

2013 SEPA Rulemaking Advisory Group Categorical Exemptions Issue Tracking

| Subtopic | WAC 197-11 | Issue/Idea | Advisory Group Comments and Additional Information |
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| <i>Exceptions to Exemptions (Parks)</i> | 908 | Revisit and clarify critical area provision for “opt-out” of exemptions | |
| <i>Exceptions to Exemptions (counties, business)</i> | 800(1)(2) (3)(6)(23) | Revisit exceptions for <i>Lands Covered by Water, Rezones, Air & Water Discharge permits</i> <ul style="list-style-type: none"> • projects undertaken wholly or partly on lands covered by water. Clarify what this means in light of overall purpose of rule-making to update categorical exemptions in light of numerous programs directly regulating impacts on environment • Projects that require rezones. Clarify. • Projects that require air emission or water discharge permits. Air permits are routinely required for any building demolition that are usually necessary for small infill development that is encouraged by GMA but often opposed by neighbors. | The existing exceptions may be clarified but must be retained. In addition, exceptions should include projects that are in critical areas defined in RCW 36.70A.030(5) or inside standard buffers adopted for critical area protection or in, over, or under waters-of-the-state. The critical areas exception defined above may be adequate to address sedimentation issues raised by DFW below. |
| <i>New Exception to Exemptions Cultural Resources (DAHP and cultural resources Advisory Group members)</i> | 800 | Unless Cultural Resource Management Plan is incorporated into the local Comp Plan, <i>or</i> a Local ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL), <i>and</i> a DAHP Data-sharing agreement is in place. Then, there is an exception to project-level exemptions if any of the following apply: 1) No prior negative survey on file. 2) Ground disturbance proposed. 3) Project is not in 100% culturally-sterile fill. 4) Existing structures are older than 45 years old; <i>and</i> eligible for or listed in any historic register or historic survey. | We propose that the first three items in the list be combined into one item to read: 1) Ground disturbance proposed unless there is either a prior negative CRM Survey on file with DAHP for all of the ground disturbance area or there is both no excavation and all fill is 100% culturally-sterile. Can continue to read: 2) Modifications to existing structures that are both more than 45 years old and either eligible for or listed in any historic register or historic survey. See 800(2)(f). |
| <i>New Exception to Exemptions Related to sensitive resource</i> | 800(1) | Address impacts of sedimentation when adjacent to streams; when streams fall below shoreline threshold (20cfs), have small riparian buffers in critical area | We agree this should be addressed; it may be able to be incorporated in the critical areas exception we provided above. |

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| impacts (DFW) | | ordinances, or are adjacent to steep slopes. This exception could just apply to fill & excavation projects. | |
| New Exception to Exemptions Utility projects (DFW) | 800(23) | Address potential for impacts to fish, wildlife, and habitat (i.e., identified in critical area ordinances or identified priority habitats). | This may also be adequately addressed by the proposed critical areas exception. |
| New Exceptions to Exemptions Agricultural lands of long term commercial significance | 800 | <p>Exempt projects undertaken wholly or in part on agricultural lands of long term significance as defined by RCW 36.70A should no longer be exempt from SEPA. Due to continuing losses of farmland throughout the state the legislature declared that it is now the policy of the state to identify and take into account the adverse effects of actions on the preservation and conservation of farmland (RCW 43.21C.011)</p> <p>Depending on project size / design / construction and/or maintenance practices employed, currently exempt projects have a potential to negatively impact drainage, access and farming practices of the subject property as well as adjacent properties. An approach to review and exempt levels of impact to agricultural resources will bring parity to the protection of both agricultural and environmental resources without arbitrarily exempting specific types of projects.</p> | Support. |
| Non-Project Actions Minor Land Use Decisions (counties, business) | 800(6) | Clarify the relationship between the exemption for minor new construction of single family residences and the minor land use decision exemption for only short plats. | Long Plats and condo conversions must continue to require threshold determinations. |
| New Non-Project Actions (cities) | | Boundary line adjustment, Fence heights Side-yard setbacks | If there is a critical areas exception, then boundary line adjustments could be exempt. Variances need local notice. |
| New Non project Actions minor code amendments | 800 (20)(21) | Consider additional exemptions for minor code amendments and other non-project actions likely to have an adverse environmental impact. | Drafting error -- "unlikely" instead of "likely". Some jurisdictions are interpreting the existing amendment to exempt rezones. This amendment should also |

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| (counties) | | | clarify that rezones are not SEPA exempt. |
| Non-project Actions Minor Code Amendments (WSDOT) | 800 (20)(21) | Consider exemptions for minor code amendments that are procedural and do not involve actions that might affect substantive standards respecting use or modification of the environment – Similar to WAC 197-11-800 (19). | Provisions in (19) would also be acceptable. |
| Project Actions Other minor new construction (cities) | 800(2) | Increase size of underground storage tanks and add exemption for above-ground tanks | Concur with larger underground tanks. There should be placement regulations for above ground tanks before they are exempt. |
| Project Actions Increase Exemption Transportation projects and commuter facilities (cities) | 800(2) | Add transportation projects that add automobile lanes and commuter facilities and amenities (not just transit but also regular park and ride. | Opposed; adding automobile lanes and park and ride facilities should not be exempt. |
| Project Actions Review Other minor new construction (Seattle Public Utilities) | 800(2) | This exemption should apply to all agencies and not just public transit. SPU would benefit from the use of this exemption to cover the installation of permeable pavements, catch basins, culverts, and so forth. Explicit clarification that this exemption is not restricted would be beneficial for many SPU projects. | Generally ok in concept as long as critical areas exception applies; Streams are critical areas, therefore, the exception to exemptions applies to culverts which are for streams. |
| Project Actions Revise/update Other Minor New Construction | 800(2)((f)) | WAC 197-11-800(2)(f): <u>Except for structures or facilities with recognized historical significance, 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, and demolition and removal of the following individual structures:</u> <u>(1) One single-family residence. In urban growth areas, up to three single-family residences may be demolished in a single proposed action under this exemption;</u> <u>(2) One duplex or similar multifamily residential structure. In</u> | Define recognized historical significance as this issue is dealt with above for cultural resource protection. We need an explanation of why the additional proposed subsections (1) to (4) are necessary because it seems that the language “which would be exempted by subsections (1) and (2) of this sections” would be adequate. Changing “demolition” to “demolition and removal” would be good. Currently there is an exception if an air emission permit is needed – this must be retained. |

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| | | <p><u>urban growth areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished in a single proposed action;</u></p> <p><u>(3) One store, motel, office, restaurant, or similar small commercial structure if designed for an occupant load of 30 persons or less. In urban growth areas, the exemption also applies to the demolition of up to three such commercial buildings in a single proposed action on sites zoned for such use;</u></p> <p><u>(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, pavement, and fences.</u></p> | 800(1) should explicitly exempt accessory (appurtenant) structures |
| Project Actions Clarify/update minor new construction Fill and excavation | 800(1) | Consider further revisions to avoid confusion on stand-alone landfill and excavations. | 800(1)(b)(v) should delete “associated with” and replace with “necessary for” - see language in 800(2)(d) |
| New Project Actions Mixed Use/Transportation oriented development (cities) | 800(1) | Consider exemption for Mixed use and transportation oriented development. | Need more detail |
| Project Actions Clarify/update minor new construction Parking (DNR) | 800 (1)(b)(iv)) | Remove ambiguity created with use of term “standalone” that focuses on concept that exemption is intended to cover parking lots that are not associated with a structure. | We find the term clear but don’t mind clarification if others don’t find the term clear. |
| Project Actions Clarify/update minor new construction (CR 102 public comments) | 800(1) | Consider adding a definition for “multi-family” dwelling. Consider adding the number of trips generated in the new threshold levels, rather than just the number of parking stalls. | It is OK to define multi-family for purposes of SEPA but local zoning codes also define it for purposes of zoning. Number of trips requires traffic study whereas number of stalls does not. |
| Project Actions Clarify/update | 800 (3) | Clarify what kinds of work in water is not exempt, including repair and replacement of shoreline protection structures | Reconstruction/replacement of shoreline protection structures must not be exempt. Minor repairs should be |

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| Repair, Remodel and Maintenance | | | exempt. |
| <i>New Project Actions</i> Habitat restoration and small energy projects | | Consider exemptions for bulkhead removal, soft shorelines, shoreline restoration projects, Consider Exemptions for small scale renewable energy projects (solar, wind and small hydro) | Shoreline restoration should not be exempt. SMA has a criteria for permit requirements based on cost of the project. What local agencies might define as a shoreline restoration project, could involve significant impacts to the environment. One-family renewable energy projects are accessory uses that should be exempt. |
| <i>Project Actions</i> Clarify/update Public property transactions | 800(5) | Clarification is needed on the definition of “authorized public use” as it is the test of whether or not a proposal is exempt. | Reasonable provided the definition offered is satisfactory. |
| <i>Project Actions</i> Increase Exemption Wireless Facilities (Cities, Counties & Industry) | 800 (25) | In response to changes in technology and HB 1183 – if passed during 2013 legislative session. | Oppose - Wireless towers should not be exempt beyond 800(25)(a)(iii). |
| <i>Project Actions</i> Utility exemptions | 800(23) | Increase pipe size from 8” to 12” to reflect need for increased fire flow and industry standards. There is so significant difference between the installations of an 8” pipeline to a 12” pipeline. Similar if not identical excavations and support equipment are used for the installation of both sizes of pipeline. | Concur for service limited to UGAs, cities, and master-planned resorts, major industrial developments and fully-contained communities. Pipe size increases to non-urban areas promotes growth outside urban areas and therefore should have SEPA review. |
| <i>Project Actions</i> Utility exemptions (Seattle Public Utility) | 800(23) | WAC 197-11-800(23)(e): All developments <u>activities</u> within the confines of any existing electric substation, reservoir, pump station, <u>vault, pipe,</u> or well: Provided, that additional appropriations of water are not exempted by this subsection, <u>but that any changes in water flow volumes, rates, and destinations resulting from those activities are exempted.</u> SPU believes the above more realistically captures such projects and recommends adding this new exemption in | If the change in destination includes a pipe limited to serving urban areas is now allowed to serve non-urban areas – this cannot be exempt from SEPA. Pipeline and conduits in rights-of-way project extensions outside urban areas should be reviewed by SEPA . |

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| | | <p>addition to raising the pipe diameter threshold to 12 inches in this existing exemption</p> <p>ADD: Pipelines and Conduits in Rights-of-way. Any project less than one mile in length within a public street or highway or any other public right-of-way for the installation of a new pipeline/conduit and associated appurtenances or the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, removal, demolition, or abandonment of an existing pipeline/conduit and associated appurtenances. For purposes of this section, "pipeline/conduit" includes subsurface facilities but does not include any surface (aboveground) facility related to the operation of the underground facility.</p> | |
| Project Actions Utility exemptions (DNR) (Parks) | 800(23) | Address potential for linear routes to cross sensitive natural resources and bifurcate large swaths of state land management blocks. | Concur – utility extensions outside urban areas should have limited exemptions. |
| New Project Actions Recreational trails (DNR) (Parks) | 800(24) | Authorize construction of new recreational trail when in an existing trail system up to a designated threshold (not expected to involve PSAI). | Need more detail |
| New Project Actions Motorized trails (DNR) | 800(24)(g) | Add minor repair, maintenance, and re-routing of motorized recreational trails in scope where there is no material change (i.e. net increase in length or change in use) and not on lands covered by water. | Make clear that only minor re-routing allowed and define minor to not change location by more than X feet. |
| Agency specific exemption Timber sales exemption (DNR) | 830 | Expand timber sales exemption to permits for rock sales. | Consider changing 830(7) changing “timber” to “timber and rocks” |
| Agency Specific Exemptions Update and clarify existing exemptions (Gerald Steel) | 810-855 | Clarify these sections to limit exempt actions to only those named agencies | See 3-25-13 Analysis for proposed language changes. |
| New | Part Nine | Add rule clarifying what a lead agency must do document | Concur subject to review of actual language |

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| Documentation of applicability of categorical exemption (DNR) | | the applicability of a categorical exemption to a proposal, including method of considering WAC 197-11-305. | |
| New Organization of exemptions (DNR) | Part Nine | Divide exemptions into those that relate to activities and those that relate to permits or approvals to aid in clarity of applicability. | Reasonable |
| New Reorganize and rewrite in plain talk (Seattle) | Part Nine | A good example of the confusing and unclear language is found at WAC 197-11-800(1) (Minor New Construction), as evidenced by the Washington State Department of Ecology's clarification seen at http://www.ecy.wa.gov/programs/sea/sepa/exemptions_minor_construction.html | The need for SEPA does depend on the scope of the proposal. Perhaps some examples should be put into the guidance document to clarify the intent of the regulatory language. |
| New Agency interpretation of exemptions (WSDOT) | Part Nine | Utilize existing agency SEPA procedures as a way to determine how resource agencies have viewed resource protections with their own actions. Use those procedures as a mechanism to inform updates to other thresholds in - 800. | Needs more detail. |
| New Structural change to categorical exemptions approach (WSDOT) | Part Nine | Threshold should relate to potential for impacts rather than type of activity. Instead of identifying level of development, identify level of impact (use traffic impacts, and likely impacts to cultural resources as the model). Can other impact thresholds be developed? | We agree this can have potential, but one of the advantages of the current exemptions is that they do not require much analysis other than whether it's listed as an exemption. If the impact analysis requires significant work, then it may not be worth it. |