2013 SEPA Rulemaking Advisory Group

Categorical Exemptions Issue Tracking
Exceptions and Utility Proposals

4/4/13

Subtopic	WAC 197-11	Issue/Idea/Rationale	Ecology Input
Exceptions to Exemptions	908	State Parks suggests removing this critical area exception to exemption option. Ecology suggests a clarification but not the removal of the flexibility for local government to require SEPA review for projects affecting critical areas. **Note:** ***-this exception language is confusing about only doing SEPA only part of the proposal –and therefore limiting scope of review. This is inconsistent with 197-11-060 and is not applied consistently among local agencies. Local agencies should have option to remove these areas from some exemptions, but not have the option to only consider some types of impacts.*** ***-This provision looks like it was intended to be a stop-gap opportunity to allow cities and counties to use SEPA to condition projects while development regulations are yet to be developed.*** ***State agencies have to be aware of local jurisdiction flexible exemption levels and critical area exemption levels***	**Move 197-11-908 to new Section 197-11-805** (1) Each county/city may select certain categorical exemptions that do not apply in one or more critical areas designated in a critical areas ordinance adopted under GMA (RCW 36.70A.060). The selection of exemptions that will not apply may be made from the following subsections of WAC 197-11-800: (1), (2)(a) through (h), (3), (5), (6)(a), (13)(c), (23)(a) through (g), and (24)(c), (e), (g), (h). ~~The scope of environmental review of actions within these areas shall be limited to:~~ ~~(a) Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and~~ ~~(b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.~~ All other categorical exemptions apply whether or not the proposal will be located within a critical area. Exemptions selected by an agency under this section shall be listed in the agency's SEPA procedures (WAC 197-11-906). (2) Proposals that will be located within critical areas are to be treated no differently than other proposals under this chapter, except as stated in the prior subsection. A threshold determination shall be made for all such actions, and an EIS shall not be automatically required for a proposal merely because it is proposed for location in a critical area.
Exceptions to Exemptions (counties, business, state agencies)	800(1)(2)(3)(6)(23)	Revisit exceptions: 1. Lands Covered by Water 2. Projects that require rezones. 3. Air or water discharge permits.	1. Consider leaving *lands covered by water* because of the potential for significant impacts. But clarify definition in 197-11-756 to address concerns that the exception is too broad. Limit the applicability of this exception –such as, it isn't intended to cover such things as artificial lakes, ponds, or small ornamental waters created by excavating dry land. "Lands covered by water" means lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, marshes, and swamps. Certain categorical exemptions do not apply to

			lands covered by water, as specified in Part Nine. 2. Rezones need more discussion about how the current exception is used. The counties' proposal related to exemptions excludes rezones that "require an amendment to the Comprehensive Plan Future Land Use Map" 3. Consider removing exception for air and water discharge licenses (in 800(1) and (2) and replace with clarity that commercial projects are <u>not</u> "industrial". This may require a new or referenced definition.
New Exception to Exemptions **Cultural Resources (DAHP and cultural resources Advisory Group members)**	800	Unless Cultural Resource Management Plan is incorporated into the local Comp Plan, *or* a Local ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL), *and* 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; *and* eligible for or listed in any historic register or historic survey. ***Note in response to State Agency comments:*** ***-All non-city and county lead agencies should be able to use existing exemptions when local govt. has Management Plan. If so, then the data sharing and other project-level conditions for exception language still apply to determine applicability of an exemption.***	This will be discussed further in the new Workgroup but the Advisory Group will continue to track this proposal as it relates to SEPA rulemaking.
New Exception to Exemptions **Related to sensitive resource impacts (DFW)**	800(1)	Address impacts of sedimentation when adjacent to streams; when streams fall below shoreline threshold (20cfs), have small riparian buffers in critical area ordinances, or are adjacent to steep slopes. This exception could just apply to fill & excavation projects.	Is this currently addressed in exception for "lands covered by water" and current erosion control regulations?
New Exceptions to Exemptions **Agricultural lands of long term commercial significance**	800	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) 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.	We could consider rule language to limit existing exemptions related to urban development to locations only within the UGA. For instance: residential, commercial, "other minor new construction", minor land use decisions, maintenance and utilities. Linear projects would need some consideration related to a limitation within the UGA.

Project Actions **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.[1]	Additional details of how impacts are similar to smaller pipe size and therefore not significant would be helpful for concerned agencies and organizations.
Project Actions Utility exemptions (City of Seattle/Seattle Public Utility)	800(23)	**1. WAC 197-11-800(23)(e)**: All ~~developments~~ activities within the confines of any existing electric substation, reservoir, pump station, vault, pipe, or well: Provided, that additional appropriations of water are not exempted by this subsection, but that any changes in water flow volumes, rates, and destinations resulting from those activities are exempted. **2. 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.	1. What about: All ~~developments~~ utility projects within the confines of any existing electric substation, reservoir, pump station, vault, pipe, or well. This does not include additional appropriations of water ~~are not exempted by this subsection~~. 2. Is this a suggestion for replacement or is it additional language for the existing pipeline exemption?
Project Actions **Utility exemptions (DNR) (WDFW) (Parks)**	800(23)	Address potential for linear routes to cross sensitive natural resources and bifurcate large swaths of state land management blocks. Address potential for impacts to fish, wildlife, and habitat (i.e., identified in critical area ordinances or identified priority habitats).	Is this applicable to current exemption levels or a concern about increased exemption levels?

[1] Excerpt from letter from **Washington Water Utility Council**

There is no significant difference in environmental impacts between installation of an 8-inch pipeline and 12-inch pipeline. Similar, if not identical, excavations and support equipment are used for the installation of both sizes of pipeline. While the specific trench excavation is required to be several inches wider and deeper for a 12-inch pipeline compared to an 8-inch pipeline, this small increase is inconsequential in the overall real width of the impacted area which is determined by the operational width of the machinery and the adjacent cast spoil pile of soil excavated from and returned to the trench. Reclamation and repaving are identical for both size pipelines. Therefore, the final area disturbed does not change as a result of an increase in waterline from 8-inch to 12-inch.