



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Preliminary Cost-Benefit and Least Burdensome Alternative Analyses**

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*Chapter 197-11 WAC*

*SEPA Rules (State Environmental Policy Act)*

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**Preliminary Cost-Benefit and  
Least Burdensome Alternative Analyses**  
**Chapter 197-11 WAC**  
**SEPA Rules (State Environmental Policy Act)**

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for the

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# Executive Summary

The Department of Ecology (Ecology) is conducting a rulemaking that will impact three rule chapters:

- Proposed amendments to Chapter 197-11 WAC – SEPA Rules (State Environmental Policy Act).
- Repeal of Chapter 173-806 WAC.
- Repeal of Chapter 197-06 WAC.

The Administrative Procedures Act (RCW 34.05.328(1)(d)(e)) requires two types of analyses before adopting a significant legislative rule – a cost-benefit analysis and a least burdensome alternative analysis. In 2012, the Legislature directed Ecology to review and update all exemptions listed in WAC 197-11-800 (among other activities). In Section 301 of Chapter 1, Laws of 2012 1<sup>st</sup> Special Session (2ESSB 6406), specific direction is given to streamline regulatory processes and achieve program efficiencies. This report provides the results of these analyses and shows the potential impacts associated with the proposed changes.

Because the proposed amendments to Chapter 197-11 WAC increase exemptions and eliminate SEPA review costs, there are no costs of compliance associated with the proposed changes. The costs associated with this rulemaking result from potential environmental impacts (due to an increase in exemptions). There is therefore no Small Business Economic Impact Statement for this rulemaking.

**Error! Reference source not found.** 1 shows the expected costs to the people of the State of Washington over 20 years, discounted at an annual rate of 1.45 percent.<sup>1</sup>

Table 1: Costs

Costs	Low	High
<b>Total</b>	\$17,848	\$99,440
Lands covered by water	\$5,099	\$5,099
Minor new construction	\$0	\$81,591
Solar projects	\$5,099	\$5,099
Storage tanks	\$5,099	\$5,099
	\$2,550	\$2,550

Table 2 shows the expected benefits to the people of the State of Washington over 20 years, discounted at an annual rate of 1.45 percent.

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<sup>1</sup> Ecology uses a discount rate based on interest that could be earned risk-free on today’s dollars over the relevant time period. Ecology uses the ten-year average rate of return offered on the US Treasury’s T-Bills (inflation-indexed short-term bonds; US Treasury Department, 2013) as the discount rate, averaging 1.45 percent over the last ten years.

Table 2: Benefits

<b>Benefits</b>	<b>Low</b>	<b>High</b>
<b>Total</b>	\$2,039,683	\$2,411,634
Lands covered by water	\$16,957	\$16,957
Minor new construction	\$0	\$371,951
Solar projects	\$52,283	\$52,283
Storage tanks	\$27,476	\$27,476
	\$9,106	\$9,106
Rezones	\$734,638	\$734,638
Pipe size	\$1,199,223	\$1,199,223

# Chapter 1: Background and Scope

## 1.1 Background

The State Environmental Policy Act (SEPA) was enacted in 1971 (RCW 43.21C), and provides a framework for considering environmental consequences and identifying likely significant adverse impacts. If a proposal involves government action and is not categorically exempt, environmental review is required. This rulemaking contains both housekeeping amendments (to correct typographical errors or clarify language without changing its effect) and changes to increase the number of proposals that are categorically exempt.

Parties affected by this rulemaking may include those proposing projects that fall under SEPA review, and also counties, cities, and state agencies that are identified as lead agencies under the SEPA rules. Lead agencies are responsible for conducting and documenting the review. Cost savings will likely accrue to lead agencies or those proposing projects, depending on how lead agencies pass on their costs.

The general public may also be affected by this rulemaking if increased exemptions are associated with an increase in adverse environmental impacts.

This is the second round of rulemaking associated with the SEPA rules. Ecology completed the first phase of amendments in December 2012.

### 1.1.1 Reason for the rule proposal

In 2012, the Legislature directed Ecology to review and update all exemptions listed in WAC 197-11-800 (among other activities). In Section 1 of Chapter 1, Laws of 2012 1<sup>st</sup> Special Session (2ESSB 6406),

“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 time increasing the sustainability of program funding and maintaining current levels of natural resource protection.”

In section 301, specific direction is given to streamline SEPA processes and achieve program efficiencies in light of the extensive environmental regulations that have been adopted since 1971:

“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 (Growth Management Act) and 90.58 RCW (Shoreline Management Act), and other laws.”

The intent of the rule changes is to exempt duplicative SEPA review, and to modernize the rules that guide state and local agencies in conducting SEPA reviews, in light of the increased environmental protections in place under RCW 36.70A (Growth Management Act), RCW 90.58 (Shoreline Management Act) and other laws.

## 1.2 Scope of analysis

Ecology analyzes the impacts of Ecology's rule proposal in the following sections:

- **Chapter 2: Baseline for Analysis**  
Explains the baseline concepts to which Ecology's rule proposal was compared in the analysis, and analyzes the rule impacts.
- **Chapter 3: Costs of Proposed Rule**  
Explains the costs of the proposed rule.
- **Chapter 4: Benefits of Proposed Rule**  
Explains the benefits of the proposed rule.
- **Chapter 5: Conclusion**  
Summarizes Ecology's results and includes comments on the analysis.
- **Chapter 6: Least Burdensome Alternative Analysis**  
Explains Ecology's determination on whether the proposed rules place the least burden possible on those required to comply with it, while fulfilling the goals and objectives of the authorizing legislation.

# Chapter 2: Baseline for Analysis

## 2.1 Introduction

Ecology describes the baseline to which the proposed rules are compared. The baseline is the regulatory context in the absence of the amendments and repeals being adopted.

Ecology also describes the proposed rule amendments, and identifies which require analysis under the Administrative Procedure Act (Chapter 34.05 RCW). Here Ecology addresses complexities in the scope of the analysis, and indicates which cost and benefit analyses are discussed in Chapters 3 and 4.

## 2.2 Baseline

The baseline is the regulatory context in the absence of the changes being adopted. In most cases, the regulatory baseline is the existing rule. If there is no existing rule, the federal or local rule is the baseline. If there is no existing regulation at any level of government, the baseline is the statute authorizing the rule.

The baseline for the proposed rule amendments to the SEPA rule include the current SEPA rule, as well as any other federal, state or local rules and statutes. This is the second round of rulemaking as a result of 2ESSB 6406 (the rule was amended in 2012). Although the legislature directed Ecology to review and update all exemptions listed in WAC 197-11-800, with specific direction to streamline regulatory processes and achieve program efficiencies, because the legislature was nonspecific it is not possible separate out which amendments below are due purely to Ecology's discretion and which are mandated by statute. As a result, we analyze all changes to the rule below.

## 2.3 Changes under Ecology's proposed rule

Ecology qualitatively or quantitatively analyzed the impacts of the following proposed changes to the SEPA rule. We also identify if the change was not analyzed (for example if it was mandated by statute).

### 2.3.1 – Housekeeping

We do not analyze these changes quantitatively. We do not expect significant costs or benefits to accrue from these rule amendments.

The APA exempts housekeeping revisions that only correct typographical errors, or clarify language without changing its effect. These changes do not change behavior, and Ecology expects minimal cost savings associated with increased clarity.

- Amendments to the titles in WAC Section 197-11-158, 197-11-235, and 197-11-238. These titles now specify they pertain to both SEPA and the Growth Management Act (GMA). These sections always pertained to SEPA and GMA. The change to the title is to provide additional clarity, and to make these sections consistent with other

sections in the Chapter that are labeled similarly (i.e. 197-11-220, 228, 230, or 232). The change is only to the titles, and there is no practical change in applicability.

- There was an out of date law citation (Chapter 43.21C RCW) in WAC 197-11-164. SB 6406 (2012) amended the authorizing statute. The updated reference reflects the amendment to the statute, and now references the correct section in the law.
- A number of exemptions under certain state and local agencies previously listed licenses and actions as exempt “as of December 12, 1975”. Ecology has deleted the references to this date. There is no expected practical change in how exemptions will be handled, because these licenses and actions have always been considered exempt regardless of the date of issuance. These corrections can be found in WAC Sections 197-11-820, 825, 845, 850, 865, and 875.
- A list of agencies in WAC 197-11-875 has also been updated, to delete names of agencies that no longer exist, and to make consistent those agencies whose names have been changed (for example, the Interagency Committee for Outdoor Recreation is now the Recreation and Conservation Office). There is no practical change in behavior expected from these housekeeping amendments.
- The Department of Fisheries and Department of Game no longer exist. They now exist as the Department of Fish and Wildlife. Their respective sections WAC 197-11-835 and 840 have been combined into one section (197-11-835). There is no change in language however, and no change in behavior is expected.
- The list of agencies in WAC 197-11-920 with environmental expertise has also been updated to delete names of agencies that no longer exist, and to make consistent those agencies whose names have been changed. No additions were made, and there is no practical change in behavior expected from these housekeeping amendments.
- The list of agencies for private projects requiring licenses from more than one state agency in WAC 197-11-936 has also been updated to delete names of agencies that no longer exist, and to make consistent those agencies whose names have been changed. No additions were made, and there is no practical change in behavior expected from these housekeeping amendments.

### **2.3.2 – SEPA register**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule amendment.

- WAC 197-11-508 would now specify that the SEPA register must be web-based and updated daily. The SEPA register is already web-based. The data entry to the SEPA register is also already updated daily. Ecology will need to change the automated routine such that the register uploads the data every business day that Ecology offices are open, as opposed to weekly. Ecology believes this additional action to be de minimis, and does not expect any additional costs as a result of this rule amendment.

### **2.3.3 – Public notice**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule amendment.

- WAC 197-11-510 now includes one additional example of reasonable public notice: mailing or emailing notice. Lead agencies are not required to mail or email notice; it is included as an example of what is reasonable. Mailing or emailing notice has been used historically by lead agencies to provide public notice. By including it as an example of reasonable public notice, Ecology seeks to clarify and confirm that mailing or emailing is acceptable.

### **2.3.4 – Lands covered by water**

We analyze this change below in Chapter 3 and Chapter 4. We expect both costs and benefits to accrue from this rule amendment.

- WAC 197-11-756 updates the definition of lands covered by water to be more consistent with GMA. Different lead agencies have historically applied different definitions of lands covered by water, specifically pertaining to adjacent lands or buffers. Ecology has clarified that land covered by water do not include adjacent land or buffers above the ordinary high water mark. The definition of lands covered by water is relevant to certain categorical exemptions – certain exemptions do not apply if the project is on lands covered by water. To the extent that lead agencies already exempt projects on adjacent land or buffers, there will be no effect as a result of this change. To the extent that lead agencies do not exempt projects on adjacent land or buffers, this change may create more exemptions.

### **2.3.5 – Minor new construction**

We analyze certain changes below in Chapter 3 and Chapter 4. We expect both costs and benefits to accrue from a subsection of these rule amendments.

- WAC 197-11-800(1)(a) contains amendments intended to clarify language (moving language within the section from one paragraph to another). We do not analyze these changes.
  - Changes in this section also add an exemption pertaining to rezones.

The section describing the new exemption for rezones is in WAC 197-11-800(6) – please see WAC 197-11-800(6) below.

- WAC 197-11-800(1)(b) clarifies the exemptions to parking lots and fills, but does not change either in a practical way. The exemption for parking lots is still limited to those with 20 or fewer automobiles not associated with a structure (the amended language repeats the old definition), and a “landfill” is now referred to as a “fill”, and both are defined the same. We do not analyze the changes in WAC 197-11-800(1)(b) quantitatively.

- WAC 197-11-800(1)(c) is amended to allow lead agencies to raise the exempt levels as already defined in rule for mixed use projects. The intent of the change is to allow lead agencies greater flexibility in setting their thresholds when they can adequately meet the finding requirements. The finding requirements are meant to ensure environmental and cultural impacts are kept to a minimum. Practically, some lead agencies already exempt mixed use projects. To the extent that lead agencies already exempt mixed use projects, there will be no effect as a result of this change. To the extent that lead agencies do not exempt mixed use projects, this change may create more exemptions. We recall that local governments are allowed to raise their thresholds only if they can adequately meet the finding requirements. To the extent that the finding requirements preclude additional environmental impacts, we would expect no costs associated with this increase in exempt projects. We analyze this change below in Chapter 3 and Chapter 4; we expect both costs and benefits to accrue from these amendments

WAC 197-11-800(1)(c) also adds additional finding requirements for cultural resources and changes the review time local governments must provide from 21 to 60 days. In order to raise exemption threshold levels, the existing statute requires agencies to document that protection and mitigation for impacts to elements in the environment as listed in WAC 197-11-444 are met. Elements of the environment include historical and cultural resources, as defined in WAC 197-11-444. Changes are intended to provide additional clarity as to how lead agencies should document protection and mitigation for impacts to cultural resources. Lead agencies should already be documenting protection and mitigation for impacts to cultural resources under existing state statute, if they are to raise exemption threshold levels, as per WAC 197-11-444. We therefore do not analyze this change quantitatively.

- WAC 197-11-800(2) contains amendments intended to clarify language (moving language within the section from one paragraph to another).
  - It also adds exemptions for solar projects and storage tank removal. It also increases the exemption threshold from 10,000 gallons to 60,000 gallons for storage tanks on agricultural and industrial lands. These changes are analyzed below in Chapter 3 and Chapter 4; we expect both costs and benefits to accrue from these amendments.
  - WAC 197-11-800(2) also restricts the exemption for catch basins and culverts to those for road and street improvement, and restricts the exemption for reconstruction of roadbed where capacity is not increased and new right-of-way is not required. Construction of catch basins and culverts are typically associated with road and street improvements (a culvert for example, is to allow water to flow underneath a road). The amendment pertaining to increased capacity and new right-of-way ensures that exempt projects will not increase environmental impact. Historically, the proposals that have triggered SEPA review have all increased the width or capacity of the roadbed. We do not expect any practical change from these amendments because we do not expect the universe of exempted entities to change.

- WAC 197-11-800(3) adds an exemption for dredging 50 cubic yards or under. Ecology believes this review was duplicated in other permits and regulatory requirements for dredging including the Local Shoreline Permit, WDFW’s Hydraulic Project Approval, the Army Corp of Engineers’ 404 Permit, and Ecology’s 401 Water Quality Certification. Ecology’s 401 Water Quality Certification, among others, has a comment period associated with it.

Ecology believes this exemption from SEPA review will not result in environmental impact, because similar review is duplicated in other permit requirements. We therefore do not expect costs as a result of the exemption, because we do not expect any environmental impact, but do expect marginal cost savings from avoided SEPA review. We found that proposal descriptions in the SEPA Register used for data analysis in general do not specify cubic yards of dredging, and we are therefore unable to separate proposals that dredge greater than 50 cubic yards and proposals that dredge less than 50 cubic yards. We qualitatively discuss this amendment in this section only.

- WAC 197-11-800(5) adds clarity that real property transactions include easements and leases. Lead agencies already include easements and leases as exempt, and as a result Ecology believes there will be no change in practical use. We do not analyze this change quantitatively.

WAC 197-11-800(6) addresses the addition of an exemption for rezones. Ecology notes that a rezone is only exempt if it is consistent with the applicable comprehensive plan, and was previously subjected to environmental review in an Environmental Impact Statement (EIS). Because Ecology is exempting a review that was duplicative, Ecology does not expect environmental costs to be associated with the exemption, because we do not expect any environmental impact, but do estimate benefits from reduced SEPA review in Chapter 4.

### **2.3.6 – Activities of state legislature**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule amendment.

WAC 197-11-800(1) is repetitive – it is already dictated in another section of the chapter (WAC 197-11-704). The repeated section is struck out but there is no practical change in behavior because the requirement remains.

### **2.3.7 – Local improvement districts**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule amendment.

The exemption in WAC 197-11-800(19) is expanded to include formation of special purpose districts, where special purpose districts are local government entities designated by the Revised Code of Washington and are not cities, towns, townships, or counties.

Planning and project development is still subject to SEPA review; only establishing districts is considered exempt. Ecology does not expect any change in behavior.

### **2.3.8 – Procedural actions**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule amendment.

WAC 197-11-800(19) is amended such that it is consistent with the authorizing statute (Chapter 43.21C RCW), and exempts text amendments that result in no substantive changes respecting use or modification of the environment. Ecology does not expect any change in behavior.

### **2.3.9 – Building codes**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule amendment.

The section pertaining to building codes in WAC 197-11-800(20) has been deleted. This exemption is duplicated in the state Building Code Act (Chapter 19.27 RCW), which contains a broader exemption covering building codes as well as all other “amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law”. Ecology does not expect any change in behavior, and therefore does not analyze this change quantitatively.

### **2.3.10 – Adoption of noise ordinance**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule amendment.

Ecology has modified the language in WAC 197-11-800(21) to be consistent with RCW 43.21C.450. Unnecessary language regarding ordinance submittal to Ecology has been eliminated. We expect no practical change as a result of these amendments.

### **2.3.11 – Pipe size**

We analyze this change below in Chapter 4. We expect benefits to accrue from this rule amendment.

In WAC 197-114-800(23) Ecology has increased the exemption for pipe size from 8 to 12 inches, to be consistent with current industry standards. Ecology does not expect any change in environmental impacts because the impact is the same for 8 and 12 inch pipes – the process for installation is identical. There is a benefit from reduced SEPA review however, and we analyze this change below in Chapter 4.

### **2.3.12 – Wireless facilities**

We do not analyze this change. We do not expect significant costs or benefits to accrue from this rule amendment.

Ecology has updated the language in WAC 197-11-800(25) to be consistent with RCW 43.21C.0384 (SHB 1183; 2014). This change is required under statute, and affected parties must follow the amended statute regardless of Ecology's change. Ecology has no discretion in this change.

### **2.3.13 – Rock sales**

We do not analyze this change. We do not expect significant costs or benefits to accrue from this rule amendment.

Ecology believes environmental and cultural review of rock sales is already regulated, and that SEPA review is duplicated in existing Department of Natural Resources (DNR) rules. Ecology is adding an exemption for the potential sale of rocks in WAC 197-11-830. We expect marginal cost savings from avoided SEPA review, but find that queries for “rock sale” or “rock sales” obtain no results from the SEPA register. We qualitatively discuss this amendment in this section only.

### **2.3.14 – Checklist**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule amendment.

The checklist has been updated to provide more detail and clarity as to what information proposals should provide when completing the checklist (WAC 197-11-960). Ecology does not believe the changes to the checklist increase review burden or increase stringency – the revised rule language clarifies the type of detail needed to help describe the proposal and its environmental effects. This detail is required regardless of whether it is explicitly listed in the checklist.

Because the checklist was not specific enough before, lead agencies often asked for revision and additional information from parties because the parties did not know the information was required. Ecology believes that by being specific about the requirements, both lead agencies and parties proposing projects may save time from unnecessary revisions and reduce the likelihood that proposals are challenged. To the extent that checklists already provided the information required, there will be no effect as a result of this change. To the extent that this clarification will allow parties to save time by eliminating revisions, Ecology expects minimal cost savings. This change is qualitatively analyzed in this section only.

### **2.1.15 – Repeal of Chapter 173-806 WAC**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule repeal.

Ecology is repealing Chapter 173-806 WAC in response to and to make consistent with the changes described above in WAC 197-11. The model ordinance will be made available as a guidance document rather than a rule. Ecology does not expect any change in behavior.

### **2.1.16 – Repeal of Chapter 197-06 WAC**

We do not analyze this change quantitatively. We do not expect significant costs or benefits to accrue from this rule repeal.

The sections of the rule related to public records have been superseded by Chapter 173-06 WAC. This rule is also out of date because the Council on Environmental Policy no longer exists. Ecology does not expect any change in behavior.

## Chapter 3: Costs of Proposed Rule

The impacts from the proposed amendments are only associated with an increase in exemptions. There are therefore no additional costs associated with compliance with the proposed rules. There may however be costs from environmental impacts associated with the proposed rule amendments, if the increase in exemptions causes certain impacts not to be reviewed, and therefore not mitigated.

Using the SEPA register database, Ecology searched for SEPA reviews that contained “mitigate”, “mitigated”, “mitigating” or “mitigation” in their proposal descriptions. We then look at any reviews that resulted in a “DNS-M”, “EIS”, “ODNS-M”, or “ONDS/NOA-M”. These acronyms are for reviews that ended either with a determination of nonsignificance, predicated on some kind of mitigation, or an environmental impact statement. Although notices of application (NOA) may duplicate SEPA filings (because they filed a notice of application in addition to a filing when the actual determination was issued), we note that we also eliminated duplicate observations by lead agency filing number. Notices of application usually used the same lead agency filing number as a previous review. In addition, it was not always true that notices of application duplicated a previous filing (such as an ODNS-M) – there were a significant number of observations where a notice of application was the only filing associated with a proposal, with no other filings or determinations made for that proposal. After eliminating duplicates (by looking at the lead agency filing number), we are left with 36 observations.

Although these projects likely undertook some kind of mitigation (in order to have a review that resulted in one of the above categories), the mitigation in question is not always specific in the proposal description. Mitigation may take many forms, such as reconstruction of wetlands, paying impact fees, monitoring, or writing a contingency plan. Some project descriptions queried specify that mitigation was undertaken, but are nonspecific as to the extent and nature of the mitigation. Of the proposals that specify what mitigation is taken, these include paying impact fees, restoring wetlands, eelgrass, and salt marshes.

Estimating expected costs from forgone environmental review is difficult, because even if a mitigation measure is identified in a SEPA document, it does not mean the mitigation resulted because of the SEPA review. In many cases, the SEPA document cites mitigation that is already required by specific environmental regulations, not mitigation that was specifically designed to address impacts identified during review. An example may be that mitigation is required under Critical Areas Ordinance protections for wetlands, and a proposal would need to mitigate regardless of whether or not they conducted a SEPA review (because of the ordinance protections). The proposal would then include the mitigation measure as part of the SEPA review, and it would not be possible to separate out whether the SEPA review provided information as to a possible environmental impact, or if it was due to another existing environmental statute (such as the Growth Management Act).

As a result, we are likely overestimating the expected costs of a forgone review. Environmental reviews may help provide information where they may be impacts to both the natural and built environment. Because the only specified (listed in the project description) mitigation measures in the SEPA register deal with wetlands mitigation, we use it as an imperfect proxy for impacts to

the natural environment.<sup>2</sup> Where project proposals were specific to the acreage restored, we estimated the expected forgone benefit from mitigating an environmental impact. The acreage ranged from a minimum of 0.05 to 7.13 acres. We use the following average amenity value per acre per year from an Earth Economics publication “Valuing the Puget Sound Basin”, for wetlands, equal to \$42,740.

For mitigation listed in the project proposal defined by paying impact fees or mitigating noise or traffic, we use the average impact fee surveyed from 75 Washington State cities from a 2012 Association of Washington Cities report, equal to \$2,305. For the remaining proposals where mitigation is specified, but the description is nonspecific as to the nature of mitigation, we assume the mitigation benefit is minimal (for example, risk reduction from writing a contingency plan) – although the benefit is likely nonzero, the simplifying assumption is that the forgone benefit in these cases is equal to zero for the purposes of calculation.

From this sample, we then estimate the weighted average of these forgone benefits, and expect the expected forgone benefit from nonreview per mitigated review is equal to approximately \$14,778.<sup>3</sup> We use this as an imperfect proxy for the costs from environmental impacts associated with the proposed rule amendments, if the increase in exemptions causes certain impacts not to be reviewed, and therefore not mitigated. We recall that mitigation may take many forms, such as such as reconstruction of wetlands, paying impact fees, monitoring, or writing a contingency plan. The intent of the rule changes is to exempt duplicative SEPA review, and to modernize the rules that guide state and local agencies in conducting SEPA reviews, in light of the increased environmental protections in place under RCW 36.70A, RCW 90.58 and other laws. These expected forgone benefits will only be associated with review that is not duplicated (for example with adopted GMA-based requirements).

We note that because many local governments have already adopted GMA impact fees, many proposals will be paying impact fees regardless of whether the project goes under a SEPA review. To control for this distinction we find the expected proportion of new exemptions that could result in impacts.

We note that twenty-nine counties are either required to fully plan under the GMA or have chosen to do so, and that 95% of the population in the state of Washington fall in these counties.<sup>4</sup> We therefore expect that even if a project review resulted in a determination predicated on mitigation, only 5% of these impacts would not be accounted for with the proposed increase in exemptions. Other permitting and environmental regulations, including but not limited to the GMA, would provide the same information and value, and SEPA review in these cases would be duplicate. We note that even though a county may be required to or choose to fully plan under the GMA, they may not use the tool of impact fees. To the extent that SEPA review is the only venue where information on impacts to the built environment would be provided in these

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<sup>2</sup> In reality, as mentioned above, information about possible impacts to wetlands are usually accounted for by the Critical Areas Ordinance in the Growth Management Act, and SEPA review would likely not add much value. However, no other mitigation specific to the natural environment is specified in project descriptions in the SEPA register.

<sup>3</sup> Our sample contains approximately 22 percent mitigation to the natural environment, 19 percent mitigation to the built environment, and approximately 59 percent where mitigation is not specified or is negligible.

<sup>4</sup> <https://mrsc.org/subjects/planning/compplan.aspx>

counties, the above overestimates the percentage of projects where SEPA review is currently duplicative. Impact fees are one tool counties are empowered to use, but are not required to.

### **3.1 Lands covered by water**

For lands covered by water we searched the SEPA register for “lands covered by water” and “land covered by water”, and projects “landward of the ordinary high water mark”. We find that from 2001 to 2013 there were 14 reviews that may qualify for the new exemption in the proposed rule language. It is difficult to ascertain with certainty whether these proposals would qualify for the exemption. For example, a project may have constructed a set of stairs some distance landward of the ordinary high water mark, and because the previous language was unclear of land adjacent to water, a review was undertaken. Conversely, this project may have been reviewed regardless for some other reason (because the construction of stairs triggered a review because of some other environmental impact). We assume all projects would have qualified for the exemption – this will overestimate the impact of the rule amendments.

Of the 14 projects, 4 projects or approximately 28.6 percent triggered some kind of mitigation. The other 71.4 percent found a determination of nonsignificance, without mitigation. We therefore assume that over 13 years, because of the rule revisions, 4 projects would result in a review that triggered some kind of mitigation, or 0.31 projects per year. We then assume, as explained above, that 5% of these projects would result in forgone mitigation of environmental impacts from non-review, due to the proposed rule amendments. The discounted cost over 20 years, given 0.02 projects resulting in forgone mitigation, given the cost of a forgone mitigation above, would be equal to \$5,099.

### **3.2 Minor new construction**

#### **3.2.1 Mixed use projects**

WAC 197-11-800(1)(c) is amended to expressly allow lead agencies to customize exemption threshold levels for mixed use projects; i.e. where a project is comprised of multiple construction types that are each provided specific maximum exemption levels in WAC 197-11-800(1)(b). The issue of mixed projects is not specifically addressed in the current rules, and is thus subject to varying interpretation. The thresholds for exemptions have not been altered – they are already defined in rule. The intent of the change is to allow lead agencies flexibility in setting their thresholds for mixed use developments, provided they can adequately meet the finding requirements. As a result of these clarifying rule amendments, it is feasible that in some jurisdictions a greater number of projects will be exempt from SEPA review. We recall that local governments are allowed to raise their thresholds only if they can adequately meet the finding requirements. Mixed use development has occurred for many years, even though the topic of mixed use development is not currently specifically addressed in the flexible SEPA threshold part of the rule. Some local governments may feel authorized to provide exemptions where they previously interpreted the rule to preclude the decision. Alternatively, to the extent that the finding requirements preclude additional environmental impacts, we would expect no costs associated with this increase in exempt projects. We include both a low and high estimate below.

For mixed use projects we searched the SEPA register for “mixed use” and found that from 2001 to 2013 we have 969 observations where review of mixed use projects occurred, after eliminating duplicates. We then looked for proposals that specified the square feet of projects in their project descriptions, and found 437 observations remaining. Of these projects, 308 were below 30,000 square feet, or the maximum threshold under any project type. Of these, 26.66 percent resulted in a “DNS-M”, “EIS”, “ODNS-M”, or “ONDS/NOA-M”. These are results that ended either with a determination of nonsignificance, predicated on some kind of mitigation, or an environmental impact statement. We therefore assume that over 13 years, because of the rule revisions, 82.11 projects would result in a review that triggered some kind of mitigation, or 6.32 projects per year. We then assume, as explained above, that 5% of these projects would result in forgone mitigation of environmental impacts from non-review, due to the proposed rule amendments. We therefore estimate that approximately 0.32 projects would result in forgone mitigation of environmental impacts from non-review, and assuming the average forgone mitigation cost is equal to \$14,778, the discounted cost over 20 years would be equal to \$81,591.

We recall that local governments are allowed to raise their thresholds only if they can adequately meet the finding requirements. In addition, the rule proposal clarifies that local governments will decide whether or not to increase their thresholds for exemptions, and is nonspecific as to how they should do so. In the absence of this rule proposal, local governments can (and have been) increasing their thresholds for mixed used projects, because mixed use projects is not defined, and the manner in which local governments have implemented these changes has varied. With the rule proposal, local governments can increase their thresholds for mixed used projects, the definition for mixed use projects remains undefined, and the manner in which local governments will implement these changes will continue to vary. If local governments can adequately prevent additional environmental impacts, and to the extent that local governments did and will continue to increase thresholds for mixed use projects (such that there is no change in behavior), the costs associated with the addition of mixed use projects will be equal to \$0. SEPA is intended to be employed at a local level.

### ***Solar projects***

From 2000 to 2012<sup>5</sup> we find 40 instances of solar projects that underwent SEPA review, after eliminating duplicate observations. Of these projects 15 percent resulted in a “DNS-M”, “EIS”, “ODNS-M”, or “ONDS/NOA-M”. These are results that ended either with a determination of nonsignificance, predicated on some kind of mitigation, or an environmental impact statement. We therefore estimate that approximately 6 projects would result in a review that triggered some kind of mitigation, or 0.46 projects per year. We then assume, as explained above, that 5% of these projects would result in forgone mitigation of environmental impacts from non-review, due to the proposed rule amendments, or 0.02 projects per year. Assuming the average forgone mitigation cost is equal to \$14,778, the discounted cost over 20 years would be equal to \$5,099.

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<sup>5</sup> Our subsample did not include any observations from 2013.

### *Storage tanks*

From 2001 to 2013 we find 21 instances of removal of storage tanks, after eliminating duplicate observations. Of these projects approximately 23.81 percent resulted in a “DNS-M”, “EIS”, “ODNS-M”, or “ONDS/NOA-M”. These are results that ended either with a determination of nonsignificance, predicated on some kind of mitigation, or an environmental impact statement. We therefore estimate that approximately 5 projects would result in a review that triggered some kind of mitigation over 13 years, or 0.39 projects per year. Assuming the average forgone mitigation cost is equal to \$14,778, and that 5 percent of the above projects result in forgone mitigation, the discounted cost over 20 years would be equal to \$5,099.

We also look at the installation and removal of tanks above 10,000 gallons and below 60,000 gallons on agricultural and industrial lands. From 2001 to 2013 we find 20 reviews where installation or removal of a storage tank occurred on industrial or agricultural land (by finding proposals for installation or removal of storage tanks, which contained either “industrial” or “agricultural” in their proposal description). Of these 7 tanks were above 10,000 gallons and below 60,000 gallons and 2 of them resulted in a “DNS-M”, “EIS”, “ODNS-M”, or “ONDS/NOA-M”. We therefore estimate approximately 0.01 reviews per year would result in forgone mitigation of environmental impacts, and assuming the average forgone mitigation cost is equal to \$14,778, the discounted cost over 20 years would be equal to \$2,550.

# Chapter 4: Benefits of Proposed Rule

The benefits associated with increasing exemptions are the avoided costs of conducting SEPA reviews. We look at the average cost of SEPA review by various lead agencies.<sup>6</sup> SEPA review costs can vary widely, and review alone ranges from \$150 in certain counties to approximately \$1,000 in other counties. Triggering an EIS, furthermore, increases the variance of costs, as EIS costs range in the multiple thousands. We use the average cost of SEPA review, from 29 observations of local government review costs, equal to approximately \$910. This is likely an underestimate of the avoided costs. Lead agencies are allowed to charge for review and preparation of EISs, such that they recoup their costs. Even if lead agencies completely pass on their costs, the costs charged to parties proposing projects typically still would not cover administrative costs such as utilities, or human resources. The true avoided costs therefore are likely greater than our estimate.

## 4.1 Lands covered by water

For lands covered by water we searched the SEPA register for “lands covered by water” and “land covered by water”, and projects “landward of the ordinary high water mark”. We find that from 2001 to 2013 there were 14 reviews that may qualify for the new exemption in the proposed rule language, which underwent review. We recall again that we are likely overestimating the impact of rule amendments, because it is difficult to ascertain with certainty whether these proposals would qualify for the exemption. For example, a project may have constructed a set of stairs some distance landward of the ordinary high water mark, and because the previous language was unclear of land adjacent to water, a review was undertaken. Conversely, this project may have been reviewed regardless for some other reason (because the construction of stairs triggered a review because of some other environmental impact). We assume all projects would have qualified for the exemption.

These 14 projects would now be exempt from SEPA review, and we would benefit from the avoided cost of conducting these reviews. We therefore assume that over 13 years, because of the rule revisions, 1.08 projects per year would avoid a review, and the discounted benefit over 20 years, given an avoided cost of \$910 per review, would be equal to \$16,957.

### 4.1.1. Minor new construction

#### *Mixed use projects*

WAC 197-11-800(1)(c) is amended to expressly allow lead agencies to customize exemption levels for mixed use projects; i.e. where a project is comprised of multiple construction types that are each provided specific maximum exemption levels in WAC 197-11-800(1)(b). The issue of mixed projects is not specifically addressed in the current rules, and is thus subject to varying interpretation. The thresholds for exemptions have not been altered – they are already defined in rule. The intent of the change is to allow lead agencies flexibility in setting their thresholds for mixed use developments, provided they can adequately meet the finding requirements. As a result of these clarifying rule

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<sup>6</sup> We looked at the cost levied by local governments for submitting the checklist, along with any subsequent costs that could occur (for example a determination of nonsignificance with mitigation, or review of an EIS).

amendments, it is feasible that in some jurisdictions a greater number of projects will be exempt from SEPA review.

We recall that local governments are allowed to raise their thresholds only if they can adequately meet the finding requirements. Mixed use development has occurred for many years, even though the topic of mixed use development is not currently specifically addressed in the flexible SEPA threshold part of the rule. Some local governments may feel authorized to provide exemptions where they previously interpreted the rule to preclude the decision.

From 2000 to 2013 we have 969 observations where review of mixed use projects occurred, after eliminating duplicates. We then looked for proposals that specified the square feet of projects in their project descriptions, and found 437 observations remaining. Of these projects, 308 were below 30,000 square feet, or the maximum threshold under any project type.

These 308 projects would now be exempt from SEPA review, and we would benefit from the avoided cost of conducting these reviews. We therefore assume that over 13 years, because of the rule revisions, 23.69 projects per year would avoid a review, and the discounted benefit over 20 years, given an avoided cost of \$910 per review, would be equal to \$371,951.

We recall that local governments are allowed to raise their thresholds only if they can adequately meet the finding requirements. In addition, the rule proposal clarifies that local governments will decide whether or not to increase their thresholds for exemptions, and is nonspecific as to how they should do so. In the absence of this rule proposal, local governments can (and have been) increasing their thresholds for mixed used projects, because mixed use projects is not defined, and the manner in which local governments have implemented these changes has varied. With the rule proposal, local governments can increase their thresholds for mixed used projects, the definition for mixed use projects remains undefined, and the manner in which local governments will implement these changes will continue to vary. If local governments can adequately prevent additional environmental impacts, and to the extent that local governments did and will continue to increase thresholds for mixed use projects (such that there is no change in behavior), the benefits associated with the addition of mixed use projects will be equal to \$0. Certain local governments would increase thresholds in the absence of this rule proposal, and avoid costs of review, regardless of the proposed changes. SEPA is intended to be employed at a local level.

### ***Solar projects***

From 2000 to 2012 we find 40 instances of solar projects that underwent SEPA review. We therefore estimate that approximately 3.33 projects per year would avoid the costs of SEPA review, given an avoided cost of \$910 per review, and the discounted benefit over 20 years would be equal to \$52,283.

### *Storage tanks*

From 2001 to 2013 we find 21 instances of removal of storage tanks. We therefore estimate that approximately 1.75 projects per year would avoid the costs of SEPA review, given an avoided cost of \$910 per review, and the discounted benefit over 20 years would be equal to \$27,476.

We also look at the installation and removal of tanks above 10,000 gallons and below 60,000 gallons on agricultural and industrial lands. From 2001 to 2013 we find 20 reviews where installation or removal of a storage tank occurred on industrial or agricultural land. We therefore estimate approximately 0.58 reviews per year would be avoided, and given an avoided cost of \$910 per review, the discounted benefit over 20 years would be equal to \$9,106.

### **4.1.2 Rezones**

WAC 197-11-800(6) addresses the addition of an exemption for rezones. Ecology notes that a rezone is only exempt if it is consistent with the applicable comprehensive plan, and was previously subjected to environmental review in an Environmental Impact Statement (EIS). Because Ecology is exempting a review that was duplicative, Ecology does not expect environmental costs to be associated with the exemption, but expects cost savings from avoided duplicative SEPA review.

From 2000 to 2013 we find instances of rezones that did not require mitigation of environmental impacts, we remove duplicate observations, and then searched for reviews that contained either “comprehensive” or “plan” in the proposal descriptions. We then eliminate reviews that contain “construction” or “construct” in the proposal description, because these are likely to need review regardless of whether or not the exemption for rezones is added. This is an imperfect proxy for finding duplicative reviews. We find 655 reviews over 14 years, or 46.79 avoided reviews per year, and given an avoided cost of \$910 per review, the discounted benefit over 20 years would be equal to \$734,638.

### **4.1.3 Pipe size**

Ecology has increased the exemption for pipe size from 8 to 12 inches, to be consistent with current industry standards. Ecology does not expect any change in environmental impacts because the impact is the same for 8 and 12 inch pipes – the process for installation is identical. There is a benefit from reduced SEPA review however, and from 2000 to 2013 we find 993 reviews that install pipes with sizes either 10, 11, or 12 inches in diameter.

We therefore estimate approximately 76.38 reviews per year would be avoided, and given an avoided cost of \$910 per review, the discounted benefit over 20 years would be equal to \$1,199,223.

# Chapter 5: Conclusion

Table 3 shows the expected costs and expected benefits to the people of the State of Washington over 20 years, discounted at an annual rate of 1.45 percent, and compares total costs to total benefits.

Table 3: Costs and Benefits

<b>Costs</b>	<b>Low</b>	<b>High</b>
<b>Total</b>	\$17,848	\$99,440
Lands covered by water	\$5,099	\$5,099
Minor new construction	\$0	\$81,591
Solar projects	\$5,099	\$5,099
Storage tanks	\$5,099	\$5,099
	\$2,550	\$2,550
<b>Benefits</b>	<b>Low</b>	<b>High</b>
<b>Total</b>	\$2,039,683	\$2,411,634
Lands covered by water	\$16,957	\$16,957
Minor new construction	\$0	\$371,951
Solar projects	\$52,283	\$52,283
Storage tanks	\$27,476	\$27,476
	\$9,106	\$9,106
Rezoning	\$734,638	\$734,638
Pipe size	\$1,199,223	\$1,199,223

The costs associated with the proposed rule amendments vary greatly depending on the environmental impacts that may be associated with increasing exemptions for mixed use projects. If local governments can adequately meet their finding requirements, as the intended by the change, and environmental impacts are small, the costs associated with the proposed rule amendments are also small. There is also a possibility for large environmental impacts associated with mixed use projects, however.

The intent of the rule changes is to exempt duplicative SEPA review, and to modernize the rules that guide state and local agencies in conducting SEPA reviews, in light of the increased environmental protections in place under RCW 36.70A, RCW 90.58 and other laws. Because many projects where SEPA was originally the authority to obtain mitigation are now subject to numerous other regulations that already require mitigation – many of the avoided reviews are duplicative.

We see that the present value of the respective low and high estimates of the proposed rule benefits exceed the respective low and high estimates of the proposed rule costs. Ecology concludes that on a qualitative and quantitative assessment of the likely costs and benefits there is a reasonable likelihood the estimated benefits of the proposed rule amendments exceed their costs.

# Chapter 6: Least Burdensome Alternative Analysis

## 6.1 Introduction

RCW 34.05.328(1)(e) requires Ecology to “determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

Ecology assesses alternatives to the proposed rule amendments, and determines whether they met the general goals and specific objectives of the authorizing statute. Of those meeting these objectives, Ecology determines whether the proposed rule amendments are the least burdensome.

## 6.2 General goals and specific objectives of the authorizing statutes

In 2012, the Legislature directed Ecology to review and update all exemptions listed in WAC 197-11-800 (among other activities). In Section 301 of Chapter 1, Laws of 2012 1<sup>st</sup> Special Session (2ESSB 6406), specific direction is given to streamline regulatory processes and achieve program efficiencies.

The intent of the rule changes is to exempt duplicative SEPA review, and to exempt review for projects that historically have not been associated with environmental impacts.

Because the proposed amendments increase exemptions and eliminate SEPA review costs, there are no costs of compliance associated with the proposed changes. By definition the proposed are the least burdensome for those required to comply with the rule.

## 6.3 Alternative rule content considered

### 6.3.1 Address mixed use

Options considered:

1. Add the provision as proposed above regarding a new project type for mixed-use construction.
2. Do not add the previously proposed language but instead specify that local government sets the mixed-use threshold up to a combined maximum flexible level using the residential units and commercial building sizes in 800(d).
3. Add a new mixed use exemption with a lower threshold than the combination of both residential and commercial thresholds.

**Status:** Ecology proposes option 2, where local governments will set mixed use thresholds.

### 6.3.2 Modify fill and excavations project type

Options considered:

1. Keep this exemption in 800(1) and replace the phrase “associated with” to “necessary for”.
2. Move this exemption to 800(2) and apply the 1000 cu yd threshold for all agencies. This should further clarify that this is not intended to be combined with other new construction project types, nor should it be used for land-clearing for landscaping or other connected activities associated with an existing facility/structure.

**Status:** Ecology is proposing option 1 with additional clarification of the applicability of this exemption.

### 6.3.3 Installation and removal of tanks

Options considered:

1. Amend to include “installation or removal of impervious underground or above-ground tanks,” and include the same 10,000 gallon threshold for both types of tanks.
2. Add above-ground tanks as in # 1 and create separate residential and non-residential exemptions for tanks with larger threshold for agricultural or industrial sites (e.g., 60,000 gallons).

**Status:** Ecology is considering option 2 in order to both provide an above-ground tank exemption and to allow for larger tanks in appropriate industrial and agricultural locations.

### 6.3.4 Exemption for demolition of buildings

Options considered:

1. Amend this provision to add the eligibility language to the “exception” provision for demolition exemption.
2. Amend to include “demolition and removal” to clarify this type of exempt activity
3. Do not make an amendment to this provision.

**Status:** Ecology is not proposing any amendments to this section.

### 6.3.5 Repair, remodeling and maintenance activities

Options considered:

1. Qualify the dredging exception to allow up to 50 cubic yards of sediment under the exemption
2. Qualify the dredging exception to allow up to 20 cubic yards of sediment
3. Add clarification that reconstruction/maintenance of bulkheads and other “shoreline stabilization” structures are not exempt
4. Include a specific percentage of the structure to be replaced as a threshold for the maintenance exemption

**Status:** Ecology proposes to amend this section to exempt maintenance dredging of up to 50 cubic yards of sediment. Ecology proposes leaving the existing language regarding “groins and similar shoreline protection structures” unchanged. No changes are proposed

to specify a percentage-based approach to the minor repair or replacement exemption language.

### **6.3.6 Clarification and addition – not including in-water work**

Options considered:

1. Modify 800(3) to include additions and expansions pursuant to City of Seattle’s proposal plus add “transportation facilities” in addition to the “existing public and private facilities” language.
2. Modify 800(2)(e) to exempt additions and expansion pursuant to City of Seattle’s proposal
3. Add the “transportation facilities” language only
4. Retain current language in 800(3) and 800(2)(e)

**Status:** Ecology proposes option #3 to clarify that transportation facilities are included in the maintenance exemptions.

### **6.3.7 Purchase or sale of real property**

Options considered:

1. Amend this subsection to define “authorized public use” with the proposed language above
2. Amend this subsection to add a different definition for “authorized public use”.
3. Do not amend this subsection
4. Remove the exception for “authorized public use” resulting in all public property transactions to be exempt.

**Status:** Ecology proposes to clarify this term and add the proposed language above (Option 1). In addition Ecology was provided additional information in comment letters and it proposed modifying this exemption to include easements and other lesser property interests in section (c).

### **6.3.8 Increase pipe size**

Options considered:

1. Revise rule to increase pipe size and activities within existing facilities as listed above.
2. Revise rule to also exempt replacement pipe installation within existing streets and right of ways.
3. Also add the condition that limits one or both of the above amendments to within UGA, cities etc.

**Status:** Ecology proposes option #1 in order to update the exemption to current industry standards for routine and relatively minor pipe installation projects.

### 6.3.9 Natural resource management

Options considered:

1. Amend this subsection to include minor repair, maintenance and re-routing of motorized trails limited to the same net total trail coverage.
2. Continue to discuss this proposal and review additional information

**Status:** Ecology needs additional information about the proposed exemption for motorized trails and is not moving forward with this proposal because of the concerns listed above.

### 6.3.10 Small energy projects

Options considered:

1. Add a new subsection to 800(2)(d) or an entirely new subsection in 800 to include accessory solar energy generation equipment for existing structures –even those structures that are above the minor new construction size threshold. This exemption would be limited by not increasing the existing footprint of the existing structure or facility.
2. Add a new subsection that exempts solar energy systems plus additional structures and equipment on the same parcel (perhaps limited to 500 sq/ft per City of Seattle’s proposal).
3. Continue to research this proposal and further define the impacts associated with the type, size and location of these projects.
4. Do not make any rule changes based on this proposal.

**Status:** Ecology proposes option 1 to create a new exemption for accessory solar energy installations on existing structures.

### 6.3.11 Improving public notice for proposals

Options considered:

1. Revise WAC 197-11-508 (SEPA Register) to provide that the register is web-based and updated daily;
2. Revise WAC 197-11-510 (Public Notice) to specify that any postings on property must be visible to the general public, perhaps from the nearest public road), and that agencies are required to maintain an interested parties list for SEPA notices; and
3. Requiring cities and counties to submit all Notices of Application under RCW 36.70B (or equivalent notice) to the SEPA Register (or some other statewide listing).

**Status:** Ecology is proposing options 1 and second part of option 2 (agencies are to maintain an interested parties list for SEPA notices).

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