

Discussion Framework for Increasing SEPA Optional Maximum Thresholds: 2012 SEPA rule update

1. Legislative intent and direction

Legislative objectives in SB 6406.

From Section 1: “The legislature finds that significant opportunities exist to modify programs that provide for management and protection of the state's natural resources...in order to streamline regulatory processes and achieve program efficiencies while at the same ...maintaining current levels of natural resource protection.

Sec. 301.(1) The legislature recognizes that the rule-based categorical exemption thresholds to chapter 43.21C RCW, found in WAC 197-11-800, have not been updated in recent years, and should be reviewed in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, and other laws. It is the intent of the legislature to direct the department of ecology to conduct two phases of rule making over the next two years to increase the thresholds for these categorical exemptions.

(2) By December 31, 2012, the department of ecology shall increase the rule-based categorical exemptions to chapter 43.21C RCW found in WAC 197-11-800 and update the environmental checklist found in WAC 197-11-960. In updating the categorical exemptions, the department of ecology must:

(a) At a minimum, increase the existing maximum threshold levels for the following project types:

- (i) The construction or location of single-family residential developments;
- (ii) The construction or location of multifamily residential developments;
- (iii) The construction of an agricultural structure, other than a feed lot, that is similar to the following:
A barn, a loafing shed, a farm equipment storage building, or a produce storing or packing structure;
- (iv) The construction of the following, including any associated areas or facilities: An office, a school, a commercial building, a recreational building, a service building, or a storage building;
- (v) Landfilling or excavation activities; and
- (vi) The installation of an electric facility, lines, equipment, or appurtenances, other than substations.

Note: This utility project type does not have flexible threshold levels that can be changed so it will be considered separately from the “minor new construction exemptions”.

(b) Establish maximum exemption levels for action types that differ based on whether the project is proposed to occur in:

- (i) An incorporated city;
 - (ii) An unincorporated area within an urban growth area;
 - (iii) An unincorporated area outside of an urban growth area but within a county planning under chapter 36.70A RCW; or
 - (iv) An unincorporated area within a county not planning under chapter 36.70A RCW.”
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2. Assumptions

- a. We will consider increasing the maximum thresholds for each type of project, but an increase is not required for each type of construction in each type of location specified in 301(2)(b) above.
 - b. Suggested “parking lot” items to be held for the 2013 rule update (for Committee discussion):
 - i. The “exceptions” to the exemptions in 800(1). These are projects with:
 - A rezone required; or
 - A “license” governing air or water discharges required; or
 - Lands covered by water.
 - ii. Improving notification regarding development proposals (SB 6406 Section 301 (4)(a) (ii) and (iii.)
 - iii. All detailed exemptions in 197-11-800 “other minor construction” except (23)(c) electrical facilities.
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3. Considerations for increasing exemption levels

- a. The legislation directed the SEPA rulemaking to contribute to:
 - Streamline regulatory processes; while
 - Maintaining environmental protection (of the natural and built environment) (from SB 6406 Section 1.)
- b. The category of actions in the revision “shall be limited to those types which are not major actions significantly affecting the quality of the environment” (from RCW 43.21C.110, identifying the actions Ecology is to include as categorically exempt in the SEPA rules).
- c. Consider the range and severity of environmental impacts of the activities covered by the proposed amendment, and the approximate number of actions of this type (from WAC 197-11-890 regarding petitions to ECY to update SEPA exemption rules.)
- d. Take into account the other existing tools that local governments can use to streamline project-level SEPA review, including:
 - Infill exemption
 - Planned actions
 - Subarea planning for transit-oriented development

4. Proposed rule amendment language for discussion

Ecology staff offers the following to help focus Committee discussion. Proposed changes are in bill format (strikeout and underline.) We propose a chart to replace the written description of the maximum optional thresholds. The chart shows the current maximum threshold, with a brief description of key considerations related to increasing thresholds for each project type, within the four city/county settings.

Ideas for discussion:

- Increase maximum thresholds with no additional conditions or requirements
- Increase maximum thresholds but specify additional findings that must be made by local government to adopt a threshold above the current maximum levels.

WAC 197-11-800

(1) Minor new construction -- Flexible thresholds.

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

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

(i) The construction or location of any residential structures of four dwelling units.

(ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(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.

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

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

(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:

~~—(i) 20 dwelling units.~~

~~—(ii) 30,000 square feet.~~

~~—(iii) 12,000 square feet; 40 automobiles.~~

~~—(iv) 40 automobiles.~~

~~—(v) 500 cubic yards.~~

Type of Construction	Current maximum	In City	County UGA	GMA County out of UGA	Non-GMA County
<u>(i). Single-family Residential</u>	20 units	Look at examples and data from SEPA Register	Proposal for discussion: Same as City level, based on previous planning for UGA. Question: Does lower level of growth mgt planning (ex. no impact fees) warrant lower thresholds for County UGAs?	Retain current level or increase less than in UGA	Retain current level, i.e. 20 units
<u>(ii). Multi-family Residential</u>	New in 6406: Separate thresholds for SF vs. MF.	Higher threshold for than Single Family due to smaller footprint.	Same as City level	Retain current level or increase less than in UGA	20 units? Or higher due to smaller footprint?
(iii). Agricultural	30k sq ft	Keep at current level in Urban areas, since Ag is not generally a long-term urban use.	Same as City level	Retain current level or increase less than in UGA	Is 30k sq ft too small for ag needs? (3/4 acre building is fairly large.)
(iv). Commercial	12k sq ft & 40 parking	Wide diversity of uses and impacts – needs discussion	Same as City level	Retain current level or increase less than in UGA	12k sq ft & 40 parking spaces
(v). Stand-alone Parking lot		Considerations: <ul style="list-style-type: none"> • Leave unchanged, as this is not in SB 6406? • Revise to match Comm. parking number? • Or clarify that Commercial includes stand-alone parking? 	Same as City level	Retain current level or increase less than in UGA	40 spaces
<u>(vi). Landfill & Excavation-1</u>	500 cu yds	Move to a new separate item (k) in subsection (2) and set threshold at 500 cubic yards. This will ensure that larger excavation-only projects trigger SEPA, and avoid triggering SEPA review of exempt projects.(see footnote above)	Move to separate subsection @ 500 cubic yards.	Move to separate subsection @ 500 cubic yards.	Move to separate subsection @ 500 cubic yards.

¹ Ecology proposes moving stand-alone excavation to its own subsection (and out of “minor new construction”) in order to avoid confusion. This item is intended for excavation *not associated with a development proposal*. However, it is triggering unnecessary SEPA reviews when the excavation and fill project type is considered as part of the clearing and grading for building construction. Our proposal is to move this exempt project type to a separate subsection and apply the current “maximum” existing level across the location types and jurisdictions.

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

(k) Any stand-alone landfill or excavation project of 500 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.
