

WSR 23-06-070

DEPARTMENT OF ECOLOGY

[Filed March 1, 2023, 7:46 a.m.]

**Interpretive Statement on Subdivision State
Environmental Policy Act (SEPA) Exemptions**

Program Name: Shorelands and Environmental Assistance.

Date Issued: March 1, 2023.

References: WAC 197-11-800 (1) and (6); chapter 58.17 RCW.

Purpose: To clarify SEPA review is not required for exempt minor new construction proposals under WAC 197-11-800(1) that also include a subdivision of land.

Application: This policy applies to SEPA exempt proposals for minor new construction in WAC 197-11-800(1) also requiring subdivision of land under chapter 58.17 RCW. This interpretive statement clarifies that the subdivision of land should not require an otherwise exempt proposal to undergo SEPA review.

Rationale: The SEPA rules in WAC 197-11-800(1) establish exemptions from SEPA for minor new construction proposals. The exemptions apply to "all licenses" for minor new construction. Subdivision of land under chapter 58.17 RCW is included within the definition of "license" in the SEPA rules (WAC 197-11-760). This subdivision activity is exempt from SEPA review if the proposed number of units is equal to or less than the level in the minor new construction exemption thresholds in WAC 197-11-800(1).

The minor new construction exemptions in WAC 197-11-800(1) also include four circumstances when the exemptions do not apply. These exceptions to the exemptions include any proposal for a "land use decision that is not exempt under WAC 197-11-800(6)." WAC 197-11-800(6) specifies that "the following land use decisions shall be exempt: (a) Land use decisions for exempt projects, except that rezones must comply with (c)." WAC 197-11-800 (6)(d) also lists "approval of short plats or short subdivisions" as exempt from SEPA review.

WAC 197-11-800 (1) and (6) are unclear because the former exempts subdivisions qualifying as minor new construction from SEPA review, while the latter implies that only short plats or short subdivisions are exempt. However, short plats and short subdivisions are not the only type of land use decision included in "all licenses" necessary for the minor new construction exemptions in WAC 197-11-800(1).

To clarify, any proposal (with a subdivision) that qualifies as minor new construction under WAC 197-11-800(1) is SEPA exempt. WAC 197-11-800 (6)(d) exempts subdivisions that are not affiliated with exempt minor construction proposals. Both exemptions apply unless a proposal requires a rezone under WAC 197-11-800 (6)(c).

Note: In determining exemptions from SEPA, lead agencies should make sure proposals are defined clearly to include all parts of the proposal - see WAC 197-11-060(3). For the minor new construction exemptions in WAC 197-11-800 (1) and (2), the circumstances when the exemptions do not apply should also be noted, including when the project:

- (i) Is undertaken wholly or partly on lands covered by water;
- (ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;
- (iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or
- (iv) Requires a land use rezone decision that is not exempt under WAC 197-11-800(6).

In addition, in WAC 197-11-908, cities and counties may elect for certain exemptions to not apply in critical areas, including the minor new construction exemptions in WAC 197-11-800 (1) and (2).

Americans with Disabilities Act (ADA) Accessibility: To request an ADA accommodation, contact ecology by phone at 360-407-6831 or email at ecyadacoordinator@ecy.wa.gov, or visit <https://ecology.wa.gov/accessibility>. For relay service or TTY call 711 or 877-833-6341.