights of way and major extensions to existing water distribution systems.

(4) The approval of an application for a certificate of need under RCW 70.38.120 for construction of a new hospital or medical facility or for major additions to existing service

capacity of such institutions.

(5) The approval of an application for any system of sewerage and/or water general plan or amendments under RCW 36.94.100.

(6) The approval of any plans and specifications for new sewage treatment works or major extensions to existing sewer treatment works submitted to the department under WAC 248-92-040.

(7) The construction of any building, facility or other installation not exempt by WAC 197-11-800 for the purpose of housing department personnel, or fulfilling statutorily directed or authorized functions (e.g., prisons).

(8) The approval of any final plans for construction of a nursing home pursuant to WAC 248-14-100, construction of a private psychiatric hospital pursuant to WAC 248-22-005 or construction of an alcoholism treatment center pursuant to WAC 248-22-510.

[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-845, filed 2/10/84, effective 4/4/84.]

**WAC 197-11-850 Department of agriculture.** All actions under programs administered by the department of agriculture as of December 12, 1975 are exempted, except for the following:

(1) The approval of any application for a commercial registered feedlot, quarantined registered feedlot under chapter 16.36 RCW, or chapters 16-28 and 16-30 WAC.

(2) The issuance or amendment of any regulation respecting restricted-use pesticides under chapter 15.58 RCW that would have the effect of allowing the use of a pesticide previously prohibited by Washington state.

(3) The removal of any pesticide from the list of restricted-use pesticides established in WAC 16-228-155 so as to permit sale of such pesticides to home and garden users, unless the pesticide is no longer manufactured and is not available.

(4) The removal of any pesticide from the list of highly toxic and restricted-use pesticides established under WAC 16-228-165 so as to authorize sale of such pesticides to persons not holding an annual user permit, an applicator certificate, or an applicator operator license, unless the pesticide is no longer manufactured and is not available.

(5) The removal of any pesticide from the category of highly toxic pesticide formulations established in WAC 16-228-165 so as to permit the sale of such pesticides by persons not possessing a pesticide dealer's license, unless the pesticide is no longer manufactured and is not available.

<p>(6) The approval of any use of the pesticide DDT or DDD except for those uses approved by the centers for disease control of the United States Department of Health and Human Services (such as control of rabid bats).</p> <p>(7) The issuance of a license to operate a public livestock market under RCW 16.65.030.</p> <p>(8) The provisions of WAC 197-11-800 (14)(i) shall apply to allow possible exemption of renewals of the licenses in (1) through (7) above.</p> <p>[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-850, filed 2/10/84, effective 4/4/84.]</p>	
<p><b>WAC 197-11-855 Department of ecology.</b> The following activities of the department of ecology shall be exempt:</p> <p>(1) The issuance, reissuance or modification of any waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules and regulations. This exemption shall apply to existing discharges only and shall not apply to any new source discharges.</p> <p>(2) Review of comprehensive solid waste management plans under RCW 70.95.100 and 70.95.110.</p> <p>(3) Granting or denial of certification of consistency pursuant to the Federal Coastal Zone Management Act (16 U.S.C. 1451).</p> <p>(4) Issuance of short-term water quality standards modification, pursuant to chapter 173-201 WAC, for minor projects when the water violations would:</p> <ul style="list-style-type: none"> <li>(a) Result in turbidity violations only;</li> <li>(b) Be less than fourteen days duration;</li> <li>(c) Be mitigated by a current hydraulic project approval conditioned to protect the fishery resource; and</li> <li>(d) Not significantly impair beneficial uses of the affected water body.</li> </ul> <p>(5) 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.</p> <p>[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-855, filed 2/10/84, effective 4/4/84.]</p>	<p>(3) Eliminate.</p> <p><i>(4) Delete; Ecology no longer issues short-term water quality modifications.</i></p> <p>(5) Delete exemption for engineering reports.</p>
<p><b>WAC 197-11-860 Department of transportation.</b> The following activities of the department of transportation shall be exempt:</p>	<p>The exemptions for transportation activities in this section should extend to local agencies which have similar or parallel road related activities.</p>

(1) Approval of the annual highway safety work program involving the highway-related safety standards pursuant to 23 U.S.C. 402;

(2) Issuance of road approach permits and right of way rental agreements;

(3) Establishment and changing of 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).

[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-860, filed 2/10/84, effective 4/4/84.]

**WAC 197-11-865 Utilities and transportation commission.** All actions of the utilities and transportation commission under statutes administered as of December 12, 1975, are exempted, except the following:

- (1) Issuance of common carrier motor freight authority under chapter 81.80 RCW that would authorize a new service, or extend an existing transportation service in the fields of petroleum and petroleum products in bulk in tank type vehicles, radioactive substances, explosives, or corrosives;
- (2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;
- (3) Regulation of oil and gas pipelines under chapter 81.88 RCW; and
- (4) The approval of utility and transportation rates where the funds realized as a result of such approved rates will or are intended to finance construction of a project, approval of which would not be otherwise exempt under WAC 197-11-800,

<p>and where at the time of such rate approval no responsible official of any state or federal agency has conducted the environmental analysis prescribed by this chapter or the appropriate provisions of NEPA, whichever is applicable.</p> <p>[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-865, filed 2/10/84, effective 4/4/84.]</p>	
<p><b>WAC 197-11-870 Department of commerce and economic development.</b> The following activities of the department of commerce and economic development shall be exempt:</p> <p>(1) The provisions of business consulting and advisory services that include tourist promotion under RCW 43.31.050.</p> <p>(2) The promotion and development of foreign trade under RCW 43.31.370.</p> <p>(3) The furnishing of technical and information services under RCW 43.31.060.</p> <p>(4) The provision of technical assistance to applicants for loans and aid and/or grants by the community of economic revitalization board under chapter 43.160 RCW.</p> <p>(5) The conduct of research and economic analysis under RCW 43.31.070, including the provision of consulting and advisory services and recommendations to state and local officials, agencies and governmental bodies as authorized under RCW 43.31.160, 43.31.200 and 43.31.210.</p> <p>[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-870, filed 2/10/84, effective 4/4/84.]</p>	
<p><b>WAC 197-11-875 Other agencies.</b> Except for building construction (the majority of which is undertaken through the department of general administration), all activities of the following state agencies under programs they administer as of December 12, 1975, are exempted:</p> <p>(1) Office of the attorney general.</p> <p>(2) Office of the auditor.</p> <p>(3) Department of employment security.</p> <p>(4) Office of the insurance commissioner and state fire marshal.</p> <p>(5) Department of personnel.</p> <p>(6) Department of printing.</p> <p>(7) Department of revenue.</p> <p>(8) Office of the secretary of state.</p>	

<p>(9) Office of the treasurer.</p> <p>(10) Arts commission.</p> <p>(11) Washington state patrol.</p> <p>(12) Interagency committee for outdoor recreation.</p> <p>(13) Department of emergency services.</p> <p>(14) Department of general administration, division of banking and division of savings and loan associations.</p> <p>(15) Forest practices appeals board.</p> <p>(16) Public employees' retirement system.</p> <p>(17) Law enforcement officers' and fire fighters' retirement board.</p> <p>(18) Volunteer fireman's retirement system board.</p> <p>(19) State department of retirement systems.</p> <p>(20) Teachers' retirement system board.</p> <p>(21) Higher education personnel board.</p> <p>(22) Commission for vocational education.</p> <p>(23) State energy office.</p> <p>[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-875, filed 2/10/84, effective 4/4/84.]</p>	
<p><b>WAC 197-11-880 Emergencies.</b> Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt. Agencies may specify these emergency actions in their procedures.</p> <p>[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-880, filed 2/10/84, effective 4/4/84.]</p>	
<p><b>WAC 197-11-890 Petitioning DOE to change exemptions.</b> (1) Except for the preceding section, agencies may create additional exemptions in their procedures only after receiving approval from the department of ecology under this section.</p> <p>(2) An agency may petition the department to adopt</p>	

additional exemptions or to delete existing exemptions by amending these rules. The petition shall be made under RCW 34.05.330. The petition shall state the language of the requested amendment, the petitioning agency's views on the environmental impacts of the activities covered by the proposed amendment, and the approximate number of actions of this type which have come before the petitioning agency over a particular period of time. The department shall consider and decide upon a petition within sixty days of receipt. If the determination is favorable, the department shall begin rule making under chapter 34.05 RCW. Any resulting amendments will apply either generally or to specified classes of agencies. Affected agencies shall amend their procedures accordingly.

(3) An agency may also petition the department for an immediate ruling upon any request to add, delete, or change an exemption. If such a petition is granted, the department will notify the petitioning agency, which may immediately include the change approved by the department in its own procedures. The department may thereafter begin rule making proceedings to amend these rules. Until these rules are amended, any change granted under this subsection shall apply only to the petitioning agency or agencies.

(4) The department will provide public notice of any proposed amendments to these rules in the manner required by the Administrative Procedure Act, chapter 34.05 RCW. A copy of all approvals by the department under the preceding subsection shall be given to any person requesting the department for advance notice of rule making.

[Statutory Authority: RCW 43.21C.110. 95-07-023 (Order 94-22), § 197-11-890, filed 3/6/95, effective 4/6/95; 84-05-020 (Order DE 83-39), § 197-11-890, filed 2/10/84, effective 4/4/84.]

### **Suggested New Exemptions**

1. Add exemption for land application of biosolids that meets federal and state standards.
2. Add exemption for actions that undertaken solely to preserve land for the health of species and watersheds. For example, acquiring land or conservation easements.
3. Add exemption for designating historic landmarks and related historic preservation activities.
4. Add new activities to list of exemptions for "minor new construction"; examples of activities that should be exempted include minor changes in use allocations in mixed-use projects; minor in-water work (e.g. installation of small number of pilings); installation of satellite dishes.
5. Expand minor new construction categories in 800(1) and (2) to cover minor work done by ports.
6. Add exemption for issuance of minor air permits.

7. Add exemption for situations where existing regulations would avoid or reduce potentially adverse significant impacts to a level of nonsignificance.
8. Add exemption for smaller water system improvements (e.g. water towers, well houses).
9. Add exemption for remediation projects approved by the Department of Ecology.

### **Other Suggestions Received**

1. Do not widen exemptions for construction projects; should be conditional on their not exceeding certain thresholds of environmental impact.
2. Several specific suggestions have been received for reorganizing or rewriting part or all of the categorical exemptions.
3. Add the statutory reference to all exemptions created by statute.
4. Exempt every action that does not "significantly affect the quality of the environment".
5. When revising exemptions, consider that the Notice of Application is tied to exemption levels. When a project is not exempt, additional time and delays will occur.
6. *Review other exemptions [several specified] and revise to reduce their adverse effects on landmarking and related historic preservation activities.*
7. *The EIS should address instances where SEPA exemptions may create inconsistencies among jurisdictions or with other statutes. For example, short plats are exempt from SEPA. Since cities can vary the number of lots that can be created via a short plat from 4-9, in one jurisdiction the creation of four lots is exempt from SEPA and in another the creation of nine lots is exempt.*
8. *The potential listing of salmon as threatened or endangered brings up several points relating to the SEPA process. This includes:*
  - *how SEPA review will apply to projects that have already been reviewed through local agencies or planning groups, tribes, state agencies and National Marine Fisheries Service (NMFS);*
  - *the resources available to review actions related to ESA recovery; and*
  - *whether a programmatic approach to SEPA review of recovery projects would be appropriate..*