



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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**DETERMINATION OF NONSIGNIFICANCE
STATE ENVIRONMENTAL POLICY ACT**

The Department of Ecology proposes to adopt amendments to Chapter 197-11 WAC, State Environmental Policy Act (SEPA). The rule changes include, but are not limited to the following:

- Expanded use of NEPA documentation by lead agencies.
- Update of definition for “lands covered by water”.
- For adoption of increased flexible thresholds for minor new construction, more specific requirements regarding cultural resources and an increase in notice to 60 days.
- Expanded minor new construction exemptions for installation or removal of tanks and solar energy projects.
- New maintenance exemption for smaller dredging projects.
- Update of exemption for land use decisions to provide that most land use decisions will be exempt for otherwise exempt projects, with some limited exceptions.
- New exemption for formation of special districts
- New exemption for text amendments of ordinances or codes that do not change environmental standards.
- Update of utility exemption for water pipe size to align with industry standards.
- Allow Department of Natural Resource (DNR) Rock sales on state owned land.
- Updated Washington State Department of Transportation (WSDOT) maintenance exemptions.
- Environmental checklist updates.
- Other minor updates, clarifications and technical corrections.

Ecology proposes to repeal Chapter 173-06 WAC in response to changes being made in WAC 197-11 and will make the model ordinance available as guidance rather than rule.

Ecology also proposes to repeal the Chapter 197-06 WAC. This rule is being repealed because (1) a number of the provisions are specific to the Council on Environmental Policy that was established in the 1970's and no longer exists; (2) The sections of the rule related to public records have been superseded by Chapter 173-03 WAC.

Proponent and SEPA Lead Agency: *Washington State Department of Ecology*

Location of proposal is *Statewide*

The Department of Ecology has determined that the proposed amendments will not result in probable significant adverse impacts on the environment for the following reasons:

1. The proposed rule changes would influence the process of review of proposals under SEPA. Although in some cases review of proposals is reduced under the proposed rules, SEPA is not the only law or regulation affecting decisions about proposals. These proposals now undergo review for environmental impacts under a variety of other regulations, including development regulations adopted under Growth Management Act requirements and other laws. These other regulations provide for the identification of and mitigation of impacts. Thus, there will be no additional impacts since the impacts will be addressed under other authorities.
2. Many of the exemptions in the proposed rule changes include language specifying when the exemptions do not apply. Examples of language limiting when the exemptions apply, include size thresholds and limitations based on sensitive features that could be affected by the proposals.
3. Local government has the option of determining whether certain exemptions apply in critical areas or determining appropriate thresholds for new construction based on documentation that elements of the environment have been adequately addressed by other local, state, and federal regulations.

An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist in conjunction with all of the materials and discussions related to the SEPA Rulemaking Advisory Committee. This information can be found at:

<http://www.ecy.wa.gov/programs/sea/sepa/rulemaking/AdvisoryCommittee.html>

This DNS is issued with a comment period that runs concurrently with the comment period on the underlying proposal to amend the SEPA Rules (CR 102). Comments will be taken on this DNS, and on the underlying rule adoption proposal until February 5, 2014

Please submit comments to: separulemaking@ecy.wa.gov

Staff contact for questions and concerns:

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Program Manager, Washington Department of Ecology
PO Box 47600, Olympia, WA 98604-7600

Signature *Jason White*

Date: *12/11/13*

APPEAL: No administrative appeal of the decision to issue a DNS is provided under the Department of Ecology's SEPA procedures. Appeal of the decision on the underlying action (to adopt the revisions to WAC 197-11) is governed by the Administrative Procedures Act (RCW 34.05).



WAC 197-11-960 Environmental checklist.

ENVIRONMENTAL CHECKLIST

Purpose of checklist:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for nonproject proposals:

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:

Revisions to WAC 197-11 (Rules implementing the State Environmental Policy Act RCW 43.21C)

2. Name of applicant: *Washington State Department of Ecology*

3. Address and phone number of applicant and contact person:

*Gordon White, Program Manager
Shorelands and Environmental Assistance Program
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504
Phone: (360) 407-6000*

4. Date checklist prepared: *Dec 9, 2013*

5. Agency requesting checklist: *Washington Department of Ecology*

6. Proposed timing or schedule (including phasing, if applicable):

The Washington State Legislature directed the Department of Ecology to amend the State Environmental Policy Act (SEPA) Rules in SSB 6406, enacted during the 2012 legislative session. Ecology adopted the phase 1 rule amendments in 2012. In 2013, Ecology worked with an Advisory Committee to develop the phase 2 rule amendments. Ecology intends to adopt the phase 2 rule amendments by March 12, 2014.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

There are no immediate plans for further rulemaking.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

Ecology's Staff Report for the proposed rulemaking contains additional background and analysis.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

N/A

10. List any government approvals or permits that will be needed for your proposal, if known.

Adoption of this rule will need to comply with the requirements of the Washington State Administrative Procedures Act (Chapter 35.04 RCW).

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

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- *New exemption for formation of special districts*
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- *Environmental checklist updates.*
- *Other minor updates, clarifications and technical corrections.*

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Ecology also proposes to repeal the Chapter 197-06 WAC. This rule is being repealed because (1) a number of the provisions are specific to the Council on Environmental Policy that was established in the 1970's and no longer exists; (2) The sections of the rule related to public records have been superseded by Chapter 173-03 WAC.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

This proposed rulemaking applies to all proposals in the state of Washington which can be defined as "actions" under SEPA and which are reviewed to determine if they are exempt under WAC 197-11; and proposals for which an environmental checklist must be prepared.

B. ENVIRONMENTAL ELEMENTS

As specified in WAC 197-11-315(1)(e), for this nonproject proposal, Department of Ecology has determine that the questions in Part B do not aid in the review of the proposal. See the Part D for nonproject actions and the associated Staff Report.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: *Jason White*

Date Submitted: 12/11/13

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

In general, the proposed rule revisions increase the exemption levels for some proposals, which means that some proposals that would presently be reviewed under SEPA would become exempt from SEPA. These projects now undergo review for environmental impacts under a variety of other regulations, including development regulations adopted under Growth Management Act requirements and other laws. These other regulations provide for the identification of and mitigation for any impacts. Thus, there will be no additional impacts since the impacts will be addressed under other authorities.

For additional details on proposed rule changes, see the Staff Report.

Proposed measures to avoid or reduce such increases are:

Review of proposed projects is required by the city and county planning enabling statues, the Growth Management and Local Project Review Acts, where applicable, and a variety of other laws. Impacts previously identified under SEPA are identified and mitigated under these other authorities.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

See discussion under 1 above.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

See discussion under 1 above.

3. How would the proposal be likely to deplete energy or natural resources?

See discussion under 1 above.

Proposed measures to protect or conserve energy and natural resources are:

See discussion under 1 above.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

See discussion under 1 above.

Proposed measures to protect such resources or to avoid or reduce impacts are:

See discussion under 1 above. In addition, to address the historic and cultural resources, the proposal provides clarification on documentation necessary for the adoption of a local ordinance or resolution to take advantage of higher flexible exemption levels. The proposed rule specifies options for the content of the documentation to show that cultural and historic resources are adequately address when adopting the new thresholds. In addition, the review and comment period on adoption of the flexible thresholds is increased to 60-days as requested to provide adequate opportunity for review and comment by affected interests.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

See discussion under 1 above.

Proposed measures to avoid or reduce shoreline and land use impacts are:

See discussion under 1 above. In addition, clarifying detail related to agricultural lands has been proposed for addition to in the environmental checklist as required by SB 6082. SB 6082 of 2012 directs Ecology to update the checklist (WAC 197-11-960) to address agricultural lands to "ensure consideration of potential impacts to agricultural lands of long-term commercial significance ... the review and update shall ensure that the checklist is adequate to allow for consideration of impacts on adjacent agricultural properties, drainage patterns, agricultural soils, and normal agricultural operations."

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

See discussion under 1 above.

Proposed measures to reduce or respond to such demand(s) are:

See discussion under 1 above.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

No conflicts have been identified.