

## 2013 SEPA Rulemaking Advisory Group Categorical Exemptions Issue Tracking

Subtopic	WAC 197-11	Issue/Idea	Advisory Group Comments and Additional Information
<del>Exceptions to Exemptions (Parks)</del>	<del>-908</del>	<del>Revisit and clarify critical area provision for "opt-out" of exemptions</del>	
Exceptions to Exemptions (counties, business)	800(1)(2) (3)(6)(23)	<p>Revisit exceptions for <i>Lands Covered by Water, Rezones, Air &amp; Water Discharge permits</i></p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Projects that require rezones. Clarify.</li> <li>• 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.</li> </ul>	<p><u>The lands covered by water exception was also identified for evaluation by the state agency caucus. From DNR's perspective with respect to the lands covered by water exception, it may be possible to update it to reflect that it isn't intended to cover such things as artificial lakes, ponds, or small ornamental waters created by excavating dry land. It may also be a good idea to create a separate section of 800 for the exceptions to describe how they are intended to be used. State agency caucus wants to be actively involved in this topic.</u></p>
New Exception to Exemptions Cultural Resources (DAHP and cultural resources Advisory Group members)	800	<p>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.</p> <p>Then, there is an exception to project-level exemptions if any of the following apply:</p> <ol style="list-style-type: none"> <li>1) No prior negative survey on file.</li> <li>2) Ground disturbance proposed.</li> <li>3) Project is not in 100% culturally-sterile fill.</li> <li>4) Existing structures are older than 45 years old; <i>and</i> eligible for or listed in any historic register or historic survey.</li> </ol>	<p><u>Please note there is not state agency caucus consensus on the scope of this proposal. Please also note that when state agencies are lead, there is no CRMP or local Comp Plan or ordinance or development regulation to attach it to. State agencies have data-sharing agreements with DAHP.</u></p>
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.	

Comment [pwk1]: See below revision to this idea.

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<b>New Exception to Exemptions Utility projects (DFW)</b>	800(23)	This exception could just apply to fill & excavation projects. Address potential for impacts to fish, wildlife, and habitat (i.e., identified in critical area ordinances or identified priority habitats).	
<b>New Exceptions to Exemptions Agricultural lands of long term commercial significance</b>	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.	
<b>Non-Project Actions Minor Land Use Decisions (counties, business)</b>	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.	
<b>New Non-Project Actions (cities)</b>		Boundary line adjustment, Fence heights Side-yard setbacks	
<b>New Non project Actions minor code amendments (counties)</b>	800 (20)(21)	Consider additional exemptions for minor code amendments and other non-project actions likely to have an adverse environmental impact.	

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<i>Non-project Actions</i> <b>Minor Code Amendments (WSDOT)</b>	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).	
<i>Project Actions</i> <b>Other minor new construction (cities)</b>	800(2)	Increase size of underground storage tanks and add exemption for above-ground tanks	
<i>Project Actions</i> <b>Increase Exemption</b> <b>Transportation projects and commuter facilities (cities)</b>	800(2)	Add transportation projects that add automobile lanes and commuter facilities and amenities (not just transit but also regular park and ride.	
<i>Project Actions</i> <b>Review</b> <b>Other minor new construction (Seattle Public Utilities)</b>	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.	<a href="#">DNR is concerned with increasing utility exemptions without evidence of their potential to not have a probable significant adverse impact.</a>
<i>Project Actions</i> <b>Revise/update</b> <b>Other Minor New Construction</b>	800(2)((f))	WAC 197-11-800(2)(f): <del>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:</del> <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 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>	

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		<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>	
<p><i>Project Actions</i> Clarify/update minor new construction Fill and excavation</p>	800(1)	<p>Consider further revisions to avoid confusion on stand-alone landfill and excavations. <u>Perhaps clarify exemption to allow it to apply where no fill or excavation will take place within 50 feet of a wetland or water body.</u></p>	
<p><i>New Project Actions</i> Mixed Use/Transportation oriented development (cities)</p>	800(1)	<p>Consider exemption for Mixed use and transportation oriented development.</p>	
<p><i>Project Actions</i> Clarify/update minor new construction Parking (DNR)</p>	800 (1)(b)(iv))	<p>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.</p>	
<p><i>Project Actions</i> Clarify/update minor new construction (CR 102 public comments)</p>	800(1)	<p>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.</p>	
<p><i>Project Actions</i> Clarify/update Repair, Remodel and Maintenance</p>	800 (3)	<p>Clarify what kinds of work in water is not exempt, including repair and replacement of shoreline protection structures</p>	

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<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)	
<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. <u>“Authorized public use” needs clear definition to understand applicability of exemptions using this term.</u>	
<u><i>Businesses and regulatory licences (Parks)</i></u>	<u>800(13)(c)</u>	<u>Add “events” after civic celebrations. State Parks often holds temporary events such as mountain bike or trail running races on existing trail systems. These types of events are temporary in nature and appear to fit within the scope of this categorical exemption, however, the existing language is outdated and it is not clear that race events would be covered. The language suggested below would make it more clear that this exemption also applies to these types of events.</u>	
<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.	
<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.	<u>DNR is concerned with increasing utility exemptions without evidence of their potential to not have a probable significant adverse impact.</u>
<i>Project Actions</i> Utility exemptions (Seattle Public Utility)	800(23)	<b>WAC 197-11-800(23)(e):</b> All <del>developments</del> 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	<u>DNR is concerned with increasing utility exemptions without evidence of their potential to not have a probable significant adverse</u>

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		<p>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 addition to raising the pipe diameter threshold to 12 inches in this existing exemption</p> <p><b><u>ADD: Pipelines and Conduits in Rights-of-way.</u></b> 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>	<p><a href="#">impact.</a></p>
<b>Project Actions Utility exemptions (DNR) (Parks)</b>	800(23)	Address potential for linear routes to cross sensitive natural resources and bifurcate large swaths of state land management blocks.	
<b>New Project Actions Recreational trails (DNR) (Parks)</b>	800(24)	Authorize construction of new recreational trail when in an existing trail system up to a designated threshold (not expected to involve PSAI).	
<b>New Project Actions Motorized trails (DNR)</b>	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. <a href="#">Also add clarification that recreational site includes non-motorized trails.</a>	
<b>Agency specific exemption Timber sales exemption (DNR)</b>	830	Expand timber sales exemption to permits for rock sales.	

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<b>Agency Specific Exemptions</b> Update and clarify existing exemptions (Gerald Steel)	810-855	Clarify these sections to limit exempt actions to only those named agencies	<a href="#">We need to make certain this edit is not intended to undermine the applicability of -305</a>
<b>New</b> Documentation of applicability of categorical exemption (DNR)	Part Nine	Add rule clarifying what a lead agency must do document the applicability of a categorical exemption to a proposal, including method of considering WAC 197-11-305.	
<b>New</b> 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.	<a href="#">This may not be the only approach to dealing with the manner exemptions are organized.</a>
<b>New</b> 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 <a href="http://www.ecy.wa.gov/programs/sea/sepa/exemptions_minor_construction.html">http://www.ecy.wa.gov/programs/sea/sepa/exemptions_minor_construction.html</a>	
<b>New</b> 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.	
<b>New</b> 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?	
<b>New</b> <a href="#">Forest practices appeals board</a>	<a href="#">895(16)</a>	<a href="#">This appeals board was eliminated in 2010 in SHB 2935. Forest practices appeals now go to the Pollution Control Hearings Board (PCHB).</a>	
<b>Critical areas</b>	<a href="#">908</a>	<a href="#">Strike language related to the applicability of categorical exemptions in critical areas because of the lack of consistent application by local governments and difficulty for other</a>	<a href="#">State Parks undertakes projects throughout the state. Parks is unaware of any local government entity that has used this provision. Often local</a>

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		<u>agencies with jurisdiction to determine whether it applies.</u>	<u>government planning staff are unaware as to whether or not this provision has been applied through their SEPA ordinance. This requires Parks staff to review each jurisdictions SEPA ordinance to determine whether or not this provision applies. Often the language included in a particular ordinance is confusing and does not provide clear guidance on the applicability of this provision (see for example the Spokane County SEPA ordinance). Unless this provision is being used by local governments it should be removed to prevent confusion as it potentially creates situations where an agency is required to “err on the side of caution” and complete a checklist for what would typically be a categorical exemption.</u>
<b>New</b> <u>Class IV forest practices</u>	938(c)(i)	<u>(i) on lands platted after January 1, 1960 should be deleted because that criterion for forest practices Class IV FPA classification was eliminated in 2011 legislation HB 1582.</u>	
<b>New</b> <u>State transportation maintenance work</u>	468-12-800(1)	<u>See pending bill 1978. WDOT to provide rationale for this exemption.</u>	