

Director's Report and Recommendation

SEPA "Infill Development" Categorical Exemption Levels

June 16, 2016

Background

The State Environmental Policy Act (SEPA, Ch. 43.21C RCW) mandates environmental review for many actions including certain development permits and amending the Land Use Code where such code contains standards that affect the environment. The SEPA process is intended to identify adverse impacts to the natural or built environment of an action before a decision is made about the action. If "likely significant adverse environmental impacts" are identified, a municipality may place condition on development approval. However, SEPA sets categorical exemptions whereby certain actions, if below a threshold level, are exempt from SEPA review.¹

In 2003, the Legislature authorized certain municipalities to use a new categorical exemption (RCW 43.21C.229) for "infill development" under limited circumstances to encourage growth that is consistent with the Growth Management Act.

In 2012, the City adopted an infill development categorical exemption that existed until fall 2015. In fall 2015 the infill development categorical exemption was removed by Ordinance 124885 pending completion of the Environmental Impact Statement for the Comprehensive Plan update and adoption of the new Comprehensive Plan, known as "Seattle 2035". These steps are required before infill exemptions can be reestablished.

Proposal

The proposal is to re-adopt the "infill development" categorical exemptions to the prior levels that existed from 2012 to 2015, based on "infill development" provisions in state law, RCW 43.21C.229.

Seattle's environmental policies and procedures, updated in 2008 and 2012, defined SEPA "infill development" categorical exemption levels for urban centers, and urban villages that contain light rail station area overlay districts, while also maintaining lower SEPA exemption levels for other areas throughout Seattle.

The proposed exemption levels for urban centers, and urban villages with light rail station area overlay district designations, are 200 dwelling units (250 dwelling units in Downtown), and up to 30,000 square feet of non-residential space when contained in a mixed-use development. Outside of these defined areas, the exemption levels would remain unchanged.

¹ In this report, the phrase "SEPA thresholds" means the "categorical exemption levels" as used in state statute.

The proposal will continue to require monitoring and if permitted and built development in a particular area reaches 90% of its growth estimate for the 20-year planning horizon (2015-2035), the categorical exemption level would be reduced to 20 dwelling units and 12,000 square feet of non-residential space, per state law.

SDCI would issue a Director's Rule to explain implementation procedures for how growth is measured, how changes to threshold levels will occur, and to provide public notification of the status of the SEPA categorical exemption levels across the various affected Urban Centers and Urban Villages.

Analysis

In past decades, State law has defined a maximum categorical exemption level of 20 dwelling units and 12,000 square feet of non-residential floor area. But in 2003, State law was updated to allow jurisdictions to define higher SEPA threshold levels that would encourage "infill development" to occur in urban growth areas, in support of growth management objectives. This can occur as long as an urban growth area has not exceeded its density or intensity goals (for residential and employment levels, respectively) that are described in its growth planning policies.

The practical effect of the proposed changes will be to require fewer development proposals to undergo SEPA environmental review than is the case today. SEPA environmental review is a well-understood component of development permit reviews for which SDCI charges the applicant for time spent analyzing the potential environmental impacts of an action and summarizing them in a written decision. This can also lead to imposition of SEPA-based conditions on development, if adverse impacts are identified that warrant mitigation that is not provided by other development regulations.

However, as the City's codes have evolved, there is generally less need to employ SEPA-based conditioning authority because other City codes and requirements effectively mitigate environmental impacts that otherwise might be adverse or significant adverse. Relevant policies and codes include: environmental critical areas, shorelines, grading and drainage, stormwater, design review, land use, noise, transportation mitigation programs, energy, building, and historic preservation. These policies and codes are periodically fine-tuned to keep their standards up to date, generally moving in the direction of greater protections. Seattle's shoreline master program regulations (Chapter 23.60A), for example, were extensively updated in 2015. Another example is Section 23.52.008 of the Land Use Code that requires transportation impact study and mitigation for developments in size ranges that fall below the proposed SEPA thresholds. In place since 2012, this makes explicit the City's authority to mitigate transportation impacts even if SEPA review does not occur. See Table 1 on the next page for more explanation of code protections and their relationship to SEPA elements of the environment.

Based on an assessment of the permit records, SDCI estimates that under the proposed amendments up to approximately 60 fewer development proposals per year would undergo environmental review. The City spent approximately 6 hours on SEPA review for a typical permit review process although it can vary depending on project complexity. This leads to additional costs

of development permitting and the potential for added time delays, if the City's SEPA decision is appealed. It takes six months or more for an appeal to be resolved.

The effects of the proposal could lead to more development applications and permit activity, for example if a potential applicant believes the permit process will be timelier and less costly than if SEPA environmental review is included.

Recommendation

The SDCI Director recommends adoption of the proposed amendments, to reestablish categorical exemptions to the levels they were in place from 2012 to 2015 to encourage infill development consistent with the Growth Management Act and the City's Comprehensive Plan.

Table 1. Summary of environmental protections in other codes/rules compared to a full list of topics addressed by environmental review pursuant to the SEPA

SEPA Authority by Element of the Environment (from 25.05.675)	How Addressed by Other Codes/Rules*
Air Quality	<ul style="list-style-type: none"> • Regional air quality oversight addresses policies and rules on air quality attainment status on a neighborhood or sub-area basis. Additional authority provided by Puget Sound Clean Air Agency (PSCAA), Environmental Protection Agency, Clean Air Act, and the state Department of Ecology.
Construction Impacts - Air Quality	<ul style="list-style-type: none"> • Building code contains provisions for the removal of hazardous and combustible materials (Section 3303). • PSCAA rules and best practices apply to mitigate impacts from fugitive dust and other potentially hazardous demolition waste materials, such as lead. • PSCAA permit required for asbestos removal and includes survey and mitigation measures for dust control techniques and use of toxic air control technologies.
Construction Impacts – Noise	<ul style="list-style-type: none"> • Noise Code sets a limit of 7 PM on noisy work in most zones in or near residential areas (25.08.425), includes LR, MR, HR, NC, RC zones. • Noise Code includes daytime/nighttime noise level limits (25.08.410-425)
Construction Impacts – Parking/Traffic/Streets/ Pedestrian Safety	<ul style="list-style-type: none"> • Street Use and Traffic Codes (Titles 15 & 11) contain authority to regulate: <ul style="list-style-type: none"> ○ Pedestrian safety measures, ○ Street and sidewalk closures, ○ Truck traffic timing and haul routes, ○ Any planned use of the street for construction purposes (material, equipment storage). • Land Use Code (23.42.044) includes authority to manage construction-related parking.
Earth/Environmentally Critical Areas /Water Quality/Drainage/Plants and Animals	<ul style="list-style-type: none"> • Environmentally Critical Area Code includes mitigation for landslide hazards, steep slopes, unstable soils, wetlands, flood prone and fish/wildlife habitat areas (25.09). • In addition, the Stormwater, Grading & Drainage ordinances and Shoreline regulations (Chapter 23.60A) include environmental & water quality protections.

SEPA Authority by Element of the Environment (from 25.05.675)	How Addressed by Other Codes/Rules*
Energy	<ul style="list-style-type: none"> • Energy Codes required by the City and the State mandate high levels of energy efficiency. • City Light utility system improvements, if any, are required to provide service to new development. This can include local improvements and at distances from sites if the needs warrant such improvements. • Various City policies, programs and rules address energy conservation and efficient building designs (LEED; Energy Star).
Environmental Health	<ul style="list-style-type: none"> • Federal, state and regional regulations are the primary means of mitigating risks associated with hazardous and toxic materials. • Regulations for telecommunications facilities in the Land Use Code also apply within this category.
<p>Housing</p> <p><i>SEPA authority is narrowly defined: "Compliance with legally valid City ordinance provisions relating to housing relocation, demolition and conversion shall constitute compliance with [SEPA] policy." SMC 25.05.675.1.2.c.</i></p>	<ul style="list-style-type: none"> • 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.
Historic Preservation/Archaeological Sites	<ul style="list-style-type: none"> • Landmarks Preservation Ordinance remains in place for landmark preservation (Chapter 25.12) • Existing policy/practices are in place for SDCI to refer permit applicants to the Historic Preservation Office for potential survey and landmark nomination. • SDCI Director's Rule 2-98: Clarification of State Environmental Policy Act (SEPA) Historic Preservation Policy for potential archaeologically significant sites and requirements for archeological assessments • Federal and state regulations address protection of cultural/archaeological resources (including RCW Chapters 27.34, 27.53, 27.44, 79.01 and 79.90 RCW; and WAC Chapter 25.48).
Land Use/Height, Bulk & Scale/Shadows on Open Spaces	Design Review process applies at various thresholds and provide the venue for addressing these topics (Chapter 23.41).

SEPA Authority by Element of the Environment (from 25.05.675)	How Addressed by Other Codes/Rules*
	<ul style="list-style-type: none"> • Land Use Code development standards address the scale of development and other aspects related to compatibility.
Light and Glare	<ul style="list-style-type: none"> • Land Use Code screening and landscaping, lighting directional/shielding standards provide mitigation. • Design Review can address this topic as well.
Noise	<ul style="list-style-type: none"> • 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.
<p>Parking</p> <p><i>The policies apply only to areas outside of urban centers, the station area overlay district, and portions of urban villages within 1,320 feet of a street with frequent transit service.</i></p>	<p>Inside the areas mentioned no parking is required and in addition:</p> <ul style="list-style-type: none"> • City policy promotes transit, bike, pedestrian and other ways of getting around rather than driving; • The City and region fund transit service; • The State Commute trip reduction requires transportation management plans for major employers.
Public Services and Facilities	<ul style="list-style-type: none"> • Authority for requiring utility improvements is identified in rules, codes and policies and are applied during permitting reviews. This includes water, sewer, storm drain and electrical system improvements. • Permit applications are referred for other departments for input, if facilities or services might be affected, such as police or fire protection. • 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.
<p>Public View Protection</p> <p><i>Applies to public views from designated public viewpoints, parks, scenic routes and view corridors to features such as mountains, skyline & water. Does not apply to views from private property.</i></p>	<ul style="list-style-type: none"> • Design Review can address individual development view impact consideration and mitigation. • 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.

SEPA Authority by Element of the Environment (from 25.05.675)	How Addressed by Other Codes/Rules*
Traffic and Transportation	<ul style="list-style-type: none">• Land Use Code requires transportation study & mitigation (Chapter 23.52) for projects no longer subject to SEPA.• Street use permitting (15.04, 11.16) & Right of Way Improvements Manual include mitigation authority for: access point control, street/ intersection configuration, bike parking and signage.

*All citations are from the Seattle Municipal Code, unless otherwise indicated. RCW = Revised Code of Washington. WAC= Washington Administrative Code.