



# New SEPA Housing Exemptions – Guidance on Implementing SSB 5412

## Introduction

The 2023 session law [Substitute Senate Bill 5412 \(SSB 5412\)](#) amends the State Environmental Policy Act (SEPA) [RCW 43.21C.229: Infill development—Categorical exemptions](#) and expands SEPA's categorical exemptions for residential projects.

Cities and counties fully planning under the Growth Management Act (GMA) and [RCW 43.21C.229 \(3\)](#) will be required to adopt categorical exemptions from SEPA for the following types of residential development:

- One or more residential housing units in incorporated areas of an Urban Growth Area (UGA).
- One or more middle housing units in unincorporated areas of a UGA.

The new exemption does not apply automatically, except for a specific provision for City of Seattle.<sup>1</sup> Jurisdictions must adopt an ordinance, likely as part of the GMA periodic update process. The law also requires jurisdictions to conduct a specific analysis to support adoption of the new exemption, to conduct outreach to agencies, tribes, and the public, and to coordinate with the Washington State Department of Transportation.

## Applicability

To adopt new SEPA categorical exemptions under this section of [RCW 43.21C.229 \(3\)](#), local governments must ensure the following conditions are satisfied:

- The local government adopting the new exemptions must be a fully planning jurisdiction under the Growth Management Act (GMA).
- For cities, the exemption applies to all housing types.
- For counties, the exemption applies to middle housing projects in [designated unincorporated Urban Growth Areas](#).
- For all jurisdictions, the exemption applies only to proposed developments that are consistent with the comprehensive plan and all applicable development regulations.

## Environmental analysis requirements

Before adopting the housing SEPA categorical exemption required under the new law, an **environmental analysis** is required. Often, this level of environmental review would be completed in an Environmental Impact Statement (EIS) or Supplemental EIS. At a minimum, each city or county's

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<sup>1</sup> For City of Seattle, the exemption applies on the effective date of the bill (July 2023).

environmental analysis must consider the proposed use or density and intensity of use in their jurisdiction (e.g., the Future Land Use Map and zoning map), and document the following:

- Each element of the environment under SEPA, found in [WAC 197-11-444](#), is addressed by existing local, state, and federal regulations or other applicable plans. The [example table below](#) may be useful as a starting point.

An analysis of multimodal transportation impacts of new residential development, including impacts to neighboring jurisdictions, transit facilities, and the state transportation system.

- Consultation with the Washington Department of Transportation on impacts to state-owned transportation facilities, including whether mitigation is necessary for impacts to state-owned transportation facilities. Requests for consultation or questions about the required analysis should be submitted to your [WSDOT Regional Development Services](#) office. WSDOT provided the following information on consultations, but may also have additional information on its [webpage](#):

At the time of establishing categorical exemptions and conducting environmental analysis, jurisdictions are required to consult with WSDOT related to housing development near state facilities. WSDOT will request that local jurisdictions document the safety and operations of state facilities, the adopted multimodal level of service standards, and the nature of the locations being considered. WSDOT expects the environmental and multimodal transportation analysis required pursuant to RCW 43.21C.229 to assess potential safety, mobility, connectivity, preservation, maintenance, resiliency, equity, and climate change concerns from increased travel demand on the state transportation system.

- A threshold determination of any changes to development codes to ensure adequate mitigation for significant impacts from planned residential development.

## Exceptions to the categorical exemption

Under [RCW 43.21C.229\(5\)](#), the housing categorical exemption adopted by a city or county is still subject to the exceptions adopted by rule by the Department of Ecology.

**If any of the following exceptions apply, then a proposed project is not exempt from SEPA:**

- The proposal includes other non-exempt activities, see [WAC 197-11-305:\(1\)\(b\)](#).
- The proposal is undertaken wholly or partly on lands covered by water, see [WAC 197-11-800:\(1\)\(a\)\(i\)](#).
- The proposal requires a non-exempt NPDES permit, including construction stormwater general permits for sites 5 acres and above, see [WAC 197-11-800:\(1\)\(a\)\(ii\)](#).
- The proposal requires a non-exempt license governing emissions to air, see [WAC 197-11-800:\(1\)\(a\)\(iii\)](#).
- The proposal requires a land use decision that is not exempt under [WAC 197-11-800:\(6\)](#), see

[WAC 197-11-800:\(1\)\(a\)\(iv\)](#).



- The proposal includes demolition of structures or facilities with recognized historical significance such as listing in a historic register, see [WAC 197-11-800:\(2\)\(g\)](#).
- The proposal requires a Class IV forest practices approval, see [RCW 43.21C.037](#).




## Implementation




Categorical exemptions adopted under [RCW 43.21C.229 \(3\)](#) become effective 30-days after the adoption of the enacting ordinance.





## How to document environmental protections


The table below provides guidance to local governments on how to meet the requirements of SSB 5412 to document analysis of each “[Element of the Environment](#)” under SEPA when adopting the new housing exemption. It provides specific examples of existing local, state, and federal codes or rules that may already address each element of the environment. Counties and cities may use this table as a starting point for their analysis.

SEPA Elements of the Environment <a href="#">WAC 197-11-444:</a>	How Elements are Addressed by Other Codes and Rules
<p><b>Earth</b></p>  <ul style="list-style-type: none"> <li>• Geology</li> <li>• Soils</li> <li>• Topography</li> <li>• Unique physical features</li> <li>• Erosion/enlargement of land area (accretion)</li> </ul>	<ul style="list-style-type: none"> <li>• Critical Areas Ordinance includes protections for landslide hazards, steep slopes, unstable soils, wetlands, flood prone and fish/wildlife habitat areas, including compensatory mitigation requirements for unavoidable impacts. Ordinance adopted consistent with RCW 36.70A and chapter 365-190 WAC.</li> <li>• Building and Construction codes include provisions that regulate development in seismic hazard areas.</li> <li>• <b>SEPA Exceptions [WAC 197-11-800(1)(a)(i) and (ii)]:</b> work on <a href="#">lands covered by water</a> is not categorically exempt, and SEPA will continue to apply to developments with wetlands, and construction projects that greater than 5 acres that require a NPDES construction stormwater permit.</li> </ul>
<p><b>Air</b></p>  <ul style="list-style-type: none"> <li>• Air quality</li> <li>• Odor</li> <li>• Climate</li> </ul>	<ul style="list-style-type: none"> <li>• Regional air quality oversight addresses policies and rules on air quality attainment status on a neighborhood or sub-area basis.</li> <li>• Additional authority provided by Environmental Protection Agency, Clean Air Act, and the state Department of Ecology.</li> <li>• Rules and best practices from your local Clean Air Agency or the Department of Ecology that apply to mitigate impacts from fugitive dust and other potentially hazardous demolition, such as lead.</li> <li>• Air permit required for asbestos removal includes survey and mitigation measures for dust control techniques and use of toxic air control technologies.</li> <li>• <i>If applicable:</i> The energy code prohibits the use of natural gas heating in new buildings taller than three stories.</li> <li>• <b>SEPA Exceptions [WAC 197-11-800(1)(a)(iii)]:</b> Development that triggers certain Air discharge permits are not exempt from SEPA. <i>Note: these types of permits are not normally associated with residential development.</i></li> </ul>


<b>SEPA Elements of the Environment</b> <a href="#">WAC 197-11-444:</a>	<b>How Elements are Addressed by Other Codes and Rules</b>
<p><b>Water</b></p>  <ul style="list-style-type: none"> <li>• Surface water movement/quantity/quality</li> <li>• Runoff/absorption</li> <li>• Floods</li> <li>• Groundwater movement/quantity/quality</li> <li>• Public water supplies</li> </ul>	<ul style="list-style-type: none"> <li>• Stormwater, Grading &amp; Drainage ordinances include environmental &amp; water quality protections, to meet applicable State guidance that includes Ecology's <a href="#">Stormwater Management Manual</a>.</li> <li>• Flooding is addressed through participation in the National Flood Insurance Program (NFIP). Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Maps identify geographic areas that the FEMA has defined according to varying levels of flood risk.</li> <li>• Construction projects that meet defined thresholds must obtain a Stormwater Construction Permit from Department of Ecology.</li> </ul>
<p><b>Plants and Animals</b></p>  <ul style="list-style-type: none"> <li>• Habitat for and numbers or diversity of species of plants, fish, or other wildlife</li> <li>• Unique species</li> <li>• Fish or wildlife migration routes</li> </ul>	<ul style="list-style-type: none"> <li>• Critical Areas Ordinance includes protections for floodplains, wetlands and fish wildlife habitat areas, including compensatory mitigation requirements for unavoidable impacts. Regulations are adopted consistent with RCW 36.70A and WAC Ch. 365-190 guidance.</li> <li>• County Weed board and local weed district surveys for noxious weeds and work with landowners to ensure they are controlled.</li> <li>• Endangered plants and animals are protected under the federal Endangered Species Act.</li> <li>• <b>SEPA Exceptions (WAC 197-11-305 and RCW 43.21C.037):</b> Proposals are not exempt if they require a Class IV forest practices approval.</li> </ul>
<p><b>Energy and Natural Resources</b></p>  <ul style="list-style-type: none"> <li>• Amount required/rate of use/efficiency</li> <li>• Source/availability</li> <li>• Nonrenewable resources</li> <li>• Conservation and renewable resources</li> <li>• Scenic resources</li> </ul>	<ul style="list-style-type: none"> <li>• Energy Codes required by International Building Code and Residential Building Code mandate high levels of energy efficiency.</li> <li>• Utility system improvements are required to provide service to new development. This can include local improvements and at distances from sites if the needs warrant such improvements.</li> <li>• Other policies, programs and rules that address energy conservation and efficient building design (e.g., LEED, Energy Star).</li> </ul>

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<p><b>Environmental Health</b></p>  <ul style="list-style-type: none"> <li>• Health hazards</li> <li>• Noise</li> </ul>	<ul style="list-style-type: none"> <li>• Federal, state, and regional regulations are the primary means of mitigating risks associated with hazardous and toxic materials. The development code includes a procedural requirement that ensures contaminated sites obtain appropriate review by checking against listings of known contaminated sites.</li> <li>• Building code contains provisions for the removal of hazardous and combustible materials.</li> <li>• Noise Control Code provides for daytime and nighttime noise limits, and authority to mitigate impacts related to exceeding noise level limits and specific noise generating activities. Exceptions are provided, e.g., for public project construction noise.</li> </ul>
<p><b>Land and Shoreline Use</b></p>  <ul style="list-style-type: none"> <li>• Relationship to existing land use plans and to estimated population.</li> </ul>	<ul style="list-style-type: none"> <li>• For shorelines of the state, the Shoreline Master Program approved by Ecology for consistency with State Shoreline Master Program guidelines (WAC 173-26).</li> <li>• Critical Areas Ordinance includes mitigation for landslide hazards, steep slopes, unstable soils, wetlands, flood prone and fish/wildlife habitat areas. Consistent with RCW 36.70A and WAC Ch. 365-190 guidance</li> <li>• <b>SEPA Exceptions [WAC 197-11-800(1)(a)(i), (ii), and (iv)]:</b> Development over water is not categorically exempt, and SEPA will continue to apply to developments with wetlands, and construction projects that greater than 5 acres that require a NPDES construction stormwater permit. Also, a proposal is not exempt if it requires a land use decision that is not exempt under WAC 197-11-800(6).</li> </ul>
<p><b>Housing</b></p> 	<ul style="list-style-type: none"> <li>• Land Use, housing and building maintenance, and other codes include provisions to encourage housing preservation, especially for low-income persons, as well as tenant relocation assistance, and incentives for affordable housing.</li> <li>• Low-income housing preservation is a high priority for many City public projects and programs.</li> </ul>
<p><b>Aesthetics</b></p>	<ul style="list-style-type: none"> <li>• Land Use Code development standards address the scale of development and other aspects related to compatibility.</li> </ul>

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 <p><b>Aesthetics (cont.)</b></p>	<ul style="list-style-type: none"> <li>• View considerations, such as along specific streets, are commonly addressed during area planning and rezoning efforts. Commonly used approaches include height limits and upper-level setbacks incorporated into new zoning.</li> <li>• Regulations that address aesthetics include setbacks required to preserve key view corridors from designated public viewpoints, parks, scenic routes, and to features such as mountains, skyline and water.</li> <li>• Design Review process applies at various thresholds and provides the venue for addressing these topics. Design Review can address individual development view impact consideration and mitigation.</li> </ul>
<p><b>Light and Glare</b></p> 	<ul style="list-style-type: none"> <li>• Land Use Code requires mitigation through screening and landscaping, lighting directional/shielding standards.</li> <li>• If applicable, Design Review can address this topic as well.</li> </ul>
<p><b>Recreation</b></p> 	<ul style="list-style-type: none"> <li>• Parks and recreation projects are required to follow all applicable ordinances protecting elements of the environment identified in this table.</li> </ul>
<p><b>Historic and Cultural Preservation</b></p>  <ul style="list-style-type: none"> <li>• Archaeological Sites</li> <li>• Tribal resources</li> </ul>	<ul style="list-style-type: none"> <li>• Landmarks Preservation Ordinance addresses landmark preservation. Existing policy/practices are in place to refer permit applicants to the Historic Preservation Office for potential survey and landmark nomination.</li> <li>• Historic Preservation Policy for potential archaeologically significant sites and requirements for archeological assessments</li> <li>• Review includes use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington Department of Archaeology and Historic Preservation, other agencies, and consultation with tribal governments.</li> <li>• Development regulations include pre-project cultural resource review. Standard inadvertent discovery language (SIDL) is included in authorizations for all projects.</li> </ul>

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<p><b>Historic and Cultural Preservation (cont.)</b></p>	<ul style="list-style-type: none"> <li>• <a href="#">Section 106 of the National Historic Preservation Act</a> — Requires federal agencies to consider cultural resources in their licensing, permitting, and funding decisions. Federal agencies consult with state and local governments to identify cultural resources and receive formal opinions about the significance of an affected area and probable impacts.</li> <li>• <a href="#">Forest Practices Act</a> — Sets Forest practice standards for timber harvest, pre-commercial thinning, road construction, fertilization, and forest chemical application activities. The rules help protect historic and cultural sites while maintaining a viable timber industry.</li> <li>• <a href="#">Shoreline Management Act</a> — The Shoreline Master Program requires project developers stop work and provide notice, including to the department of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation. The SMP also require that permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.</li> <li>• Other state regulations addressing protection of cultural/archaeological resources include RCW Chapters 27.34, 27.53, 27.44, 79.01 and 79.90 RCW; and WAC Chapter 25.48).</li> <li>• <b>SEPA Exceptions [WAC 197-11-800(2)(g)]:</b> A proposal is not exempt from SEPA if it includes demolition of structures or facilities with recognized historical significance such as listing in a historic register.</li> </ul>
<p><b>Transportation</b></p>  <ul style="list-style-type: none"> <li>• Transportation systems</li> <li>• Vehicular traffic</li> <li>• Waterborne, rail, and air traffic</li> <li>• Movement/circulation of people or goods</li> <li>• Traffic hazards</li> </ul>	<ul style="list-style-type: none"> <li>• Land Use Code requires transportation study and mitigation. citywide level-of-service standards, new development of certain size in certain locations must include action to help achieve single-occupant-vehicle reduction target, by geographic sector.</li> <li>• Street use permitting &amp; Right of Way Improvements Manual include mitigation authority for: access point control, street/ intersection configuration, bike parking and signage.</li> <li>• Street Use and Traffic Codes contain authority to regulate: <ul style="list-style-type: none"> <li>○ Pedestrian safety measures,</li> <li>○ Street and sidewalk closures,</li> </ul> </li> </ul>



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	<ul style="list-style-type: none"> <li>○ Truck traffic timing and haul routes, and</li> <li>○ Any planned use of the street for construction purposes (material, equipment storage).</li> </ul>
<p><b>Public Services and Utilities</b></p>  <ul style="list-style-type: none"> <li>● Fire</li> <li>● Police</li> <li>● Schools</li> <li>● Parks or other recreational facilities</li> <li>● Maintenance</li> <li>● Communications</li> <li>● Water/stormwater</li> <li>● Sewer/solid waste</li> <li>● Other governmental services or utilities</li> </ul>	<ul style="list-style-type: none"> <li>● Authority for requiring utility improvements and using building features that reduce demand for utilities is identified in rules, codes and policies and are applied during permitting reviews. These include construction codes including the Building Code, Electrical Code, Energy Code, Fuel Gas Code; Plumbing Code, and the Stormwater Code, and rules promulgated by City/County Planning and Public Utilities departments, including water, sewer, storm drain &amp; electrical system improvements.</li> <li>● Permit applications are referred to other departments for input, if facilities or services might be affected, such as police or fire protection.</li> <li>● Public service and utility impact analyses to address growth impacts are addressed through area planning initiatives in conjunction with supporting area wide SEPA reviews, as is done for subarea rezones.</li> <li>● Regulations for telecommunications facilities in the Land Use Code also apply within this category.</li> </ul>