



Snohomish County
Planning and Development Services

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MEMORANDUM

To: Snohomish County Planning Commission
From: Alison Bridges, Senior Planner, PDS
Date: May 13, 2015
RE: SEPA Code Update Project

INTRODUCTION

The purpose of this staff report is to provide information regarding proposed amendments to Chapter 30.61 Snohomish County Code (SCC) in response to recent changes made to the State Environmental Policy Act (SEPA) Rules in Washington Administrative Code (WAC) 197-11-800. The proposed code amendments to SCC 30.61.035 would increase existing threshold levels exempting minor new construction from SEPA review.

BACKGROUND

Located in Revised Code of Washington (RCW) Chapter 43.21C, SEPA was enacted in 1971, when the nation's awareness of environmental problems was just beginning to emerge. Intended to ensure that environmental values are considered during decision-making, SEPA applies to all state and local government decisions, unless they are considered categorically exempt. These decisions may be related to issuing permits for private projects such as office buildings or apartment complexes, constructing public facilities like new schools or highways, as well as decisions associated with the adoption of development regulations, policies or comprehensive plans.

The SEPA Rules, found in WAC 197-11, were enacted in 1984. The SEPA Rules provide comprehensive guidance on how local governments make SEPA determinations. Categorical exemptions from SEPA are outlined in WAC 197-11-800. The county has codified the requirements of SEPA within Chapter 30.61 SCC.

Most project proponents interested in land development within unincorporated Snohomish County must go through the formal building permit review process. Part of this process specifically requires Snohomish County Department of Planning and Development Services (PDS) staff to determine compliance with Title 30 SCC – the Unified Development Code (UDC).

The UDC implements the county's Growth Management Act (GMA) Comprehensive Plan by providing a unified set of standards and procedures to regulate building and land development within unincorporated Snohomish County. These development regulations are consistent with established goals and policies in the county's comprehensive plan and designed to protect natural resources and prevent or mitigate adverse environmental impacts.

In 2012, the Washington State Legislature passed Senate Bill 6406, directing the Washington State Department of Ecology (Ecology) to modernize the rules that guide state and local agencies in conducting SEPA reviews. Recognizing the overlap between SEPA and many local, state and federal regulations, one intended outcome of the SEPA rule updates was to improve coordination with current land-use planning and development regulations. Also, in light of the increased environmental protections associated with the GMA (RCW 36.70A), updates to the Shoreline Management Act (RCW 90.58) and other laws, this effort was intended to streamline regulatory processes while also maintaining existing levels of environmental protection.

In response to the legislative directive, Ecology undertook a two-phase rule adoption process. The first phase, completed in December 2012, included increases to exemption levels for minor new construction projects and efficiency improvements to the environmental checklist. The second round of rule changes added many more exemptions and updates.

PROJECT GOALS

- **Update Exemptions for Minor New Construction.** The primary goal of this project is to review updates made to SEPA Categorical Exemptions in WAC 197-11-800 and determine the need for partially or fully raising corresponding exemption levels in Chapter 30.61 SCC.
- **Update Other Provisions in Chapter 30.61 SCC.** Secondary project goals may also include other updates to Chapter 30.61 SCC necessary for consistency or clarity since the code was last updated in 2002.

UPDATING EXEMPTIONS FOR MINOR NEW CONSTRUCTION

Existing Code Structure.

Provisions in SCC 30.61.035 govern the exemption levels for minor new construction as allowed by WAC 197-11-800(1). To be exempt from SEPA, projects must be equal to or smaller than the exempt level. Exempt levels are identified by dwelling unit (du) for residential structures, square footage (sf) for agricultural and commercial structures, parking spaces (ps) for parking facilities and cubic yards (cy) for grading activities. Under existing county code, the following project types are currently exempt from SEPA:

1. **Residential structures** of 20 du or less;
2. **Agricultural structures** covering 30,000 sf or less;
3. **Commercial development:**
 - a) Within UGA - 12,000 sf or less and associated facilities designed for 40 or fewer ps
 - b) Outside UGA - 4,000 sf or less and associated facilities designed for 20 or fewer ps
4. **Parking lot construction** designed for 40 or fewer ps; and
5. **Landfill or excavation** of 500 cy or less.

Proposed Code Structure.

Many jurisdictions fully planning under GMA are choosing to raise the exempt levels up to the maximum specified in WAC 197-11-800(1)(d) which are listed in the table below. One significant change that occurred during the rule adoption process was to allow higher exemption levels for those projects located within the Urban Growth Area (UGA). Action by the county to adopt these higher exemption levels would support existing county policies encouraging development in UGAs and encouraging streamlined permit processes.

It is important to note, cities and counties are not required to raise SEPA exemption levels consistent with updates to the rules in WAC 197-11-800. Some local governments may opt to have lower SEPA exemption thresholds than the rules allow.

Maximum SEPA Exemption Thresholds for Minor New Construction - WAC 197-11-800(1)(d)

Project Types		UGA	Other
Residential Structures	Single Family	30 du	20 du
	Multi Family	60 du	25 du
Agriculture Structures		40,000 sf	40,000 sf
Commercial Development		30,000 sf 90 ps	12,000 sf 40 ps
Landfill or Excavation		1,000 cy	1,000 cy

The proposed code amendments to SCC 30.61.035 would increase exemption levels for residential dwelling units, agricultural structures, commercial development and standalone grading to the maximum allowed as detailed below:

- a) **Residential Structures** – SEPA exemptions are currently allowed for projects with 20 du or less. SEPA Updates now distinguish single-family, such as detached condominiums from multi-family structures, such as apartment complexes. Consistent with WAC 197-11-800, the proposed code amendments to exemption levels would allow for an increase from 20 residential du up to 30 single-family and 60 multi-family du. *Please note that this exemption only applies to the construction of residential projects and not to land use decisions, such as subdivisions which are addressed in WAC 197-11-800(6).*
- b) **Agricultural Structures** – SEPA exemptions are currently allowed for projects 30,000 sf or less. The proposed amendments would increase the exempt level to 40,000 sf.
- c) **Commercial Development** – Within UGAs, SEPA exemptions are currently allowed for commercial development of 12,000 sf or less and associated parking facilities designed for 40 or fewer ps. For all other areas of unincorporated county, SEPA exemptions are currently allowed for commercial development of 4,000 sf or less and 20 or fewer ps.

The proposed amendments would allow for an increase from 12,000 up to 30,000 sf for commercial development *within the UGA*. The parking facilities associated with these commercial projects would also allow for an increase from 40 up to 90 ps.

For all other areas of unincorporated county, the proposed amendments would allow for an increase from 4,000 sf up to 12,000 sf for commercial development. The parking facilities associated with these commercial projects would also allow for an increase from 20 up to 40 ps.

- d) **Standalone Grading** – SEPA exemptions for standalone grading permits are currently allowed for landfill and excavation up to 500 cy. Under the recent rule changes, SEPA exemptions for standalone grading projects both within and outside the UGA in unincorporated county would allow for an increase from 500 to 1000 cy. *Please note that this exemption applies to standalone grading projects only; this does not include land disturbing activity that occurs as part of any other project type.*

Comparison of Current vs Proposed Exemption Levels

Project Types		Current		Proposed	
Residential Structures	Single Family	20 du		UGA	Other
				30 du	20 du
	Multi Family	20 du		60 du	25 du
Agriculture Structures		30,000 sf		40,000 sf	40,000 sf
Commercial Development		UGA	Other	30,000 sf 90 ps	12,000 sf 40 ps
		12,000 sf 40 ps	4,000 sf 20 ps		
Landfill or Excavation		500 cy		1,000 cy	1,000 cy

Requirements for Adoption of Exemptions for Minor New Construction.

Cities and counties that wish to raise exemption levels for minor new construction up to the maximum specified in WAC 197-11-800(1)(d) must meet certain procedural requirements.

First, jurisdictions must document how existing county, state and federal regulations are adequate to mitigate environmental impacts. To meet this requirement, the county has created a table (Attachment 1) summarizing the existing county, state and federal regulations which address SEPA elements of the environment associated with minor new construction.

Second, jurisdictions must document the public comment opportunities available for projects that were not previously exempt, but will now be exempt under the new exemption levels. To meet this requirement, the county will include findings and conclusions in the proposed ordinance describing existing code provisions related to noticing in Chapter 30.70 SCC. Please note: this project does not propose to modify any existing county code provisions related to noticing.

Third, jurisdictions must provide a minimum of sixty days notice to affected tribes, agencies with expertise, affected jurisdictions, Ecology and the public prior to adoption of the ordinance and provide an opportunity for comment. Adoption of the proposed code amendments would be considered a Type 3 legislative process subject to provisions in Chapter 30.73 SCC. Pursuant to SCC 30.73.050 and 070, notice for Type 3 actions requires at least ten days prior to the county council public hearing on this matter. To meet this requirement, PDS will request the Clerk of the Council to extend the notice period prior to the public hearing from ten to sixty days so that all stakeholders have the chance to provide input on the impacts of this proposal.

Finally, in order to raise exemption levels, jurisdictions must also document the existing development regulations and applicable state and federal laws which will provide adequate protections for cultural and historic resources when exemption levels are raised, including:

1. Use of available data and other project review tools regarding known and likely cultural and historic resources;
2. Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44 (Indian Graves and Records), 27.53 (Archaeological Sites and Resources), 68.50 (Human Remains), and 68.60 (Abandoned and Historic Cemeteries and Historic Graves) RCW; and
3. Local development regulations that include at minimum pre-project cultural resource review where warranted and standard inadvertent discovery language (SIDL) for all projects.

To meet these requirements, the county has provided the following existing documentation (Attachment 2):

1. Available Data and Project Review Tools:

The county is an active participant in the Certified Local Government (CLG) program. CLG is a nationwide program that offers financial and technical assistance to local governments in the preservation of irreplaceable historic and cultural resources. The program is administered by the Washington State Department of Archaeology and Historic Preservation (DAHP).

As a participant in the program, the county maintains a historic preservation commission, a survey of local historic properties, has the authority to enforce state and local preservation requirements and maintains a public participation program. As a CLG, the county also has the authority to offer a state tax incentive for the rehabilitation of buildings on its historical register.

DAHP shares in the county's role of historic preservation. It administers the National Register of Historic Places, the Washington Heritage Register, and the Heritage Barn Register, as well as maintains a database of the sites listed on those registers, including an online Geographic Information System (GIS) map tool called the Washington Information System for Architectural and Archaeological Records Data (WISAARD).

Snohomish County and DAHP are parties to a Memorandum of Understanding (MOU) which allows for the sharing of this archaeological and historic site data (Attachment 2a).

Data sets subject to this agreement include historic sites, recorded archaeological sites and cemetery sites. The agreement allows DAHP to provide the county with access to GIS records identifying the location and nature of archaeological and historic sites within the county.

This data allows county staff to advise applicants whether proposed properties or development sites are located within an area that contains archaeological sensitivity when application submittals of any type are submitted involving ground disturbing activity.

Per the agreement, only individuals who have taken cultural resources sensitivity training from DAHP may have access to this data for purposes of evaluating permit applications and development proposals for impacts to archaeological and historic resources.

2. Planning and Permitting Processes:

The General Policy Plan (GPP) is the principal document of Snohomish County's Growth Management Act (GMA) Comprehensive Plan and contains policy elements addressing cultural resources, among others. GPP Goal LU 11 and associated objectives and policies, also included in Attachment 2b, encourage the identification, protection, preservation, and enhancement of cultural resources including archaeological, historic, and arts resources.

3. Local Development Regulations:

On April 3, 2002, the council adopted Amended Ordinance No. 02-007, which added Title 33 SCC - Protection and Preservation of Snohomish County Archaeological and Historic Resources, Sites and Districts to county code. Later that year, on December 9, 2002, the council updated provisions for Historic and Archaeological Resources in Chapter 30.32D SCC (formerly Title 33 SCC) in Amended Ordinance No. 02-064.

The purpose of Chapter 30.32D SCC is to identify, evaluate, and protect archaeological and historic resources within the county and to preserve and rehabilitate eligible historic properties for future generations. This chapter of county code includes provisions addressing the shared DAHP data related to registered historic places and known archaeological sites.

In addition to DAHP's role in administering the protection of historic structures on the natural and state registers, in 2010 DAHP developed a non-regulatory planning tool. Known as the Predictive Model, this tool is intended to help determine areas in Washington State which may have a high probability of containing previously unknown archaeological materials.

In response, Snohomish County Planning and Development Services (PDS) modified procedures to flag those parcels identified by DAHP's predictive model as "Very High Risk" or "High Risk" of encountering an archaeological site. PDS then developed an Assistance Bulletin #103 and a brochure for customers outlining Inadvertent Discovery Protocols. These procedures are distributed to customers when applications of any type are submitted on those properties that have been flagged as high risk according to the predictive model.

ANALYSIS

Ecology's amendments allowing jurisdictions to increase exemption thresholds for minor new construction require each jurisdiction to demonstrate that existing development regulations already provide adequate environmental protection. Attachment 2 to this staff report shows how the large majority of environmental issues that SEPA was intended to address are already mitigated by requirements to comply with existing county code, state and federal regulations.

For instance, SCC 30.61.122 states that SEPA review includes consideration of the specific probable adverse environmental impacts of a development activity with regard to on-site and off-site changes to stormwater volume, release rate, erosion, sedimentation, stream channel stability and water quality. However, during review of private projects, PDS staff must determine whether the proposed development activity is in compliance with the following code sections:

- Chapter 30.43C - Flood Hazard Permits
- Chapter 30.44 - Shoreline Permits
- Chapter 30.62A - Wetlands and Fish & Wildlife Habitat Conservation Areas
- Chapter 30.62B - Geologically Hazardous Areas
- Chapter 30.62C - Critical Aquifer Recharge Areas
- Chapter 30.63A - Drainage
- Chapter 30.63B - Land Disturbing Activity
- Chapter 30.63C - Low Impact Development
- Chapter 30.64 - Groundwater Protection
- Chapter 30.65 - Special Flood Hazard Areas
- Chapter 30.67 - Shoreline Management Program

Once compliance with county code requirements has been determined, PDS staff can ensure that the proposed development activity will not result in any probable significant adverse environmental impacts. Therefore, compliance with county code requirements constitutes adequate analysis and mitigation of the specific significant probable adverse environmental impacts of the development activity.

Regarding cultural resource protection, state laws prohibit disturbance of Indian Graves and Records, Human Remains and Abandoned and Historic Graves and Cemeteries. RCW 27.53.060 specifically requires a permit prior to disturbance of any archaeological resource or site. Noncompliance with this statute can result in severe civil penalties. In addition to state and federal laws, Chapter 30.32D SCC requires an archaeology site report for any construction, earth movement, clearing or other site disturbance of a known archaeological site and for any proposed development on certain areas of the Tulalip Indian Reservation.

To ensure that no loss of environmental protection would result from increases to exemption levels, PDS conducted an analysis of permits for residential and commercial development, as well as standalone grading projects that would be subject to the increased exemption levels. At the briefing on May 26, 2015, PDS plans to provide commissioners with the results of that analysis.

Based on our analysis of the data, PDS concludes that increases to exemption levels in the proposed amendments would significantly reduce the duplication and administrative costs of environmental review while still providing protection of the environment and strong public participation during the permitting process. PDS will include appropriate documentation to satisfy the procedural requirements for raising the exemption levels in the record and as exhibits to or findings in the adopting ordinance, including Attachments 1 and 2 to this staff report.

UPDATING OTHER PROVISIONS IN CHAPTER 30.61 SCC

Chapter 30.61 SCC was adopted in Amended Ordinance No. 02-064 on December 9, 2002, and has not been comprehensively updated since. In addition to raising exemption thresholds consistent with state law, PDS also recommends the following changes be included in the proposal to provide necessary detail for existing code sections or requirements:

- Exemptions on Lands Covered by Water
- Clarification of SEPA Responsible Official

Lands Covered by Water.

Pursuant to WAC 197-11-800, exemptions from SEPA are allowed for minor new construction except when a project is undertaken (in whole or in part) on lands covered by water. The WAC provides a definition for certain “lands covered by water” which is a near identical match to the definition of critical areas that can be found in SCC 30.91C.340.

Critical areas throughout the county are protected by the county’s critical area regulations in Chapters 30.62A, 30.62B and 30.62C SCC. County regulations establish the same standard of protection required under SEPA. Additionally, critical areas and “lands covered by water” are often further protected by local shoreline regulations, state requirements for hydraulic project approval permits and federal Army Corps of Engineers permit requirements.

Therefore, it should not be necessary to duplicate this review through the SEPA process. For this reason, PDS adopted local guidance (Rule 5700) on February 24, 1998, providing an interpretation of the SEPA exemption for lands covered by water in WAC 197-11-800. The proposed ordinance includes language codifying exemptions for minor new construction and minor land use decisions on “lands covered by water” per PDS rule 5700. Following adoption of the proposed ordinance, PDS staff would repeal Rule 5700.

Clarification of SEPA Responsible Official.

Pursuant to SCC 30.61.055, the director of PDS is the SEPA responsible official for proposals for which PDS is the lead agency. In practice, the PDS Director may designate a staff member to serve as a SEPA lead to make threshold determinations, supervise scoping and preparation of any Environmental Impact Statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by the SEPA rules in the WAC. The proposed ordinance would clarify that the PDS Director or his/her designee (SEPA lead) can be the SEPA responsible official.

TRIBES, STAKEHOLDERS and OTHER AFFECTED PARTIES

PDS provided or will provide informational briefings for this project to the following stakeholders:

- April 7, 2015 – Council Discussion
- April 9, 2015 – The Tulalip Tribes
- May 14, 2015 – Snohomish County Tomorrow Planning Advisory Committee (SCT PAC)
- TBD – MBA and Futurewise

CONSISTENCY WITH THE SNOHOMISH COUNTY GENERAL POLICY PLAN (GPP)

The proposed amendments will maintain consistency with the following goals, objective, and policies of the Growth Management Act Comprehensive Plan (GMACP) - GPP:

- Objective NE 1.A** Balance the protection of the natural environment with economic growth, housing needs and the protection of property rights.
- GOAL NE 3** Comply with the requirements of state, federal and local laws for protecting and managing critical areas, shorelines, and water.
- Objective NE 3.A** Develop regulatory policies that apply to elements of the natural environment.
- Goal ED 2.** Provide a planning and regulatory environment which facilitates growth of the local economy.
- Objective ED 2.A.** Develop and maintain a regulatory system that is fair, understandable, coordinated and timely.
- Policy ED 2.A.1** Snohomish County shall ensure that revisions to the Snohomish County Code result in a more understandable, accessible, and user friendly document which eliminates unnecessary and clarifies confusing code provisions.
- Policy ED 2.A.2.** Snohomish County should stress predictability but maintain enough flexibility in the Comprehensive Plan and development codes to allow for timely response to unanticipated and desirable developments.

IMPLEMENTATION

Internal. Prior to code adoption, e-mail notification of the new provisions will be circulated to internal stakeholders, including departments and staff who use Title 30 SCC - UDC. Notification of code adoption will also be posted to internal websites frequently used by staff. Appropriate PDS staff in the Permitting Division of PDS will receive applicable training via regular divisional staff meetings. The Project Manager will also repeal Rule 5700.

External. Prior to code adoption, e-mail notification of the new provisions will be sent to external stakeholders. As appropriate, applicants will be notified at the front counter in CSC. Staff will create a bulletin to be distributed explaining new exemption levels and other changes. Pursuant to RCW 36.70A.106, an expedited request for review and notification of intent to adopt development regulations or amendments will be sent to the Washington State Department of Commerce (Commerce).

SCHEDULE

Updating SEPA Exemptions Proposed 2015 Schedule (Subject to Change)	
Date	Activity
May 26	Planning Commission Briefing
June 23	Planning Commission Public Hearing
Late Summer	Council Briefing and Public Hearing

ENVIRONMENTAL REVIEW, NOTIFICATION OF STATE AGENCIES AND PUBLIC COMMENT

SEPA. In order to satisfy SEPA requirements, the completion of an environmental checklist and the issuance of a threshold determination are expected to be completed on this non-project action after the planning commission hearing.

Commerce. In addition, each county and city planning under the GMA is required to notify the Growth Management Services office at Commerce, when adopting or permanently amending its comprehensive plans and/or development regulations (RCW 36.70A.106(1) and (3)(a).

Notice. Typically, the county provides at least ten days notice prior to the county council public hearing on Type 3 actions. However, pursuant to WAC 197-11-800(1)(c)(iii), before adopting the ordinance containing the proposed new exemption levels, the county must provide a minimum of sixty days notice to affected tribes, agencies with expertise, affected jurisdictions, Ecology and the public and provide an opportunity for comment.

ATTACHMENTS

- 1 – Existing county, state and federal regulations
- 2 – Regulations providing adequate protection for cultural resources