

**PROPOSED REVISIONS WITH EXPLANATORY NOTES: RULES  
RELATING TO THE WASHINGTON STATE ENVIRONMENTAL POLICY ACT  
(WAC 197-11)**

The following revisions are proposed by the Department of Ecology to rules regarding the State Environmental Policy Act (SEPA).

**Minor new construction optional thresholds: WAC 197-11-800(1)**

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**Electrical facilities thresholds: WAC 197-11-800(23)**

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**Environmental checklist efficiency: WACs 197-11-315,-906 and -960**

WAC 197-11-315

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WAC 197-11-906

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Note: The official version of this proposed rule amendment and other information is available on the Ecology rule amendment web page at <http://www.ecy.wa.gov/laws-rules/wac19711/1201.html> Hard copies of documents are available by calling Fran Sant at 360-407-6004.

**Summary of Proposed Changes to WAC 197-11-800(1) –  
Minor New Construction Optional Thresholds**

WAC revisions are proposed to increase optional SEPA thresholds that local governments may adopt for specified types of minor new construction. These revisions include:

- WAC 197-11-800(1) subsections (1)(b)(i) and (ii) - Residential uses: A new "multi-family" category for thresholds was stipulated by SB 6406. Thus, we propose dividing the original "residential" category into "single-family" and "multi-family" categories. The threshold for triggering SEPA review would remain the same.
- Subsection (1)(iv) - Parking lots: The subsection related to parking lots in current WAC subsection (iv) is proposed to be merged with existing subsection (iii) regarding commercial-type uses. The threshold for triggering SEPA review would remain the same.
- Subsection (1)(vi) - Landfill and excavation: Clarification is needed to ensure that this subsection is implemented in harmony with another WAC section on grading and filling: WAC 197-11-800(2)(d) ("Other minor new construction"). This other section exempts from SEPA review all "grading, excavating, filling . . . necessary for any building . . . exempted by subsections (1) or (2)." The proposed revision is intended to harmonize implementation of the two existing exemption sections addressing grading and filling.
- Subsection (c) - Submittal requirement: Propose to delete the existing requirement that local governments must submit adopted local SEPA ordinance revisions to Ecology. This burden on local government no longer serves a vital purpose. Ordinances are now available through internet searches and other sources.
- Optional higher thresholds - The optional maximum minor construction thresholds available to local governments would be revised as shown in new Table 1. The proposal includes separate maximum optional thresholds for fully-planning and non-fully planning jurisdictions under 36.70A. Clarification is added that a local government may adopt the maximum level or a level between the default and the maximum.
- Threshold adoption requirements - Procedural requirements for adopting an ordinance or resolution enacting optional higher SEPA thresholds for minor construction:
  - o Subsection (i) - Requires documentation of the other regulations that ensure protection of the environment.

- o Subsection (ii) - Requires description of public notification provided through other local planning processes for the exempted projects.
- o Subsection (iii) - Requires notice of the proposal to affected tribes, agencies with expertise, the Department of Ecology and the public. This ensures that the same parties that receive notice of projects under SEPA will receive notice of the local government's proposal to programmatically exempt certain groups of projects from SEPA review.

**Proposed Revision to WAC 197-11-800(1) Minor new construction --  
Flexible thresholds.**

**WAC 197-11-800 WAC 197-11-800 Categorical exemptions.** 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.

Note: The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

**(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 four detached single family residential structures units of four dwelling units.

(ii) The construction or location of four multi-family residential units.

(iii) 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)~~ (iv) 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. This exemption includes stand-alone parking lots.

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

(v) Any stand-alone landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation not associated with an exempt project in subsection (b)(i), (ii), (iii), or iv); and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

(c) Cities, towns or counties may raise the exempt levels to the maximum specified in Table 1 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. Separate maximum optional thresholds are established in Table 1 applying to incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW 36.70A.040; other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the default and maximum level. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas.)

At a minimum, the following process shall be met in order to establish a new flexible exemption level.

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed. These can be addressed in specific adopted development regulations, comprehensive plans and applicable state and federal regulations.

(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established project-level public comment opportunities that are provided for proposals included in these increased exemption levels.

(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the local government shall provide a minimum of 21 days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, the public and provide an opportunity for comment.

The maximum exempt levels 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~~ are identified on Table 1.

**Table 1**

<u>Levels</u>	<u>Fully Planning GMA Counties</u>		<u>All other counties</u>
	<u>Incorporated and unincorporated UGA</u>	<u>Other unincorporated areas</u>	<u>Incorporated and unincorporated areas</u>
<u>Single family residential</u> [# of units ]	<u>30</u>	<u>20</u>	<u>20</u>
<u>Multifamily residential</u> [# of unit]	<u>60</u>	<u>25</u>	<u>25</u>
<u>Agricultural</u> [sq ft]	<u>40,000</u>	<u>40,000</u>	<u>40,000</u>
<u>Office, school, commercial + parking</u> [sq ft + # of spots]	<u>30,000 + 90</u>	<u>12,000 + 40</u>	<u>12,000 + 40</u>
<u>Landfill or excavation</u> [cu yds]	<u>1000</u>	<u>1000</u>	<u>1000</u>



**Summary of Proposed Changes to WAC 197-11-800(23)**  
**- Electrical facilities**

Increasing SEPA thresholds for electrical facilities was stipulated as a topic for this rulemaking in SB 6406.

Electrical utilities indicate that modern electrical lines are often being constructed at 115,000 volts. Thus, the SEPA review threshold of 55,000 volts used as the existing rule is outdated and needs to be amended to reflect current practice. The proposed revision allows the updated size of electrical lines to be installed without SEPA review in existing rights-of-way and developed utility corridors. SEPA review would still be required for new cross-country 115,000 volt lines.

**(Note:** Only the subsection of WAC 197-11-800(2) through (25) proposed for amendment is included in this explanatory version.)

**Proposed Revision to WAC 197-11-800(23) –  
Electrical facilities**

**WAC 197-11-800**

**(23) Utilities.** 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.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(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.

(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); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station or well: Provided, That additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, 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.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

## Summary of Proposed Changes to WAC 197-11-315

Improving efficiency of the environmental checklist is a stipulated topic for this rulemaking, per SB 6406 section 301. Three related sections of the SEPA rule are proposed for amendment (WAC 197-11-315, 197-11-906 and 197-11-960.)

Proposed updates to WAC 197-11-315:

- Amendments proposed to reflect provisions in SB 6406 section 308 (now RCW 43.21c.460) that provide new flexibility for lead agencies. Lead agencies may now identify in the checklist "a locally adopted ordinance, development regulation, land use plan, or other legal authority" that addresses impacts from a proposal on a particular element of the natural or built environment. This is intended to reduce time involved in completing a checklist and provide more complete responses.
- Electronic submittal is proposed to be expressly allowed, including allowance for electronic signature. This will facilitate electronic submittal of checklists to lead agencies, which will improve efficiency of the process for all parties.

**Proposed Revisions to 197-11-315 Environmental checklist** (excerpt of subsections proposed for revision)

**WAC 197-11-315 Environmental checklist.** (1) Agencies shall use the environmental checklist substantially in the form found in WAC 197-11-960 to assist in making threshold determinations for proposals, except for:

(a) Public proposals on which the lead agency has decided to prepare its own EIS; or

(b) Proposals on which the lead agency and applicant agree an EIS will be prepared; or

(c) Projects which are proposed as planned actions (see subsection (2) of this section).

(d) Projects where questions on the checklist are adequately covered by existing legal authorities (see subsection (6) of this section); or.

(e) Nonproject proposals where the lead agency determines that questions in Part B do not contribute meaningfully to the analysis of the proposal. In such cases, part A, C and D at a minimum shall be completed.

(2) For projects submitted as planned actions under WAC 197-11-164, a GMA county/city shall use the existing environmental checklist or modify the environmental checklist form to fulfill the purposes outlined in WAC 197-11-172(1), notwithstanding the requirements of WAC 197-11-906(4).

If the GMA county/city chooses to modify the existing environmental checklist, the modified form shall be submitted to the department of ecology to allow at least a thirty-day review prior to use. The department shall notify the GMA county/city within thirty days of receipt if it has any objections to the modified form and the general nature of the objections. If the department objects, the modified form shall not be used until the GMA county/city and the department have reached agreement.

(3) Agencies may use an environmental checklist whenever it would assist in their planning and decision making, but shall only require an applicant to prepare a checklist under SEPA if a checklist is required by subsection (1) of this section.

(4) The lead agency shall prepare the checklist or require an applicant to prepare the checklist.

(5) The items in the environmental checklist are not weighted. The mention of one or many adverse environmental impacts does not necessarily mean that the impacts are significant. Conversely, a probable significant adverse impact on the environment may result in the need for an EIS.

(6) The lead agency for an environmental review under this chapter may identify within the checklist provided to applicants instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority. A lead agency still must consider whether the action has an impact on the particular element or elements of the environment in question.

(a) In instances where the locally adopted ordinance, development regulation, land use plan, or other legal authority provide the necessary information to answer a specific question, the lead agency must explain how the proposed project satisfies the underlying local legal authority.

(b) If the lead agency identifies instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority, an applicant may still provide answers to any questions on the checklist.

(c) Nothing in this section authorizes a lead agency to ignore or delete a question on the checklist.

(7) The lead agency may determine the appropriate methods for receipt of electronic submittals of the checklist from applicants including electronic signature of part C of the checklist.

(8) Lead agencies may include helpful information (including web links) in the checklist to assist applicants in completing the questions.

## **Summary of Proposed Changes to WAC 197-11-906**

Improving efficiency of the environmental checklist is a stipulated topic for this rulemaking, per SB 6406 section 301. Three related sections of the SEPA rule are proposed for amendment (WAC 197-11-315, 197-11-906 and 197-11-960.)

A provision is proposed for deletion from WAC 197-11-906 that precluded "altering" questions on the checklist. This provision could conflict with reforms adopted in SB 6406. It could also conflict with other provisions of the proposed rule update intended to improve efficiency of the checklist.

**Proposed revisions to WAC 197-11-906 Content and consistency of agency procedures.**

**197-11-906 Content and consistency of agency procedures.**

(1)(a) Agency SEPA policies and procedures shall implement and be consistent with the rules in this chapter. Unless optional or permissive (see WAC 197-11-704), all of the provisions of this chapter are mandatory, and agency procedures shall incorporate these rules and criteria.

(b) Permissive and optional rules shall *not* be construed as mandatory requirements. Rules giving encouragement or guidance shall also not be construed as mandatory. The decision on whether to apply an optional provision rests with the responsible official.

(c) Except as stated in the next subsection, the rules in this chapter are not exclusive, and agencies may add procedures and criteria. However, any additional material shall not be inconsistent with, contradict, or make compliance with any provision of these rules a practical impossibility. Any additional material shall be consistent with SEPA.

(d) Agency procedures shall also include the procedures required by sections WAC 197-11-055 (3)(a) and (4), 197-11-420 (1) and (4), and 197-11-910.

(e) Agency procedures may include procedures under WAC 197-11-055 (2) and (7), 197-11-100(3), 197-11-680, 197-11-714(2), 197-11-800(1), and 197-11-908. Any such procedures shall include the content required by those rules.

(2) The following provisions of this chapter are exclusive and may not be added to or changed in agency procedures:

(a) The definitions of "proposal," "major," "action," "significant," "affecting," "environment," "categorical exemption," "agencies with jurisdiction," "lands covered by water," "built environment," "natural environment," "license," "licensing," "mitigation," and "scope";

(b) The criteria for lead agency determination (Part Ten of these rules);

(c) The categorical exemptions in Part Nine of these rules, unless expressly allowed under Part Nine;

(d) The information allowed to be required of applicants under WAC 197-11-080, 197-11-100, 197-11-335, and 197-11-420;

(e) The requirements for the style and size of an EIS (WAC 197-11-425);

(f) The list of elements of the environment (WAC 197-11-444);  
and

(g) The provisions on substantive authority and mitigation in WAC 197-11-660.

(3) The following provisions of this chapter may not be changed, but may be added to; any additions shall meet the criteria for additional material stated in subsection (1)(c) of this section:

(a) All other definitions in Part Eight of these rules;

(b) The provisions in Parts Four and Five of these rules, except as necessary to be grammatically incorporated into agency procedures;

(c) The contents of agency SEPA procedures (WAC 197-11-906);  
and

(d) The list of agencies with environmental expertise (WAC 197-11-920).

(4) The forms in Part Eleven shall be used substantially as set forth. Minor changes are allowed to make the forms more useful to agencies, applicants, and the public, as long as the changes do not eliminate requested information or impose burdens on applicants. ~~The questions in Part Two of the environmental checklist shall not be altered.~~

## Summary of Proposed Changes to WAC 197-11-960

Improving efficiency of the environmental checklist is a stipulated topic for this rulemaking, per SB 6406 section 301. Three related sections of the SEPA rule are proposed for amendment (WAC 197-11-315, 197-11-906 and 197-11-960.)

Amendments to WAC 197-11-960 are proposed regarding SEPA review for nonproject proposals. Many local governments have noted that the detailed environmental checklist is generally not useful for review of nonproject actions like plan or ordinance adoption. In this proposal, nonproject proposals are required to complete the SEPA supplemental nonpoint proposal questions, but do not need to complete the full environmental checklist when it is not useful to analysis of the proposal.

**Note:** Only the introductory portion of WAC 197-11-960 is included in this explanatory version, as this is the only portion proposed for amendment. Not included in this summary version for brevity: The detailed questions in subsections A through D. These would remain in effect.

**Proposed revisions to WAC 197-11-960 Environmental checklist**  
(excerpt of section proposed for revision)

**WAC 197-11-960 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)~~ including the supplemental sheet for nonproject actions (part D). When the questions for the environmental elements (part B) do not contribute meaningfully to the analysis of the proposal, they may be excluded by the lead agency.

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.